

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

D.D., et al.,	:	Case No. 2:10-cv-01097
	:	
Plaintiffs,	:	JUDGE ECONOMOUS
	:	
vs.	:	MAGISTRATE JUDGE KEMP
	:	
WASHINGTON COUNTY, et al.	:	
	:	
Defendants.	:	PARTIES' PROPOSED CASE MANAGEMENT PLAN
	:	
	:	

The following proposed case management plan is entered into between counsel for plaintiffs and all defendants except David Matthew Montgomery, DO, and John Does 1-20. For purposes of this document, the defendants—excluding Morrison and John Does 1-20—shall be referred to as “defendants” and the plaintiffs and these defendants together shall be referred to as “the parties.” Nothing in this document precludes those defendants from later joining this plan.

The parties in the above litigation hereby propose a case management plan and case schedule. This plan is modeled on similar plans that have been successfully implemented in this Court to resolve conditions cases in the past. *See, e.g., Fussell v. Wilkinson*, USDC, SD OH, 1:03-cv-00704; *S.H.v. Stickrath*, USDC, SD OH, 2:04 CV 01206. The complaint has been filed but as yet no answers have been filed. The defendants do not admit in any way that they are liable in this matter. The purpose of this plan is solely to determine early in the litigation if the matter can be resolved.

I. INTRODUCTION

This is a civil rights action by juveniles in the custody of and under the supervision of Washington County, Ohio. Plaintiffs allege a facility -wide failure to meet constitutional standards regarding conditions of confinement at the Washington County Juvenile Center. Plaintiffs bring claims under both federal and state law. They seek damages and a preliminary and permanent injunction prohibiting defendants from imposing these practices and conditions on the members of the putative class.

The defendants deny liability and have initiated steps internally to investigate and respond to the issues raised in this litigation. This plan is designed to build on those efforts in a positive manner and also seeks to determine if the matter can be resolved through a collaborative process.

The parties propose to enter into this case management plan in order to coordinate their investigation and discovery so that facts may be expeditiously determined, the merits of the matter may be evaluated, and the parties may determine early in the litigation whether it can be resolved. By entering into this plan neither party would agree to waive their rights to fully litigate all aspects of this case, including the right to assert all defenses (including immunity defenses) and the right to challenge certification of a class action as to some or all allegations. Rather, the parties would simply agree to delay normal litigation efforts and instead pursue this alternative path of collaborative fact finding and negotiation for a short period of time to be determined by the parties and the Court.

II. PROPOSAL RE PLEADINGS

A. Class Action Complaint; Notice of Appearance. Defendants have been served with a proposed class action complaint. Defendants do not admit to liability or class certification and reserve the right to oppose relief and class certification if the matter is not resolved through the process proposed in this plan. Counsel for the defendants are entering their appearance in the action through this pleading.

B. Class Motion. Plaintiffs seek certification of a class pursuant to Fed. R. Civ. Proc. 23 (a) and 23(b) (2) and (b) (3) as follows:

All persons twenty-two years of age or less as of the date on which this lawsuit is filed (and others for whom the statute of limitations is legally tolled) who have been, are now, or in the future, held in custody at the Washington County, Ohio Juvenile.

Defendants do not concede certification of this class, but the parties agree that the putative class representatives are D.D., K.M., N.B., B.M., C.M., W.G., J.R. and J.L. All minors are acting through their legal custodians. The parties agree to discuss class certification as part of their mediation. Should the class be certified, whether by agreement or Court Order, class counsel shall be Alphonse A. Gerhardstein and Jennifer L. Branch. The parties agree that the statute(s) of limitation for all claims of the putative class members against the defendants are tolled as of the date of the filing of the putative class complaint. No claim of any putative class member shall be waived or lost by virtue of the agreement to include class certification as an issue for mediation.

III. PROPOSAL RE MEDIATION

A. Mediation. The parties agree to meet at the earliest possible date with the Court to establish a process for assessing the claims and the prospects for achieving a resolution. The parties hereby jointly request a status conference for that purpose.

B. Protective Order. Parties will enter into a protective order to preserve the confidentiality of putative class member records and submit it to the Court within 14 days.

C. Class Certification, List and Notice. Defendants will provide to plaintiffs in electronic format a list of all potential putative class members, with dates of birth and social security numbers and last known addresses and telephone numbers no later than 60 days. Should the parties reach an agreement at mediation that includes an agreement to certify a class, the Parties will submit a draft order certifying the class and class notice for approval by the Court within 30 days of completing mediation.

D. Access to Information. The parties agree to approach the mediation in good faith and produce information to each side in furtherance of identifying the existence of viable claims, and in evaluating the potential value of this matter. Defendants will produce records and access to staff at the direction of the mediator to address the putative class representatives' claims. As appropriate, the Defendants may produce additional records of putative class members, as the mediator suggests and Defendants deems productive to mediation discussions. Likewise, Plaintiffs will produce access to the putative class representatives identified in this matter for interviews. The parties may agree to submit information to an independent fact finder as part of the mediation. Both parties will conduct themselves consistently with the mediation protocol developed by the parties and the Court.

E. Negotiation. Upon the exchange of information and the assessment of the claims pursuant to the mediation protocol developed by the parties and the Court the parties will enter into negotiations in a good faith effort to resolve this matter. **Nothing in this paragraph shall**

be interpreted as an admission by defendants of liability in any respect and neither party agrees to waive their rights to fully litigate any and all aspects of this case.

F. Stay of Litigation. The parties are directed to submit a proposed protective order for approval by the Court. All other pleadings and discovery in this case, except those pursued pursuant to the mediation protocol developed by the parties and the Court shall be stayed unless otherwise directed by the Court.

IV. CONCLUSION

Plaintiffs respectfully request that this case management plan be entered.

Respectfully Submitted,

<p><u>s/ Alphonse A. Gerhardstein</u> Alphonse A. Gerhardstein (0032053) Attorney for Plaintiffs Jennifer L. Branch (0038893) Attorney for Plaintiffs GERHARDSTEIN & BRANCH CO. LPA 432 Walnut Street, Suite 400 Cincinnati, Ohio 45202 (513) 621-9100 (513) 345-5543 fax agerhardstein@gbfirm.com jbranch@gbfirm.com www.gbfirm.com</p>	<p><u>s/ Kimberly Vanover Riley</u> Kimberly Vanover Riley (0068187) Lisa M. Zaring (0080659) Montgomery, Rennie, & Jonson 36 East Seventh St., Suite 2100 Cincinnati, OH 45202 Attorneys for Defendant the Honorable Judge Timothy A. Williams, in his individual capacity only</p> <p><u>s/ Cheri B. Hass</u> Cheri B. Hass (0065157) DOWNES FISHEL HASS KIM LLP 400 South Fifth Street, Suite 200 Columbus, Ohio 43215 (614) 221-1216 (614) 221-8769 fax Attorney for Defendant the Honorable Judge Timothy A. Williams, in his official capacity only, and all other Defendants except David Matthew Montgomery, DO, and John Does 1- 20.</p>
--	---