

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

RODNEY J. IRELAND, et al.,

Plaintiffs,

-vs-

CHRISTOPHER D. JONES, Executive
Director, North Dakota Department of
Human Services, et. al.,

Defendants.

Civil No. 3:13-CV-0003-PDW-ARS

**NOTICE OF PROPOSED CLASS
ACTION SETTLEMENT AND
HEARING**

**IF YOU HAVE BEEN CIVILLY COMMITTED AS A SEXUALLY
DANGEROUS INDIVIDUAL IN THE STATE OF NORTH DAKOTA OR
REFERRED TO THE NORTH DAKOTA STATE HOSPITAL FOR
EVALUATION FOR CIVIL COMMITMENT AS A SEXUALLY
DANGEROUS INDIVIDUAL, YOU MAY BE AFFECTED BY A CLASS
ACTION SETTLEMENT**

A written Class Action Settlement Agreement (the “Settlement Agreement”) has been proposed in a class action lawsuit about the rights of people who have been civilly committed as “sexually dangerous individuals” in the State of North Dakota or who have been referred to the North Dakota State Hospital for evaluation for possible civil commitment as “sexually dangerous individuals.”

The Court will have a hearing to decide whether to approve the settlement.

This Notice gives a summary of the proposed settlement and information about the hearing and your right to object to the settlement. The United States District Court for the District of North Dakota approved this Notice.

ARE YOU A MEMBER OF ANY OF THE CLASSES?

There are several classes and subclasses affected by the settlement. The following is a brief description of each:

SOTEP Class:

You are a member of the SOTEP Class if you are currently, or at any time since February 12, 2013 were, civilly committed as a sexually dangerous individual (an “SDI”) under North Dakota Century Code chapter 25-03.3 and confined at the North Dakota State Hospital in the Sex Offender Treatment and Evaluation Program (“SOTEP”).

Religious Land Use and Institutionalized Persons (RLUIPA) Subclass:

You are a member of the RLUIPA Subclass if you are currently, or at any time since February 12, 2013 were, civilly committed as an SDI and confined at the North Dakota State Hospital in the SOTEP and your religious exercise has been substantially burdened during this civil commitment.

Americans with Disabilities (ADA) Subclass:

You are a member of the ADA Subclass if you are currently, or at any time since February 12, 2013 were, civilly committed as an SDI and confined at the North Dakota State Hospital in the SOTEP and you have a disability or disabilities recognized under the federal Americans with Disabilities Act.

Juvenile Subclass:

You are a member of the Juvenile Subclass if you are currently, or at any time since February 12, 2013 were, civilly committed as an SDI and confined at the North Dakota State Hospital in the SOTEP and your civil commitment was based on “sexually predatory conduct” (as defined by N.D.C.C. § 25-03.3-01(9)) that you committed while you were a minor.

Evaluation Class:

You are a member of the Evaluation Class if you are currently, or at any time since February 12, 2013 were, in custody at the North Dakota State Hospital for evaluation to determine whether you should be civilly committed as an SDI.

Debt Class:

You are a member of the Debt Class if, at any time since January 1, 2004, the North Dakota Department of Human Services or the North Dakota State Hospital has demanded payment from you for expenses and services provided during your civil commitment as an SDI.

WHO ARE THE DEFENDANTS?

The Defendants are (a) Christopher D. Jones, Executive Director, North Dakota Department of Human Services, in his official capacity, (b) the State of North Dakota, (c) North Dakota Department of Human Services (referred to as the “DHS”), (d) North Dakota State Hospital (referred to as “NDSH”) and (e) Dr. Rosalie Etherington, Superintendent of NDSH, in her official capacity.

WHAT IS THIS CASE ABOUT?

