

CL 3-29-91
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES BENJAMIN, et al.,

Plaintiffs,

- against -

CATHERINE M. ABATE, et al.,

Defendants.
-----X

ERNESTO MALDONADO, et al.,

Plaintiffs,

- against -

CATHERINE M. ABATE, et al.,

Defendants.
-----X

DETAINEES OF THE BROOKLYN HOUSE OF
DETENTION FOR MEN, et al.,

Plaintiffs,

- against -

CATHERINE M. ABATE, et al.,

Defendants.
-----X

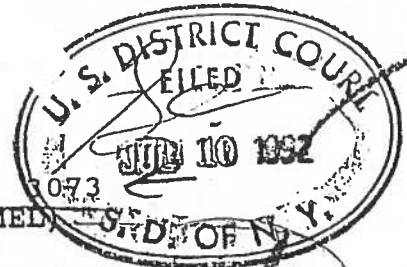
DETAINEES OF THE QUEENS HOUSE OF
DETENTION FOR MEN, et al.,

Plaintiffs,

- against -

CATHERINE M. ABATE, et al.,

Defendants.
-----X



75 Civ. 3073

(MEL)

Order - 92/7

Occp - 92/16

76 Civ. 2854

(MEL)

ORDER RE: COMPLIANCE
WITH WORK PLAN DEADLINES

79 Civ. 4913

(MEL)

79 Civ. 4914

(MEL)

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IOLA FORTS, et al.,

Plaintiffs,

76 Civ. 101
(MEL)

- against -

CATHERINE M. ABATE, et al.,

Defendants.

-----X

GUY ZEPH AMBROSE, et al.,

Plaintiffs,

76 Civ. 190 (MEL)

- against -

CATHERINE M. ABATE, et al.,

Defendants.

-----X

In 1979 this Court and other courts entered consent decrees in the above entitled cases settling plaintiffs' claims that conditions of confinement for pre-trial detainees in the New York City jails were unconstitutional. By consent, these cases were then consolidated before this Court for enforcement purposes. In 1982, in response to a motion for contempt filed by the plaintiffs, and to help remedy allegations of widespread non-compliance with the consent decrees that were largely undisputed, the Court entered a further order creating the Office of Compliance Consultants (OCC), a neutral third party intended to assist the defendants in attaining compliance. Subsequent orders by consent have extended the tenure of OCC.

In response to continued failures of compliance, the Court in 1990 directed OCC, in cooperation with the parties, to commence the preparation of "work plans" identifying the tasks required to be done to bring the defendants into compliance with the consent decrees and setting schedules for the accomplishment of each task. The work plans were intended to be adopted as orders of the Court subject to the Court's consideration and approval and the right of the parties to be heard. To date, work plans have been prepared by OCC, and adopted by the Court, in the areas of inmate classification, inmate property, and food services.

In response to several instances of noncompliance with work plan deadlines, the Court directed that requests for delays in any of the work plans' deadline dates must be made in writing, at least a week in advance, to the Court via OCC, as memorialized in OCC's letter to the Court of June 4, 1991.

By letter of August 29, 1991, OCC called to the Court's attention several further undisputed violations of the court-ordered food service and inmate property work plans, mostly involving the failure to hire necessary staff in a timely manner, and caused in substantial part by the nonfeasance by City agencies and personnel outside the Department of Correction whose cooperation was required in order to meet the relevant deadlines.

By letter of September 4, 1991, the plaintiffs requested further relief, including a schedule of monetary sanctions, to enforce the terms of the work plans by means short of contempt proceedings. The Court declined to order such relief and instead

held a conference to explain the obligations of the consent decrees and work plans to representatives of the relevant City agencies, including the Department of General Services, the Department of Personnel, the Office of Management and Budget, the Office of Labor Relations, and the Office of the Deputy Mayor for Criminal Justice, in addition to the Department of Correction and the Corporation Counsel.

The Court has now been informed of further unexcused violations of the work plans in the areas of food service and classification. In addition to these direct violations of the work plans, OCC has informed the Court that defendants have failed to take prompt actions to remedy these violations and to develop revised plans in a timely manner.

