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WESTERN DISTRICT OF WASHINGTON AT TACOMA		
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CV 00 05749 #00000149

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTI RUST, et al ,

Plaintiff

v

WESTERN STATE HOSPITAL, et al ,

Defendants

Case No C00-5749RJB

REPORT AND RECOMMENDATION

This matter comes before the court pursuant to an Order of Reference under 28 U S C §636 (b)(1)(B), Local Rules MJR 4, and FRCP 72, designating the undersigned United States Magistrate Judge to conduct the Fairness Hearing scheduled for September 6, 2001

BACKGROUND

This case was filed on behalf of six individually named Plaintiffs who are admitted to the Center for Forensic Services (CFS) at Western State Hospital (WSH) by the Washington Protection and Advocacy System, Inc (WPAS). The complaint alleged that Defendants failed to provide patients at CFS with minimally adequate dental care, medical care, psychiatric care, active treatment, discharge planning and protection from harm. The complaint further alleged under staffing, overcrowding, and failure to provide treatment in the most integrated setting.

On January 3, 2001, plaintiffs filed a motion for preliminary injunction, seeking relief on virtually

1 all of the claims in the Complaint

2 On February 2, 2001, the court certified this as a class action, defining the class as follows All
3 individuals who currently are residents on the Center for Forensic Services at Western State Hospital and
4 will become residents of the Center for Forensic Services at Western State Hospital in the future

5 In March of 2001, the parties began intensive settlement negotiations to resolve the issues raised in
6 the preliminary injunction motion as well the entire case

7 In May of 2001, a partial settlement was reached and was approved by the court following a
8 Fairness Hearing Unresolved, were issues regarding active individualized treatment and adequate
9 staffing

10 On August 24, 2001, a Joint Motion for Approval of Settlement was filed requesting court
11 approval of a final settlement on the remaining issues following a Fairness Hearing scheduled for
12 September 6, 2001

13 REPORT

14 The undersigned conducted the Fairness Hearing on September 6, 2001, commencing at 1 15 p m ,
15 concluding at 3 00 p m The plaintiff class was represented by Deborah A Dorfman of Washington
16 Protection and Advocacy System, Inc , the defendants were represented by Assistant Washington State
17 Attorney General, Pamela H Anderson Notice of the hearing was given to all members of the class
18 Omar Larsen, Ryan Galvin, and Jeff Kapphahn. class members, filed written statements prior to the
19 hearing As a matter of convenience the hearing was conducted at Western State Hospital A court
20 reporter was present and recorded the full proceeding The undersigned explained the purpose of the
21 hearing to the assembled class members and counsel made some introductory remarks The court next
22 invited class members Larsen, Galvin and Kapphahn to articulate the concerns set forth in the
23 aforementioned written documents to which both counsel and the court responded Thereafter all
24 members of the class were invited to ask questions for clarification and/or register concerns about the
25 proposed settlement agreement

26 The issues raised and comments made by the class members at the Fairness Hearing fell into three
27 general categories

28 1) matters covered by the partial settlement agreement earlier approved by the court,

2) the adequacy of the proposed "active treatment" contemplated by the pending settlement agreement,

3) support for the proposed settlement

There is every appearance that the settlement was conducted at "arm's length" The settlement agreement was reached in stages The parties sought and received approval on some issues in May of this year reserving the remaining issues for further negotiations The use of independent monitors during the negotiation process and their ongoing role in the implementation of the agreement, together with the conditions of the settlement with regard to enforcement, strongly support the parties contention that the proposed settlement agreement is the result of an in depth evaluation and should significantly benefit the class members

LEGAL ANALYSIS

FRCP 23(e) provides that "a class action shall not be dismissed or compromised without approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the court directs " Before a court can approve dismissal or compromise, it must evaluate whether the proposed settlement is "fundamentally fair, adequate, and reasonable " *Officers for Justice v Civil Service Comm'n* , 688 F 2d 615, 625 (9th Cir 1981), cert den 459 U S 1217 (1983) In making this determination, courts must balance some or all of the following factors

1) Strength of the plaintiff's case It is clear from the improvements agreed upon in the proposed settlement as well as the changes provided for in the partial settlement agreement approved in May of 2001, that plaintiffs case was girded with considerable merit

2) The risk, expense, complexity, and duration of any further litigation in the case. The complexity of treatment issues is substantial The settlement agreement reached appears to have great value in that it heightens the recognition of each class member's individual needs, and provides for treatment programs which are tailored to meet each patient's treatment goals The settlement process has allowed both sides to negotiate all of the issues related to treatment in such a way as to provide a cohesive plan The proposed settlement eliminates the inherent risks of further litigation, and it appears that all of the issues addressed in the complaint are included in the settlement agreement It would be difficult for a trial judge to issue an order any more detailed or comprehensive than that which the parties have reached by way of

