

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

THE PHILADELPHIA INQUIRER
and
THE PATRIOT-NEWS,

Plaintiffs,

v.

JOHN E. WETZEL
and
MARIROSA LAMAS

Defendants.

Civil Action No. 12-cv-01917-YK
(Chief Judge Yvette Kane)

GENERAL RELEASE AND SETTLEMENT AGREEMENT

This General Release and Settlement Agreement (hereinafter referred to as the "Agreement") is executed by the Parties this 18th day of October, 2013.

PREAMBLE

1. It is acknowledged, understood and agreed, that this Agreement is a compromise entered into to avoid protracted litigation of the matter and the Agreement is not to be construed in any manner as an admission of liability or wrongdoing, any such liability being expressly denied on behalf of and by the Defendants, the Commonwealth and the Department.

2. It is acknowledged, understood and agreed, that the Releasors shall dismiss with prejudice the action of *The Philadelphia Inquirer, et al. v. Wetzel, et al.* United States District Court for the Middle District of Pennsylvania, Civil Action No. 1:12-cv-01917 (the “Lawsuit”). The Releasors and Releasees (hereinafter collectively referred to as the “Parties”) agree that they will sign and submit a stipulation of dismissal with prejudice under Fed.R.Civ.P. 41(a)(1)(A)(ii) to the Court in the form attached hereto as Exhibit A.

PARTIES

3. The Philadelphia Inquirer is a daily newspaper with its principal place of business at 801 Market Street, Suite 300, Philadelphia, PA 19107. The Philadelphia Inquirer is a Plaintiff in this case.

4. The Patriot-News is a daily newspaper with its principal place of business at 2020 Technology Parkway, Suite 300, Mechanicsburg, PA 17050. The Patriot-News is a Plaintiff in this case.

5. The Philadelphia Inquirer and the Patriot-News will be herein collectively referred to as the “Plaintiffs” and/or the “Releasors”.

6. John E. Wetzel has been sued in his individual capacity as Secretary of the Pennsylvania Department of Corrections (herein referred to as “Secretary Wetzel”).

7. Marirosa Lamas has been sued in her individual capacity as Superintendent of the State Correctional Institute at Rockview (herein referred to as “Superintendent Lamas”). The State Correctional Institute at Rockview is the institution designated by the Department of Corrections to house the lethal injection chamber.

8. Secretary Wetzel and Superintendent Lamas will be herein collectively referred to as the “Defendants” and/or the “Releasees”.

9. The Pennsylvania Department of Corrections will be herein referred to as the “Department”.

RECITALS

10. On September 25, 2012, the Plaintiffs filed a lawsuit in the United States District Court for the Middle District of Pennsylvania (the “Court”) pursuant to 42 U.S.C. § 1983 challenging a Department policy that prevented individuals selected to witness executions from seeing and hearing the execution from the moment the condemned enters the lethal injection chamber through, to and including, the time the condemned inmate is declared dead.

11. Plaintiffs moved the Court to preliminarily enjoin Defendants from enforcing the policy and, in a Memorandum and Order dated November 6, 2012, the Court granted the motion and enjoined Defendants from “preventing witnesses

from full visual and auditory observation of the execution scheduled for November 8, 2012 at SCI-Rockview.”

12. On November 7, 2012, the Department of Corrections adopted and promulgated an amendment to Policy 6.5.8, Capital Case Administration, Section 4 – Execution Procedures (hereinafter referred to as “Policy 6.5.8, Section 4”), a redacted copy of which is attached hereto as Exhibit B.

13. Prior to amending Policy 6.5.8, Section 4, approved witnesses were permitted to view inside the lethal injection chamber only after the condemned inmate was transported into the chamber; secured on the injection table; connected to an EEG and ECG monitor; two intravenous catheters are established; and saline solutions began to flow.

14. Pursuant to amended Policy 6.5.8, Section 4, all individuals selected to witness executions are permitted to view inside the lethal injection chamber from the time the inmate enters the chamber through, to and including, the time the inmate is declared dead.

15. It is acknowledged, understood and agreed that all individuals selected to witness executions will be permitted to view inside the lethal injection chamber from the time the inmate enters the chamber through, to and including, the time the inmate is declared dead, unless the Secretary declares that all witnesses should be

excluded from participation for safety and security reasons as authorized by 61 Pa.C.S. § 4305(b).

16. It is acknowledged, understood and agreed that the public address system will be turned on and all individuals selected to witness executions will be permitted to hear inside the lethal injection chamber from the time the inmate enters the chamber through, to and including, the time the inmate is declared dead, unless the Secretary declares that all witnesses should be excluded from participation for safety and security reasons as authorized by 61 Pa.C.S. § 4305(b).

