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Court Expert

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. CV 94-2307 CW

**COURT EXPERT'S QUARTERLY
REPORT ON INVESTIGATIONS AND
DISCIPLINE**

Beginning in fall 2020, the Court ordered CDCR to implement reforms to the staff complaint, investigation, and discipline process at six prisons. Dkt. 3060, 3-4 (pertaining to RJD); 3218, 4-5 (pertaining to five additional prisons). The Court also ordered the Court Expert to monitor and issue quarterly reports on CDCR's implementation of its reforms. The Court Expert subsequently shared with the parties a series of proposals for modifications to the investigations and discipline process, and the parties and the Court Expert met and conferred over the course of several months to discuss those proposals and other possible modifications. The parties reached agreement on most of the reforms, and they briefed to the Court the areas still in dispute. On December 13, 2021, the Court issued its order on Plaintiffs' objections to

1 Defendant's proposed plans for the six prisons and ordered Defendants to make certain
2 modifications. Dkt. 3356.

3 As the Court Expert has previously reported, CDCR anticipates that it will begin
4 implementation of agreed-upon reforms in January 2022. Accordingly, the Court Expert cannot
5 yet report on implementation progress. However, there are six issues the parties continue to
6 negotiate with the assistance of the Court Expert.

7 First, while, as noted above, the parties agreed on most aspects of a new investigations
8 and discipline system, they determined that further negotiations would be fruitful in three areas.
9 Those were (1) finalization of the Investigation Assignment Index (IAI), which establishes the
10 process by which the Office of Internal Affairs will determine which cases are assigned to which
11 investigators; (2) a set of guidelines (referred to as the "investigation tool") that will be used
12 prior to finalization of investigations reports to evaluate whether the investigation was
13 comprehensive and unbiased; and (3) certain aspects of the Early Warning System (EWS), which
14 is intended to help identify trends related to staff misconduct and to allow for intervention to
15 prevent misconduct. The Court Expert and the parties will continue to work together to finalize
16 these aspects of the new process.

17 Second, there are two areas of dispute arising out of the Court's ruling on Plaintiffs'
18 objections to the remedial plan. Those are a timeline under which investigations will be
19 completed and the composition of and procedures for a post-investigation review panel. With
20 respect to investigation timelines, the Court ordered CDCR to "modify their proposed plans to
21 propose shorter deadlines than one year for the completion of investigations." Dkt. 3356, 16.
22 With respect to the panel, the Court ordered CDCR to set forth specifics on the panel's
23 composition and procedure "so that Plaintiffs may have an opportunity to exercise their right . . .
24 to object before the panel is implemented." *Id.* at 18. The Court Expert and the parties will
25 continue to meet and confer on these two issues.

26 Finally, another issue has arisen, namely the timeline for implementation of CDCR's
27 reforms. On December 8, 2021, CDCR submitted to the Office of Administrative Law a
28 proposed set of regulations that provided as follows:

The provisions of this Article [setting forth the new investigations procedure] shall apply to staff misconduct complaints received by the department as follows:

- (1) CDCR Form 602-1, Grievance (Rev. 01/22), which is incorporated by reference, fully implemented at [the six prisons subject to the Court's order] on May 31, 2022;
- (2) CDCR Form 602-1 fully implemented at [six further] facilities on September 30, 2022;
- (3) CDCR Form 602-1 fully implemented at [six further] facilities on November 30, 2022;
- (4) CDCR Form 602-1 fully implemented at [sixteen further facilities, community beds, and the Division of Adult Parole Operations] on November 30, 2022;
- (5) CDCR Form 602-HC, Health Care Grievance (Rev. 10/18), which is incorporated by reference, on March 31, 2023;
- (6) CDCR Form 1824, Reasonable Accommodation Request (Rev. 09/17), which is incorporated by reference, on April 30, 2023;
- (7) All other complaints (e.g., third party complaints, citizen complaints, staff, ombudsman, advocacy letters and any related interviews, etc.) received either electronically, telephonically, or in writing on June 30, 2023.

15 CA ADC § 3486(c) (proposed).

Under these regulations, CDCR's new discipline and investigations system will be partially implemented at the six prisons subject to the Court's order by May 31, 2022, but not fully implemented there (or at other facilities) until June 30, 2023. Further, under this timeline, it appears that the six institutions subject to the Court's order will have two different investigations and disciplinary systems operating in parallel. The new, agreed-upon process will apply to staff misconduct complaints raised via Form 602. But the old process will remain in place for staff misconduct complaints raised via Form 602-HC (which applies to complaints made in connection with health care), via Form 1824 (which applies to complaints made in connection with requests for reasonable accommodation), or through any other means. Plaintiffs have raised concerns, which the Court Expert shares, about both the lengthy timeline for implementation and the prospect of differential treatment of complaints based on their source. The parties have met and conferred with the Court Expert twice since these proposed regulations issued, and the Court Expert anticipates there will be further discussions on this topic in the weeks ahead.

1 The Court Expert will continue to work with the parties to resolve these issues and will
2 report to the Court on further developments at the end of the next quarter.

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4 Dated: December 31, 2021

Respectfully submitted,

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6 /s/
7 Edward W. Swanson
8 SWANSON & McNAMARA LLP
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