

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

UNITED STATES OF AMERICA,)
)
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 v.)
)
TERRITORY OF THE VIRGIN ISLANDS,)
et al.,)
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)
)
Defendants.)

Civil Action No. 1986-0265

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ORDER

THIS MATTER comes before the Court on the United States’ “Notice of Objections and Request for Emergency Status Conference” (Dkt. No. 888), Defendants’ Court-ordered Response thereto (Dkt. No. 895), and the hearing held on April 17, 2015. In the Notice, the United States advised the Court that Defendants had failed to comply with the March 30, 2015 deadline for the submission of final policies and procedures, as set forth in the Monitoring Schedule (Dkt. No. 863-1) that was the subject of the parties’ “Joint Motion for Entry of Stipulated Order” (Dkt. No.

853) and entered as an Order of the Court—subject to judicial enforcement—on December 17, 2014 (Dkt. No. 873).¹

This is the third time over the course of little more than a year that the Court has had to address Defendants’ failure to meet deadlines, to which they had previously agreed, for the development of policies and procedures. On the first occasion, the matter was brought to the Court’s attention on March 3, 2014, when the United States filed a “Motion for Enforcement of this Court’s May 14, 2013 Order Adopting the Parties’ Settlement Agreement and for More Specific Orders Implementing that Agreement,” in which the United States informed the Court that Defendants had failed to abide by a deadline which Defendants set, as required by the Settlement Agreement, for the submission of draft policies. (Dkt. No. 777). The issue was later resolved by agreement of the parties with the development of an implementation schedule that set forth deadlines for deliverables required under the Settlement Agreement. (*See* Dkt. No. 800 (“Monitor’s Adopted Implementation Schedule”). The United States then withdrew its Motion for Enforcement and advised the Court that “the Monitor’s Adopted Implementation Schedule sufficiently addresse[d] the relief requested in the United States’ [Motion for Enforcement].” (Dkt. No. 801 at 2).

On the second occasion, the matter was brought to the Court’s attention on August 13, 2014, when the United States filed a “Motion for an Order to Show Cause Why Defendants Should Not Be Held in Civil Contempt of Court and Request for Expedited Briefing.” (Dkt. No. 833). In the Motion, the United States advised the Court that, during the three months following

¹ At the hearing held on April 17, 2015, the United States informed the Court that, on the March 30, 2015 deadline, Defendants submitted seventeen (17) of the sixty-five (65) policies and procedures that were due. Then, on April 8, 2015, Defendants submitted one (1) of the forty-eight (48) outstanding policies and procedures (the Inmate Disciplinary Policy), and on April 9, 2015, submitted fourteen (14) of the forty-seven (47) outstanding medical and mental health policies and procedures. On April 13, 2015, Defendants submitted an additional twenty-eight (28) medical policies and procedures. However, twelve (12) of them were duplicates of the policies and procedures Defendants had submitted on April 9, 2015. At the hearing, the parties agreed that Defendants have five (5) or six (6) mental health policies and procedures, and related forms, that are still outstanding.

the United States' withdrawal of its Motion for Enforcement and the filing of the Monitor's Adopted Implementation Schedule, Defendants had once again failed to meet deadlines they had agreed upon and had failed to request an extension of time in advance of the deadlines. (*Id.* at 5). The United States requested that the Court find Defendants in contempt of the Court's May 14, 2013 Order Adopting the Parties' Settlement Agreement (Dkt. No. 742), and enter as an Order of the Court all new deadlines. (Dkt. No. 833 at 3).

The Court scheduled a hearing on the United States' Motion for an Order to Show Cause for September 25, 2014. (Dkt. No. 837).² However, the day prior to the hearing, the parties reached an agreement on the issues raised in the United States' Motion and filed a "Joint Motion for Entry of Stipulated Order." (Dkt. No. 853). In the Joint Motion, Defendants stipulated that they were non-compliant with the Settlement Agreement, entered as an Order of the Court on May 14, 2013, and agreed that a new schedule for policy development, training, and implementation would be submitted to the Court on October 17, 2014 and entered as an Order of the Court, subject to judicial enforcement. (Dkt. No. 853-1). In consideration of the entry of the Stipulated Order, the United States agreed to withdraw, without prejudice, its Motion for an Order to Show Cause. (Dkt. No. 853 at 2).