17. It is acknowledged, understood and agreed that the public address system may be turned off during any period of time when a condemned inmate is making threatening and/or malicious statements directed toward the witnesses.

18. It is acknowledged, understood and agreed that, although inmates will not be invited to offer last words or a final statement while in the lethal injection chamber: (a) inmates will not be told that they are forbidden from offering last words or a final statement while in the lethal injection chamber or otherwise discouraged from doing so, and (b) the public address system will not be turned off for the sole reason that an inmate begins to offer last words or a final statement.

RELEASE AND DISCHARGE

19. In consideration of the terms and conditions called for herein, the Plaintiffs release and completely and forever discharge all Releasees, their

insurers, officers, directors, agents, attorneys, servants, representatives, and employees, past and present, and their past, present and future officers, directors, agents, attorneys, servants, representatives, and employees and all other persons with whom any of the former have been, are now or may hereinafter be affiliated, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses, and any claims for compensation or punitive or other damages of any type which Releasors now have, or which may hereinafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which are then subject of the above captioned action in the United States District Court for the Middle District of Pennsylvania, which was docketed therein at Civil Action No. 1:12-cv-01917. Nothing in this paragraph or this Agreement shall release Defendants from their obligation to pay the attorney's fees identified in paragraph 22 of this Agreement.

20. This release and discharge on the part of the Releasors shall be a fully-binding and complete release by the Releasors of all the Releasees, their assigns and successors.

21. In the event that Defendants, the Department or others attempt to change, amend, modify or revise Policy 6.5.8, Section 4, or institute or promulgate other policies or procedures that would impact Policy 6.5.8, Section 4 ("Proposed Changes"), nothing in this Agreement or any other agreement shall prohibit

Plaintiffs from bringing and pursuing claims against Defendants, the Department or others related to the Proposed Changes, and nothing in this Agreement or any other agreement shall release Defendants, the Department or others from any claims related to the Proposed Changes.

ATTORNEYS' FEES AND COSTS

22. On or before December 24, 2013, Defendants shall pay the amount of \$150,000.00 as full and complete satisfaction of the reasonable attorneys' fees Plaintiffs would have been entitled to recoup from Defendants pursuant to 42 U.S.C. § 1988 had they prevailed in the Lawsuit. The payment shall be made by check, payable to Schnader Harrison Segal & Lewis LLP, and delivered to Stephen J. Shapiro, Esq., Schnader Harrison Segal & Lewis LLP, 1600 Market Street, Suite 3600, Philadelphia, PA 19103.

23. Releasees shall bear all their own attorneys' fees and costs arising from the actions of their own counsel in connection with the claims made by the Releasers against the Releasees and this Agreement.

GENERAL RELEASE

24. Releasers hereby acknowledge and agree that the Release and discharge set forth above is a general release, and they expressly waive and assume the risk of any and all claims which exist as of this date, but of which the Releasers do not know or suspect to exist, whether through ignorance, oversight, error,

negligence or otherwise, and which if know would materially affect the Releasors' decision to execute this Agreement.

25. The Releasors further agree that they have accepted the terms and conditions set forth herein, as a complete compromise of matters involving disputed issues of law and fact. Releasors assume the risk that the law or facts may be otherwise than they or their counsel believes. It is understood and agreed by Releasors that this Agreement is a compromise of disputed claims, and the terms and conditions are not to be construed as an admission of liability on the part of any of the Releasees, by whom liability is expressly denied.

WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

26. Releasors represent and warrant that besides themselves, no other person or entity has or has any interest in the claims, demands or actions referred to in this Agreement, except as otherwise set forth herein; and that they have the sole right and exclusive authority to execute this Agreement.

ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

27. This Agreement contains the entire Agreement between the Releasors and Releasees with regard to the matters set forth herein, and shall be binding upon and inure to the benefit of the successors and assigns of each for a period of eight (8) years following the effective date of this Agreement.

28. It is acknowledged and agreed that this Agreement, with regard for the pertinent provisions of the Commonwealths Attorneys Act, is not, cannot and shall not be construed to be a consent decree.

REPRESENTATION AND COMPREHENSION OF DOCUMENT

29. By the execution of this Agreement, Releasors represent that they have fully read the Agreement and fully understand and accept the same. Releasors further represent that they have had ample time to review all of the provisions of this Agreement and fully understand the Agreement and the choices with respect to the advisability of making the Agreement. Releasors enter into this Agreement by their own free will and choice, without any compulsion, duress or undue influence from anyone and acknowledge that they have been represented by independent legal counsel who advised them of their rights and the advisability of entering into this Agreement.

GOVERNING LAW

30. This Agreement shall be construed and interpreted with the law of the Commonwealth of Pennsylvania.

CONFLICT WITH OTHER LAWS

31. If, subsequent to the effective date of this Agreement, the federal government or any state, or any federal or state agency, enacts or promulgates legislation with respect to matters governed by this Agreement that creates a

conflict with any of the terms or conditions contained herein and the Defendants intend to comply with the newly enacted legislation, Defendants will notify the Plaintiffs of the same. Plaintiffs may agree to a modification to the Agreement to the extent necessary to eliminate such conflict. If Plaintiffs disagree and the Parties are not able to resolve the disagreement within 60 days of the notification, the Parties shall jointly request mediation from an appropriate court in an effort to resolve the disagreement.

32. If any provision of this Agreement is held to be invalid or illegal, the validity or legality of the remaining provisions shall not in any way be affected or impaired thereby.

DISPUTE RESOLUTION

33. The Parties may agree to a modification to this Agreement, provided that they memorialize said modification(s) in a written instrument executed by persons authorized to modify the Agreement.

34. Defendants and their successors and/or the Department may not change, amend, modify or revise provisions within Policy 6.5.8, Section 4 that allow all individuals selected to witness executions to view and hear inside the lethal injection chamber from the time the inmate enters the chamber through, to and including, the time the inmate is declared dead, or institute or promulgate other policies or procedures that would impact those provisions within Policy 6.5.8,

Section 4 (“Proposed Changes”) without first providing Plaintiffs and their counsel with at least sixty (60) days advance written notice of their intent to implement the Proposed Changes (the “Written Notice”). If either or both Plaintiffs file a motion to preliminarily enjoin the Proposed Changes (the “PI Motion”) during the sixty (60) days following delivery of the Written Notice, the Proposed Changes shall not take effect unless and until either: (a) Plaintiff(s) withdraw the PI Motion; or (b) any order denying the PI Motion becomes final. Any Written Notice sent pursuant to this paragraph shall: (a) include a copy of this Agreement; (b) indicate that the Written Notice is being sent pursuant to this paragraph of the Agreement; and (c) include the verbatim text of the Proposed Changes.

35. This Agreement does not in any way limit or waive the authority granted the Secretary to exclude witness participation for safety and security reasons as authorized by 61 Pa.C.S. § 4305(b).

36. The Parties agree that the Court shall maintain jurisdiction to hear any disputes relating to this Agreement.

37. All notices required under this Agreement shall be sent by overnight mail or overnight courier to the following people:

If to Plaintiffs:

Editor
The Philadelphia Inquirer
801 Market Street, Suite 300
Philadelphia, PA 19107

Vice President
The Patriot-News
2020 Technology Parkway, Suite 300
Mechanicsburg, PA 17050

Stephen J. Shapiro, Esq.
Schnader Harrison Segal & Lewis LLP
1600 Market Street, Suite 3600
Philadelphia, PA 19103

Legal Director
American Civil Liberties Foundation of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213

If to Defendants:

Timothy P. Keating, Esq.
Senior Deputy Attorney General
Office of Attorney General
15th Floor – Strawberry Square
Harrisburg, PA 17120

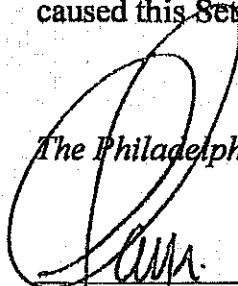
Timothy E. Gates, Esq.
Deputy Chief Counsel
Pennsylvania Department of Corrections
1920 Technology Parkway
Mechanicsburg, PA 17050

EFFECTIVENESS

38. This Agreement shall become effective following the execution
below.

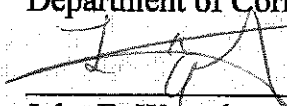
IN WITNESS WHEREOF, the Parties hereto, as well as the Department, have caused this Settlement Agreement to be duly executed.

The Philadelphia Inquirer:



Gabriel Escobar
Deputy Managing Editor

Secretary of the Pennsylvania
Department of Corrections:



John E. Wetzel

The Patriot-News:

Donald Gilliland
Enterprise Reporter

Superintendent of SCI-Rockview:

Marirosa Lamas

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THE PHILADELPHIA INQUIRER, et
al.,

Plaintiffs,

v.

