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United States District Court,  
S.D. Indiana,  
Indianapolis Division.

MARION COUNTY JAIL INMATES, Plaintiffs,  
v.  
SHERIFF Frank J. ANDERSON, et al.,  
Defendants.

No. IP 72-424-C B/S. | March 19, 2003.

#### Attorneys and Law Firms

Kenneth J Falk, Indiana Civil Liberties Union,  
Indianapolis, IN, for plaintiffs.

Kevin Charles Murray, Locke Reynolds LLP, Anthony W  
Overholt, Office of Corporation Counsel, Indianapolis,  
IN, for defendants.

#### Opinion

### ORDER DENYING REQUEST FOR COURT-SUPERVISED MEDIATION AND DIRECTING DEFENDANTS TO SHOW CAUSE WHY CONTEMPT SHOULD NOT BE ENTERED AGAINST THEM AND SANCTIONS IMPOSED

SARAH EVANS BARKER, Judge.

\*1 Counsel for plaintiffs has filed a Motion requesting “immediate mediation by (the) parties and interested persons to prevent further contempt proceedings” and for that purpose referral of the case to a magistrate judge. As grounds for his Motion, counsel for plaintiffs has detailed the frequency and extent to which defendants have failed to comply with jail population limits previously imposed by this court in accordance with Constitutional requirements. In short, according to all available documentation, the population limits have been exceeded many times, in major ways and for extended periods of time. Indeed, defendants continue to be in serious breach of those limitations, to a point of real, threatened, substantial detriment to the health and well-being of the inmates housed in the Marion County Jail.<sup>1</sup> This is a problem of enormous magnitude and grave consequence.

<sup>1</sup> The most recent jail population figures submitted to the Court by the Marion County Sheriff reflect population figures for the successive days of the week of March 10-16, 2003, as follow: 1510, 1461, 1451, 1434, 1421,

1526 and 1520, each count well in excess of previously imposed limits.

Obviously, parties to a litigation are always free to pursue their own voluntary avenues of discussion and attempted resolution of their dispute, including through processes such as mediation. Whether this court, under current circumstances, ought to order mediation as plaintiffs request is another matter, however. We frankly do not see the wisdom in lateraling responsibility for conducting such negotiations to a magistrate judge who has not previously been involved in managing this case and would be charged basically with “holding a meeting” of all interested persons, whoever they may be, without sufficient authority to make and enforce her decisions. Courts do not conduct town meetings, to which “all interested persons” are invited to attend, to resolve public issues; that approach better serves the needs and interests of the legislative and executive branches. Unless a person or party is within the Court’s jurisdiction, the court lacks power to act and the person/party has no obligation to respond to an “invitation” to come to court and to engage in good faith discussions and enter into binding agreements to resolve the controversy. Courts act only where they have power to enforce compliance. Stated otherwise, “meetings” set by the Court are limited to those in which the persons involved in a case over which the Court has jurisdiction can be ordered to attend and participate; they are sessions from which lawful, enforceable rulings may issue, as necessary.

Therefore, while we would not prevent the parties from voluntarily pursuing mediation, we will not order mediation, particularly involving non-parties. In lieu of requiring mediation, the Court hereby **Orders** the Defendants to **SHOW CAUSE** within twenty-one (21) days from the date of this order why they should not be held in contempt for violation of the jail population limits of 1134 persons (or arguably 1300), and further, since the population figures, even without elaboration or explanation, paint so clear and indisputable a picture, why the Court should not proceed forthwith to take up and resolve the issue of appropriate sanctions for said contempt, including consideration of the scope of any and all necessary remedial actions to coerce future compliance with the Court’s orders at the earliest practicable time.

\*2 Because of the urgency of the Constitutional imperatives underlying these issues, not to mention the duration and intractability of this litigation, and the fact that in fashioning workable remedies, the interests of many non-parties obviously are also implicated, the Court, by serving a copy of this order on officials and representatives of the following offices and agencies, hereby gives notice of a pre-contempt-hearing conference

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for purposes of exploring informally through multi-lateral discussions the feasibility of all possible, reasonable remedial actions. [Copies of this order shall be served on representatives with decision-making authority of the City of Indianapolis, the Marion County Circuit and Superior Court, the Marion County Justice Agency, the Marion County Prosecutor, the Marion County Public Defender, the Marion County Auditor, the Indiana Department of Correction, and the City-County Council of the City of Indianapolis-Marion County.] The undersigned judge shall preside over the conference to be held on **Wednesday, April 23, 2003, in Room 308, U.S. Courthouse, 46 East Ohio Street, Indianapolis, at 10:00 a.m.**

No non-party to this litigation is required to attend the afore-referenced conference. However, non-party officials and representatives may choose to attend and to participate in the discussions for the reason that,

following these discussions, the Court shall set a formal hearing at which non-parties will not be permitted to participate, unless subpoenaed as witnesses, in determining what further action or orders may be required. Thereafter, should sanctions be required, the Court will construct its remedial orders in part based on the discussions at the April 23, 2003 session, and its orders will extend, in addition to the named parties to this action, to those within their ambit and reach, that is, "their officers, agents, servants, employees, and attorneys, and ... those person in active concert or participation with them who receive actual notice of the order by personal service or otherwise." Thus, the importance of full, active participation by parties and non-parties alike in these proceedings should be apparent.