

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
TERRE HAUTE DIVISION

|                              |   |                           |
|------------------------------|---|---------------------------|
| BRIAN MAST, <i>et al.</i> ,  | ) |                           |
|                              | ) |                           |
| Plaintiffs,                  | ) |                           |
|                              | ) |                           |
| v.                           | ) | No. 2:05-cv-00037 LJM/WGH |
|                              | ) |                           |
| COMMISSIONER, INDIANA        | ) |                           |
| DEPARTMENT OF CORRECTION,    | ) |                           |
| <i>et al.</i> , <sup>1</sup> | ) |                           |
|                              | ) |                           |
| Defendants.                  | ) |                           |

**Stipulation to Terminate Private Settlement Agreement Following Notice to the Class  
and Approval by the Court / Joint Motion to Approve Manner of Notice**

Come now the parties, by their counsel, and say that:

*Introduction*

1. For the reasons set out below, undersigned counsel believe that the private settlement agreement in this case (Dkt. 75-1) should now be terminated.
2. However, inasmuch as this case is a certified class action, with the class defined as “all prisoners currently, and in the future confined within the Secured Housing Unit at the Wabash Valley Correctional Facility who are mentally ill,” the parties agree that, pursuant to Federal Rule of Civil Procedure 23(e), notice must be given to the class

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<sup>1</sup> At the time of the private settlement agreement in this case the lead defendant was J. David Donahue in his official capacity as Commissioner of the Indiana Department of Correction. Mr. Donahue is no longer the Commissioner and, pursuant to Federal Rule of Civil Procedure 17(d), the office is designated.

concerning this Stipulation and the Court must find that the termination of the private settlement agreement is a fair, reasonable, and adequate resolution of this case.

*Justification for the vacating and dismissal of the private settlement agreement*

3. In the private settlement agreement the parties agreed that prisoners would not be placed in the Secured Housing Unit (“SHU), which is now called the Secure Confinement Unit (“SCU”), at Wabash Valley Correctional Facility if they were seriously mentally ill.

Paragraph 10 of the private settlement agreement defines “seriously mentally ill” as:

-prisoners who have a current diagnosis, or evidence, of any Diagnostic and Statistical Manual IV (DSM-IV) Axis 1 diagnosis or who are receiving treatment for such a diagnosis, or,

-prisoners who have been diagnosed with a mental disorder that is worsened by confinement in the SHU

4. In 2008, new litigation was filed alleging that the Indiana Department of Correction (“DOC”) was violating the constitutional rights of seriously mentally ill prisoners throughout the DOC by placing them in segregation or segregation-like settings.

*Indiana Protection and Advocacy Services Commission, et al. v. Commissioner, Indiana Department of Correction*, No. 1:08-cv-01317-TWP-MJD (S.D. Ind.) (“IPAS case”).

(Segregated housing is now referred to as “restrictive status housing” by the DOC).

Kenneth J. Falk is class counsel in both cases and David A. Arthur represents the defendants in both cases.

5. A class was certified in that case defined as:

all current and future mentally ill prisoners who are committed to the Indiana Department of Correction and who are housed in settings in Department of Correction Institutions or in the New Castle Correctional Facility that feature extended periods of time in cells, including, but not limited to, prisoners in disciplinary segregation, administrative segregation, or in the New Castle Psychiatric Unit

6. On December 31, 2012, the Court in the *IPAS* case issued its Entry Following Bench Trial concluding that the plaintiffs had demonstrated that the DOC was violating the Eighth Amendment rights of the class members by placing them in segregation or segregation-like settings. The Court did not enter final judgment.

7. Instead, on January 27, 2016, the parties filed a Stipulation to Enter Into Private Settlement Agreement Following Notice to the Class. That notice was given and on March 24, 2016, the Court found that the private settlement agreement was fair, reasonable, and adequate.

8. The private settlement agreement generally prohibits the placement of seriously mentally ill persons in segregation or segregation-like settings for more than 30 days and imposes requirements for the treatment of seriously mentally ill prisoners.

9. The private settlement agreement in the *IPAS* case defines seriously mentally ill prisoners as follows:

a. Prisoners determined to have a current diagnosis or recent significant history of schizophrenia, delusional disorder, schizophreniform disorder, schizoaffective disorder, brief psychotic disorder, substance-induced psychotic disorder (excluding intoxication and withdrawal), undifferentiated psychotic disorder, bipolar I or II disorders;

b. Prisoners diagnosed with any other validated mental illness that is clinically severe, based on evidence-based standards, and that results in significant functional impairment; and

c. Prisoners diagnosed with an intellectual or developmental disability or other cognitive disorder that results in a significant functional impairment.

d. As used above:

(i) “Recent significant history” refers to a diagnosis made at any time in the last 12 months.

