

Duffy v. Riveland



PC-WA-0003-0006

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

SEAN G. DUFFY, et al.,

Plaintiffs,

v.

CHASE RIVELAND, et al.,

Defendants.

No. C92-1596R

DECLARATION OF LEONARD J.
FELDMAN IN SUPPORT OF
MOTION FOR ORDER
APPROVING SETTLEMENT OF
CLASS ACTION

I, Leonard J. Feldman, declare under penalty of perjury under the laws of the State of Washington as follows:

1. I am counsel for plaintiff Sean Duffy in the above-captioned matter and make this declaration based on my own personal knowledge.

2. This action arises out of the ongoing failure of officials of the Washington Department of Corrections (DOC) to accommodate the special needs of deaf and hearing impaired prisoners. Plaintiffs brought this action to redress DOC's failure under (i) the Americans with Disabilities Act of 1990 (ADA), (ii) the Rehabilitation Act of 1973, (iii) 42 U.S.C. § 1983, and (iv) RCW 2.42.120.

3. After substantial discovery, dispositive motions, and a Ninth Circuit appeal (involving plaintiff Duffy), the parties executed a proposed settlement agreement resolving all

1 of the plaintiffs' claims. The settlement agreement and related documents were submitted to
2 the Court in early June 1998. The parties requested that the Court provisionally approve the
3 proposed settlement and direct notice to all putative class members. The Court did so by
4 Order dated June 8, 1998.

5 4. I understand -- based on communications with defendants' counsel and others --
6 that notice of the proposed settlement was (i) distributed to all known deaf and hearing-
7 impaired prisoners in DOC institutions, and (ii) posted in prominent locations in DOC
8 institutions throughout the state. Members of the proposed class were instructed that any
9 objections to the proposed settlement should be mailed to the Court on or before August 1,
10 1998.

11 5. Counsel for plaintiffs subsequently determined that members of the proposed
12 class should be given additional time to respond. The parties subsequently agreed, and the
13 Court ordered, that any objections to the proposed settlement agreement would be considered
14 timely if mailed before August 15, 1998. On August 20 -- five days after the August 15
15 deadline -- an employee of Heller Ehrman reviewed the Court file to determine whether any
16 such objections had been submitted.

17 6. As explained in plaintiffs' moving papers regarding class certification, plaintiffs'
18 counsel believe that there are over 100 deaf and hearing-impaired prisoners in Washington.
19 Nevertheless, the Court file in this matter contained objections (as of August 20, 1998) of only
20 eight prisoners, some of whom apparently are not deaf or hearing-impaired. One other
21 prisoner -- Clayton Gerlach -- filed a document supporting the proposed settlement agreement.
22 Copies of plaintiffs' Memorandum in Support of Motion for Order Approving Settlement of
23 Class Action ("Plaintiffs' Supporting Memorandum," filed herewith) and related pleadings
24 were served on each of these prisoners. However, in order to protect each prisoner's privacy,
25 we did not send any prisoner copies of another prisoner's objections.

26 7. Notwithstanding the few objections that were found in the Court file, plaintiffs'
27 counsel firmly believe that the settlement agreement in this matter is fair, adequate, and
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DECLARATION OF LEONARD J.
FELDMAN - 2

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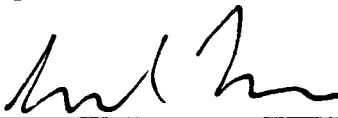
1 reasonable. That agreement provides many important benefits to deaf and hearing-impaired
2 prisoners in Washington, as is illustrated by Plaintiffs' Supporting Memorandum.

3 8. The proposed settlement agreement is not, however, one-sided. Defendants in
4 this matter have repeatedly argued that federal law allows prison officials substantial flexibility
5 in managing prison facilities. In response to this argument, the DOC policy gives appropriate
6 weight to safety and security concerns that may arise in the prison environment. This lawsuit
7 could not have been settled without recognizing these concerns. After much discussion and
8 debate, appropriate language was drafted on this point.

9 9. Plaintiffs are entitled to reasonable attorney fees and costs under 29 U.S.C
10 § 794a(b), 42 U.S.C. § 12205, and 42 U.S.C. § 1988. Although plaintiffs' fees and costs
11 totaled more than \$400,000 at the time of settlement discussions, defendants agreed to pay and
12 plaintiffs' counsel agreed to accept \$150,000 -- less than 40 percent of the amount requested --
13 for those services. Again, plaintiffs' counsel believe that the parties' agreement on this issue
14 is fair, adequate and reasonable.

15 10. As is also explained in Plaintiffs' Supporting Memorandum, the proposed
16 settlement agreement contains provisions that allow plaintiffs' counsel to monitor defendants'
17 compliance with DOC Policy 490.050, a copy of which is attached to the settlement
18 agreement. Plaintiffs' counsel are committed to ensuring that DOC complies with its new
19 policy and taking appropriate action if DOC fails to do so.

20 DATED this 21st day of August, 1998, at Seattle, Washington.

21 
22 _____
23 Leonard J. Feldman