

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHIGAN PROTECTION & ADVOCACY
SERVICE, INC.,

Case No. 5:05-CV-0128

Plaintiff,

Hon. Paul L. Maloney

v

PATRICIA L. CARUSO, in her official
capacity as Director, Michigan Department
of Corrections,

Defendant.

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JOINT MOTION FOR A STAY

The parties, through their undersigned counsel, jointly move this Honorable Court to extend the stay of litigation in the above captioned matter for six months. In support of their joint motion, the parties respectfully state as follows:

1. On December 17, 2009, with the consent and in accordance with a stipulation of the parties (Doc. 231), the Court stayed this matter for one year. (Doc. 232).

2. In the nearly eleven months since the stay, the parties have continued to work together to further the implementation of the terms of the “action plan” negotiated by the parties under the supervision and assistance of the Magistrate Judge.

3. Pursuant to the terms of the action plan, the Joint Monitors, Joel Dvoskin, Ph.D., and Lee Rome, M.D., have made regular periodic visits to the defendant’s facilities and, with the full cooperation of the defendant, have met and consulted with the defendant’s staff and with prisoners.

4. After each monitoring visit, the Joint Monitors have provided the parties with comprehensive written reports of their efforts and their observations. The reports have noted those provisions of the action plan with which the defendant is in substantial compliance and those provisions with which, in the Joint Monitors’ opinions, the defendant has yet to achieve substantial compliance.

5. The Joint Monitors have scheduled a monitoring visit for the week of November 29, 2010.

6. Based on their prior visits and their continuing contact with the defendant and her staff, the Joint Monitors have informed the parties that they anticipate that their upcoming monitoring visit will result in a determination that the defendant is in substantial compliance with the provisions of the action plan.

7. The Monitor’s anticipated determination of substantial compliance will be made at or very near the end of the term of the current stay, which expires on December 17, 2010.

8. Because some of the policies, practices and programs established by the defendant pursuant to the action plan will have been in place for only a brief time, the Joint Monitors have recommended to the parties that two additional visits are warranted and necessary to determine whether the policies, practices and programs continue, are stable and are working effectively in accordance with the action plan. The Joint Monitors are willing and available to undertake this task and recommend monitoring visits at the end of February 2011 and the end of April 2011.

9. The parties' attorneys have conferred with their clients and with each other and agree with the Joint Monitors' recommendations. It is the opinion of the parties that a stay of the nature recommended by the Joint Monitors will be of benefit to the plaintiff and its constituents and to the defendant.

10. The parties agree that during the time this matter is stayed, the Joint Monitors will continue in their role of touring facilities, meeting with staff of MDOC and reporting to the parties on the progress of Defendant in meeting its goals under the action plan.

11. That parties agree that at any time during the stay, the plaintiff may move for a finding that the defendant is in substantial non-compliance with the action plan or the defendant may move that the mental health issues in plaintiff's Amended Complaint have been substantially resolved. The parties or either of them may refer to or otherwise incorporate their most recent Joint Monitors' report, in support of or in opposition to a motion for a finding of substantial compliance or non-compliance. In the event the Court finds the defendant to be in substantial non-compliance with the action plan, the stay shall be lifted and litigation may recommence pursuant to any orders of the Court. If the Court finds substantial compliance, the case shall be dismissed.

12. Absent a pre-stay expiration finding of non-compliance, the parties agree that the case shall be dismissed with prejudice at the expiration of the stay, except as set forth in the following paragraph.

13. The plaintiff may present a request for reasonable attorneys' fees to the defendant prior to expiration of the stay. The parties agree to negotiate the request in good faith. If the parties cannot agree on an award of attorneys' fees, they shall so inform the Court before the expiration of the stay, in which event the Court shall retain jurisdiction of the case for the sole purpose of considering the plaintiff's motion for fees. The plaintiff shall file its motion for attorneys' fees, if any, no later than 30 days after the expiration of the stay unless an extension is agreed to by the parties and is approved by the Court. If the case is resolved upon a defendant's motion pursuant to paragraph 11 of the stipulation, the Court shall retain jurisdiction under such terms as the Court may order, for resolution of plaintiff's request for attorneys' fees.

WHEREFORE, the parties jointly move the Court to extend the stay in this matter for six months until June 17, 2011 in accordance with this joint motion.

Respectfully submitted,

The Plaintiff,
MICHIGAN PROTECTION AND ADVOCACY
SERVICES,
By its attorney,

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