

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

PRISON LEGAL NEWS, INC., )  
 )  
 Plaintiff, )  
 )  
 vs. ) Case \_\_\_\_\_  
 )  
 CHARLES SIMMONS, individually and )  
 in his official capacity as Secretary of ) JURY DEMANDED  
 Corrections for the State of Kansas, )  
 )  
 Defendant. )

**COMPLAINT**

**INTRODUCTION**

1. This is a civil action brought pursuant to 42 U.S.C. § 1983 to vindicate the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution. Plaintiff seeks declaratory and injunctive relief and damages to order Defendant to cease the Kansas Department of Corrections' (KDOC) unconstitutional policy of prohibiting inmates from receiving any book or magazine from a publisher such as Plaintiff unless the publication has been paid for by that inmate with a special purchase order (SPO). Under Defendant's policy, inmates, many of whom are indigent, may not receive free publications or publications purchased on their behalf by family members, friends, or charitable organizations. This practice deprives Plaintiff, as well as its subscribers, of its First Amendment rights and serves no neutral, legitimate penological purpose. Plaintiff has attempted to resolve this matter informally without success.

## **JURISDICTION**

2. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331 and 1343.
3. This Court has jurisdiction over Plaintiffs' request for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202.

## **PARTIES**

4. Plaintiff Prison Legal News, Inc. is a Washington state non-profit corporation with IRS 501(c)(3) status which publishes Prison Legal News (PLN), a monthly publication that is circulated internationally and which distributes legal and political books. Its subscribers include attorneys, judges, prisoners, libraries and concerned citizens. PLN reports on issues that affect prisoners and prisons around the world, publishes articles of interest to prisoners and their families, and summarizes recent court decisions, verdicts, and settlements that relate to prisoners.
5. Defendant Charles Simmons is the Kansas Secretary of Corrections and is the chief executive officer of KDOC pursuant to KSA 75-5203. He is responsible for the administration of all Kansas state correctional facilities, including those at Lansing, Ellsworth, El Dorado and Hutchinson, and for ensuring that the prisons operate in a manner that is consistent with the United States Constitution pursuant to KSA 75-5205. He is also responsible for the promulgation and adoption of all rules, regulations, memoranda, policies, procedures and orders for every state correctional facility, pursuant to KSA 75-5210. At all times relevant to this action he has acted under color of state law.

## STATEMENT OF FACTS

### POLICIES STATEWIDE

6. Defendant has adopted and enforces regulations pertaining to publications,  

including KAR 44-12-601(q)(1):

Any inmate may receive books, newspapers, and periodicals, except for those inmates assigned to the reception and diagnostic unit of the Topeka correctional facility for evaluation purposes. All books, newspapers, or periodicals shall be purchased through special purchase orders. Only books, newspapers, or periodicals received directly from a publisher or a vendor shall be accepted.
7. This regulation as enforced prevents inmates under the care and control of defendant from receiving promotional offers and gift subscriptions to plaintiff's publication or gift books , whether purchased by a third party or sent as a trial subscription or other gift from plaintiff.
8. Defendant has issued and continues to issue interpretations and guidance for Kansas statutes and regulations in procedures called Internal Management Policy and Procedure (IMPP).
9. Defendant has issued IMPP 11-101 (January 7, 2002) which precludes all inmates on Level 1 (which lasts a minimum of 120 days) throughout the KDOC system from receiving publications of any sort other than religious publications.
10. Defendant has determined that plaintiff's publication is not a religious publication, thus determining whether publications should be delivered based on their content.
11. IMPP 11-101 (January 7, 2002) also limits the maximum amount of monthly purchases, including all books, magazines and newspapers to \$30.00, although one newspaper subscription exceeding this amount is possible as are religious

books. Again, plaintiff's publication and books are treated differently based on their content.

12. Plaintiff's publication is not available to any inmates in Kansas who are on Level 1.
13. IMPP 12-120 (August 21, 2000) restricts inmates in defendant's care and custody to receiving only newspaper subscriptions and books purchased by Special Purchase Order (SPO) and received directly from publisher or vendor.
14. Plaintiff's publication and books are not available to any inmates in Kansas who have not purchased them through an SPO. This policy precludes inmates in defendant's care and custody from receiving free or gift subscriptions to plaintiff's publications or free or gift books.

#### PROCEDURES SPECIFIC TO LANSING CORRECTIONAL FACILITY

15. Inmates at defendant's Lansing Facility have been unable to receive unpaid subscriptions to plaintiff's publication or free or gift books from plaintiff because of defendant's regulations and other actions of defendant and his agents.
16. On February 7, 2001, Defendant's agent and employee Margie J Phelps, Lansing DWSS, issued an Interdepartmental Memorandum stating that:

In order to receive a magazine or newspaper,

1. You must purchase the periodical through the Business Office. The mailroom will keep a list from SPO's of all inmates who have made purchases through the Business Office. ...Otherwise...your magazine or newspaper will not be processed....

All periodicals received after March 19 that do not comply with these requirements will be sent to the visiting room (if appropriate) or destroyed.

17. This policy was modified by a subsequent memorandum from Margie J Phelps, DWSS on March 2, 2001, advising inmates that they could "grandfather" in one

periodical for up to 12 months from that date for periodicals not purchased through the business office. These policies apply to inmates at defendant's Lansing facility only.

18. Inmates at defendant's Lansing Facility cannot receive free copies of plaintiff's publication or free or gift books because of these regulations and procedures.

