

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT OFFICE OF	:	Civil Action No. 3:03CV1352 (RNC)
PROTECTION AND ADVOCACY	:	
FOR PERSONS WITH DISABILITIES;	:	
JAMES MCGAUGHEY, Executive	:	
Director, Office of Protection and	:	
Advocacy for Persons with Disabilities,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
WAYNE CHOINSKI, Warden,	:	
Northern Correctional Institution,	:	
in his official capacity;	:	
GIOVANNY GOMEZ, Warden,	:	
Garner Correctional Institution,	:	
in his official capacity; and	:	
THERESA C. LANTZ, Commissioner,	:	
Connecticut Department of Correction,	:	
in her official capacity;	:	
	:	
Defendants.	:	August 5, 2008

MOTION FOR CONTEMPT

The plaintiffs respectfully request the entry of an order holding defendants in contempt for failure to pay plaintiffs' expert consultants. In support of this motion, plaintiffs state the following:

1. The Settlement Agreement entered in this matter provides in Section B17 that the defendants "shall reimburse each of plaintiffs' consultants in an amount not to exceed a grand total of \$40,000.00 per year for each of the three years this agreement is in effect (a year shall be each 12 month period following the effective date of this agreement)." A copy of this provision of the Settlement Agreement is attached hereto as Exhibit 1.

ORAL ARGUMENT IS NOT REQUESTED

2. Plaintiffs have two consultants: E. Eugene Miller is their custody consultant and Carl E. Fulwiler, M.D, Ph.D. is their mental health consultant.

3. On March 26, 2008, plaintiffs submitted Mr. Miller's March 21, 2008 invoice in the amount of \$787.50 to defense counsel. A copy of the bill and cover letter is attached hereto as Exhibit 2.

4. After several reminders by plaintiffs to do so, defense counsel submitted this bill to this Court on May 22, 2008 for the entry of an order that it be paid. That order issued on May 28, 2008. A copy of this order is attached hereto as Exhibit 3.

5. Despite repeated inquiry by plaintiffs, defendants have neglected and refused to comply with this order and to pay this bill.

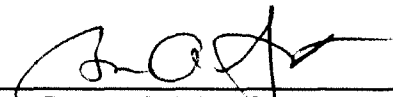
6. On June 10, 2008, plaintiffs submitted to defense counsel the June 2, 2008 bill of Dr. Fulwiler in the amount of \$5,280.00. Despite repeated requests by plaintiffs, defendants have failed to submit this bill to the Court for entry of an order of payment. A copy of this bill with cover letter is attached hereto as Exhibit 4.

7. Plaintiffs have raised the non-payment of these bills in a June 18, 2008 email, a July 10, 2008 voicemail, a July 22, 2008 voicemail, and a July 24, 2008 email. Defendants have not responded to any of these inquiries.

8. Accordingly, plaintiffs respectfully request that this Court enter an order holding defendants in contempt and directing them to immediately issue a check in the amount of \$787.50 made payable to E. Eugene Miller, a check in the amount of \$5,280.00 made payable to Carl E. Fulwiler, M.D., Ph.D., pay future consultants' bills within ten days of submission, and pay plaintiffs a reasonable attorneys' fee in connection with the bringing of this motion in an amount to be set by the Court.

THE PLAINTIFFS
STATE OF CONNECTICUT
OFFICE OF PROTECTION & ADVOCACY, et al.

