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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JUL 2 1989

ALB 89
ST. PATRICK'S

ESSEX COUNTY JAIL INMATES, et als.,	:	CIVIL NO. 82-1945
	:	
Plaintiffs,	:	
	:	
v.	:	Hon. Harold A. Ackerman U.S..D.J.
	:	
NICHOLAS AMATO, County Executive, et als.,	:	Robert DelTufo, Special Master Bennet Zurofsky, Special Master
	:	
and	:	
	:	
WILLIAM H. FAUVER, Commis- sioner, New Jersey Depart- ment of Corrections,	:	<u>ORDER ESTABLISHING OVERCROWDING BAIL FUND</u>
	:	
Defendants.	:	
	:	

In accordance with Fed. R. Civ.P. 53(e)(2) and for the reasons set forth in the opinion of the Court rendered on July 27, 1989;

It is on this 25 day of July, 1989:

ORDERED that the Report and Recommendations On a Bail Fund for Essex County Jail Detainees, submitted by Special Masters Robert J. Del Tufo and Bennet D.Zurofsky, filed on July 6, 1989, in accordance with the Court's Order of May 24, 1989, is hereby adopted, with the exceptions or modifications as set forth in the Court's opinion of July 27, 1989, and incorporated herein, as follows:

Creation of the Fund

1. The monies paid in the amount of \$257,600 by the County defendants as contempt sanctions, ^{deposited in an interest bearing account} shall constitute an Overcrowding Bail Fund for Essex County Jail Detainees [hereafter "the Fund"], to be managed by an Administrator. The Administrator shall be independent of the County and shall be designated as the

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on
THE DOCKET
on 7-25 1989
By WILLIAM J. WALSH, CLERK
W. J. WALSH
(Deputy Clerk)

sole signatory for the account established in accordance with this Court's Order of May 24, 1989.

Fund Purpose

2. The purpose of the Essex County Jail Detainees Bail Fund shall be to provide bail assistance for individuals in the Essex County Jail who may have insufficient money or property to secure release on bail.

Use of the Fund

3. Monies from the Fund shall be made available in accordance with the terms of this Order on a daily basis for bail purposes for pretrial detainees confined in the Essex County Jail in order to maintain the population of the Essex County Jail at 594 inmates on a daily basis as measured under the terms of this Order.

4. Fund monies shall be made available in an order of priority as fixed by this Order to pay for bail bonds or cash bail for any pretrial detainees who have been unable, for financial reasons, to secure their own release on bail.

Function of the Fund

5. The Fund shall be administered as a revolving fund which shall loan cash bail to the families of detainees or to individual detainees who cannot afford bail. When the bailee appears for court, the bail amount paid by the Fund shall be refunded to the Fund in order to assist other detainees. In the event of a defendant's failure to appear for court proceedings, the bail shall be forfeited and returned to the County.

Administration and Management of the Fund

6. The Fund shall be managed by an Administrator of the Fund to be appointed by the Court. The Administrator shall be an attorney-at-law of the

State of New Jersey. The Special Masters previously appointed by this Court may act as counsel to the Administrator with regard to any Fund related matters.

7. The Administrator of the Fund shall act as a fiduciary to ensure the proper administration and expenditure of the Fund in accordance with the terms of the Court's orders and the declared purposes of the Fund.

8. Compensation for the Administrator shall be paid from the Fund on an hourly basis commensurate with the fee structure applicable to a special master and his or her assistants. Fee application shall be made to and approved by the Court on a monthly basis.

9. The Administrator or the Administrator's designee shall use the criteria established by this Order to select the detainees who may be eligible to receive use of Fund monies for bail purposes.

10. The Administrator of the Fund, from time to time and after consulting with the Assignment Judge of Essex County or his designee, or with the Special Masters or counsel for any of the parties to this case, may recommend to the Court, upon notice to counsel for all parties, any additional criteria to enlarge ^{or reduce} the number of pretrial detainees who may be eligible to receive use of Fund monies for bail purposes.

11. The Administrator may contract with or hire sufficient additional personnel with Fund monies to provide necessary assistance in the management and operation of the Fund or to otherwise carry out the purposes of the Fund, provided that when the Administrator believes it necessary to hire additional personnel beyond immediate subordinates to aid the Administrator in Fund operations, he or she shall first confer and consult with County Counsel to determine if the County can provide appropriate personnel or staff.

12. The Administrator may enter into any necessary contracts or agreements to arrange for the actual posting of bail or payment of cash bail for the detainees selected for Fund eligibility. The Administrator shall be authorized to retain counsel and to do any and all acts necessary, appropriate, or incidental to carry out the provisions of the Court's Order establishing the Fund.

13. The Administrator may, upon advice from and through counsel to the Fund, operate the Fund as a trust or arrange for incorporation as an appropriate non-profit organization. He or she also may apply to the Internal Revenue Service to receive an employer identification number and tax rulings and/or exemptions to determine the Fund's legal obligations with regard to the deductibility of contributions to the Fund under section 501(c)(3) of the Internal Revenue Code, or with regard to liability for income taxes, social security taxes (FICA), taxes imposed under the Federal Unemployment Tax Act, or with regard to excise taxes under Chapter 42 of the Internal Revenue Code or other code provisions, or with regard to the Fund's filing obligations as an Exempt organization, or with regard to any other state or federal taxes.

Procedures for Release

14. If the ECJ population exceeds 594 inmates on any day by reference to a population survey of the jail at 12 midnight, then the Administrator shall be authorized to begin procedures under this Order to effect the release on bail of a sufficient number of detainees whose release would reduce the ECJ population to at least 594 inmates. The Administrator, in his or her discretion, may target a reduction number below 594 inmates in order to provide a minimally sufficient capacity at the jail to accommodate routine arrests and detention of additional persons and to minimize the frequency with which the Administrator is

required to act to keep the ECJ population below the maximum capacity of 594 inmates fixed in the Third Supplemental Consent Order, filed on Dec. 27, 1988. However, in no event is the target reduction number to fall below 564.

15. Whenever the ECJ population exceeds 594 inmates at 12 midnight on a given day, the County shall prepare a list of all detainees confined in the custody of the County ^{and those on RSC} on that day for whom bail has been set. This daily detainee list ("Detainee List") shall be arranged in the order of the bail amounts for each detainee, from lowest to highest. The Detainee List shall contain the following information for each detainee: date of admission to the jail, all current charges, all current bail amounts, and all current detainers.

16. The County shall arrange to have the Detainee List delivered, to arrive no later than 10 a.m. of that day, to the following individuals or agencies: the Administrator of the Fund, the Special Masters, plaintiffs' counsel, County Counsel, the County Prosecutor, and the County Probation Office.

17. The Administrator shall review the Detainee List and authorize the payment of Fund monies in an amount no greater than \$5000 for use as bail bonds or cash bail in the following order of priority ["Priority Criteria"]:

a. on a daily basis, those detainees who have been incarcerated for a minimum of seven days shall be selected for bail fund eligibility in accordance with the bail amounts set by state court judges and as reported to the Administrator by the County, with eligibility to start with detainees held on the lowest bail amounts;

b. among detainees held on the same bail amounts, detainees shall be eligible for Fund monies in accordance with the seriousness of the offense for which they are held, with eligibility to start and proceed with the detainee held for the least serious offenses; and,

c. among detainees held on the same bail amounts for the same type or degree of offense, detainees shall be eligible for Fund monies in accordance with their length of confinement, with eligibility to start with those detainees held the longest period of time.

