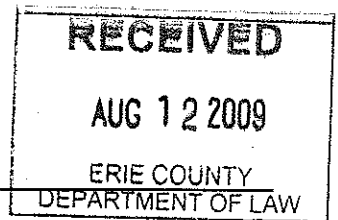




U.S. Department of Justice
Civil Rights Division



SYC:DHW:ZIL:AF:AL:BJ:NA:mrbr
DJ 168-53-41, 168-53-42

*Special Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530*

August 11, 2009

Cheryl A. Green
County Attorney
Erie County
69 Delaware Avenue
Buffalo, NY 14202

RE: Investigation of the Erie County Holding Center and
the Erie County Correctional Facility

Dear Ms. Green:

The Department of Justice (the "Department") appreciates Erie County's commitment to resolving the deficiencies identified in our July 15, 2009 findings letter regarding the Erie County Holding Center ("ECHC") and Erie County Correctional Facility ("ECCF"). At our August 10, 2009 meeting in Washington, D.C., the County and the Department agreed to a structured process to facilitate a prompt and appropriate resolution to this matter. This letter memorializes the agreement we reached regarding the structure of that process. The Department and the County agreed to the following terms:

- The Department and the County will engage in good-faith negotiations to conclude agreement on an appropriately tailored, court-enforceable consent decree to be filed in the United States District Court for the Western District of New York. The Department and the County will reach agreement on the terms of that decree by November 15, 2009.
- The County will provide the Department and its consultants access to ECHC and ECCF in order to conduct interviews of staff and inmates and to observe facility operations during all shifts.

- A representative of the County Attorney's Office may accompany Department staff and consultants during interviews of managerial staff,¹ but may not be present for interviews with inmates.
- The County will provide the Department with access to and/or copies of all relevant documents, including, but not limited to, incident reports and medical and mental health records.
- The Department will provide Erie County with a list of documents it would like to review prior to visiting the facilities and while on-site.²
- At the conclusion of the Department's review of the facilities, the Department will provide the County with an oral de-briefing of the consultants' findings.
- The parties agree to work in good faith to address the issues identified through the review of the facilities.
- In the event that the Department and the County should disagree regarding relevant constitutional standards, the Department and the County agree to engage in good faith discussions of each others' respective positions.

¹ The County takes the position that non-managerial staff could be represented by the County Attorney in the event they are named as individual defendants in lawsuits arising out of their employment and, therefore, such staff are represented parties for purposes of the Department's investigation. The Department's position is that the statements of non-managerial staff are not binding upon the County for purposes of the Department's investigation, therefore non-managerial staff are not represented parties and the presence of a representative of the County Attorney's Office during their interviews is not warranted. The County and the Department agree to continue their good faith discussions and to resolve this disagreement prior to the on-site tours.

² To implement the County's agreement (memorialized in text) to provide access to facilities, documents, and persons, we propose that the production of documents will occur by September 10, 2009. On-site facility visits will occur on October 5-9, 2009 and October 19-23, 2009.

We look forward to the opportunity to work cooperatively with Erie County in resolving our investigation and achieving the shared goal of remedying the identified constitutional violations present at the Holding Center and the Correctional Facility. Please indicate the County's agreement to the above-described process by signing below.

Should you have any questions, feel free to contact me at [REDACTED] Zazy I. López at [REDACTED] or Aaron Fleisher at [REDACTED].

Sincerely,



Shanetta Y. Cutlar
Chief
Special Litigation Section

Agreed to on behalf of Erie County:

Cheryl Green
County Attorney
Erie County Department of Law

cc: Kathleen M. Mehlretter,
Acting United States Attorney
Western District of New York