

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 T.R., P.R., and K.W., on behalf of)
 themselves and others similarly situated;)
 and Protection and Advocacy for People)
 with Disabilities, Inc.,)
)
 Plaintiffs,)
)
 v.)
)
 State of South Carolina; South Carolina)
 Department of Corrections; and Jon)
 Ozmint, as Director of the South Carolina)
 Department of Corrections,)
)
 Defendants.)

IN THE FIFTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2005-CP-40-02925

FILED
 2008 SEP 16 PM 3:47
 BARBARA A. SCOTT
 C.C.C.

**ORDER SETTING FORTH
 PROCEDURE FOR INSPECTION
 OF LEE AND LIEBER
 CORRECTIONAL INSTITUTIONS**

Pursuant to the Consent Scheduling Order entered into in this case, Plaintiffs will conduct an inspection of Lee and Lieber Correctional Institutions on September 15-18, 2008, pursuant to the procedures set forth in this Order. The Court conducted a telephone conference with counsel prior to the issuance of this Order. Because certain information was not provided to counsel for Defendant State of South Carolina in advance of that conference, that party does not consent to the procedures outlined herein.

1. The inspection will begin promptly at 8:30 a.m. each day and conclude at 5:30 p.m. The inspection for Lee shall commence on Monday, September 15; the inspection for Lieber shall commence on Wednesday, September 17, 2008.

2. To facilitate and make more efficient the inspection process, the parties will comply with the following procedures.

a) Prior to the inspection, the Department shall provide Plaintiffs with full and complete responses to Plaintiffs' Seventh Request for Production 24

and Seventh Interrogatories 2 and 3 and complete updated responses to Plaintiffs' Seventh Request for Production 11-13 and Seventh Interrogatories 1 and 4-8.

- b) Prior to the inspection, Plaintiffs shall provide the Department with a list of inmates Plaintiffs' experts wish to interview during the inspection. The inmates that may be interviewed by Plaintiffs' experts will not be limited to the list. Plaintiffs' experts are authorized to interview other mentally ill and non-mentally ill inmates during the inspection.
- c) To the extent possible, Plaintiffs will identify before the inspection a list of inmate records their experts wish to review and the Department will attempt to have such records available. Plaintiffs' experts will not be limited by the list of inmate records to the records they may review during the inspection. If they request additional records, the Department shall also make its best efforts to provide records requested during the inspection.

3. If Defendants believe that any communications between Plaintiffs' experts and Department employees during the inspection results in unfair surprise or prejudice to the Defendants, in that such communications are duplicative of depositions already taken, Defendants may object and file an appropriate motion with the Court.

4. During the inspection the experts may take photographs as long as the photographs do not present an unreasonable security risk. Defense counsel shall be provided with copies of any photographs taken within two (2) weeks of the inspection.

5. Plaintiffs' experts will be allowed to take their laptop computers into the institutions to take notes during the interviews. Copies of any and all notes prepared by Plaintiffs' experts during their interviews with inmates must be produced to defense counsel within twenty-four (24) hours of the conclusion of the inspection. These notes are protected information, and may not be disseminated in any form beyond counsel, Department of Corrections employees, and retained experts.

Psychiatric Interviews and Inspection

6. On September 15 Plaintiffs' expert psychiatrists, Dr. Metzner and Dr. Patterson, along with Guardian ad Litem Polly Bekaert, will be given a brief guided walk-through of the institution being inspected, accompanied only by an escort. During the walk-through Dr. Metzner and Dr. Patterson may ask factual questions of their escort related to the layout, organization, and operations of the institution. On September 17 a similar brief walk-through will be conducted for the institution scheduled that day.

7. Dr. Metzner and Dr. Patterson, accompanied by Ms. Bekaert, will conduct private, cell-front interviews of any mentally ill and non-mentally ill inmates at the institutions. To expedite the inspection process, Dr. Metzner and Dr. Patterson will, at times, split up so they can conduct separate sets of cell-front interviews. Prior to speaking with any inmate, Plaintiffs' experts must advise the inmate that he is not required to participate in any discussions. No attorneys for any party may accompany Dr. Metzner or Dr. Patterson during the walk-through or cell-front interviews.

8. Dr. Metzner and Dr. Patterson will be allowed to privately review requested automated and non-automated records of selected inmates, including but not limited to medical records, custody records, classification records, disciplinary records, and use of force records.

The Department of Corrections will provide knowledgeable employees to assist Dr. Metzner and Dr. Patterson throughout the inspection with obtaining any computerized records they wish to review. In addition, Plaintiffs' counsel may bring an IT employee of their own to help facilitate this process.

9. Dr. Metzner and Dr. Patterson, separately or together and accompanied by Ms. Bekaert, will also be allowed to conduct individual, private interviews of any mentally ill and non-mentally ill inmates without the presence of Department staff or counsel for Plaintiffs or Defendants. These interviews will not be cell-front interviews but will take place in private rooms. The Court is aware that, due to the incarceration status of certain inmates, reasonable security precautions may have to be taken by the Department in allowing out of cell interviews with such inmates. Interviews with such inmates by Plaintiffs' counsel or experts is understood to be conducted with an assumption of the risks involved.

10. Dr. Metzner and Dr. Patterson will be allowed to interview Dr. Janet Woolery, who provides psychiatric services at Lee, at an appropriate time and place during the inspection. At the option of the Department, one lawyer for Plaintiffs, one lawyer for the Department, and one lawyer for the State can be present for the interview, but these lawyers may not ask any questions, make any comments, nor attempt to communicate with Departmental staff during the interview. If during the interview Defendants' counsel believes Dr. Metzner's or Dr. Patterson's questions stray outside the appropriate scope, they may object and telephone the Court for a ruling if counsel for the parties are unable to resolve the issue among themselves. Plaintiffs will be responsible for tape recording this interview, and such recording shall be sealed.

Correctional Interviews and Inspection

11. Plaintiffs' correctional expert, Mr. Steve J. Martin, will also conduct his inspection of Lee and Lieber Correctional Institutions from September 15 through September 18, 2008, from 8:30 a.m. to 5:30 p.m. each day. At 8:30 a.m. on September 15 and at 8:30 a.m. on September 17, Mr. Martin will be allowed to ask factual questions of one or more knowledgeable administrators regarding the overall layout and operation of the facilities at their institutions and about the organization and contents of a representative institutional file. Mr. Martin will be provided with Lee and Lieber daily inmate count sheets by housing unit and daily security shift rosters by housing unit for September 15-18, 2008. He will be allowed to ask the appropriate administrator factual questions about the meaning of figures, columns, codes, etc. appearing on these documents. At the option of the Department, one lawyer for Plaintiffs, one lawyer for the Department, and one lawyer for the State can be present for the interview, but these lawyers may not ask any questions, make any comments, nor attempt to communicate with Departmental staff during the interview. If during the interview Defendants' counsel believes Mr. Martin's questions stray outside the appropriate scope, they may object and telephone the Court for a ruling if counsel for the parties are unable to resolve the issue among themselves. Plaintiffs will be responsible for tape recording this interview.

12. Mr. Martin will also be provided with a knowledgeable escort who will walk him through all the units, divisions, support areas, and facilities at the two institutions. Mr. Martin's walk-through and escort may in part be separate from Dr. Metzner and Dr. Patterson's; however, to lessen the burden on institution staff, where possible the tour for Plaintiffs' experts shall be conducted together and led by one individual staff member.

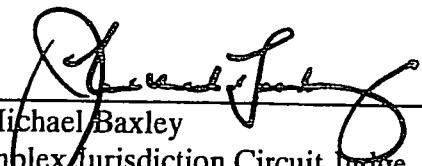
13. Mr. Martin will be allowed to ask the escort factual questions during the walk-through. Mr. Martin will be allowed to conduct private, cell-front interviews of any mentally ill

and non-mentally ill inmates at the institutions. Prior to speaking with any inmate, Mr. Martin must advise the inmate and he/she is not required to participate in any discussions. No attorneys for any party may accompany Mr. Martin during the walk-through or cell-front interviews.

14. Mr. Martin will be allowed to review privately requested inmate records, including but not limited to medical records, custody records, classification records, disciplinary records, and use of force records. Mr. Martin will also be provided daily inmate count sheets by housing unit, as well as security daily shift rosters for Lee and Lieber by housing unit for each day of the inspection. The Department will provide a knowledgeable IT employee throughout the inspection to assist Mr. Martin with obtaining any computerized records he wishes to review. In addition, the IT employee of Plaintiffs' counsel may be present to help facilitate this process.

15. Mr. Martin will also be allowed to conduct individual, private interviews of any mentally ill and non-mentally ill inmates without the presence of Department staff or counsel for Plaintiffs or Defendants. These interviews will not be cell-front interviews but will take place in private rooms.

IT IS SO ORDERED.



J. Michael Baxley
Complex Jurisdiction Circuit Judge
Fifth Judicial Circuit

September 12, 2008