

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PEOPLE FIRST OF TENNESSEE; et. al.,

Plaintiffs,

v.

ARLINGTON DEVELOPMENTAL CENTER;
et. al.,

Defendants.

No. 92-2213 MI/V

CERTIFIED TRUE COPY
ROBERT R. DI TROLIO
U.S. DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE

ORDER

BY F. Summers
DEPUTY CLERK

On July 29, 1996, plaintiffs and defendants submitted a proposed stipulation and order of compromise and dismissal. Intervenor filed an objection to the proposed stipulation and order. Accordingly, on July 30, 1996, the Court conducted a conference by telephone on the issues raised in intervenor's objection. On July 31, 1996, the Court entered an order directing plaintiffs to submit a plan for compliance with Fed. R. Civ. P. 23(e) by 5:00 p.m. on August 6, 1996, and intervenor to submit any comments on plaintiff's plan by 5:00 p.m. on August 13, 1996. On August 6, 1996, plaintiffs submitted a proposed plan for compliance along with a proposed notice of proposed settlement. On August 13, 1996, intervenor submitted comments on plaintiffs' proposed plan.

Under Fed. R. Civ. P. 23(e),

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

Upon consideration of the filings of the parties with respect to compliance with Fed. R. Civ.

This document entered on docket sheet in compliance with Rule 58 and/or
79 (a) FRCP on 8/19/96.

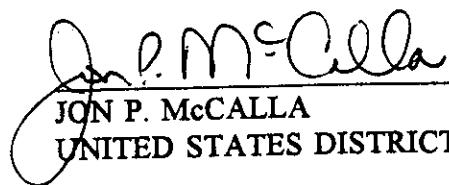
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P. 23(e), it appears that the following is necessary to provide proper notice to the class certified by order of September 27, 1995. The proposed stipulation and order of compromise and dismissal attached hereto as exhibit 1 is hereby **PRELIMINARILY APPROVED** pending final order of the Court after the hearing described hereinafter. The notice of proposed settlement attached hereto as exhibit 2 is hereby **APPROVED**. Counsel for plaintiffs are hereby **ORDERED** to arrange to have the notice of proposed settlement published in The Commercial Appeal (Memphis) newspaper on three occasions: 1) once during the week of August 25, 1996, to August 31, 1996; 2) once during the week of September 1, 1996, to September 7, 1996; and 3) once during the week of September 8, 1996, to September 14, 1996. Counsel for defendants are hereby **ORDERED** to provide counsel for plaintiffs a current list of the following by 5:00 p.m. on Friday, August 23, 1996: 1) the names and addresses of all Arlington Developmental Center ("ADC") residents discharged on or after December 12, 1989; 2) the names and address of the family members, guardians, or next friends of all ADC residents discharged on or after December 12, 1989; 3) the names and addresses of the family members, guardians, and next friends of all current ADC residents. Counsel for plaintiffs are hereby **ORDERED** to mail copies of the notice of proposed settlement via first class mail, postage prepaid, to ADC residents discharged on or after December 12, 1989, and to the family members, guardians, or next friends of ADC residents discharged on or after December 12, 1989, by 5:00 p.m. on Friday, August 30, 1996. Counsel for defendants are hereby **ORDERED** to deliver a copy of the notice of proposed settlement to each current ADC resident by 5:00 p.m. on Friday, August 30, 1996. Counsel for plaintiffs are hereby **ORDERED** to mail copies of the notice of proposed settlement via

first class mail, postage prepaid, to family members, guardians, or next friends of all current ADC residents. Counsel for defendants are hereby ORDERED to mail copies of the notice of proposed settlement via first class mail, postage prepaid, to community service providers by 5:00 p.m. on Friday, August 30, 1996, for subsequent distribution to class members served by such community service providers.

A hearing on the proposed settlement is hereby SCHEDULED for 2:00 p.m. on Friday, September 27, 1996. Any class member or family member, guardian, or next friend of a class member who wishes to attend and/or participate in the hearing MUST notify the Court by 5:00 p.m. on Friday, September 20, 1996, by filing with the Clerk of Court a typewritten document no more than one page in length (on 8 1/2" by 11" paper) that refers to this case by docket number. Any class member or family member, guardian, or next friend of a class member who wishes to submit any comments in support of or in opposition to the proposed settlement MUST file such comments with the Clerk of Court by 5:00 p.m. on Friday, September 20, 1996, in a typewritten document no more than five pages in length (on 8 1/2 " by 11" paper in no smaller than a ten point font) that refers to this case by docket number. Any class member or family member, guardian, or next friend of a class member who files such comments MUST also contemporaneously mail copies of such comments to one of the attorneys for plaintiffs, one of the attorneys for defendants, and one of the attorneys for intervenor. Any party that wishes to file a memorandum of law on the proposed settlement MUST do so by 5:00 p.m. on Friday, September 13, 1996.