JOHN E. WETZEL,
IN HIS INDIVIDUAL CAPACITY AS
SECRETARY OF THE
PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

Civil Action No. 12-cv-01917-YK
(Chief Judge Yvette Kane)

(Filed Electronically)

STIPULATION OF DISMISSAL

Plaintiffs dismiss with prejudice all claims in the above-captioned
action pursuant to a Settlement Agreement.

The Court shall retain jurisdiction to hear any disputes relating to the
Settlement Agreement.

BY THE COURT:

Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania

Resptfully Submitted,

Counsel for Plaintiffs:

SCHNADER HARRISON SEGAL &
LEWIS LLP

Paul H. Titus (Pa. I.D. No. 1399)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222-3001
(412) 577-5200 (tel)
(412) 765-3858 (fax)

Stephen J. Shapiro
(Pa. I.D. No. 83961)*
1600 Market Street, Suite 3600
Philadelphia, PA 19103-7286
(215) 751-2000 (tel)
(215) 751-2205 (fax)

AMERICAN CIVIL LIBERTIES FOUNDATION
OF PENNSYLVANIA

Witold J. Walczak (Pa. I.D. No. 62976)
313 Atwood Street
Pittsburgh, PA 15213
(412) 681-7864 (tel)
(412) 681-8707 (fax)

Mary Catherine Roper
(Pa. I.D. No. 71107)
P.O. Box 40008
Philadelphia, PA 19106
(215) 592-1513 (tel)
(215) 592-1343 (fax)

* Specially admitted pursuant to LR
83.8.2.1.

Counsel for Defendants:

OFFICE OF ATTORNEY GENERAL

Timothy P. Keating
Timothy P. Keating
(Pa. I.D. No. 44874)
Senior Deputy Attorney General
15th Floor – Strawberry Square
Harrisburg, PA 17120
(717) 705-8580 (tel)
(717) 772-4526 (fax)

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS

Timothy E. Gates
(Pa. I.D. No. 202305)
Deputy Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050
(717) 728-7763 (tel)

Exhibit B



BULLETIN
Commonwealth of Pennsylvania • Department of Corrections

TO: Executive Staff Facility Managers	Policy Subject: Capital Case Administration Section 4 – Execution Procedures	
	Policy Number:	6.5.8, Section 4 - 01
	Policy Issue Date:	November 7, 2012
Date of Issue: November 7, 2012	Authority: Signature on File John E. Wetzel	Effective Date: November 7, 2012

The purpose of this interim bulletin is to amend **Section 4 – Execution Procedures** of Department policy **6.5.8, “Capital Case Administration.”**

Subsection C.1.p. is being modified to read:

p. During this time, the curtain in the Injection Chamber will be in the open position.

Subsection C.2.h. is being modified to read:

h. The Major-of-the-Guard/designee will remove the surgical mask from the inmate and cover the inmate with a sheet up to his/her neck, signaling the commencement of the execution. He/she will make the written record of all activity in the Injection Chamber.

Subsection C.3.b. shall be deleted.

Subsection C.3.c.(10) shall be deleted.

Subsection C.3.c.(11) is being modified to read:

(11) The Capital Facility Manager/designee shall permit the Coroner to enter the Injection Chamber to conduct an examination to determine that the Phase III inmate died following the lethal injection and to pronounce the Phase III inmate dead under those circumstances.

Subsection C.4.d. shall be deleted.

Subsection C.4.e. shall be modified to read:

- e. ***The Capital Facility Manager/designee shall permit the Coroner to enter the Injection Chamber to conduct an examination to determine that the Phase III inmate died following the lethal injection and to pronounce the Phase III inmate dead under those circumstances.***

Subsection C.5.c. shall be modified to read:

- c. ***The Capital Facility Manager/designee will use the microphone in the Injection Chamber to make the following announcement over the public address system to the witnesses:***

“Ladies and Gentlemen, the County Coroner has pronounced [insert inmate’s name] dead at _____ pm. The execution is complete and the officers will now escort you out of the Execution Complex.”

Subsection C.5.d. shall be modified to read:

- d. ***After making the announcement, the Capital Facility Manager/designee will open the door to the Injection Chamber and signal the Coroner to enter the Injection Chamber to perform his/her post-execution procedures.***

Checklist of Lethal Injection Procedures (Attachment 4-E)

On page 2, Under PROCEDURE the following language has been DELETED:

_____ Major-of-the-Guard opened the curtain.

Instructions to Witnesses (Attachment 4-F)

This attachment has also been revised.