From Handcuffs to a Handshake: Successful Mediation of Inmate Civil Rights Litigation in Federal Court

by Hon. Karoline Mehalchick

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On Oct. 1, 2015, the U.S. District Court for the Middle District of Pennsylvania launched its pilot Prisoner Litigation Settlement Program, designed to improve the efficiency and effectiveness of the court's prisoner civil rights management procedures. The program's purpose is to attempt to resolve, at the earliest possible stage, those prisoner cases that are otherwise most likely to go to trial and to reduce future prisoner litigation by resolving regularly recurring issues. The program is run by a committee consisting of the court's alternative dispute resolution coordinator, a senior pro se law clerk, and me, a magistrate judge for the court.

Addressing a Need of the Court

According to the Bureau of Justice Statistics, at year end 2015, an estimated 1.53 million prisoners were held across the United States.[1] The Middle District of Pennsylvania is home to approximately 2.5 percent of the population nationwide, including approximately 7,300 federal inmates, 23,000 state inmates, and 12,000 county inmates, for a total inmate population of over 42,000. By comparison, the entire seating capacity of Wrigley Field is currently 41,649. The federal population is housed in six federal institutions located in the district, including three of the country's 17 high-security federal penitentiaries. The 12 state correctional institutions in the district house nearly half of all Pennsylvania Department of Corrections inmates. Finally, of the 33 counties in the district, 28 of them have county jails.

Many of these facilities consistently operate at or over capacity. "Operational bed capacity" as defined by the Department of Corrections represents the optimal number of inmates that each facility can house based on a number of factors. In addition to cell size and security level, capacity takes into consideration availability of inmate employment or programming, support services, and facility infrastructure.[2] On average, according to statistics from the Pennsylvania Department of Corrections, state facilities operate at 107.5 percent capacity. As of Sept. 30, 2017, two facilities in the Middle District of Pennsylvania were operating at more than 120 percent of capacity.[3] Within the Department of Corrections, approximately 83 percent of the inmate population is classified as an unskilled worker, the average reading level is eighth grade, and nearly 27 percent have less than a 12th grade education. Nearly 30 percent of the population is listed on the mental health roster, and 43 percent need intensive alcohol or other drug treatment.[4]

Of course, the Middle District of Pennsylvania is not the only district with a large inmate population. In 2011, the U.S. Supreme Court addressed the overcrowding of prisons in California.[5] Included in its decision was a picture taken in August 2006 at the California Institution for Men, as an example of an overcrowded prison ward. The Court held that population limits were necessary to protect prisoners' Eighth Amendment rights.

The high inmate population within the Middle District of Pennsylvania results in a proportionally high number of civil filings by that population. Nearly a third of all civil cases filed in the Middle District of Pennsylvania are filed by prisoners alleging civil rights violations. These cases allege violations of rights of access to law libraries, violations of religious freedoms, claims of excessive force and failure to protect, allegations of deliberate indifference to medical care, and retaliation for filing grievances against corrections officers. These cases are often dominated by multiple amended pleadings and motions practice by a pro se inmate plaintiff.

These factors—the dense prison population within the Middle District of Pennsylvania and the proportionally high number of civil filings by the inmate population—led the court to consider implementing a program targeting these cases for mediation. As such, in early 2015, the Prisoner Litigation Settlement Program was developed. The program was officially launched in October of that year.

Developing the Program

In developing its program, the Middle District looked to

successful programs in courts across the country that addressed similar concerns about inmate litigation. Primarily, we looked to districts to the west: the Western District of Pennsylvania, the District of Nevada, the District of Arizona, and the Eastern District of California. All four courts had implemented prisoner mediation programs, and all of them emphasized early mediation; the Eastern District of California also looked at mediating cases following decisions on motions for summary judgment. Some of the courts required all prisoner cases to be mediated upon filing. In looking at these programs, we decided to develop a hybrid approach that built as nimble and inclusive a program as possible. The committee committed to reviewing every newly filed prisoner case for possible inclusion in the settlement program. Additionally, the committee agreed to conduct periodic reviews of open prisoner cases with recently decided dispositive motions. In consideration of some of the concerns of the other stakeholders in the program, the committee opted not to mandate mediation in every case, but instead, upon selection of those cases for mediation, provided both the plaintiff and the defendant the ability to opt out of mediation.

In addition to studying and consulting with other courts, the committee sought advice from various stakeholders in these cases—both internal and external to the court. We spoke with judicial officers and law clerks, and met with representatives from the Offices of the U.S. Attorneys, the Federal Bureau of Prisons, the Pennsylvania Office of Attorney General, the Department of Corrections, prison wardens, and county solicitors. Collaboration with these representatives is key to the success of the program.