1 settlement

2 **3) The risk involved in maintaining class action status throughout the trial** Their risk appears to be
3 nominal

4 **4) The amount offered in settlement** The settlement is qualitative in nature and significant in terms of
5 changes which will benefit the class The addition of 33 staff and the comprehensive treatment
6 arrangements included in the proposed settlement should result in significant improvements regarding
7 patient care and the quality of treatment

8 **5) The extent of discovery completed in the case** There has been a high degree of cooperation between
9 the parties and counsel making formal discovery unnecessary The very nature of the case is such that all
10 parties and counsel are intimately acquainted with all of the relevant information

11 **6) The experience and views of counsel** Plaintiffs' counsel are experienced with particular expertise
12 and knowledge regarding the issues in this case They have represented other plaintiffs in matters
13 concerning treatment at Western State Hospital with a high degree of success The defendants are
14 represented by counsel from the Washington State Attorney General's Office who are experienced in
15 defending agencies within the Washington State Department of Social and Health Services, and who
16 demonstrated particular expertise and knowledge regarding the issues in this case It appears to the
17 undersigned that counsel worked collaboratively towards settlement without unduly compromising the
18 positions of their respective clients

19 **7) Whether there is a governmental participant in this case.** The defendant is a governmental
20 participant

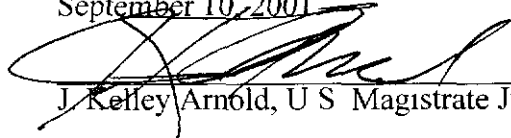
21 **8) The reaction of the class members to the proposed settlement** A close reading of the written
22 concerns expressed by residents Larsen, Galvin, and Kapphahn and the tenor of the oral remarks offered at
23 the Fairness Hearing suggest to the undersigned that there is at the least a feeling of "guarded optimism"
24 by the class members To the extent there were negative comments, they related primarily to the 20 hours
25 of "active treatment" a week provided for each class member in the proposed settlement agreement Some
26 felt it might be more than enough treatment, others wondered if it was enough The court is satisfied that
27 the proposed agreement contains sufficient flexibility to deal with these issues A concern which the
28 undersigned did not feel was well addressed in the settlement agreement was *treatment for chemical*

1 *dependency issues* It does not appear that the proposed agreement addresses chemical dependency
2 treatment

3 **RECOMMENDATION**

4 Based on the foregoing it is recommended by the undersigned U S Magistrate Judge that the Court
5 approve the [Proposed] Order Approving Settlement as submitted, unless upon further review the Court
6 wishes the parties to further explore the issue of chemical dependency treatment

7 September 10, 2001

8 
9 J. Kelley Arnold, U S Magistrate Judge

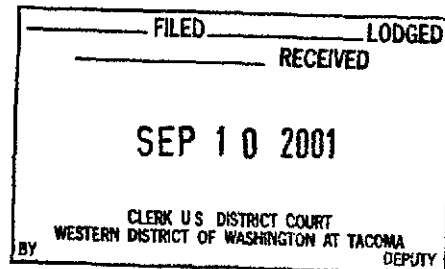
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

CHAMBERS OF
J KELLEY ARNOLD
UNITED STATES MAGISTRATE JUDGE

U.S. COURTHOUSE
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September 10, 2001



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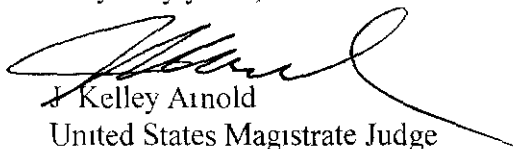
Re: CHRISTI RUST, et al., v. WESTERN STATE HOSPITAL, et al.
Case No. C00-5749JB

Dear Counsel

Enclosed are copies of my Report and Recommendation, proposed order, and proposed judgment in the above-captioned case. The originals are being filed with the Clerk. This Report and Recommendation is not an appealable order. Any notice of appeal should not be filed until the District Judge enters judgment in this case.

Objections to the recommendation should be filed and served within **fifteen (15) days** of the date of this letter with copies to the Clerk for forwarding to the District Judge and to my office. Failure to file objections within the specified time waives the right to appeal any order by the District Court adopting this report and recommendation. In accordance with our local rules, you should note your objections for consideration on the Judge's motion calendar for the third Friday after they are filed. If no timely objections are filed, the matter will be ready for consideration by the District Judge on September 24, 2001.

Very truly yours,


J. Kelley Arnold
United States Magistrate Judge

Enclosures

cc Court File C00-5749RJB