SO ORDERED this 15 day of August 1996.



JON P. McCALLA
UNITED STATES DISTRICT JUDGE

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PEOPLE FIRST OF TENNESSEE,)
on behalf of its members, ET AL.)
)
Plaintiffs,)
)
v.) Civil No. 92-2213-ML-V
)
THE ARLINGTON DEVELOPMENTAL)
CENTER, ET AL.)
)
Defendants.)

STIPULATION AND ORDER

The remaining First Amendment issues of this case were set for trial on July 29, 1996. In order to avoid the costs associated with litigation the parties hereby agree to the following Stipulation and Order, if approved and so ordered by the Court.

1. Plaintiffs/Class Representatives and Defendants jointly acknowledge and affirm that each class member should not be precluded or discouraged from exercising their rights under the First Amendment to the Constitution of the United States. Defendants hereby acknowledge that there have been past violations of the First Amendment rights of the Plaintiff class consisting of the prevention of class members from associating and assembling with others

of their choice; and, prevention of class members from communicating with others of their choice.

2. In lieu of a hearing on this matter Defendants agree to the following:

a. Defendants shall, within thirty days of the entry of this Order, develop, in consultation with the Plaintiff class, a policy on enabling class members to communicate, associate and assemble with others of their choice, and enabling class members to meet and speak privately with friends and others of their choice.

b. Defendants shall immediately communicate this policy to all staff members at Arlington and to contract community services agencies and shall include a provision as a requirement in all future contracts (including amendments) with community services agencies serving class members, which provision shall provide that community services agencies agree not to preclude or discourage class members from exercising their first amendment rights.

c. Defendants shall within thirty days establish a process of disciplinary sanctions for staff members who violate this policy by including such violations as an offense for which disciplinary action may be taken under Defendants' personnel policies;

d. Defendants shall allow class representatives, other advocates and members of religious organizations and community organizations reasonable opportunities to communicate with all class members and shall afford all class members reasonable opportunities to participate in community activities.

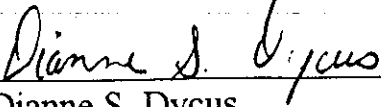
3. Nothing in this Stipulation and Order shall in any way serve to limit Class Representatives' access to class members already allowed and/or called for by Orders in this case and/or in United States of America v. State of Tennessee, Civil Action No. 92-2062-ML/A in this Court.

DONE and ORDERED this ____ day of _____, 1996 at
Memphis, Tennessee.

Jon P. McCalla
United States District Court Judge

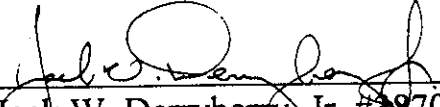
APPROVED FOR ENTRY:

For the State of Tennessee:



Dianne S. Dycus
Senior Counsel
Office of the Attorney General

For Plaintiffs:



Jack W. Derryberry, Jr. #3870
Judith Gran
Edward G. Connette
Earle Schwarz

For Intervenors:

William Sherman

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing on Mr. William Sherman by facsimile transmission at 2:15 P.M., July 26, 1996 at his office number, 501-372-2630.



EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

PEOPLE FIRST OF TENNESSEE; et. al.,

Plaintiffs,

v.

ARLINGTON DEVELOPMENTAL CENTER;
et. al.,

Defendants.

No. 92-2213 MI/V

NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT

- TO: A) ALL PERSONS WHO ON OR AFTER DECEMBER 12, 1989, HAVE RESIDED, OR ARE RESIDING AT THE ARLINGTON DEVELOPMENTAL CENTER;
- B) ALL PERSONS WHO HAVE BEEN TRANSFERRED FROM ARLINGTON DEVELOPMENTAL CENTER TO OTHER SETTINGS, SUCH AS INTERMEDIATE CARE FACILITIES OR SKILLED NURSING FACILITIES, BUT REMAIN DEFENDANTS' RESPONSIBILITY;
- C) ALL PERSONS AT RISK OF BEING PLACED AT ARLINGTON DEVELOPMENTAL CENTER;
- D) FAMILY MEMBERS, GUARDIANS, AND NEXT FRIENDS OF PERSONS LISTED IN A), B), AND C).

