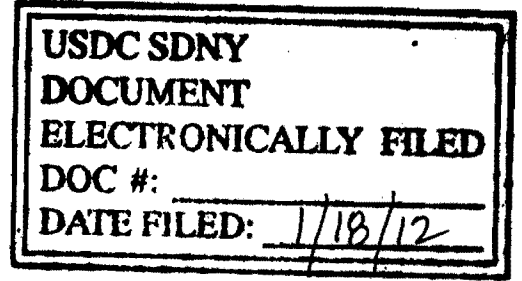


~~MAILED TO COUNSEL~~



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----X  
In re Petition of Edward Koehl :  
-----X  
LOUIS MILBURN, :  
: Plaintiff, :  
: v. :  
THOMAS A. COUGHLIN, III, et al., :  
: Defendants. :  
-----X

79 Civ. 5077 (LAP)  
MEMORANDUM & ORDER

LORETTA A. PRESKA, Chief United States District Judge:

On or about July 7, 2011 Petitioner Edward Koehl ("Petitioner" or "Koehl") filed a Motion for Contempt of the September 27, 1991 Modified Final Judgment in this case ("Milburn II" or "Consent Decree"). Petitioner specifically seeks, among other relief, an injunction requiring Defendants to house him in a single cell, monetary damages for the alleged violations of the Consent Decree, and the appointment of counsel to assist him questioning witnesses. See Affidavit of Edward Koehl in Support of Contempt Motion ("Koehl Aff.") ¶¶ 2-4, 28-30. Because Petitioner has not exhausted his administrative requirements under the terms of the Consent Decree prior to filing this claim, however, Petitioner's motion is denied without prejudice.

The Milburn II Consent Decree sets forth specific procedures for challenging alleged non-compliance with its

terms. Parties must first negotiate in good faith to resolve compliance issues before bringing unresolved issues before the Court on a contempt motion or otherwise. See Consent Decree ¶ XXIX(A). Section XXIX(C) of the Consent Decree requires that plaintiff class counsel (in this litigation, the Legal Aid Society) bring the facts supporting any allegation of non-compliance to the attention of Defendants' counsel prior to the filing of a contempt motion. Id. ¶ XXIX(C). Defendants are then given an opportunity to respond or negotiate a resolution. Id. Only if these efforts are unsuccessful may a petitioner then seek judicial relief pursuant to Section XXIX(B) of the Consent Decree. Id. The purposes of this procedure are, among others, to afford the maximum legal aid to a potential petitioner, provide Defendants with an opportunity to resolve the situation adequately without resorting to the Court, and to crystallize any remaining legal issues arising under the Consent Decree that are therefore ripe for judicial review.

Petitioner has not complied with these requirements. See Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Contempt ("Def. Mem") at 9. Instead, it appears he has filed this motion for contempt without consulting with plaintiffs' counsel at all,<sup>1</sup> alerting Defendants for the first

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<sup>1</sup> Part of Petitioner's request for relief, for example, is the appointment of counsel. See, e.g., Koehl Aff. ¶¶ 4, 29.

time that he is raising specific claims under the Consent Decree on the same day this motion was filed. Id. Petitioner characterizes this as "harmless error[]" from which Defendants have experienced no prejudice. See Reply Affidavit of Edward Koehl ("Koehl Reply Aff.") ¶ 9. As this Court has noted many times, however, it is not free selectively to enforce the terms of the Consent Decree in this case. Courts are not "entitled to expand or contract the agreement of the parties as set forth in the consent decree," Berger v. Heckler, 771 F.2d 1556, 1558 (2d Cir. 1988); courts must narrowly construe the terms of a consent decree, and not impose supplementary obligations on the parties. Barcia v. Sitkin, 367 F.3d 87, 106 (2d Cir. 2004) (internal citation omitted). For the reasons mentioned above, Section XXIX(C) of the Consent Decree is not a mere formality. Moreover, Petitioner's proffered exigency in filing this motion, a "perceived immediate danger to [his] safety via sexual threats/attacks by a sick serial rapist, Warden Lee forced [him] to double bunk with," Koehl Reply Aff. ¶ 9, is now mitigated by the undisputed fact that Petitioner has been assigned to a single cell on the "E" block since July 21, 2011. See, e.g., Affidavit of Captain Burnett ("Burnett Aff.") ¶ 7; Koehl Reply Aff. ¶ 14.

Petitioner raises serious allegations against Defendants, and Defendants likewise raise legitimate questions regarding the

mootness of these claims as well as their relation to the Milburn II Consent Decree generally. It is therefore the Court's expectation that Petitioner be afforded an opportunity to consult with plaintiffs' class counsel and that the parties confer on these issues consistent with the terms of the Millburn II Consent Decree and within a reasonable amount of time. To the extent unresolved claims arguably arising under the Consent Decree remain, Petitioner's pending motion is dismissed without prejudice to his re-filing it in pertinent part at that time.

**CONCLUSION**

For the foregoing reasons, Petitioner's Motion for Contempt [dkt. nos. 364, 365, 373] is denied without prejudice.

SO ORDERED.

Dated: New York, New York  
January 17, 2012

  
LORETTA A. PRESKA  
Chief U.S. District Judge