

IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS, URBANA DIVISION

PRISON LEGAL NEWS, a project of
the HUMAN RIGHTS DEFENSE CENTER,

Plaintiff,

v.

COUNTY OF KANKAKEE;
SHERIFF TIMOTHY BUKOWSKI, individually and in
his official capacity;
CHIEF OF CORRECTIONS, CHAD KOLITWENZEW,
individually;
DOES 1-10, individually,

Defendants.

Case No.: 14-cv-2290

Hon. Colin S. Bruce

Order of Stipulation and Dismissal

The Parties to this action, represented by counsel, stipulate to and request entry of the following Order:

1. On December 1, 2014, Plaintiff Prison Legal News, a Project of the Human Rights Defense Center (“PLN” or “Plaintiff”) filed suit in the above-captioned matter seeking injunctive and declaratory relief, damages, and attorney’s fees and costs. Plaintiff’s complaint alleges an unlawful and unconstitutional custom, practice, or policy regarding the delivery of incoming publications and correspondence to prisoners at the Kankakee County Detention Center and Jerome Combs Detention Center (the “Jails”) in violation of the First and Fourteenth Amendments to the United States Constitution.

2. On February 16, 2015, Defendants Kankakee County, *et al.*, (collectively “Defendants”) filed an answer denying the allegations in Plaintiff’s complaint and raising various affirmative defenses.

3. The Parties agree that Defendants have disputed, and continue to dispute and deny liability in this case. However, in order to avoid the expense, delay, uncertainty, and burden of litigation, the Parties agree to the entry of this consent decree.

4. The Parties agree that this Order and Stipulation of Dismissal, together with payment of the sum of one hundred twelve thousand dollars (\$112,000.00), fully and finally resolves all claims alleged by Plaintiff in its complaint. If payment is not made within forty-five days of the entry of this order, or July 6, 2015, then interest shall accrue at ten percent per annum from that date.

5. The Parties agree that this Order and Stipulation of Dismissal shall be applicable to the delivery of all publications directly from any Publisher; and b) the delivery of other documents or correspondence from Prison Legal News. Specifically, the Parties agree that Defendants shall deliver Prison Legal News, and all other publications from PLN, to inmates and/or detainees at the Jails. The Parties further agree that Defendants shall no longer have, nor implement in the future, blanket bans on books, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, or newsletter sent directly from any Publisher to inmates and/or detainees at the Jails. For the purposes of this Order and Stipulation of Dismissal, the term Publisher shall mean any publisher or book store that does mail order business.

6. The Parties agree that Defendants shall provide constitutionally adequate written notice and an administrative process to appeal the Jails’ refusal to deliver any publication,

correspondence, or document sent to a prisoner at the Jails. The administrative review process shall include the sender's right to have its appeal, complaint, or inquiry considered and resolved by a decision maker other than the person who originally refused to deliver the publication or mailing in question.

7. The parties agree that Defendants shall be given an opportunity to correct any future violations of this Order in good faith. Nothing in this Order and Stipulation of Dismissal is meant to prevent Plaintiff from filing a future action against Defendants and/or any agents thereof for future violations of Plaintiff's constitutional rights.

8. The Court finds that this case concerns the First and Fourteenth Amendment rights of a publisher and is therefore not a case concerning prison conditions as defined in the Prison Litigation Reform Act of 1996. The Court further finds that the relief herein ordered is narrowly drawn, extends no further than necessary to correct the harm to PLN, and is the least intrusive means necessary to correct that harm.

9. It is further agreed and ordered that within 30 days of the date of entry of this Order and Stipulation of Dismissal, the defendant Sheriff Timothy Bukowski will insure that the new jail mail policy (attached hereto as EXHIBIT A) is disseminated to all employees of the Jails as well as to all persons in custody at both jails and that the new policy will be fully implemented. Defendants' counsel will furnish the Court and plaintiffs' counsel with written confirmation of same.

10. The Parties agree that the public interest is served by the entry of this Order, which protects the constitutional rights of publishers and other persons who correspond with prisoners by mail, and the right of prisoners to send and receive mail.

11. The Court retains jurisdiction of this matter for the purpose of enforcement of its Order until terminated upon motion made by either Party.