This notice describes a proposed settlement agreement of a lawsuit against the Arlington Developmental Center, its superintendent, the Governor of Tennessee, and officials of six State departments and agencies-- the Department of Mental Health and Mental Retardation, the Department of Health, the Medicaid Bureau, and the Department of Human Services including Social Services and Rehabilitation Services. This notice tells you what the

lawsuit is about, how to get more information, and how to object to the proposed settlement agreement if you think it is not fair.

The Lawsuit

This class action lawsuit was filed in December 1991 by five residents of the Arlington Developmental Center on behalf of all Center residents, and by People First of Tennessee, a self-advocacy group for persons with disabilities. They wanted to prevent further abuses and neglect in the institution, receive better services for the residents, and secure their legal and constitutional rights, including the right to freely associate with persons of their choice as guaranteed under the First Amendment of the United States Constitution.

In September 1995 the Court certified the class, defining it as: all persons who after December 12, 1989, have resided or are residing at the Arlington Developmental Center, all persons who have been transferred to other facilities but who remain the defendants' responsibility, and all persons at risk of being placed in the Center. Also, in 1995, the Court addressed the issue of care, services, abuse and neglect by entering a remedial Order in United States v. State of Tennessee, Case No. 92-2062-MI-A, as a final order in this case. Thus, the only remaining issue is the First Amendment rights of the residents. In order to avoid costly litigation on that issue, the parties reached an agreement which would secure the rights of the class members to exercise their freedom to associate and assemble with others of their choice.

The Proposed Settlement

1. The plaintiffs and defendants acknowledge that past violations of the residents' First Amendment rights did occur. Plaintiff/residents were prevented from communicating, associating and assembling with persons of their choice.

2. According to the proposed settlement, the Defendants will protect the rights of the Plaintiff/residents by:

(a) developing a policy to enable residents to communicate, associate, and assemble with others of their choice both publicly and privately;

(b) telling the staff of the Arlington Developmental Center and agencies who work with the Center about the policy so that the staff will not discourage residents from exercising their right to freely communicate, associate and assemble with others of their choice;

(c) establishing a process to discipline staff members who violate the right of residents to freely communicate, associate and assemble with others; and

(d) allowing advocates, religious organizations, and community organizations reasonable opportunity to communicate with residents and allowing residents the opportunity to participate in community activities.

How the Settlement Affects Your Rights

The settlement is a complete settlement of all class members' claims regarding the Defendants' interference with Plaintiff/residents' First Amendment rights to freely communicate, associate and assemble with persons of their choice.

How to Comment on the Proposed Settlement

If you do not want to object to this proposed settlement, then it is not necessary for you to take any action. If, however, you want to comment on the proposed settlement or object to it as not being fair, reasonable, or adequate, then you or your attorney on your behalf may file no more than five (5) pages of typewritten objections on 8 1/2" by 11" paper, in no smaller than a ten (10) point font, by 5:00 p.m. on Friday, September 20, 1996.

Comments and objections must refer to this case by docket number and be submitted to the Court at this address:

Office of the Clerk
United States District Court
for the Western District of Tennessee
167 N. Main Street
Room 242
Memphis, Tennessee 38103

If you file comments or objections, then, at the same time, you must also send copies of the filed comments or objections to one of the attorneys for the plaintiffs, one of the attorneys for the defendants, and one of the attorneys for the intervenor. The attorneys' names and addresses are set out below.

How to Obtain More Information

You can get a complete copy of the proposed settlement by writing to plaintiffs' attorneys, at one of the addresses listed below. You may also examine the court papers filed in this case, which can be viewed at the Office of the Clerk for the United States District Court, at the above address, by asking to see the file in People First of Tennessee v. The Arlington Developmental Center, Case No. 92-2213 MI/V.

If you have any questions or would like more information about this notice, you may contact your own lawyer or the lawyers for the plaintiffs.

Hearing

A hearing on the proposed settlement will be held at 2:00 p.m. on Friday, September 27, 1996, in Courtroom 4 on the 9th Floor of the Federal Building, Memphis, Tennessee.

Any class member or family member, guardian, or next friend of a class member who wishes to attend and/or participate in the hearing must notify the Court by 5:00 p.m. on Friday, September 20, 1996, by filing with the Clerk of Court at the above address a typewritten document no more than one page in length (on 8 1/2" by 11" paper) that refers to this case by docket number.

List of Attorneys

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