

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

(Notice to District Attorneys, Chief Public Defenders and OIDS' Executive Director)

Certain Oklahoma state-court criminal defendants ("Class Members") may be affected by a proposed settlement of claims made under 42 U.S.C. § 1983, the due process clauses of the Fourteenth Amendment to the United States Constitution, and Article 2, Section 7 of the Constitution of the State of Oklahoma, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 in the lawsuit styled *Briggs, et al. v Allie Friesen, et al.*, Case No. 4:23-cv-00081-GKF-JFJ, pending in the United States District Court for the Northern District of Oklahoma. This Notice summarizes the claims in the lawsuit, what the proposed settlement entails, and your rights under the proposed settlement.

This Notice is being sent to all Oklahoma District Attorneys, Chief Public Defenders and the Executive Director of Oklahoma's Indigent Defense System

### **1. What is the issue in the lawsuit?**

Whether the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services ("Department") and the Executive Director of the Oklahoma Forensic Center (OFC), located in Vinita, Oklahoma, failed to provide timely court-ordered competency restoration treatment to persons charged with a crime in Oklahoma state court and who are incarcerated in county jails, or similar detention facilities, throughout the State.

### **2. Who is affected by the settlement? Who is a "Class Member"?**

A Class Member is any person who has been, or will be, charged with a crime in Oklahoma state court, declared incompetent to stand trial by the state court, and is incarcerated in a county jail or similar detention facility awaiting court-ordered competency restoration services to be provided by the Department. If you have any question as to whether you are affected by this settlement, contact the Class Counsel referred to in Question 6 on Page 4 of this Notice.

### **3. What is the proposed settlement?**

The Plaintiffs and the Defendants have reached a proposed settlement agreement that, if accepted by the Court, would result in a "Consent Decree" being entered by the Court. The Consent Decree will resolve all of Plaintiffs' claims in the lawsuit. The purpose of the Consent Decree is to reform and improve the Department's delivery of competency evaluations and timely restoration treatment to Class Members, including significantly reducing the amount of time Class Members wait to receive competency restoration treatment while locked up in jail. The Consent Decree achieves this goal by requiring the Department, within 90 days after the Court's final approval of the Consent Decree, to develop and implement a strategic "Plan." Under the Plan, Defendants are required, among other things, to use "Best Efforts" to:

- Reevaluate all Class Members currently waiting to receive competency restoration treatment, which must be performed by a "Qualified Forensic Examiner."

- Cease operation of the Department's current purported state-wide in-jail competency restoration program, while allowing for continuation of current medical treatment of Class Members while still in jail.
- Increase the Department's inventory of in-patient forensic beds dedicated solely for competency restoration.
- Upgrade OFC's staffing and environment-of-care standards.
- Develop and implement a continuing education program for OFC psychiatrists, psychologists and other clinical staff involved in competency restoration.
- Develop and implement a competency restoration triage screening program intended to expedite evaluation and placement of Class Members in appropriate restoration treatment settings.
- Impose deadlines for performing court-ordered competency evaluations and for reevaluations by Qualified Forensic Examiners.
- Impose deadlines by which the Department must provide restoration treatment to Class Members who have been declared incompetent.
- Develop and implement a community-based restoration treatment pilot program in four Oklahoma counties, if Oklahoma law is clarified to permit outpatient community-based restoration treatment of Class Members.
- Develop and implement of an in-jail restoration treatment pilot program in two Oklahoma Counties, including Tulsa County.
- Develop and implement a plan for enhanced staffing at the Department dedicated to competency restoration, including data gathering, reporting and management.
- Provide increased competency restoration training to relevant state-court personnel.

The Consent Decree appoints a panel of three independent experts, called "Consultants," who will help the Department develop the Plan, but also monitor and report the Defendants' compliance, or lack of compliance, with the Consent Decree. The Consultants must approve all Plan components developed by the Defendants.

To incentivize the Defendants to work in good faith to develop and implement the Plan, the Consent Decree establishes a regime of Fines that will be imposed on the Department if it fails to meet the deadlines for reducing the time periods Class Members wait to receive competency restoration treatment.

