

## Jones 'El v. Schneider

United States District Court for the Western District of Wisconsin

May 15, 2006, Decided

00-C-421-C

**Reporter:** 2006 U.S. Dist. LEXIS 30423

DENNIS E. JONES 'EL, MICHA'EL JOHNSON, DE'ONDRE CONQUEST, LUIS NIEVES, SCOTT SEAL, ALEX FIGUEROA, ROBERT SALLIE, CHAD GOETSCH, EDWARD PISCITELLO, QUINTIN L'MINGGIO, LORENZO BALLI, DONALD BROWN, CHRISTOPHER SCARVER, BENJAMIN BIESE, LASHAWN LOGAN, JASON PAGLIARINI, and ANDREW COLLETTE, and all others similarly situated, Plaintiffs, v. RICHARD SCHNEITER and MATT FRANK, Defendants.

**Subsequent History:** Later proceeding at [Jones 'EL v. Schneider, 2006 U.S. Dist. LEXIS 53213 \(W.D. Wis., July 31, 2006\)](#)

**Prior History:** [Jones 'El v. Berge, 2004 U.S. Dist. LEXIS 3365 \(W.D. Wis., Feb. 26, 2004\)](#)

**Counsel:** [\*1] For LORENZO BALLI, BENJAMIN BIESE, DONALD BROWN, ANDREW COLLETTE, DE'ONDRE CONQUEST, ALEX FIGUEROA, CHAD GOETSCH, MICHAEL JOHNSON, DENNIS E. JONES 'EL, QUINTON L'MINGGIO, LASHAWN LOGAN, LUIS NIEVES, JASON PAGLIARINI, EDWARD PISCITELLO, ROBERT SALLIE, CHRISTOPHER SCARVER, SCOTT SEAL, Plaintiffs: EDWARD R. GARVEY, GARVEY & STODDARD, S.C., MADISON, WI.

For DENNIS E. JONES 'EL, Plaintiff: WALTER DICKEY, UNIVERSITY OF WISCONSIN LAW SCHOOL, MADISON, WI.

**Judges:** BARBARA B. CRABB, District Judge.

**Opinion by:** BARBARA B. CRABB

### Opinion

ORDER

A hearing on defendants' motion to extend the term of the monitor was held in this case on May 12, 2006, before United States District Judge Barbara B. Crabb. Plaintiffs appeared by Ed Garvey, Pamela McGillivray and Carlos Pabellon. Defendants were represented by Corey Finkelmeyer, David Hoel and Kevin Potter.

After hearing plaintiffs' arguments in opposition to the extension of the monitor's term, I advised counsel for both

sides that it appeared that the issues between the parties are not the ones that led to the implementation of the consent agreement in the first place. Rather, they seem to be disagreements about matters related to defendants' proposed changes [\*2] to the Wisconsin Secure Program Facility. From the reports filed with the court and the representations of counsel in the various hearings held by the court, it appears that defendants have taken major steps to ameliorate the conditions that plaintiffs were challenging when they brought this suit. Plaintiffs have not complained that defendants are out of compliance with any of the provisions of the consent agreement. Therefore, it seems proper to consider ending the consent agreement.

Although the parties made it a condition of their agreement that they would not seek to modify or terminate or otherwise challenge the agreement for a period of five years following the court's approval of the agreement, that condition does not bind the court. A court is "not bound forever to enforce and interpret a preexisting decree without occasionally pausing to question whether changing circumstances have rendered the decree unnecessary, outmoded, or even harmful to the public interest." [In re Pearson, 990 F.2d 653, 659-60 \(1st Cir. 1993\)](#). In light of the changes that defendants have made to the facility, including air conditioning, the development of a screening process to prevent [\*3] the seriously mentally ill from being transferred to the facility, or remaining there, the construction of outdoor exercise facilities and the abandonment of the much-criticized "Level System," this seems an apt moment to pause and consider the continuing need for the decree.

Counsel agreed to a schedule for briefing the question. With the possibility in mind that the consent agreement might be terminated, plaintiffs' counsel advised the court that they did not oppose continuation of the same monitor, performing the same tasks, until the continued viability of the consent agreement is resolved. They asked also that the United States Magistrate Judge conduct further negotiations about the parties' disagreements, which would not include the continued work of the monitor. With that contentious issue out of the picture, I believe that the magistrate judge would be willing to work further with the parties' counsel. I will leave it to him to decide when to schedule such negotiations and how long to continue them if they do not seem to be productive.

ORDER

IT IS ORDERED that plaintiffs may have until May 26, 2006, in which to file and serve a brief on the question of terminating the consent [\*4] agreement on the court's motion; defendants may have until June 9, 2006, in which to serve and file a brief on the same question and plaintiffs may have until June 16, 2006, in which to file and serve a reply brief.

Entered this 15th day of May, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

United States Magistrate Judge Stephen L. Crocker will arrange a negotiation session with counsel to try to resolve any remaining issues the parties wish to discuss.