(ii) “Significant functional impairment” includes one of the following as determined by qualified mental health staff:

- Within the previous 6 months, the prisoner has either made a suicide attempt that mental health staff considers serious, inflicted self-injury that mental health staff considers serious, or both;
- The prisoner has demonstrated difficulty in his/her ability to engage in activities of daily living including:
  - Eating
  - Grooming and/or personal hygiene
  - Maintenance of housing area
  - Participation in recreation
  - Ambulation
- The prisoner has demonstrated a pervasive pattern of dysfunctional or disruptive social interactions, bizarre or disruptive behavior, *etc.*, as a result of mental illness.

(iii) A misdiagnosis does not qualify as a diagnosis or determination of mental illness for purposes of this settlement, once the error has been determined by a qualified mental health professional.

10. The DOC believes that the definition of seriously mentally ill prisoners in the *IPAS* case is slightly narrower than that in this case. Consequently, there are prisoners today

who are not allowed to be housed in the SCU at Wabash Valley Correctional Facility, but may be housed, under the terms of the *IPAS* case, in other restrictive housing units throughout the DOC.

11. Unless the parties jointly consent to extend it, the private settlement agreement in the *IPAS* case will expire on March 25, 2019.

12. Plaintiffs' counsel believes that it would be in the best interests of seriously mentally ill prisoners within the DOC to extend the private settlement agreement in the *IPAS* case as counsel believe that it has led to significant beneficial treatment for seriously mentally ill prisoners within the DOC and allowing the private settlement agreement to expire at this point could be detrimental to these prisoners.

13. The DOC does not agree with plaintiffs' counsel's assessment concerning the need or benefit to continuing the private settlement agreement in the *IPAS* case.

14. However, the DOC is willing to extend the private settlement agreement in the *IPAS* case for one year from the date this stipulation becomes operative after approval by the Court after notice, if the private settlement agreement in this case is terminated by that approval.

15. The DOC wishes to terminate the private settlement agreement here so that it can treat all secured housing units the same in terms of determining which prisoners with mental health diagnoses can be housed in the units.

16. At the current time the mentally ill prisoners who do not, in the estimation of the DOC, meet the definition of seriously mentally ill under the *IPAS* case, and who would otherwise be housed in the SCU at Wabash Valley Correctional Facility but for the private settlement agreement in this case, are housed in other secured housing units within the DOC.

17. Therefore, terminating the private settlement agreement in this case will not cause persons who would otherwise not be in secured housing to be placed in secured housing. It will only provide another unit where secured housing prisoners may be housed.

18. In light of this, and in light of the benefit to seriously mentally ill persons that plaintiffs' counsel believe the extension of the *IPAS* private settlement agreement will bring, plaintiffs' counsel believe it is appropriate to terminate the private settlement agreement in this case at this juncture.

*Notice to the class*

19. Plaintiffs have separately filed their Motion to Approve Class Notice, that sets out the notice that their counsel wish to provide to the class.

20. As noted, the class in this case was defined in terms of mentally ill prisoners within the formerly named secured housing unit at Wabash Valley. However, given that "seriously mentally ill" prisoners as defined in the private settlement agreement in this case are no longer housed in this unit, it is appropriate to provide notice of this proposed termination not only to prisoners currently in the SCU at Wabash Valley, but also to

prisoners in other locations throughout the DOC and the parties agree that the notice, if approved by the Court, should be given as follows:

a. Notice posted in a prominent location in each secured housing unit in the DOC and the New Castle Psychiatric Unit for at least 30 days where prisoners will have an opportunity to review the notice when they are out of their cells for recreation and showers.

b. Transmitting the notice to each DOC prisoner (with the exception of those in juvenile facilities) through the DOC's GTL system.

21. The parties agree that this matter should be set for a fairness hearing pursuant to Rule 23(e) of the Federal Rules of Civil Procedure no sooner than 60 days from this date and that plaintiffs' counsel should be ordered to report back as to any comments from prisoners no sooner than 30 days after class notice is posted and distributed to the prisoners as noted above.

WHEREFORE, the parties agree that the private settlement agreement in this case be terminated after notice to the class and a fairness hearing before this Court, and for all other proper relief.

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