The Consent Decree requires the Department to pay the Consultants' fees and to pay Class Counsel reasonable attorney fees, which Class Counsel has substantially discounted. Class Counsel has requested the Court order the Department to pay Class Counsel's attorney fees in the amount of \$303,000 for work done up to the point of filing the Joint Motion for Preliminary Approval; and thereafter at a rate of \$325 per hour, limited to \$75,000 per year after the Court grants final approval of the Consent Decree.

The Consent Decree will **not** impact defendants' rights, defenses and arguments in their state court criminal case. The Consent Decree only deals with improving the Department's timely delivery of competency evaluations and restoration treatment.

Under Oklahoma law, the Consent Decree must be approved by Oklahoma's legislature when in session or, if the legislature is not in session, by the Contingency Review Board. (*See* 51 O.S. § 200).

You have the right to learn more about the proposed settlement. A copy of the proposed Consent Decree, and other case documents, are posted at <https://www.okcompetencyrestoration.com>. If you are unable to access the Consent Decree online, or if you can't read or understand the Consent Decree, you can contact Class Counsel referred to in Question 6 below.

#### **4. Who represents the individuals affected by the settlement?**

The lawyers representing the Class Members ("Class Counsel") are Paul DeMuro and Frederic Dorwart, of Frederic Dorwart, Lawyers PLLC, Old City Hall, 124 East 4<sup>th</sup> Street, Tulsa, Oklahoma 74103, (918) 583-9957; and Nick Southerland and Brian Wilkerson of the Oklahoma Disability Law Center, Inc., 2816 E. 51<sup>st</sup> Street, Suite 300, Tulsa, Oklahoma 74105, (918) 743-6220.

#### **5. What are your options?**

On September 19, 2024, the United States District Court for the Northern District of Oklahoma preliminarily approved the Consent Decree; but, the Court must hold a hearing to determine whether final approval should be granted. At the hearing, the Court will determine if the Consent Decree is fair, reasonable, and adequate. **The Final Approval and Fairness Hearing will be held on January 15, 2025 at 9:30 a.m., in Courtroom 3 of the Boulder Building, 224 S. Boulder Ave., Tulsa, Oklahoma 74103.** You may, but are not required to, request to appear at the hearing if you submit a written objection or comment regarding the settlement, using the attached "Response to Proposed Class Action Settlement" form or your own paper, or if you submit an objection or comment online. The Court will decide which class members will testify. Class members who do not appear at the final fairness hearing will be represented by Class Counsel.

If you have objections, comments, or statements about the proposed Consent Decree, you can submit them in one of two ways:

First, you can submit comments, questions or objections on the attached “Response to Proposed Class Action Settlement” form or your own paper. If you choose to send an objection, comment, or statement, you must include your full name, all objections or comments and the reasons for them, any and all supporting papers (including all briefs, written evidence, and declarations), and your signature. If you are sending supporting papers, do not send originals because they will not be returned to you. **Written objections, comments, and statements should be sent to the following address: Paul DeMuro, Frederic Dorwart, Lawyers PLLC, Old City Hall, 124 East 4<sup>th</sup> Street, Tulsa, Oklahoma 74103.**

Second, you can submit comments, questions or objections on the case’s website at <https://www.okcompetencyrestoration.com>. You must include your full name, all objections or comments and the reasons for them.

All comments, questions, or objections must be submitted or postmarked by **December 2, 2024**. Properly and timely submitted objections and comments will be consolidated and submitted to the Court by Plaintiffs’ counsel on **December 9, 2024**, in advance of the Final Approval and Fairness Hearing, which the Court will hold on **January 15, 2025 at 9:30 a.m.**

**Any objections, comments, or questions that do not comply with the above procedures and timeline will not be heard or considered by the Court.**

**6. How can you get more information?**

If you have any questions about the matters contained in this notice, or any questions regarding the proposed Consent Decree, you may write or call Class Counsel’s office below:

Chantel Wilson, Paralegal  
Frederic Dorwart, Lawyers PLLC  
Old City Hall  
124 East 4<sup>th</sup> Street  
Tulsa, OK 74103  
(918) 583-0429 – telephone  
[okcompetencyrestoration@fdlaw.com](mailto:okcompetencyrestoration@fdlaw.com)

