

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

APR 20 2000
LARRY W. F. EOD 4/21/00
CLERK
CHARLESTON, SC

Alexander Mickle, Jr., et al.,)
Plaintiff,) Civil Action No. 2:96-5555-23AJ
v.) In re: Long Term Administrative
Michael Moore, Director of) Segregation of Inmates Designated
the South Carolina Department) as Five Percenters
of Corrections, et al.,)
Defendant.)
ORDER

This matter is before this Court for the approval of a settlement entered by the parties on the issue of attorney's fees under 42 U.S.C. § 1988.

By way of background, approximately forty nine inmates confined in the South Carolina Department of Corrections (SCDC) filed individual lawsuits challenging their confinement in administrative segregation on account of their membership in a group known as the Five Percenters. The Plaintiffs alleged that their confinement was in contravention of the Free Exercise Clause of the First Amendment.

By order filed October 25, 1996, this Court consolidated the individual cases and assigned one civil action number. The

1
JMS

68

Court further ordered that all pleadings, discovery and other filings by the Plaintiffs were to be coordinated through Robert E. Bensing, Esquire of the Southern Center for Human Rights. Mr. Bensing and his successors at the Southern Center for Human Rights have represented the interests of all Plaintiffs in subsequent matters before this Court and on appeal.

Following a period of discovery, this Court granted summary judgment to the Defendants concluding that the reclassification of the Petitioners to a higher custody level did not unconstitutionally impinge on their right to free exercise of their religious beliefs. The Plaintiffs appealed to the Fourth Circuit Court of Appeals, which affirmed this Court's rulings. See, In Re Long Term Administrative Segregation, 174 F.3d 464 (4th Cir. 1999). A subsequent petition writ of certiorari to the United States Supreme Court was denied.¹

On December 3, 1997, this Court granted the Plaintiffs' motion for a preliminary injunction on their claim that the Defendants' ban on Five Percenters literature violated their First Amendment rights. Following the issuance of this Court's order granting the Defendants summary judgment on all other issues, the Defendants voluntarily agreed that the preliminary

¹ The Plaintiffs also raised Eighth Amendment and Fourteenth Amendment claims which were dismissed by the district court. The Fourth Circuit Court of Appeals affirmed those rulings.

injunction would be made a permanent injunction pursuant to the terms set forth in a consent order filed August 21, 1998. The parties further stipulated that the Plaintiffs were "prevailing parties" on this one issue of injunctive relief under 42 U.S.C. § 1988 and Farrar v. Hobby, 506 U.S. 103 (1992).

This Court is now advised that the parties have reached a settlement as to the amount of attorney's fees to which the Plaintiffs are entitled under 42 U.S.C. § 1988. The Plaintiffs' counsel has agreed to accept \$5,000.00 in payment of attorney's fees and costs on the single issue on which the Plaintiffs did prevail.

In reaching this settlement, the parties have recognized the impracticality and hardship to be caused to the Plaintiffs' counsel to obtain a signed release from each of the Plaintiffs to discharge the Defendants' liability under 42 U.S.C. § 1988. As a result, the parties have requested this Court to review the proposed settlement and issue an order approving that settlement and discharging the Defendants' liability under 42 U.S.C. § 1988. This Court finds such a process to be proper given that any award of attorney's fees would necessarily be paid to the Plaintiffs' counsel, who are the very persons that have negotiated and approved the proposed settlement. This Court is further aware that none of the Plaintiffs have individually filed any petition for attorney's fees and costs under 42 U.S.C.

§ 1988, and the time for filing any such petitions has now elapsed. See, Local Civil Rule 54.02.

Accordingly, the Court has reviewed the proposed settlement and concludes that the terms thereof are reasonable and fair under the circumstances. The Court thereby approves the settlement of the parties. The Court further orders that, upon payment by the Defendants to the Southern Center for Human Rights of the amount of \$5,000.00, the Defendants' liability under 42 U.S.C. § 1988 will be forever discharged and extinguished. This Court will not entertain any additional petitions for attorney's fees and costs in this action.

AND IT IS SO ORDERED.



PATRICK MICHAEL DUFFY
United States District Judge

Charleston, South Carolina

April 20th, 2000

4