BY



Ben A. Solnit – CT00292
Tyler Cooper & Alcorn, LLP
555 Long Wharf Drive, 8th Floor
P.O. Box 1936
New Haven, CT 06509-0906
Tel. No. 203.784.8200
Fax. No. 203.777.1181
E-Mail: bsolnit@tylercooper.com

Nancy B. Alisberg-ct21321
Office of Protection & Advocacy
60-B Weston Street
Hartford, CT 06120
Tel. No.: 860.297.4300
Fax. No.: 860.566.8714
E-Mail: nancy.alisberg@po.state.ct.us

Eric Balaban
ACLU National Prison Project
915 15th Street, NW, 7th Floor
Washington, D.C. 20005
Tel. No.: 202.393.4930
Fax. No.: 202.393.4931
E-Mail: ebalaban@npp-aclu.org

David J. McGuire – ct27503
American Civil Liberties Union
Foundation of Connecticut
32 Grand Street
Hartford, CT 06106
Tel. No.: 860.247.9823-Ext. 211
Fax. No.: 860.728.0287
E-Mail: dmcguire@acluct.org
ATTORNEYS FOR PLAINTIFFS

ORDER

Having failed to comply with this Court's May 28, 2008 order and having failed to respond to plaintiffs' repeated inquiries regarding the payment of consultant fees agreed to between the parties in the Settlement Agreement entered as an order of this Court, this Court hereby holds defendants in contempt. Said contempt may be purged by the following:

1. Defendants' immediate issuance of a check made payable to E. Eugene Miller in the amount of \$787.50 and delivered by overnight courier to counsel for plaintiff;
2. Defendants' immediate issuance of a check made payable to Carl E. Fulwiler, M.D., Ph.D. in the amount of \$5,280.00 and delivered by overnight courier to plaintiffs' counsel;
3. Defendants' payment of future consultants' bills within ten days of submission; and
4. The immediate payment of \$_____ to plaintiffs' counsel as reasonable attorneys' fees incurred in bringing this motion.

It is so ORDERED.

Dated at Hartford, Connecticut _____, 2008.

Robert N. Chatigny
Chief United States District Judge

CERTIFICATE OF SERVICE

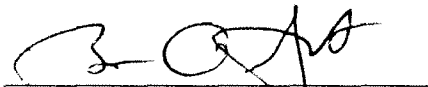
This is to certify that a copy of the foregoing has been mailed this 5th day of August, 2008, to the following counsel of record:

Terrence M. O'Neill, Esq.
Ann E. Lynch, Esq.
Steven R. Strom, Esq.
Assistant Attorneys General
Office of the Attorney General
110 Sherman Street
Hartford, CT 06105
Attys. for Defendants.

Eric Balaban, Esq.
ACLU National Prison Project
915 15th Street, NW, 7th Floor
Washington, D.C. 20005
Tel. No.: 202.393.4930
Fax. No.: 202.393.4931
E-Mail: ebalaban@npp-aclu.org
Attorney for Plaintiffs.

Nancy B. Alisberg, Esq.
Office of Protection & Advocacy
60-B Weston Street
Hartford, CT 06120
Tel. No.: 860.297.4300
Fax. No.: 860.566.8714
E-Mail: nancy.alisberg@po.state.ct.us
Attorney for Plaintiffs.

David J. McGuire Esq.
American Civil Liberties Union
Foundation of Connecticut
32 Grand Street
Hartford, CT 06106
Tel. No.: 860.247.9823-Ext. 211
Fax. No.: 860.728.0287
E-Mail: dm McGuire@acluct.org
Attorney for Plaintiffs.


Ben A. Solnit – CT00292

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT OFFICE OF	:	Civil Action No. 3:03CV1352 (RNC)
PROTECTION AND ADVOCACY	:	
FOR PERSONS WITH DISABILITIES;	:	
JAMES MCGAUGHEY, Executive	:	
Director, Office of Protection and	:	
Advocacy for Persons with Disabilities,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
WAYNE CHOINSKI, Warden,	:	
Northern Correctional Institution,	:	
in his official capacity;	:	
GIOVANNY GOMEZ, Warden,	:	
Garner Correctional Institution,	:	
in his official capacity; and	:	
THERESA C. LANTZ, Commissioner,	:	
Connecticut Department of Correction,	:	
in her official capacity;	:	MARCH 8, 2004
	:	
Defendants.	:	

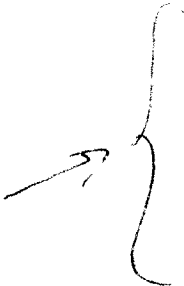
SETTLEMENT AGREEMENT

A. GENERAL PROVISIONS

1. This settlement agreement is entered into by the parties to resolve all of the claims made in this action, wherein the plaintiffs, Office of Protection and Advocacy for Persons with Disabilities ("OPA") and James McGaughey, bring a number of claims relating to the conditions of confinement of inmates housed at the Northern Correctional Institution and Garner Correctional Institution.

