

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

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

Plaintiff,

v.

Case No. CIV-16-0198-HE

**JOSEPH K. LESTER, Sheriff of
Cleveland County, in his individual and
official capacities;
COUNTY OF CLEVELAND,
OKLAHOMA;
CLEVELAND COUNTY BOARD OF
COMMISSIONERS; and DOES 1-10, in
their individual and official capacities,**

Defendants.

CONSENT DECREE

The Parties to this action, represented by counsel, hereby stipulate to and request that this Court order the following terms and conditions, which fully and finally resolve all of Plaintiff's claims for injunctive and declaratory relief:

1. On February 29, 2016, 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, 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 F. Dewayne

Beggs Detention Center (“the Jail”) in violation of the First and Fourteenth Amendments to the United States Constitution (“the challenged mail policy and practices”).

2. On March 23, 2016, Defendants Sheriff Joseph K. Lester, *et al.*, (collectively “Defendants”) filed answers informing the Plaintiff and the Court that they adopted a new mail policy in response to Plaintiff’s complaint.

3. Plaintiff claims, but Defendants deny, that (a) the refusal to deliver any item of mail to a prisoner on the basis that it is not a postcard is a violation of the First Amendment free speech rights of both the sender of the mail and the prisoner who is the intended recipient; (b) refusing to deliver envelopes or copies of envelopes to prisoners is a violation of the First Amendment free speech rights of both the sender of the envelope and the prisoner who is the intended recipient; (c) the refusal to deliver any item of mail to a prisoner from a licensed attorney on the basis that an attorney-client relationship does not exist is a violation of the First Amendment free speech rights of both the attorney and the prisoner who is the intended recipient, (d) whenever prison or jail officials refuse to deliver a piece of mail to a prisoner, the sender of the mail must always be provided with adequate notice of the reason for the rejection and a meaningful opportunity to appeal that refusal to an impartial official who did not participate in the original decision, even if an appeal has previously been lodged, heard, and a rejection decision upheld on the same piece of mail, such as a particular magazine issue or catalog.

4. The Parties agree, and the Court finds and declares, that Defendants shall continue, if consistent with their legitimate penological interests and express policy terms based thereon, to deliver publications (including but not limited to books, magazines, brochures, newsletters and newspapers) to prisoners in their custody in the future.

5. The Parties agree, and the Court orders, that this Consent Decree shall also be applicable to the delivery of all publications and other correspondence sent directly from any publisher to any person held in custody at the Jail. For the purposes of this Consent Decree, the term PUBLISHER shall mean any publisher, book seller or other type of distributor of literature that sends books or other publications to people through the mail.

6. The parties agree, and the Court orders, that whenever Defendants refuse to deliver any publication, correspondence, or document sent to any prisoner at the Jail for any reason, Defendants shall place into the mail written notice and an administrative appeal process to the sender within three (3) days of making an initial mail rejection decision. The notice shall include the name and address of the PUBLISHER as well as the name(s) of the intended recipient(s), a description of the refused item of mail, a citation to the objectionable portion of the publication and a citation to the Jail rule concerning the way in which the censored speech would threaten one of Defendants' specific legitimate penological interests. Such notice may be satisfied through the utilization of a standardized form similar to that used by the Federal Bureau of Prisons.

The refused publication, correspondence or document will be retained by the Jail staff persons pending the disposition of all appeals and shall be reviewed by all persons participating in the decision of any appeal.

7. The Parties agree, and the Court orders, that Defendants shall provide a copy of this Consent Decree to all staff persons employed at the Jail who have duties that in any way concern the mail or property of prisoners and shall also post paper copies of this Consent Decree in places that are conspicuous to all staff persons and prisoners alike in each and every housing unit of the Jail, all within thirty (30) days of the entry of this Consent Decree.

8. The Parties agree, and the Court orders, that Defendants shall conduct a two-hour training session with all staff persons who are responsible for any part of the receipt, collection, and delivery of U.S. Mail to prisoners about the contents of this Consent Decree and the best practices for successful compliance herewith. Defendants shall file with the Court a notice that said training has been conducted within ninety (90) days of the entry of this Consent Decree and they shall provide a copy of the written materials used for such training to Plaintiff's counsel at the time of filing.

9. The Parties agree, and 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.

10. It is further agreed and ordered that within 30 days of the date of entry of this Consent Decree, Defendants will insure that a new mail policy consistent with the terms herein is promulgated and that any other Jail rules concerning Inmate Mail procedures are amended to conform to the requirements of this Consent Decree.

11. This Consent Injunction is binding on Defendants and their agencies, departments, successors, or independent contractors including agents and/or assigns who have or come to have responsibilities related to Inmate Mail or to the implementation of the requirements of this Consent Decree. The Court shall retain jurisdiction to enforce the provisions of this Consent Injunction.

12. The Parties agree, and the Court orders, that Defendants are permanently enjoined from (a) refusing to deliver mail to prisoners on the grounds that the mail is not a postcard or on the grounds that the mail was sent in an envelope containing multiple pieces of paper; (b) refusing to ensure information, which indicates the date of the enclosed letter or materials and the sender of them, is delivered to prisoners, in the absence of the envelope itself or a copy being delivered; and refusing to deliver any content other than that typically included for mail delivery reasons, e.g. artwork, drawings, or brief messages to the recipient (c) refusing to deliver mail to prisoners from a licensed attorney on the basis that no attorney-client relationship exists; and (d) failing

to provide due process (i.e., adequate notice and a meaningful opportunity to appeal) to senders of mail when depriving them of their liberty interest in free speech, through the mail, with people detained at the Jail. The terms above shall not preclude Defendant from restricting mail consistent with their legitimate penological interests should pressing circumstances, bearing on inmate mail, cause a marked change in institutional needs, provided that a Motion to Modify the instant Consent Decree be made within a reasonable time after such change in circumstances is reasonably believed to warrant a modification of the injunctions herein.

IT IS SO ORDERED.

Dated this 28th day of July, 2016.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE