

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

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

T.R., P.R., K.W., and A.M. 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. )

**ORDER SETTING FORTH PROCEDURES**  
**FOR AUGUST 23-27 INSPECTION**

2010 AUG 17 PM 3:21  
FILED  
RICHLAND COUNTY  
JENNIFER W. McBRIDE  
CLERK, P. & G.S.

This is a class action brought on behalf of inmates with serious mental illness in custody of the South Carolina Department of Corrections ("SCDC"). Plaintiffs' experts have already conducted four previous inspections of SCDC institutions during this litigation. The next inspection will be held August 23-27, 2010 and involves Camille Graham Correctional Institution ("Graham"), Gilliam Psychiatric Hospital ("GPH"), and SCDC's Maximum Security Unit ("MSU"). Both GPH and MSU are located within Kirkland Correctional Institution. Plaintiffs' experts will also inspect on August 27, 2010 certain portions of Carolina Regional Care Center ("CRCC"), a privately operated facility. The CRCC inspection is subject to a separate order dated June 23, 2010.

Past inspections in this case have involved three of Plaintiffs' experts – Dr. Metzner, Dr. Patterson, and Mr. Martin. Plaintiffs have now added a fourth expert, however, Stephen A. Carter. Mr. Carter's areas of expertise are prison design and costs. He will not require as much

inspection time as Plaintiffs' other experts, therefore his inspection will be conducted separately from the others.

**A. Carter Inspection**

Mr. Carter, accompanied by a photographer, will be allowed to inspect Graham, GPH, and MSU all on August 27, 2010. He will be provided a knowledgeable escort at each of these three facilities who can answer factual questions related to the identity of buildings and their purposes and functions. He will not conduct interviews. There are no restrictions on what may be photographed, but Plaintiffs shall keep strictly confidential any photographs to which SCDC objects until such time as the Court rules upon the objections. No lawyers for any party will accompany Mr. Carter.

**B. Metzner, Patterson, Martin Inspection of Graham and GPH**

Plaintiffs' other three experts will inspect Graham and GPH pursuant to the procedures set forth below:

1. The inspection will begin promptly at 8:30 a.m. each day and conclude at 5:30 p.m.
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' outstanding written discovery.
  - 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 without restriction, except that Plaintiffs shall keep strictly confidential any photographs to which SCDC objects until such time as the Court rules on the objections.

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 and retained experts.

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Psychiatric Interviews and Inspection

6. At the beginning of each inspection Plaintiffs' expert psychiatrists, Dr. Metzner and Dr. Patterson, along with the Guardians ad Litem and a photographer, 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

7. Dr. Metzner and Dr. Patterson, accompanied by the GALs and photographer, 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 IT employees to assist Dr. Metzner and Dr. Patterson throughout the inspection with obtaining any computerized records they wish to review

9. Dr. Metzner and Dr. Patterson, separately or together and accompanied by the GALs and photographer, 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

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Plaintiffs or Defendants. These interviews will not be cell-front interviews but will take place in private rooms.

10. Plaintiffs' experts and GALs will be allowed to observe group therapy sessions at Graham and GPH of mentally ill inmates, but may not speak during the sessions.

Correctional Interviews and Inspection

11. Plaintiffs' correctional expert, Mr. Steve J. Martin, will also conduct his inspection from August 23 through August 27, 2010, from 8:30 a.m. to 5:30 p.m. each day. At the beginning of each inspection 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 daily inmate count sheets by housing unit and daily security shift rosters by housing unit for August 23-27, 2010. 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 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.

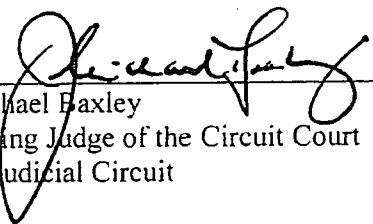
C. MSU Inspection

16. MSU was scheduled for inspection in November 2009, but the inspection was postponed. Prior to the inspection, the Court issued its Second Discovery Conference Report, attached hereto as Exhibit A and incorporated herein ("Conference Report"). Paragraph

3 of the Conference Report references an eight-point document prepared by Plaintiffs, attached hereto as Exhibit B and incorporated herein ("Plaintiffs' MSU Inspection Document"). Paragraph 3 of the Conference Report concludes: "The Court will proceed with the MSU inspection as outlined by the Plaintiffs." Accordingly, the upcoming MSU inspection will be governed by the procedures set forth in the Conference Report and Plaintiffs' MSU Inspection document.

17. In addition, Plaintiffs' experts may be accompanied by a photographer during the MSU inspection. There is no restriction on what may be photographed, but Plaintiffs shall keep strictly confidential any photographs to which SCDC objects until such time as the Court rules on the objections.

AND IT IS SO ORDERED.