Now, the Court is faced with yet a third instance where Defendants have failed to abide by an agreed-upon deadline for policy development. This time, at the behest of both the United States and Defendants, the deadline was specifically dictated by Court Order. Thus, Defendants' failure to comply with the deadline constituted a direct violation of a specific Court Order.

Compounding Defendants' failure to meet the above-referenced deadlines is an apparent lack of adequate oversight of Defendants' compliance with the terms of the Settlement

² A status conference, where all parties were scheduled to be physically present, had previously been set for September 25, 2014. Therefore, the Court ordered that the status conference be expanded to include a hearing on the United States' Motion. (*See* Dkt. No. 837 at 2).

Agreement and related Court Orders by the legal team representing Defendants. The Court has observed that in each instance where there is a compliance problem that is brought to the Court's attention by the United States, counsel for Defendants seek—in effect—to divorce themselves from responsibility for the problem. In this latest instance, counsel for Defendants indicated that they were unaware—*until the day that the policies and procedures were due*—of the Bureau of Corrections' inability to meet the deadline.³ At the hearing held on April 17, 2015, counsel stated that they had relied upon representations from Bureau of Corrections personnel that everything was on track for the March 30, 2015 deadline.⁴

Had this been the first time that Defendants' counsel had given such an excuse, the Court may not have been quite as troubled. However, given the recent history of this case, the Court finds wholly unacceptable counsel's purported "reliance," without more, and their seeming obliviousness to the reality of what is occurring at the Bureau of Corrections. Not long ago, it was routine for Defendants' counsel to be unaware that the Monitor was not being timely paid until after the deadline for payment had passed and a concern was raised. Then, in November of 2014, in reliance on representations from Bureau of Corrections personnel, Defendants' counsel submitted to the Court a Response to an Order to Show Cause that contained a completely fictitious account of why the Monitor's payment was delayed (Dkt. No. 867)—an explanation that the Court found "factually and legally inadequate" on its face and that was retracted by Defendants' counsel in its entirety at the subsequent Show Cause Hearing (Dkt. No. 868 at 2), following a more in-depth review of the matter by Defendants' counsel. Now, in the face of a

³ Such a revelation is not merely surprising, but rather, incomprehensible, given that what was at issue here was not one or two delayed policies and procedures but forty seven (47) of sixty five (65) such submissions.

⁴ The Court notes that Vernita Charles, Health Care Administrator at the Bureau of Corrections—the point person for the medical and mental health policies and procedures, who has consistently received accolades from the monitoring team for her diligence and productivity in the development of the medical and mental health policies and procedures—informed the Court at the hearing that she had repeatedly requested administrative assistance from the Bureau to help her complete the medical and mental health policies and procedures, but to no avail.

deadline of major significance to the fulfillment of the terms of the Settlement Agreement, Defendants' counsel again simply relied on representations, and then learned at the eleventh hour that the commitment would not be honored.⁵

In view of Defendants' violation of the Court's December 17, 2014 Order (Dkt. No. 873), the Court would be well within its power to pursue contempt proceedings against Defendants. However, the Court will not pursue such proceedings against Defendants at this time. Instead, the Court will do two things. First, the Court will initiate in this Order yet another schedule for Defendants to meet its policy, training, and implementation obligations under the Settlement Agreement. The dates reflected in this partial schedule of deadlines were suggested by the parties at the April 17, 2015 hearing and accepted by the Court. The Court will not look favorably on any failure to meet these deadlines.

Second, the Court notes that, in addition to the Director of the Bureau of Corrections and the Warden of Golden Grove, the Governor of the Virgin Islands and the Attorney General of the Virgin Islands are also signatories to the Settlement Agreement, and are thus also responsible for ensuring that its requirements are fulfilled. (*See* Dkt. No. 689-1 at 21). In view of what the Court has observed to be a lack of adequate oversight of this matter by counsel for Defendants, the Court will henceforth incorporate in its Orders—as it deems appropriate—the requirement that the Attorney General and Chief Legal Counsel to the Governor appear in person at status conferences and other proceedings scheduled by the Court.⁶

⁵ Defendants' counsel then added “insult to injury” by not seeking an extension from the Court of the Court-ordered deadline until sixteen (16) days after the deadline had passed—in their Response to the United States' Notice of Objections.