Respectfully Submitted,

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One of Plaintiff's Attorneys

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Exhibit A

KANKAKEE COUNTY
INCOMING PUBLICATIONS POLICY

1. Purpose and Scope

Except when precluded by law, the Kankakee County Sheriff's Department (KCSO) permits any inmate to subscribe to or to receive publications without prior approval and has established procedures to determine if an incoming publication is detrimental to the security, discipline, or good order of the institution or if it might facilitate criminal activity. The term publication, as used in this subpart, means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, or newsletter, plus such other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

2. Program Objectives. The expected results of this program are:

- a. Inmates will be permitted to receive and retain publications which do not threaten security, good order, or discipline of the institution or that may facilitate criminal activity, or are otherwise prohibited by law.
- b. Publications determined detrimental to the security, good order, or discipline of the institution or that may facilitate criminal activity, or are otherwise prohibited by law, will be excluded from KCSO facilities.
- c. A safer environment for staff and inmates will be provided by strengthening procedures designed to prevent the introduction of contraband.

3. Standards Referenced

- a. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-5D-01
- b. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4432
- c. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-5D-04
- d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: 1-ABC-5D-04
- e. U.S. Department of Justice, Federal Bureau of Prisons.

4. **Application.** Procedures in this Incoming Publication Policy apply to all correctional facilities under the jurisdiction and control of the Kankakee County Sheriff's Department (namely Kankakee County Detention Center and Jerome Combs Detention Center).

5. **Procedures**

- a. At all KCSD facilities, any inmate may receive publications (for example, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, or newsletter, plus such other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs) from the publisher, a distributor, a book club, bookstore or other retailer.
- b. The JAIL ADMINISTRATION may make an exception to the provisions of paragraph 5(a) if the publication is no longer available from the publisher, a distributor, book club or bookstore. An inmate requesting an exception to paragraph 5(a) shall provide the JAIL ADMINISTRATION with written documentation that the publication is no longer available from these sources. The JAIL ADMINISTRATION shall review all requests for exceptions within 10 days and make reasonable accommodations to make the requested publication available to the inmate. Any response to a request for exception shall be documented in writing and provided to the requesting inmate within 10 days. The inmate may appeal the JAIL ADMINISTRATION's response to the CHIEF OF CORRECTIONS using the jail's administrative review procedures.
- c. The JAIL ADMINISTRATION may censor a publication only if it is determined to be detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity. The JAIL ADMINISTRATION may not censor a publication solely because its content is religious, philosophical, political, social or sexual, or because its content is unpopular or repugnant. Publications which may be censored by a JAIL ADMINISTRATION include but are not limited to publications which meet one of the following criteria:
 - (1) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices;
 - (2) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings or similar descriptions of KCSD institutions;
 - (3) It depicts or describes procedures for the brewing of alcoholic beverages, or the manufacture of drugs;

- (4) It is written in code;
- (5) Contains obscenity, nudity, or sexually explicit material. It is sexually explicit material which by its nature or content poses a threat to the security, good order, or discipline of the institution, or facilitates criminal activity
- (6) It is otherwise detrimental to security, good order, rehabilitation or discipline or it might facilitate criminal activity, or be detrimental to mental health;
- (7) Sample products or free gifts (other than publications), including but not limited to lotions, free samples and gifts, will be placed in inmate property bins;
- (8) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;
- (9) It encourages or instructs in the commission of criminal activity.

Only the JAIL ADMINISTRATION may censor an incoming publication.

- d. The JAIL ADMINISTRATION may not establish an excluded list of publications. This means the JAIL ADMINISTRATION shall review the individual publication prior to the censorship of that publication. Censorship of several issues of a subscription publication is not sufficient reason to censor the subscription publication in its entirety.
- e. Where a publication is found unacceptable, the JAIL ADMINISTRATION shall promptly advise the inmate in writing of the decision and the reasons for it. The notice must contain reference to the specific article(s) or material(s) considered objectionable.
- f. The JAIL ADMINISTRATION shall provide the publisher or sender of an unacceptable publication a copy of the notice of censorship. The JAIL ADMINISTRATION shall advise the publisher or sender that he may obtain an independent review of the rejection by writing to the CHIEF OF CORRECTIONS within 20 days of receipt of the notice of censorship.
- g. The JAIL ADMINISTRATION shall retain the rejected publication at the institution if the inmate indicates that he will file an appeal or until time for appeal has lapsed. If the censorship is upheld on appeal, or if neither the inmate nor the publisher/sender appeal the censorship, the JAIL ADMINISTRATION shall provide the inmate with the following options of disposing of the censored publication:

- (1) return to sender;
- (2) send to person or entity designated by the inmate to receive censored publications at prisoners' expense, or
- (3) place into inmates property bin, or allow the family or other designated person to pick up the items.