2. In entering this agreement, the parties agree and represent that this agreement is fair, reasonable and adequate to protect the interests of all parties and, with respect to the population served by the plaintiffs, that in the opinion of OPA, entering into this agreement is in the best interests of prisoners and detainees with mental illness, who may develop mental illness, or who are at risk of developing mental illness, who are confined

any communications with the Court without the express agreement of all parties. No consultant shall engage in any ex parte communications with any court having jurisdiction to enforce the terms of this agreement.



Upon submission of an appropriate invoice for services and expenses, CDOC shall reimburse each of the plaintiffs' consultants in an amount not to exceed a grand total of \$40,000 per year for each of the three years this agreement is in effect (a year shall be each 12 month period following the effective date of this agreement). In the event that a neutral expert is required to arbitrate disputes between the consultants as set forth in this paragraph and as set forth in paragraph A.8., CDOC shall reimburse each such neutral expert in an amount not to exceed \$15,000.00 per year.

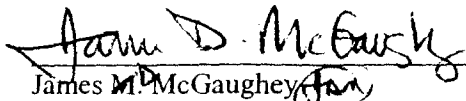
18. Attorneys' Fees and Costs

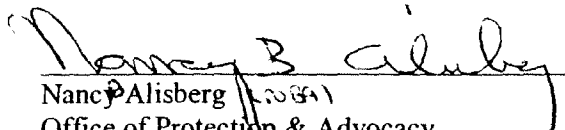
The defendants shall pay to the plaintiffs the sum of \$177,850.00 for attorneys' fees and \$13,131.16 for costs incurred in this case to date. Any future awards of attorneys' fees shall be calculated in accordance with the hourly rates established pursuant to the Prison Litigation Reform Act and limited to \$20,000 a year as set forth in Paragraph A12 above for attorney's fees and \$5,000 a year for plaintiff's monitoring and enforcement expenses.

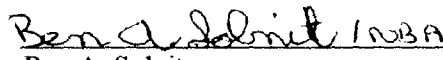
19. Approval of Legislature Required

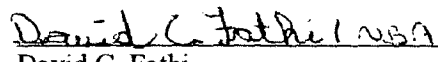
Prior to submission of this agreement to the Court for approval, the parties acknowledge that the defendants' authority to enter into this Settlement Agreement is contingent upon the General Assembly's approval of this agreement pursuant to Conn. Gen. Stat. § 3-125a. The defendants have not obtained the General Assembly's approval at the time they and their attorneys signed this agreement, and will not have the General Assembly's approval until such time as the General Assembly has approved this agreement by resolution, or the thirty day period for the General Assembly to consider this agreement has elapsed, as described in Conn. Gen. Stat. § 3-125a.

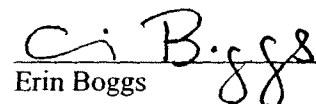
PLAINTIFFS,
Office of Protection & Advocacy


James M. McGaughey
Executive Director

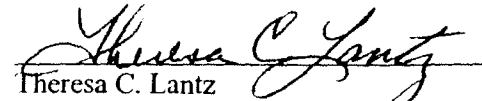

Nancy B. Alisberg
Office of Protection & Advocacy
Federal Bar No. ct21321
60-B Weston Street
Hartford, CT 06120
Tel. (860) 297-4300 Fax (860) 566-8714
E-Mail: nancy.alisberg@po.state.ct.us