In identifying cases suitable for mediation, the committee developed a set of criteria, which while no means binding, provided guidelines for selecting cases to put into the program. Factors weighing in favor of selection include instances where the plaintiff is not seeking substantial money damages, cases making serious allegations that might induce the defendants to consider the benefits of early settlement, and cases that are ready for trial following decisions on dispositive motions. Factors weighing against selection include frivolousness, venue issues, jurisdictional defects, whether administrative remedies have or have not been exhausted, and any other factors that may render a case unsuitable for the program or make it appropriate for summary dismissal. The committee set its own goal that settlement conferences shall be conducted within 90 days of the referral order. Orders referring the cases to mediation provide for a limited scope appointment of pro bono counsel, for purposes of mediation only, if the plaintiff wishes to have an attorney appointed. This limited scope appointment provides an opportunity for attorneys of all levels of experience to gain pro bono experience, mediation experience, and for many, practice in an area of law outside the scope of their normal work. The court's alternative dispute coordinator serves as the neutral in many of the mediations, in addition to the court's magistrate judges and volunteer mediators.

The Program's Success

The program, in its first two years, has been a success. To date, nearly 70 percent of all cases referred to the Prisoner Litigation Settlement Program have been successfully resolved. The benefits go beyond those of mediation in general—quicker and less expensive paths to resolution and greater participant satisfaction—though they are certainly seen in these cases as well. These settlements often resolve cases filed by repeat litigants, they avoid the security and administrative issues of transporting and transferring inmates for trial, and in some cases, can avoid significant out-of-pocket costs for defendants. For the plaintiff, settlement provides a day in court, avoidance of the significant risk of taking a prisoner case to trial, and in cases of early mediation, might save the significant filing fee and a potential "strike" under the Prisoner Litigation Reform Act.[5]

Of course, the program has also faced some barriers to successful settlement conferences, including unmanaged expectations by the plaintiff (an issue with which pro bono counsel is very helpful in mitigating) and an inability for the defendant to pay enough in settlement to overcome any liens against the prisoner's account, thus nullifying the benefit of any payment. The program remains committed to overcoming these barriers through boosting the pro bono program with continuing legal education programs and outreach and continued collaboration with stakeholders who have insight into the unique issues facing prisoners in these cases, such as liens on prison accounts.

The results of the Prison Litigation Settlement Program of the Middle District of Pennsylvania are nothing but positive. As stated, nearly 70 percent of all cases referred to this program are successfully resolved. Examples of cases that have been successfully resolved through the program include a county inmate who alleged sexual assault by a prison nurse, a state prisoner who alleged retaliation for filing inmate grievances, a state inmate on whom pepper spray was used while he was restrained in a cell, and a federal inmate who alleged that the Bureau of Prisons had failed to protect him from a known dangerous inmate who assaulted and disfigured the plaintiff. Some of the settlements have resulted in global settlements of claims across multiple cases by the same litigant. Other cases have resulted in policy changes in religious accommodations that have impacted and resolved multiple claims by multiple plaintiffs. Additionally, it is important to note that settlement is not the only indicator of success. This program has fostered an ongoing dialogue between all stakeholders, and it continues to improve the efficiency and manner in which these cases are resolved, which is a wholly positive impact for all those involved. ⊙

Endnotes

[1]Bureau of Just. Stat., Prisoners in 2015: Summary, NCJ 250229 (Dec. 2016), https://www.bjs.gov/c.ontent/pub/pdf/p15_sum.pdf.

[2]Pa. Dep't of Corr., Annual Statistical Report (2009), http://www.cor.pa.gov/About%20Us/Statistics/Documents/Old%20Statistical%20Reports/2009%20Annual%20Statistical%20Report.pdf.

[3]Pa. Dep't of Corr., Monthly Population Report (Oct. 31, 2017), http://www.cor.pa.gov/About%20Us/Statistics/Documents/current%20monthly%20population.pdf.

[4]Pa. Dep't of Corr., Inmate Statistics (Dec. 31, 2016), http://www.cor.pa.gov/About%20Us/Statistics/Documents/Budget%20Documents/2016%20Inmate%20Profile.pdf.

[5]The Prisoner Litigation Reform Act, in an effort to halt the filing of frivolous inmate litigation, enacted what is commonly referred to as the "three strikes" provision. Codified at 28 U.S.C. § 1915(g), the "three strikes" rule provides that an inmate who has had three prior actions or appeals dismissed as frivolous, malicious, or for failing to state a viable claim may not proceed in a civil action *in forma pauperis* "unless the prisoner is in imminent danger of serious physical injury." *See* 28 U.S.C. § 1915(g). The "three strikes" provision does not bar disqualified inmates from filing additional actions, but it does deny them the opportunity to proceed under *in forma pauperis*, requiring the inmates to pay the full filing fee prior to commencing suit.