  
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J. Michael Baxley  
Presiding Judge of the Circuit Court  
Fifth Judicial Circuit

July 30, 2010

STATE OF SOUTH CAROLINA )  
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COUNTY OF RICHLAND )

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T.R., P.R., and K.W., on behalf of )  
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**SECOND  
DISCOVERY CONFERENCE  
REPORT**

State of South Carolina; South Carolina )  
Department of Corrections; and Jon )  
Ozmin, as Director of the South Carolina )  
Department of Corrections, )  
 )  
Defendants. )

A telephone status conference was conducted on April 23, 2009, beginning at 10:00 a.m., between counsel and the Court. Appearing on behalf of Plaintiffs were attorneys Dan Westbrook and Stuart Andrews, on behalf of Defendant SCDC attorney Ken Woodington, and on behalf of the State of South Carolina attorney Emory Smith. The conference was forty-five minutes in duration, no record was made, and the following procedural decisions were made in the course of the discussion:

1. A further discussion of the parameters of the hearing through which the Court intends to establish the legal standard for constitutional violation was discussed. Plaintiffs requested that the hearing reach only a presumptive standard and not a dispositive, final standard because Plaintiffs felt they would be prejudiced in the discovery. Defendants do not object to this approach, and thus the Court will decide the presumptive standard.
2. The final decision on the remaining outstanding Lee/Lieber discovery was deferred until April 30, 2009 because SCDC counsel Will Davidson was unable to attend today's phone conference. There was no objection. A separate discovery Order will be issued after that subsequent phone conference.
3. A discussion of the upcoming MSU inspection was had. This will likely occur the first week in November, 2009. Plaintiffs proposed a document detailing steps one through eight to be followed as a protocol for conducting the inspection. Defendants expressed concern over step four (which allows for private individual interviews of certain inmates without the presence of SCDC staff or counsel). This may require additional correctional officer personnel, SCDC will need to know the exact number of interviewees in advance. Defendants also expressed concern over the amount of prior-to-inspection discovery discussed in number eight. The Court will proceed with the MSU inspection as outlined by the Plaintiffs.
4. The Plaintiffs will propose a new detailed scheduling order, still intending to try this case in the year 2010, for further review and discussion between the Court and counsel.

April 23, 2009

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J. Michael Baxley, Presiding Judge

FORM 4

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FIRST  
DISCOVERY CONFERENCE  
REPORT

A telephone status conference was conducted on 3-20-09, beginning at 10:00 a.m., between counsel and the Court. No formal record was made, and the conference was fifty minutes in duration. The following procedural decisions were made in the course of the discussion:

1. The Court will entertain a separate hearing on the legal standard to be applied in this case. In order to develop the issue, and to prepare the Court and parties for arguments, a briefing schedule was set. The Plaintiffs have thirty (30) days from 3-20-09 to file a brief on the issue, the Defendant SCDC will be given thirty (30) days thereafter to respond, the Defendant State of South Carolina will be given one additional day thereafter to supplement the SCDC response with their own response if necessary, and Plaintiffs given fifteen (15) days thereafter to reply. A hearing will be set sometime within 90-120 days of March 20, 2009 to make a determination.
2. The Plaintiff will submit to the Court within ten (10) days of 3-20-09 comments on the sufficiency of discovery responses that were made today by Defendants concerning the Lee/Lieber inspections. These discovery responses are overdue, and the Court will conduct a hearing if necessary to settle this issue.
3. With regard to a second MSU inspection on the Broad River campus, Plaintiff will have ten (10) days for Plaintiff to submit the requested parameters and specifics of the requested inspection, the Defendants will thereafter have ten (10) days to respond.
4. Trial in this matter remains set for the year 2010.

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J. Michael Baxley, Presiding Judge

Exhibit 2

MSU INSPECTION

1. Complete walk-through of all areas of the MSU, with a knowledgeable escort who can answer factual questions.
2. Cell-front interviews of certain inmates by Plaintiffs' experts.
3. Private review by Plaintiffs' experts of requested records, including medical records, of certain inmates.
4. Private individual interviews by Plaintiffs' experts of certain inmates, without the presence of SCDC staff or counsel for Plaintiffs or Defendants.
5. Experts will be allowed to take their laptop computers into MSU to take notes during the interviews.
6. Plaintiffs' three experts will split up during the cell-front and private interviews, but stay together during the walk-through.
7. The two guardians ad litem will be allowed to accompany Plaintiffs' experts during the walk-through, cell-front interviews, and private interviews.
8. Prior to the inspection, Plaintiffs will conduct written discovery specific to MSU and notice depositions of MSU administrative, correctional, and clinical staff. To the extent such discovery is not completed prior to the inspection, Plaintiffs' experts will be allowed to conduct interviews during the inspection, under the same guidelines as in the Court's previous order governing procedures at the 2006 Kirkland inspection.