For sample notices, see *Notification to Inmate (ATTACHMENT 1)* and *Notification to Publisher/Sender of Censored Publication (ATTACHMENT 2)*.

- (i) The JAIL ADMINISTRATION must retain the censored publication for 30 days from the date that the inmate and publisher/sender are sent written notification of the censorship to allow time for either party to appeal.
 - (ii) This 30-day period is to allow both the inmate and publisher/sender the opportunity to file an appeal. If the inmate or publisher/sender does not file an appeal within the time allowed, the censored publication may be disposed of as provided in Section 5(g) herein.
 - (iii) If the inmate does file an appeal, the JAIL ADMINISTRATION must retain the censored publication at the institution.
 - (iv) The censored publication or the offensive portion of it must be reviewed prior to a staff response being prepared.
 - (v) The CHIEF OF CORRECTIONS should not respond to an appeal of a censored publication without first reviewing the censored publication.
- h. The JAIL ADMINISTRATION may set reasonable limits (for fire, sanitation or housekeeping reasons) on the number or volume of publications an inmate may receive or retain in his/her quarters. Inmates will store all publications in the areas provided for personal effects. The JAIL ADMINISTRATION may authorize an inmate additional storage space for storage of legal materials in accordance with the KCSO procedures on personal property of inmates. The jails currently set the reasonable limit at four (4) publications per inmate.

Sheriff Timothy Bukowski
Kankakee County Sheriff's Department

Jerome Combs Detention Center

Date: _____

It is not an option to place items deemed contraband into a detainee's property/storage container contained within his cell. It is the detainee's responsibility to inform family or friends what can or cannot be sent into the facility. Refer to pages 24-26 in the green inmate handbook.

_____ was received for Inmate _____
and is considered contraband due to:

_____.

The item(s) can be picked up through visitation within 30 days of inmate signature by a designated person of your choosing, can be returned to sender, can be placed in the inmate's property bin maintained by the facility, or can be sent to a person or entity designated by the inmate at your expense, not JCDC's expense. If you wish to appeal this decision, please respond using the time frame and form identified in the JCDC grievance procedure and indicate that you would like an independent review of this decision made by the Chief of Corrections. If you do not respond to this form regarding where to send the property, after 30 days the item(s) will be destroyed.

Authorization information:

Date: _____

Inmate Signature: _____ ID # _____

Destroy immediately YES NO

Return to Sender YES NO

Name of individual to pick up item(s) _____.

Please inform individual valid ID is required to receive item(s)

Name and address to send document at your expense _____.

Pick up information: (To be filled out by person accepting and releasing property)

Signature of recipient _____

Date & Time _____

Individual releasing item(s) _____

Please return to Classification

NOTICE OF REJECTION OF A PUBLICATION TO PUBLISHER

Date: _____

Inmate Name: _____

Publication(s) Name: _____

The above publication(s) has been rejected by the Jerome Combs Detention Center for the following reason(s):

- ___ The inmate is no longer at this facility.
- ___ It contains obscenity, nudity or sexually explicit material.
- ___ It is written in code or facilitates communication between offenders.
- ___ It depicts or describes procedures for the construction or use of weapons, ammunition, bombs or incendiary devices.
- ___ It depicts, encourages, or describes methods of escape from correctional facilities.
- ___ It depicts or describes the procedures for the brewing of alcoholic beverages, or the manufacture of drugs.
- ___ It depicts, describes, advocates or encourages violence, hatred, or group disruption or it poses a risk of violence or disruption;
- ___ It encourages or instructs in the commission of criminal activity;
- ___ It is otherwise detrimental to security, good order, rehabilitation, or discipline or it might facilitate criminal activity or be detrimental to mental health.

You may obtain a review of this rejection by writing to Jail Administration within 20 days of receipt of this notice at:

Jail Administration
Jerome Combs Detention Center
3050 S. Justice Way
Kankakee, IL 60901