The Court concludes that further relief is necessary and appropriate to ensure compliance with the work plans and with the prior consent decrees that the work plans are designed to implement, and that such relief must be addressed to New York City's executive branch as a whole through the office of the defendant Mayor of New York City.

It is therefore ORDERED, ADJUDGED, AND DECREED:

1. The court urges the parties to attempt to agree to resolve minor adjustments in the work plan schedules if these become necessary. To this end, the parties should consult with one another before seeking court approval for such minor schedule changes. The court should be notified in writing of such agreed minor schedule changes.

2. If either party believes that it cannot comply with any deadline contained within any work plan adopted by the Court, including such work plans as may be adopted by the Court in the future, and if the parties do not agree on a schedule adjustment pursuant to ¶ 1, above, that party shall in writing request an extension of time from the Court via OCC as soon as the need for an extension becomes apparent, and in any case no later than one week before the date stated in the work plan.

3. All deadlines stated in the work plans shall be strictly complied with in the absence of an extension agreed to by the parties or granted by the Court, including deadlines involving the hiring of staff. If defendants elect, or are required by state or local law, to engage in unusual hiring procedures to fill positions required by a work plan, those procedures shall be accomplished within the time deadlines stated in the relevant work plan unless an extension agreed to or is granted by the Court pursuant to ¶ 2, above.

4. The Department of Correction shall be responsible for notifying all persons and agencies of city government of relevant work plan deadlines in any case in which their cooperation is required in order to meet the deadlines. To this end the defendant Commissioner of Correction or her designee shall identify to the Court and to plaintiffs' counsel an official within the Department of Correction who shall be personally responsible for making such notifications. If the Commissioner or her designee elects to reassign that responsibility to a different individual, she shall so notify the Court at the time the change is made.

The person assigned to make such notifications shall keep a contemporaneous record of them, indicating the date of notification, the person notified, and the substance of the notification.

5. In order to ensure compliance with work plan deadlines, the Court hereby imposes the following structure of coercive fines, to be assessed for any noncompliance that occurs after September 15, 1992 in violation of court-ordered work plans.

a. In any case in which defendants fail to meet a work plan deadline for the hiring of staff and have not obtained an extension of the deadline by agreement from the Court pursuant to ¶ 2, defendants shall be fined an amount equal to three times the salary and benefits accruing to the relevant position for the period between the missed deadline and the time the position is filled.

b. In all other cases in which defendants fail to meet a work plan deadline and have not obtained an extension of the deadline by agreement or from the Court pursuant to ¶ 2, defendants shall be fined \$100 a day for each day of noncompliance for a period of 14 days. If noncompliance persists after 14 days, the fine shall be increased to \$500 a day for each day of noncompliance for a further period of 28 days. After the 28th day of noncompliance, the fine shall be increased to \$1000 a day for each additional day of noncompliance.

c. The amount of any fine imposed pursuant to paragraph 5(b), above, may be adjusted by the Court after the 14th day of noncompliance upon a showing:

1) by the defendants, that the amount is unreasonable and oppressive in relation to the seriousness of the noncompliance; or

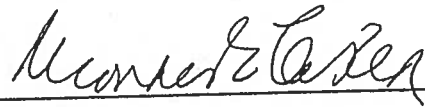
2) by the plaintiffs, that the amount is too small relative to the cost of compliance effectively to coerce defendants' urgent and immediate efforts to achieve prompt compliance.

The provisions of this paragraph do not apply to fines imposed pursuant to paragraph 5(a), above.

d. Defendants shall be excused from paying the above described fines in any case in which they show that their noncompliance with the relevant deadline was occasioned by unforeseeable events beyond the control of the agencies and personnel of New York City government.

6. OCC shall compute the amount of any fines owed under ¶ 5, above, subject to the parties' right to be heard in opposition and to de novo review by the Court.

Dated: New York, New York
July 10, 1992



U.S.D.J.