

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 97-2806-Civ-MORENO
MAGISTRATE JUDGE SORRENTINO

MARK OSTERBACK, et al., :
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 Plaintiffs, :
 :
 v. :
 :
 HARRY K. SINGLETARY, Jr., :
 et al., :
 :
 Defendants. :
 :

REPORT OF
MAGISTRATE JUDGE

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Mark Osterback, Thomas Gross and Darryl E. Williams, detainees at the Everglades Correctional Institution, have filed a pro se Complaint (DE# 1) pursuant to 42 U.S.C. §1983, contesting the constitutionality of the Florida Department of Corrections "Close Management" policies as set forth in Fla.Admin.Code Ann.r. 33-38, et. seq., (1996).¹ All three plaintiffs have been granted leave to proceed in forma pauperis.

The plaintiffs seek to bring this suit as a class action with themselves as representatives of a class consisting of (1) all inmates, including plaintiffs, who are in close management at Everglades Correctional Institution, E-Dormitory; (2) all future inmates who will be in close management in F-Dormitory and (3) all future inmates to be housed in close management, regardless of

¹Close Management is the "confinement of an inmate apart from the general population, for reasons of security, or the order and effective management of the institution, where the inmate, through his own behavior, has demonstrated an inability to live in the general population without abusing the rights and privileges of others." Fla.Admin.Code Ann r. 33-38.001 (1996).

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which institution to which they are confined or into which dormitory they are placed. The plaintiffs' Motion To Certify Plaintiffs' Complaint As A Class Action (DE# 15) gives a detailed list of what constitutes present and future inmates.

The district court is accorded broad discretion in determining whether a suit should proceed as a class action. There are four prerequisites which must be satisfied to allow certification of a class: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed.R.Civ.P. 23(a). The burden is on the party seeking class certification to establish his right to do so, and all four of the prerequisites must be satisfied. Once the plaintiff has satisfied the requirements of Fed.R.Civ.P. 23(a), he must demonstrate that the class he seeks to represent falls within one of the sub-categories of Fed.R.Civ.P. 23(b). Avery v. Powell, 695 F.Supp. 632, 643 (D.N.H. 1988).

In this case, the plaintiffs have failed to meet the prerequisites for class certification pursuant to Fed.R.Civ.P. 23(a). The plaintiffs have failed to show that the claims or defenses of the representative parties are typical of the claims or defenses of the class under Rule 23(a)(3). The class, as described

in the plaintiffs' Motion To Certify Plaintiffs' Complaint As A Class Action (DE# 15) consists of inmates at various institutions throughout Florida, not only those at Everglades Correctional Institution. These inmates consist of those who are temporarily out of close management status for medical or psychiatric reasons and those temporarily housed in crisis stabilization units at various facilities because of a mental health crisis. The plaintiffs cannot show with any certainty that the conditions they have allegedly experienced at Everglades Correctional Institution are similar to the experiences of all other prisoners housed in close management at other institutions in Florida.

The plaintiffs also fail to meet the requirement of Rule 23 (a)(4). It does not appear that these pro se plaintiffs can fairly and adequately protect the interests of the class.

One of the factors the Court must consider in determining the adequacy of representation is the qualification and experience of the person actually conducting the litigation. Competent representation is crucial because a judgment rendered in a class action suit for injunctive relief is binding on all members of the class, thereby preventing others from later raising the same claims. See Williams v. Bennett, 689 F.2d 1370, 1381-82 (11 Cir. 1982), cert. denied, 464 U.S. 832 (1983). Often the ability of the class representative to protect the interests of the class depends on the quality of counsel. Gonzales v. Cassidy, 474 F.2d 67, 72-73

(5 Cir. 1973). Because a layman does not ordinarily possess the legal training and expertise needed to protect the interests of the proposed class, the Courts are loath to certify a class represented by a pro se litigant. In the seminal case of Oxendine v. Williams, 509 F.2d 1405, 1407 (4 Cir. 1975), the Court held that it was error to permit an imprisoned litigant who is unassisted by counsel to represent his fellow inmates in a class action.

In view of the existing case law and the facts particular to this case, it is recommended that the plaintiffs' Motion To Certify Plaintiffs' Complaint As A Class Action (DE# 15) be denied.

Objections to this report may be filed with the District Judge within ten (10) days of receipt of a copy of the report.

DATED: *December 23, 1987*

Charles H. Santiago
UNITED STATES MAGISTRATE JUDGE

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