

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. )

2011 AUG 29 PM  
JEANETTE W. JONES  
C.C.P. & G.

FILED

ORDER DENYING DEFENDANT  
SCDC'S MOTION TO RECONSIDER  
JULY 6, 2011 DISCOVERY ORDER

Defendant SCDC filed a motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to ask the Court to reconsider its Order granting Plaintiffs' Motion to Compel Responses to 14<sup>th</sup> Interrogatories, 15<sup>th</sup> Interrogatories, and 15<sup>th</sup> Requests for Production filed July 6, 2011 (the "Order"). During the August 15, 2011 hearing held by conference call, William H. Davidson and Kenneth P. Woodington represented the Defendant SCDC and Stuart M. Andrews represented the Plaintiffs. Based upon the motion filed by SCDC and the arguments of the parties, the Court denies the motion for the reasons set forth below.

SCDC asks the Court to reconsider its rulings concerning four separate requests for the production of documents set forth in Section D of the Order. See Order at 5, § D, "Miscellaneous RFPs." I will address each ruling in the order presented.

1. Number of Restraint Chair and Gas Incidents. SCDC asks the Court to reconsider the burdensomeness of the Order granting the motion to compel responses to Plaintiffs' 15<sup>th</sup> Request for Production 25. In the Order, SCDC was required to produce

documents showing the total number of use of force ("UOF") incidents with restraint chairs and gas involving all inmates and all mentally ill inmates at area mental health centers, including Kirkland Correctional Institute where MSU, ICS, and Gilliam Psychiatric Hospital are located. SCDC specifically objected to the Plaintiffs' failure to limit the period of time to which the request would apply. During the hearing, Plaintiffs' counsel proposed to limit the request to the period from January 1, 2008 through December 31, 2010. The Court finds the duration of this period to be reasonable and consistent with many of the Court's rulings establishing the scope of discovery sought by Plaintiffs.

In addition, SCDC's counsel stated the Department would respond to the Order by producing hundreds, if not thousands, of pages of records of individual UOF incidents for inspection and copying. Plaintiffs' counsel objected inasmuch as the request seeks the total numbers of incidents in which restraint chairs and gas were used involving all inmates and all mentally ill inmates, not records of individual UOF incidents.

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This production request relates to the Plaintiffs' allegations that members of the class are subjected disproportionately to uses of force, particularly to the use of gas and restraint chairs. If the Department has the capability of determining the responses to RFP 25 by any means available other than a manual review of reports of individual UOF incidents for any period of time since January 1, 2008, it is ordered to do so and to report its findings to Plaintiffs. If the data sought can be retrieved other than by the manual review of individual UOF reports but the Department regards the effort to do so to be too burdensome to undertake, the Department shall notify Plaintiffs' counsel and the Court of the estimated hours and cost necessary to retrieve the requested information.

SCDC shall also determine whether it can produce the total number of UOF incidents for all inmates and for all mentally ill inmates without regard to the uses of particular kinds of force. If it has the capability of providing such information without conducting a manual review of all individual UOF reports, it shall do so for the requested years and institutions. Further, if it can determine the number of UOF incidents involving either all inmates or all mentally ill inmates, it shall also provide that information.

Finally, the Department's counsel acknowledged during the hearing that management information notes ("MINs") would contain reports of many individual UOF incidents and could be produced electronically. If the Department is unable to respond fully to RFP 25, SCDC shall produce an electronic version of the MINs for the requested institutions for all inmates, including but not limited to mentally ill inmates, in a format that is capable of being searched and sorted.

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The Department was originally ordered to produce documents in response to this RFP 25 by August 1, 2011. Because of the approaching close of the discovery period and the relevance of this information to opinions to be offered by Plaintiffs' experts, SCDC is ordered to produce the responsive documents and information by September 1, 2011.

2. *Employment Records.* SCDC next asks the Court to reconsider its ruling compelling the Department to respond to the Plaintiffs' 15<sup>th</sup> Request for Production 26. In granting Plaintiffs' motion to compel, the Court found that the quality of care provided mentally ill inmates "goes to the heart of this lawsuit," and that turnover in the mental health and medical staff who provide that care is "highly relevant." Order at p. 6, ¶ 3.