⁶ The Court anticipates that the Attorney General and Chief Legal Counsel to the Governor will be required to appear, at a minimum, at each quarterly status conference held in this matter.

A final issue raised in the parties' respective filings with the Court and at the April 17, 2015 hearing was Defendants' request that they be permitted to rely on the services of the Monitor to help address the objections lodged by the United States to Defendants' non-medical, non-mental health policies and procedures and to assist Defendants in finalizing them. Consistent with the Settlement Agreement, the Monitor and his team have already provided significant "technical assistance" to Defendants in the development of their policies and procedures. (*See* Dkt. No. 689-1 at Section X.H.1). The Court will not allow the Monitor to assist Defendants with this final phase of the process because the Court finds that such assistance would conflict with the appropriate degree of independence that the Monitor must maintain in order to properly perform his general monitoring responsibilities. (*See, e.g.*, Dkt. No. 689-1 at Sections IX.3 and X.A.2.a). Accordingly, Defendants will be required to seek any necessary assistance in this regard from another source.⁷

UPON CONSIDERATION of the foregoing, it is hereby

ORDERED that the parties and the Monitor shall adhere to the following schedule:

1. Defendants shall submit to the United States and the Monitor all of the outstanding mental health policies and procedures, and related forms, no later than **April 24, 2015**.
2. The United States and the Monitor shall submit to Defendants their comments and/or objections to the medical policies and procedures, and related forms, no later than **April 24, 2015**.

⁷ At the April 17, 2015 hearing, the Monitor advised the Court of an ongoing issue regarding the production of documents by Defendants. Defendants have exhibited a pattern of not providing the Monitor with requested documents necessary for his monitoring activities on dates to which Defendants agreed. The Monitor requested that the Court enter an Order requiring Defendants to provide him with all requested documents by agreed-upon dates. Although the Court will not enter an Order at this time, the Court has orally explained its expectation that Acting Director Dwayne Benjamin will ensure that documents are provided to the Monitor in a timely fashion. The Court also expects that counsel for Defendants will ensure that Defendants are meeting this requirement of the Settlement Agreement. (*See* Dkt. No. 689-1 at Sections IX.8 and X.D.2). The Court notes that this is not the first time that the Monitor has raised this issue of the Bureau of Corrections' failure to timely provide him with documents that are necessary for him to perform his ongoing monitoring responsibilities. The Court hopes that no further action will need to be taken by the Court.

3. The United States and the Monitor shall submit to Defendants their comments and/or objections to the mental health policies and procedures, and related forms, no later than **May 8, 2015**.
4. Defendants shall submit to the United States and the Monitor final versions of the medical policies and procedures, and related forms, no later than **May 29, 2015**.
5. Defendants shall submit to the United States and the Monitor final versions of the mental health policies and procedures, and related forms, no later than **May 29, 2015**.
6. The Monitor—in accordance with Section IX.3 of the Settlement Agreement—shall assist the parties with resolving any disputes regarding any of the policies and procedures, and related forms, between **May 29, 2015** and **June 15, 2015**.
7. At the scheduled **June 11, 2015** status conference, the parties shall be prepared to apprise the Court of whether they expect that any remaining disputes regarding policies and procedures, and related forms, will require Court intervention in accordance with Section IX.3 of the Settlement Agreement. If the need for Court intervention is not anticipated, the parties shall be prepared to discuss a proposed schedule for training and evaluation of implementation.
8. No later than **May 1, 2015**, Defendants shall file with the Court a Notice apprising the Court of their efforts to retain an expert to assist them with finalizing the non-medical, non-mental health policies and procedures, and related forms.

A separate Amended Order regarding the June 11, 2015 status conference will follow, consistent with this Order, with the requirement that the Attorney General and Chief Legal Counsel to the Governor appear in person at the status conference.

SO ORDERED.

Date: April 20, 2015

_____/s/_____
WILMA A. LEWIS
Chief Judge