Ben A. Solnit
Tyler, Cooper & Alcorn, LLP
Federal Bar No. ct00292
205 Church Street
New Haven, CT 06509-1910
Tel. (203) 784-8200 Fax. (203) 777-1181
E-Mail: solnit@tylercooper.com

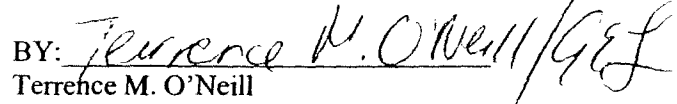

David C. Fathi
Federal Bar No. ct22477
ACLU National Prison Project
733 15th Street, NW, Suite 620 (NBA)
Washington, DC 20005
Tel. (202) 393-4930 Fax. (202) 393-4931
E-Mail: dfathi@aclu.org

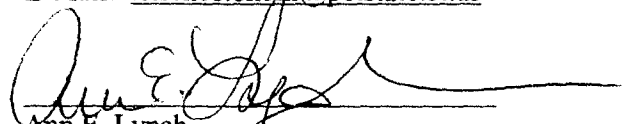

Erin Boggs
Federal Bar No. ct22989
Interim Legal Director
Connecticut Civil Liberties Union Foundation
32 Grand Street
Hartford, CT 06106
Tel. (860) 247-9823 x211 Fax (860) 728-0287
E-Mail: eboggs@cclu.org

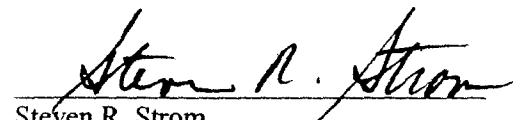
DEFENDANTS,
Wayne Choinski, et al.


Theresa C. Lantz
Commissioner of Correction

RICHARD BLUMENTHAL
ATTORNEY GENERAL

BY: 
Terrence M. O'Neill
Assistant Attorney General
Federal Bar No. ct10835
110 Sherman Street
Hartford, CT 06105
Tel. (860) 808-5450 Fax (860) 808-5591
E-Mail: terrence.oneill@po.state.ct.us


Ann E. Lynch
Assistant Attorney General
Federal Bar No. ct08326
110 Sherman Street
Hartford, CT 06105
Tel. (860) 808-5450 Fax (860) 808-5591
E-Mail: ann.lynch@po.state.ct.us


Steven R. Strom
Assistant Attorney General
Federal Bar No. 01211
110 Sherman Street
Hartford, CT 06105
Tel. (860) 808-5450 Fax (860) 808-5591
E-Mail: steven.strom@po.state.ct.us



March 26, 2008

Terrence M. O'Neill, Esquire
Assistant Attorney General
Office of the Attorney General
110 Sherman Street
Hartford, Connecticut 06105

Re: State of Connecticut Office of Protection & Advocacy, et al
v.
Warden Wayne Choinski, et al.
Civ. No. 3:03 CV 1352 (RNC)

Dear Terry:

In accordance with Section B.17 of the Settlement Agreement, I enclose the March 21, 2008 invoice of our custody expert, E. Eugene Miller, for payment by your client. Please let me know if you have any questions about it. If not, please request court approval of payment of \$787.50 to Mr. Miller. Thanks.

Best regards.

Very truly yours,

A handwritten signature in black ink, appearing to be "Ben A. Solnit". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ben A. Solnit

BAS:frc
Enclosures

INVOICE

March 21, 2008

To: Ben A. Solnit, Esq.
Tyler Cooper & Alcorn, LLP
55 Long Wharf Drive
New Haven, Connecticut 06509

For: Professional services rendered as the designated expert
on custody issues for O.P. & A. in the case of:
O.P. & A. v. Choinski, et al.