After hearing from the parties, the Court still finds the employment records for mental health and medical personnel related to exit interviews, resignations, and terminations to be highly relevant. During argument, counsel for the Department stated that SCDC would make

available for review and copying the entire employment file for each former employee who provided mental health or medical care to class members at any area mental health center, GPH, MSU, ICS, or BMU. Plaintiffs' counsel raised concerns related to whether such a process would be more burdensome to Plaintiffs than it would be to the Department, which would be in a better position than Plaintiffs' counsel to identify the responsive documents in each employment record. Rather than rule at this point, however, on a largely hypothetical issue, the Court will permit the Department to make the employment records available as their counsel has proposed. If, upon review of the records, Plaintiffs' counsel have difficulty identifying the responsive documents located in the employment files, they should advise the Court and we will schedule a telephone conference call to take up the matter promptly. The Department was previously required to produce these records on August 1, 2011. The Department shall make these records available to Plaintiffs by September 1, 2011.

3. Correctional Officer Training Records. The third ruling the Department has asked the Court to reconsider relates to the Plaintiffs' 15<sup>th</sup> Request for Production 27. In the Order, the Court directed the Department to produce the individual training files for correctional officers who have worked since January 1, 2008 at the area mental health centers and Kirkland Correctional Institution, where Gilliam, ICS, and MSU are located. The Department objected to what it characterized as the burdensome nature of the request. In response, Plaintiffs proposed an alternative form of production that would involve an electronic reporting of training information.

The purpose of RFP 27 is to determine the extent to which correctional officers at institutions that serve a large number of class members have received training related specifically to mentally ill inmates. It is a relevant area of inquiry. To the extent the requested information

can be retrieved electronically, it would be less burdensome to the Department and Plaintiffs to produce it in that manner. Accordingly, the Department shall produce the following information:

- a. The name and description of the trainings correctional officers have received since January 1, 2008 that specifically relate to mentally ill inmates.
- b. The date and location of each such training.
- c. The number of correctional officers who attended each training. If trainings located in Columbia were attended by correctional officers from non-Columbia area institutions, SCDC shall provide the number of correctional officers from the various area mental health centers who attended the trainings.
- d. The total number of correctional officers employed on January 1 for the years 2008, 2009, and 2010 at the area mental health institutions and Kirkland Correctional Institution.

The Department shall produce this information by September 1, 2011, at which point it shall be relieved of the necessity to produce all individual training files under the July 6 Order.

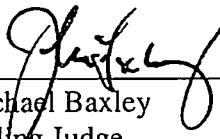
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4. Schematic Drawings. The Department's final request seeks clarification concerning the Court's ruling in granting Plaintiffs' motion to compel SCDC to produce certain schematic drawings in response to RFP 29. The Order identifies those individuals who are authorized to review the drawings and further states that the drawings "shall not be copied." The Department asks the Court to clarify the limitation concerning the reproduction of the schematic drawings and to confirm that it was the Court's intent to require the Plaintiffs' experts to review the drawings at the Department's offices rather than be furnished with a copy of each drawing that is responsive to this request.

It was not the Court's intent in the July 6 Order to require the architects retained by Plaintiffs to be limited in their review of the schematic drawings to copies in SCDC's sole possession. The proscription on copying applied to Plaintiffs, not the Department. Plaintiffs shall not make copies of the drawings produced by the Department.

Copies of the responsive drawings should have been produced on August 1, 2011. Because of the approaching discovery deadline and the relevance of these records to opinions to be offered by Plaintiffs' experts, the Department is ordered to produce a copy of each schematic drawing responsive to Plaintiffs' request by September 1, 2011. To the extent the Department must make arrangements for the expedited reproduction of the drawings to meet the September 1 deadline, it shall bear the costs of such charges.

**AND IT IS SO ORDERED.**

  
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J. Michael Baxley  
Presiding Judge  
Complex Jurisdiction

Hartsville, South Carolina

08/25, 2011