

Judge says state must pay for Willowbrook lawyers

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Civil rights lawyers who have won major reforms at Willowbrook Developmental Center said yesterday they will likely ask New York State to pay them more than \$1 million in legal fees for six years of work in the court case.

The lawyers' statements followed U.S. District Court Judge John R. Bartels' ruling that four public attorneys groups representing the institution's mentally retarded residents are entitled under a 1976 federal statute to "reasonable" payment since the start of the class-action suit against the state in 1972.

Bartels, in a seven-page decision, called the residents' lawyers "prevailing parties" in the dispute — responsible in large sum for reversing a situation that allowed nearly 6,000 people to languish for years on the institution's overcrowded, filthy ward floors.

The state Attorney General's office, which had opposed the motion to award legal fees, refused comment yesterday on the ruling or the probable demand of close to \$1.2 million that would be syphoned from taxpayer money.

An appeal, however, was expected to be filed by the state, with months of in and out-of-court wrangling preceding any lump-sum payments.

Four of the residents' attorneys have worked roughly half time for the past six years on the Willowbrook case, according to Christopher A. Hansen, a

lawyer for the Mental Health Law Project.

At the rate of between \$100 and \$150 an hour, a sum to which Hansen and other attorneys said they feel entitled, legal and paralegal fees would total \$1.2 million.

The final cost will be decided by the state and the residents' attorneys and would be paid by the Comptroller's office. But New York taxpayers would ultimately bear the costs.

"These cases," Hansen said, defending receipt of attorneys fees, "can't be done without extraordinary resources and enormous amounts of time."

Cases like Willowbrook are to be encouraged, he added, "and the award of fees permits our attorneys to go on and take a similar case on behalf of the mentally retarded or mentally ill."

In the precedent-setting Willowbrook case the state agreed in 1975 to reforms that have changed the nature of publicly run institutions nationwide.

"I don't think it's a ridiculous sum at all," Hansen argued, saying that if a private attorney were to have taken on the class action, the requested costs would undoubtedly be "much, much greater."

Jack Bernstein, an attorney for the group representing the state Association for Retarded Children, said the federal court's ruling "has shown the rest of the legal profession, particularly the private bar, that fees are possible when you represent people whose rights are

being abridged."

"To me, to have the private attorneys realize they too can represent disadvantaged people is more important than the money," Bernstein added.

He said that his firm, System of Advocacy for the Retarded, will not benefit, but that the awarded fees will go into "more and better programs" for the developmentally disabled.

"And this ruling only takes into consideration fees for services rendered up to now," Bernstein noted. "I assume additional issues will come into it through 1981, and we will continue to generate attorney fees."

"Maybe the state will learn there's a less expensive way than going to court," he added.

By 1981, as called for under the 1975 court judgment, Willowbrook, which now has 1,600 residents, is to be dismantled to the point where only 250 people, all native Islanders, remain.

The Attorney General's office, which represents Gov. Carey and the executive branch as well as the mental hygiene agency and its designated leadership, had argued against the awarding of fees on the ground that the state has a constitutional obligation to protect the public treasury.

The state also had maintained that substantial relief had already been provided for the Willowbrook residents, with millions of taxpayer dollars going to improve conditions there, and with the creation of a court monitor to oversee the institution's workings.

But Judge Bartels nevertheless ruled for the residents' attorneys, saying that Hansen and Bernstein's groups, as well as the New York Civil Liberties Union and the Legal Aid Society were owed "reasonable counsel fees for services rendered" since the state was first called to account for conditions at Willowbrook.

Hansen said he and the other attorneys expect to sit down with state officials "sometime in the near future" to try to work out a "fair entitlement."

If the state refuses to bargain, however, the attorney general likely will go back into federal court, asking for another hearing before Bartels.

Bartels' order, signed March 21, was based in large part on the 1976 Attorney Fees Act, passed by the Congress as an encouragement to private law firms to take on civil-rights disputes.