Persons who were civilly committed as SDIs and confined at NDSH in SOTEP filed this lawsuit in federal court in Fargo in 2013 claiming that their civil commitment violated the United States Constitution. The federal court appointed lawyers to represent the SDIs and those lawyers added claims that the State of North Dakota, DHS and NDSH violated SDIs’ constitutional rights and violated the Americans with Disabilities Act (the “ADA”) and Religious Land Use and Institutionalized Persons Act (the “RLUIPA”). In 2016 the federal court certified the classes and subclasses listed above.

WHAT IS THIS CASE IS NOT ABOUT?

THIS CASE DID NOT SEEK PAYMENT OF MONEY DAMAGES FROM DEFENDANTS. RATHER, IT SOUGHT TO HAVE DEFENDANTS MAKE CHANGES IN THE WAY THEY OPERATE SOTEP.

THE DEFENDANTS DENY LIABILITY

The Defendants deny that they violated any laws, or that they did anything unlawful. However, after many years of litigation, the parties agreed to settle the lawsuit without a trial.

WHAT DOES THE SETTLEMENT DO?

You should know several claims have already been dismissed by the Court because of motions or requests that were previously made by the Defendants. The settlement is directed at the claims that still remain and to cause this litigation to be ended.

In exchange for releases from the claims and for this case to be dismissed in its entirety, the parties have made the following agreements:

1. RLUIPA Claims:

The State of North Dakota, DHS, and NDSH have agreed:

- To modify the DHS/NDSH policy in SOTEP on the possession of eagle feathers for religious use.
- To modify the DHS/NDSH policy in SOTEP for use of tobacco to allow for tobacco use for prayer ties and sweat lodges so that smoking materials used during prayer ties and sweat lodges may contain up to 1% tobacco.
- That DHS/NDSH will remain committed to making quarterly requests for sweat lodges at SOTEP, whether the chaplaincy position is filled or not.
- To add language to the SOTEP Client Handbook that sets forth a procedure for requesting religious materials.
- To post a schedule as to when drumming of personal drums for religious purposes can be conducted at NDSH.

2. ADA Claims:

It is plaintiffs' position that DHS/NDSH have made changes within SOTEP since 2016 and, regardless of the reasons for those changes, they have improved the conditions at SOTEP which formed a substantial basis for Plaintiffs' ADA Claims. Defendants' position is that they have continuously complied with the mandates of the ADA and that the changes within SOTEP made since 2016 were made as part of DHS/NDSH's continuing effort to update and revise its policies, procedures and practices to meet best practices and that none of these changes were a result of or caused by this case having been brought by plaintiffs. The non-exhaustive list of changes that occurred within SOTEP since 2016 include:

- Community Transition Center expansion completed.
- SOTIPS (Sex Offender Treatment Intervention and Progress Scale) implemented.
- SOTEP Treatment Mall opened.
- Stage and Skills System changed into one level system.
- Privileging System revised.
- Personal property policy revised.

- Secure 3 unit became an unlocked unit.
- SOTEP client outdoor time was expanded.
- SOTEP Client representative appointed to SOTEP property committee.
- NDSH clinicians within SOTEP have participated in continuing education provided by the Association for the Treatment of Sexual Abusers (ATSA) and ATSA's Minnesota Chapter (MnATSA) to reinforce progressive rehabilitation. This continuing education lead to a change in the model of care within SOTEP, in accordance with best practices, in March, 2018 to the Good Lives model of care.

The parties have agreed that none the changes listed above constitutes an admission, finding, conclusion or determination regarding compliance or non-compliance with the ADA and that nothing in the settlement of the ADA claims requires a change or other modification to any policy, procedure or programming by the Defendants. Nonetheless, lawyers for the Class believe that the changes listed above have gone a long way toward improving conditions at SOTEP such that this litigation should be settled and end.

3. Evaluation Claims:

The State of North Dakota, DHS, and NDSH have agreed:

- To adopt a revised Evaluation Status Policy that clarifies housing, the privileges that may be available upon admission, therapeutic educational activities that may be available, additional privileges that may be earned, (work, crafts, and activities) and the procedures for assessing the availability of these items for those persons admitted to NDHS for evaluation to determine whether they are sexually dangerous individuals under N.D.C.C. chapter 25-03.3 so that persons on evaluation status will be considered for housing, privileges, and education and work, dependent on availability, assessed risk and need.