18. Within 48 hours of the time that the Administrator receives the Detainee List from the County, the Administrator shall prepare and deliver to County designated personnel a Release List containing a sufficient number of detainees whose release would reduce the ECJ population to at least 594 inmates, along with a guarantee of payment of sufficient funds to post bail bonds or pay cash bail for all detainees on the list no sooner than 48 hours. At the same time, 48-hours' notice shall be given to the County Prosecutor, the County Probation Office, the Criminal Assignment Judge, the County Public Defender, and plaintiffs' counsel of the pending payment, for the purpose of giving these entities an opportunity to consider the bail decision in light of the source of monies and to give the intended recipient an opportunity to obtain a surety.

19. The County shall designate personnel to receive and process the bail list and the funds which the Administrator or the Administrator's designee shall deposit to effectuate the release on bail of the selected detainees. All detainees for whom the Administrator provides bail funds shall be made available for release by the County no later than two hours after the 48-hours' notice which has been given to the County Prosecutor, the County Probation Office, and the Criminal Assignment Judge.

Release

20. Each detainee selected by the Fund as eligible to receive bail assistance from the Fund must have a surety willing to sign a bail bond. The de-

tainee may act as the surety provided the detainee has a mailing address, or permanent residence with a co-resident, or family or community contact(s) who have a mailing address.

21. Prior to release, the detainee or the detainee's surety must meet with a Fund Bailwriter at the Jail or at another suitable location where a bond can be executed and posted. The Administrator may designate suitable County employees or contract with other individuals or private agencies to act as Fund Bailwriters. A bond and an agreement between the Fund and the detainee must be executed, which stipulate the refund of the bail to the Fund. The Bailwriter shall then deliver the bond to the jail and shall meet the inmate upon release.

22. At the time of release, every Fund bailee shall be required to execute an agreement which states that the detainee must appear in court and contact the Administrator or the Administrator's designee on a weekly basis and upon notice of scheduled court dates.

Post-Release

23. The County shall notify the Administrator, simultaneously with the defendant, of all court dates for each Fund bailee. ^{In addition for any pretrial detainee} Whenever a Fund bailee fails to appear in court and a bench warrant is issued, the County shall notify the Fund Administrator and the bail monies and the bond, if applicable, shall be forfeited to the County. In the event of forfeiture, the Administrator shall provide all information it has obtained from the bailee to the County Prosecutor, the County Probation Office and/or other appropriate authorities. The Administrator shall have the same rights and remedies as any bailbondsperson to attempt to have a forfeiture set aside or to bring about the timely surrender of the bailee.

7 for whom the Fund has provided bail assistance, the County shall within 24 hours after any court appearance scheduled for such a person, advise the Administrator of the receipt of the court attendance of the bailee.

Reporting

24. The Administrator shall submit a performance report every two weeks to the Special Masters, the Court and counsel for all parties. The report shall include the following:

a. the total number of days during the immediately prior two weeks on which the ECJ population has exceeded 594 inmates and the actual population on each of these days;

b. the number of detainees eligible for release through the Fund on each of the days when the ECJ population exceeded 594 inmates and the number of detainees actually released on each of the days;

c. the reasons for denials, if any, of release to eligible detainees;
and,

d. the amount of money expended in cash bail, bail bonds, Fund personnel costs, and Fund administration for the period and to date.

Effective Date

25. The Bail program provided for by this Order shall go into effect on September 15, 1989.

Duration

26. The use of sanctions in the amount of \$257,600 for this program is not intended to release the County defendants from the obligation of paying the balance of any other sanctions that may in the future be fixed or imposed by the Court.

27. The Fund shall cease to operate when the population of the ECJ has not exceeded the maximum capacity of 594 inmates at any time for 12 consecutive months. At that time, the balance of the Fund monies, if any, less any expenses previously incurred, including the fees of the Administrator and any personnel and/or contractors, shall be returned to Essex County.

28. Inmates will be housed out under this program in those circumstances where the County of Essex has again violated the court order by permitting the jail population to exceed 594.

29. Douglas S. Eakely, an Attorney-at-Law, of the State of New Jersey, is hereby appointed to serve as Administrator of the Fund.

Harold A. Ackerman

HAROLD A. ACKERMAN
U.S.D.J.