Specification of Services:	02/21/08	2.00 hours	Review of draft audit by DOC; report prep.; phone conference with DOC;
	03/03/08	.25 hour	Review of case materials;
	03/14/08	.25 hour	Review of case materials;
	03/17/08	2.00 hours	Review of draft audit text; report prep; phone conference with DOC;
	03/19/08	.25 hour	Phone conference with counsel;
	03/21/08	.50 hour	Review of finalized report; review of case material.

5.25 hours

Billable Hours: 5.25

Rate: \$150.00 per hour

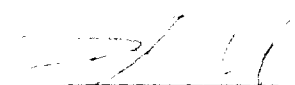
Fee: \$787.50

Expenses: None

AMOUNT DUE: \$787.50

Please Remit To: E. Eugene Miller
Suite 309
2501 Q Street, NW
Washington DC 20007

Thank you.


E. Eugene Miller

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

OFFICE OF PROTECTION AND
ADVOCACY FOR PERSONS WITH
DISABILITIES, ET AL.,

Plaintiffs,

V.

WAYNE CHOINSKI, ET AL.,

Defendants.

: CIVIL NO. 3:03CV1352 (RNC)(DFM)

:

:

:

:

:

:

:

: MAY , 2008

ORDER

In accordance with the auditing provisions, Sec. B.17, of the Settlement Agreement effective September 26, 2005, it is hereby ordered that the State of Connecticut shall reimburse plaintiff's auditor E. Eugene Miller in the amount of \$787.50 for professional services rendered during the third year of auditing this agreement.

The State of Connecticut shall pay forthwith E. Eugene Miller in the amount of \$787.50

SO ORDERED

Dated at Hartford, Connecticut, this 28 day of May, 2008.

/s/ Robert N. Chatigny, USDJ

Robert N. Chatigny

Chief United States District Judge

June 10, 2008

Terrence M. O'Neill, Esquire
Assistant Attorney General
Office of the Attorney General
110 Sherman Street
Hartford, Connecticut 06105

Re: State of Connecticut Office of Protection & Advocacy, et al
v.
Warden Wayne Choinski, et al.
Civ. No. 3:03 CV 1352 (RNC)

Dear Terry:

In accordance with Section B.17 of the Settlement Agreement, I enclose the June 2, 2008 invoice of our mental health expert, Carl E. Fulwiler, M.D., PhD, for payment by your client. Please let me know if you have any questions about it. If not, please request court approval of payment of \$5,280.00 to Dr. Fulwiler. Thanks.

Best regards.

Very truly yours,



Ben A. Solnit

BAS:frc
Enclosures

CARL E. FULWILER, MD, PhD

PSYCHIATRY

203 Walnut Street • Newton, MA • 02460

INVOICE

June 2, 2008

Attn: Attorney Nancy B. Alisberg
Office of Protection and Advocacy
State of Connecticut
60B Weston Street
Hartford, CT 06120-1551

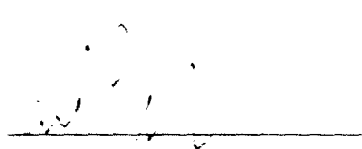
Re: OPA v. Choinski, Civ. Act. No.: 3:03CV1352 (RNC)

Services for invoice period February through May 2008

Work hours 26.4 hrs. @ \$200/hr

\$5,280

Total due: \$5,280



Carl E. Fulwiler, MD, PhD

CT Time log

Carl Fulwiler

2/2	1130-2, 330-9	Report writing	8
2/3	1230-4	"	3.5
2/9	930-1	Chart reviews	3.5
2/24	130-330; 8-9	New docs	3
3/15	1130-230; 4-730	Finish northern, start garner	6.5
4/5	4-7	Finish Garner, narrative	3
4/6	830-11	Finish, proof, formatting	2.5
4/9	1-2	Reply to 3 rd party's draft report	1
4/26		Review DE pkg	.5
5/31	1-230	Review DE pkg, DMHAS evals, 3 rd party final report	1.5
			33
			x.8
			26.4