

SETTLEMENT AGREEMENT

This agreement is entered into between Ophelia De'lonta, previously known as Michael Stokes ("De'lonta"), a person in the custody of the Virginia Department of Corrections, and the Virginia Department of Corrections, acting institutionally and on behalf of its officers, agents and employees ("VDOC").

Whereas, differences have arisen regarding the manner in which VDOC has responded to De'lonta's requests for treatment of a condition known as gender identity disorder ("GID"), and the parties have resolved these differences and wish to set forth in this agreement the terms of this resolution,

Now therefore it is hereby agreed as follows:

1. **Dismissal of Litigation.** Promptly following receipt by counsel for De'lonta of (a) this agreement duly signed on behalf of VDOC, (b) the payment set forth in ¶6 below, and (c) the dismissal order attached hereto as Exhibit A endorsed by defense counsel of record, counsel for De'lonta will endorse said dismissal order and remit it to the court for entry, copy to opposing counsel.

2. **Designation of Julian Brantley, M.D.** VDOC will provide Dr. Julian Brantley, or such other specialist necessary for the purpose of consultation regarding De'lonta's diagnosis and treatment, with such information and assistance as he reasonably requires in order to complete his assessment of De'lonta's current condition and needs, and to formulate a treatment plan for addressing her medical, physical and psychological problems associated with her GID. It is understood that doctors in the employ of VDOC and De'lonta herself

can provide Dr. Brantley with information and material deemed to bear on her case. Dr. Brantley's treatment plan, however, will be based on his own assessment of De'lonta and his knowledge and professional judgment as a doctor of medicine with expertise in GID as to what treatment is indicated for this patient. Dr. Brantley will be requested to complete his initial assessment and his formulation of a treatment plan as soon as possible consistent with his professional needs. Dr. Brantley will be given a copy of this agreement.

3. **Additional Referrals.** Should Dr. Brantley recommend referral of De'lonta to another specialist not in the employ of VDOC (e.g., an endocrinologist), and reasonably explain why such referral is needed to complete his assessment or treatment plan, VDOC physicians will promptly arrange for the consultation; provided, that if VDOC physicians determine that the referral is inappropriate, the reasons for this determination will be set forth in an explanatory (not conclusory) statement, which will be forwarded to Dr. Brantley and counsel for De'lonta, together with a copy of Dr. Brantley's recommendation. The VDOC physicians and Dr. Brantley will thereupon endeavor to resolve their differences by mutual agreement as per ¶ 5 infra.

4. **Treatment Plan.** The treatment plan developed by Dr. Brantley, and any revisions or modifications thereof made by him in the future, will be submitted to VDOC, in care of its medical director, with a copy provided to De'lonta and also counsel to De'lonta, VDOC, and VDOC medical personnel.

5. **Modifications of Treatment Plan.** Dr. Brantley's treatment plan, and any revisions or modifications thereof made by him in the future, will be considered in good faith by VDOC physicians as they direct the ongoing treatment of De'lonta while in VDOC custody. VDOC acknowledges that as of the time of this agreement, it does not have on staff health care providers with substantial expertise in the treatment of GID. Should VDOC bring any such health care provider on staff, the ongoing treatment of De'lonta may be guided by such health care provider, substituting for Dr. Brantley as VDOC may determine.

De'lonta's counsel will be advised of such proposed substitution, and provided with the *curriculum vitae* of Dr. Brantley's proposed successor in this matter. Until such time, Dr. Brantley's treatment plan will be followed by VDOC; provided, that in the event any aspect of Dr. Brantley's plan is deemed problematical by VDOC, Dr. Brantley and VDOC physicians will endeavor to resolve their differences via professional dialogue. This attempt at resolution will be based on the professional judgment of the health care providers involved, it being the intent of the parties to this agreement for decisions regarding the treatment of De'lonta to be made by doctors, not lawyers or judges.

6. **[REDACTED]**

7. **Treatment of GID by VDOC.** VDOC confirms that the 1995 memorandum of the former VDOC medical director limiting the availability of certain treatments for GID for VDOC inmates, to the extent that it ever annunciated official VDOC policy, is rescinded and no longer effective; that the

care of inmates with GID will be guided by doctors experienced in the diagnosis and treatment of GID, whether in the employ of VDOC or retained on a consulting basis; and that the treatment plans for such inmates will be in accordance with what is determined to be medically necessary by qualified specialists, with appropriate regard to the institutional setting in which the treatment is taking place, and consistent with the provisions of ¶5 above.

8. **Inmate Intake:** When, as part of its intake process or otherwise, VDOC identifies inmates whose diagnosis might include GID, VDOC will arrange for those inmates to be evaluated and treated by doctors with expertise in such matters, as set forth in ¶ 7. VDOC will take such steps as are appropriate to permit incoming or current inmates whose diagnoses might include GID to be identified.

9. **Monitoring Reports.** In addition to receipt of Dr. Brantley's assessment and plan(s) as set forth in ¶¶ 2-5 above, counsel for De'lonta will receive complete, professionally drawn progress reports regarding De'lonta's status and prognosis from VDOC doctors or their consultants within 30, 90, 180 and 365 days of the completion of the initial treatment plan. Thereafter, counsel for De'lonta may obtain such a progress report once a year, if requested. Any request for same will be made through the office of the Attorney General.

10. **[REDACTED]**

11. **Security Staff.** VDOC will train its security staff as may be required to abide by VDOC's regulations that prohibit harassment and hostility, as regards inmates' gender identification.

12. **Housing.** VDOC will house inmates diagnosed with GID in the most appropriate prison environment reasonably available taking into consideration the inmates' individual conditions, including danger to self and others, and consistent with both the security and other considerations given to the housing assignments of inmates generally, and the inmates' GID treatment plans. Should VDOC determine that a placement outside of VDOC is appropriate for De'lonta, taking into consideration all aspects of her condition, nothing in this agreement precludes the transfer of De'lonta to such placement through the Interstate Compact on Corrections or otherwise.

13. **Confidentiality.** De'lonta and her counsel (including the ACLU and the ACLU of Virginia) agree that the provisions of paragraphs 6 and 10, addressing certain monetary payments, are confidential to the extent permitted by law. De'lonta and her counsel will not undertake to publish, publicize, or disseminate through any mass medium the fact and the terms of paragraphs 6 or 10 in any manner. To the extent that news media representatives seek information about the status of these matters from any party or counsel of record, the parties and their counsel agree that they will not offer comment for the record.

14. **No Personal Criticism.** The parties acknowledge that they are

free to provide copies of pleadings and orders to others and to describe the nature and outcome of the litigation. The parties agree, however, not to engage in personal criticism of any other party or former party to the lawsuit. Specifically, the parties agree that in any public communication regarding the disposition of this action, they will address the matters at issue in generic and institutional terms only, without identifying particular named persons for criticism.

15. **Miscellaneous**. This agreement, including the dismissal order attached as Exhibit A, represents the entire agreement of the parties. It can be modified only in writing, signed by all the parties hereto. It will be signed in quadruple originals and can be executed in counterpart, with VDOC and De'lonta each retaining two complete original signature documents. Each of the numbered provisions herein is material to this agreement and none is mere recital.

IN WITNESS WHEREOF, the parties to this agreement have signed this agreement on the dates indicated by the signatures:

_____ Dated: June ____, 2004
Ophelia Azriel De'lonta

Virginia Department of Corrections

By: _____ Dated: June ____, 2004
Gene M. Johnson, Director