

NEWS

Cumberland, jail inmates reach settlement in federal court case over COVID-19



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CAMDEN – Attorneys for Cumberland County and county jail inmates disclosed in federal court here Thursday morning a settlement in a class-action lawsuit over COVID-19 control measures at that facility.

The heart of the settlement calls for a "master" to be appointed, under federal court rules, to review the jail's COVID-19 policies and enforcement. The monitor's findings will be reported to the court for its approval or rejection.

The disclosure came on day 10 of an evidentiary hearing before U.S. District Court Judge Noel Hillman. The day was scheduled for attorneys to make closing arguments, and Hillman earlier this week indicated he was open to issuing an immediate order after those closings.

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The negotiated agreement won immediate praise from an obviously pleased Hillman, who called it a "win-win."

"Ultimately, I think I'm going to take the view that this reflects a good faith effort by the county, whatever mistakes may have been made in the past, to move forward and put in place the best jail the county can run under the difficult circumstances

we all face," Hillman said. "And I think having a monitor here makes a lot of sense in trying to achieve that goal.

"Ultimately, it also reflects, I think, a reasonable perspective from the plaintiffs," Hillman said. "I was struck a couple of times how some of the complaint forms or even in the testimony a prisoner would say, 'I know this is a jail but.' And I think this will go a long way addressing the 'buts,' the things that arise that have caused concern."

Hillman started an evidentiary hearing in late April, conducting sessions virtually. The witness list included jail Warden Charles Warren, who was a named defendant, and county Health Officer Megan Sheppard.

There also was extensive use of internal jail documents, including medical aid requests. Some of those forms were written by an inmate who later died from COVID-19 complications.

Inmate attorney Jeffrey Pollock said the parties hope, in the next five days, to agree on who will take the master position and then will forward the pick to the court for its approval.

The county would pay any costs for the master, but Pollock said otherwise the plaintiffs were not seeking any payment from the county other than for items such as document copying.

"Within 45 days after the appointment of the master, the idea is that the master will come up with an initial report and that report will make findings to be provided to you (Hillman) and the parties," Pollock said. "The parties will have five days to respond to that."

At that point, Pollock said, it would up to the court to accept or reject any findings.

The areas that will be reviewed include the following under the agreement: COVID testing; COVID contact tracing of inmates and staff; quarantine/isolation practices;

ventilation; quarantine areas; availability and sufficiency of hand sanitizer and protective equipment; cleaning supplies; social distancing; and recreation.

Pollock said he and Greg Zeff, the county attorney, agree that the "parameters of what is significant for COVID may change over time."

"And so the hope and the idea is that ... both sides will be able to educate and advise the master of changes in those things," Pollock said. "We understand that, so does Mr. Zeff. So, the idea is that ... other things may be added at the master's discretion. But the fact is this is a changing situation."

Pollock said the master will do "at least" quarterly reports to the court, after filing an initial report, with five days for either side to challenge. The judge at that point would decide whether to adopt the report, he said.

Pollock said the master will have "reasonable" access to the jail as well as inmates.

"As far as termination of the arrangement of the master, that will be upon application by the county at such point in time that the county believes it's no longer necessary," Pollock said. "We will have the right ... to object. And then, the court will ultimately make the determination whether to terminate the arrangement."

County Legal Counsel John Carr issued a statement Thursday afternoon.

"We believe this resolution is in the best interest of all concerned," Carr said. "While we believe we have been exceptionally successful in mitigating the risks of the COVID-19 exposure at the jail, we look forward to working with a master, an independent monitor, to further minimize the risks to our detainees, corrections officers and staff."

Police Benevolent Association Local 231, which represents corrections officers at the jail, supported inmates in the litigation. Union officials closely monitored the proceedings but were not a party to the complaint.

PBA officials also have challenged the county over pandemic control efforts, and one corrections officer died this year from COVID-19 complications.

PBA 231 President Vic Bermudez said PBA officials, local and state, were on the court Zoom page using as an avatar a picture of deceased Officer Luis Andujar. The judge had those pictures removed, Bermudez said.

"Today's concession by the county is indicative of failed management similar to the DOJ (Department of Justice) suicide probe which found them negligent," Bermudez said after the hearing.

"Unfortunately, again, the county government failed to prioritize the safety, health and well-being of staff and inmates, resulting in deaths," Bermudez added. "Our efforts have been challenged by Warden Warren, county Administrators Kim Wood and Jody Hirata, and jail liaison Commissioners Joe Derella and Darlene Barber.

PBA attorney Stuart Alterman called the outcome "fair and expected." He added it indicts the "callous and cold nature" of county officials, notably Board of Commissioners Director Joseph Derella and Chief Financial Officer Gerry Seneski.

Alterman terms testimony by the current warden a "fairy tale."

"In other words, the word 'truth' and the Cumberland witnesses diverge a great deal," Alterman said. "It is unfortunate that our complaint, Local 231's COVID complaint, was improvidently dismissed so early in state court, as we would have been in the same place by now."

Alterman said earlier appointment of an independent jail monitor might have prevented the death of Andujar.

Alterman expects evidence the inmate plaintiffs brought to court will be useful to the PBA. "And at some point in time, we will further demonstrate the nefarious and ill-conceived conduct that has been perpetrated by Joseph Derella, former Warden Richard Smith, and Warden Warren," he said.

Bermudez said prioritizing transparency, rather than closing the jail, might have prevented the deaths of an officer and an inmate as well as some suicide.

"We are hopeful to an open dialogue with the appointed magistrate over these Cumberland County officials," he said.

The judge complimented attorneys for both parties, also noting that the Fox Rothschild law firm in Lawrenceville provided pro bono representation for inmates.

Four inmates filed a complaint on Jan. 29 in U.S. District Court for New Jersey, almost seven months after first trying to find a lawyer. A fifth inmate was added on Thursday to the list of official plaintiffs.

Any court-approved actions will apply to all inmates, current and future.

"Go forth," Hillman said. "Button it up. Pin it down. Get it done. You've done so much hard work and a lot of public good, and it's much appreciated. I look forward to signing the order."

This story was updated.

Joe Smith is a N.E. Philly native transplanted to South Jersey more than 30 years ago. He is a former editor and current senior staff writer for The Daily Journal in Vineland, Courier-Post in Cherry Hill, and the Burlington County Times. Have a tip? Reach out at (856) 563-5252 or jsmith@thedailyjournal.com or follow me on Twitter, @jpsmith-dj. Help support local journalism with a subscription.