4. Debt Claims:

The State of North Dakota, DHS, and NDSH have agreed:

- DHS/NDSH will not use a collection agency to collect money from SDIs for expended sums and/or services provided by DHS to SDIs under N.D.C.C. Chapter 25-03.3 before obtaining a judgment.

- DHS/NDSH may seek judgments pursuant to N.D.C.C. § 25-03.3-21, as may be amended, for expended sums and/or services provided by DHS to SDIs.
- DHS/NDSH may ask a collection agency to pursue a judgment against an SDI for amounts spent by DHS/NDSH for services provided at SOTEP, but will require the collection agency to obtain a judgment pursuant to N.D.C.C. § 25-03.3-21, as may be amended.
- Any judgment obtained pursuant to N.D.C.C. § 25-03.3-21 may be assigned by DHS/NDSH to a collection agency.
- DHS/NDSH will send out a notice advising SDIs and those discharged from commitment at the NDSH as an SDI, whose accounts had been previously turned over to a collection agency, that their unpaid accounts have been returned by the collection agency to DHS.
- DHS/NDSH will request that the collection agencies, who had previously sought collection of unpaid amounts from an SDI or those discharged from commitment at NDSH as an SDI, send out a notice to credit reporting agencies that they are no longer involved in such collections. DHS/NDSH will also request that these collection agencies send out a notice retracting any derogatory credit comments the collection agency may have made to credit reporting entities regarding its SDI account collections.
- DHS/NDSH will provide persons admitted to SOTEP with a notice advising them that DHS/NDSH may seek repayment from SDIs for amounts spent by DHS/NDSH for services provided and money expended at SOTEP pursuant to N.D.C.C. § 25-03.3-21.
- DHS/NDSH will continue to send to committed SDIs and those that have been discharged from commitment at NDSH as an SDI periodic expense/expended sum reports describing the amount of expended sums and/or for the services provided by SOTEP, but those reports will clearly state “This is not a bill.”
- DHS/NDSH will refund a total of \$9,132.95 (which is an amount collected by DHS/NDSH from some SDIs for services provided at SOTEP pursuant to N.D.C.C. chapter 25-03.3, minus any collection agency fee). To be eligible for a refund of any payments you made, you must sign a release of all claims you

have, including for money damages, against Defendants related to the charges and any collection attempts. No further refunding is required.

- The settlement does not alter, modify or limit debt or claim recovery that may be generally pursued by DHS/NDSH during or after the lifetime of the Class Members, nor any defense that may exist for such debt or claim recovery, including provisions of N.D.C.C. § 25-03.3-21 when applicable.

5. Attorneys' Fees:

- Under the settlement, Defendants will pay up to but not exceeding \$320,000.00 to the lawyers for the Class for Plaintiffs' attorneys' fees, litigation expenses, and costs, if the Court approves that amount. Class members will not pay any fees, expenses or costs.

6. Motion to Vacate Prior Order:

- The Class Members and Class Counsel have agreed not to oppose, or otherwise cause to be opposed, Defendants' motion to vacate the Court's prior orders which found N.D.C.C. chapter 25-03.3 to be "unconstitutional on its face because it does not require that defendants initiate court proceedings for release of individuals who no longer meet SDI criteria."
- A basis for that motion will be the decisions of the Eighth Circuit in *Karsjens v. Piper*, 845 F. 3d 394 (8th Cir. 2017) and *Van Orden v. Stringer*, 937 F.3d 1162 (8th Cir. 2019).

WHAT DO I GIVE UP IN THE SETTLEMENT?

- In exchange for Defendants' agreement to make the changes outlined above and pay Class Counsel's attorneys' fees, expenses and costs up to but not exceeding \$320,000.00 as approved by the Court, Plaintiffs will dismiss the claims and this lawsuit with prejudice and in total, and all Class Members, including those who are members of the SOTEP Class, ADA Subclass, Juvenile Subclass, RLUIPA Subclass, Evaluation Class and Debt Class will forever and completely release the Defendants and will be barred from filing another lawsuit based on the claims released in this action. The claims released are all claims for injunctive, declaratory relief or other equitable relief only, and those claims that are incidental to the injunctive, declaratory or other equitable relief claims, that any Class Members now have or at any time ever have had, whether arising

under federal, state, or local law, and that that were asserted, required to be asserted, or that could have been asserted by or on behalf of the Class Members in the Litigation against any of the Defendants under any legal theory, including all such claims, causes of action, assertions or allegations relating to or in any manner arising from Defendants' policies, practices, procedures, acts or omissions in connection with the operation of the SOTEP and/or the conditions in or at the SOTEP. If any of the Class Members attempt to bring another lawsuit based on the claims that are released, the Settlement Agreement may then be filed in the later lawsuit and an order to dismiss such lawsuit with prejudice can be sought. Released claims do not include those which arise or accrue after the final effective date of this settlement.

- The settlement does not put any limits on arguments you can make in state court as to why you should not be found to be a sexually dangerous individual or why you should be released from civil commitment. Likewise, the settlement does not put limits on arguments by others who may claim you should be found to be a sexually dangerous individual.
- If you are eligible for any part of the \$9,132.95 refund, you will have to sign a release of all claims, including claims for money damages, related to the billing or collection of those funds before receiving your refund.

WHERE CAN I GET MORE INFORMATION?

NDSH will have a copy of the complete Settlement Agreement, setting out the terms of the settlement, available in a secure location within the SOTEP unit at NDSH for review by residents, under the conditions set out in the DHS/NDSH policies and SOTEP handbook.

If you have access to the internet, you can see a copy of the Settlement Agreement on the website of the lawyers for the Class, Brancart & Brancart, www.brancart.com.

You can also contact the lawyers for the Class, Christopher Brancart and Elizabeth Brancart, and request a copy of the Settlement Agreement or if you have questions about the lawsuit or settlement. Their contact information is Brancart & Brancart, P.O. Box 686, Pescadero, CA 94060; (650) 879-0141.

CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?

Because the claims and this settlement are for injunctive relief, class members by law are not able to exclude themselves.

WHEN IS THE HEARING AND HOW CAN I OBJECT?

The Court will hold a hearing in this case on Monday, November 23, 2020 at 9:00 a.m. to decide whether to approve the settlement. The hearing will be held in Courtroom No. 1, Fourth Floor of the United States Courthouse in Fargo, North Dakota, located at 655 1st Avenue North, Fargo, North Dakota 58102.

If you do not like the settlement, you may object to it. You may also object to the payment of any attorneys' fees, litigation expenses, and costs to the lawyers for the Class.

If you want to object or if you want to go to the hearing, you must let the Court and the lawyers for the parties know by mailing your written objection or intention to appear at the hearing to each of them at the following addresses no later than September 20, 2020:

Clerk of Court	Christopher Brancart	Daniel Gaustad
U.S. District Court	Brancart & Brancart	Pearson Christensen, PLLP
655 1st Ave. North, #130	P.O. Box 686	P.O. Box 5758
Fargo, ND 58102	Pescadero, CA 94060	Grand Forks, ND 58206

Also, there are specific mandatory requirements in order for an objection to be considered by the Court and for attendance at the November 23, 2020 hearing which are described in detail in the Settlement Agreement.

Nothing in this Notice does or nor is it intended to modify or alter any term in the Settlement Agreement. Rather this Notice is to provide a summary of the proposed settlement and terms of the Settlement Agreement, information about the hearing and your right to object to the settlement.