#### PROCEDURES SPECIFIC TO ELLSWORTH CORRECTIONAL FACILITY

19. Defendant's agents at Ellsworth Correctional Facility have issued General Order 16-103 (January 14, 2002), "Communication, Mail and Visiting," which prevents inmates at that facility from receiving free or gift subscriptions to plaintiff's publication or free or gift books because they are not purchased through an inmate's account with an SPO.
20. This order has the effect of denying inmates at the Ellsworth facility under defendant's care and control free or gift subscriptions to plaintiff's publication and free or gift books and precludes plaintiff from sending free or gift subscriptions to inmates at that facility.

#### PROCEDURES SPECIFIC TO EL DORADO CORRECTIONAL FACILITY

21. On June 20, 2001, General Order 16-102 was issued at defendant's El Dorado facility which, among other things, prevented the delivery to inmates of any magazine, newspaper or books which were not purchased by an inmate through an SPO directly from a publisher or vendor. Periodicals, including plaintiff's publication and free or gift books, which are not deliverable under this policy are destroyed or donated to the prison library.
22. Plaintiff is not notified of the nondelivery of its free or gift books or publications.

23. On July 10, 2000, El Dorado Deputy KDOC Warden Don E. Thomas, an agent of defendant's, issued an Interdepartmental Memorandum restricting newspaper subscriptions and books that inmates at his facility could receive to those purchased with an SPO by the inmate, not purchased by friends, family or donated by publishers.
24. This Memo was reiterated and supplemented by Interdepartmental Memorandum dated February 21, 2001 which stated that all books and newspapers not purchased with an SPO will not be delivered to inmates.
25. These memos have the effect of denying inmates at the El Dorado facility under defendant's care and control free or gift subscriptions to plaintiff's publication and free or gift books and preclude plaintiff from sending free or gift subscriptions to inmates at that facility.

#### PROCEDURES SPECIFIC TO HUTCHINSON CORRECTIONAL FACILITY

26. By Interdepartmental Memo of May 3, 1999, Warden Robert D Hannigan, an agent of defendant's, limited inmates under defendant's care and control from obtaining subscriptions and book orders unless they were purchased with a "Form 9 and withdrawal slip."
27. Plaintiff is precluded from sending free or gift copies of its publication or its books to inmates at defendant's Hutchinson facility because they are not purchased with a Form 9 and withdrawal slip.
28. Inmates at defendant's Hutchinson facility cannot receive free or gift subscriptions to plaintiff's publications or books because of defendant's policies.

#### PLAINTIFF'S LEGAL CLAIMS

FIRST CLAIM--DENIAL OF PLAINTIFF'S  
FIRST AMENDMENT RIGHTS

29. Defendant's refusal to allow inmates to receive books, magazines and other publications from plaintiff unless they are purchased from the inmate's correctional facility account with an SPO and only then where the amount of the purchase is less than \$30.00 is not rationally related to any neutral, legitimate penological objective.
30. Plaintiff Prison Legal News has no alternative means of exercising its First Amendment right to communicate with inmates who share its point of view.
31. There is no significant impact on the accommodation of plaintiff's right to communicate with inmates on the guards, other inmates and prison resources.
32. Defendant, his agents and employees, have acted and continue to act under color of state law in the adoption and enforcement of the regulations, memoranda and orders described more fully above.
33. Plaintiff does not have an adequate remedy at law.
34. Defendant's policy of refusing to permit inmates to receive and publishers to send books, magazines, and other publications unless they are paid for with funds from the inmates' SPO accounts and limiting such purchases to \$30.00 violates the First, Fifth and Fourteenth Amendments to the United States Constitution and Due Process of law.
35. Defendant has acted deliberately, arbitrarily and in violation of well-established law in denying plaintiff its rights to send free and gift subscriptions to inmates under defendant's care.

SECOND CLAIM--VIOLATION OF DUE PROCESS

36. Plaintiff has been denied its right to due process of law in that it has mailed and continues to mail free and gift subscriptions to its publication and free or gift books to inmates under the care and control of defendant, yet some of these publications and books are not delivered to these inmates and plaintiff is never notified of this non-delivery, given a reason for the non-delivery, or given an opportunity to contest these non-deliveries.
37. Plaintiff has been damaged in an amount to be proven at trial in that it has been deprived of potential paying subscribers who would subscribe after viewing free or gift subscriptions of plaintiff's publication.
38. Plaintiff has been damaged in an amount to be proven at trial in that friends, families and relatives of inmates under the care, custody and control of defendant have not subscribed to plaintiff's publication knowing that under the illegal and unconstitutional policies of defendant the publication would not be delivered to the intended recipient.
39. Plaintiff has been damaged in an amount to be proven at trial in that inmates under the care, custody and control of defendant are unable to purchase plaintiff's publication and books because of the arbitrary and capricious \$30.00 per month limitation on purchases including publications and books.
40. Defendant has knowingly, willfully and continually maintained and extended these policies after notification of court decisions rejecting similar regulations in other jurisdictions on constitutional grounds and after repeated requests from inmates and from plaintiff to modify or rescind his illegal and unconstitutional policies.

#### INJUNCTIVE RELIEF

41. A real and actual controversy exists between plaintiff and defendant which is ongoing in that plaintiff is unable to communicate its ideas to inmates under the care, custody and control of defendant due to the continued application of defendant's arbitrary, illegal and unconstitutional policies.
42. This controversy will continue until this Court grants preliminary and permanent injunctions ordering defendant to modify his illegal, arbitrary and unconstitutional policies to allow plaintiff to send free and gift subscriptions to its publication and free and gift books to inmates under the care, custody and control of defendant and to notify plaintiff whenever its books or publications are not delivered to an inmate.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests that this Court grant the following relief:

1. Declare unconstitutional and unlawful defendant's policy of refusing to allow inmates to receive books, magazines, and other publications directly from publishers unless they are paid for with funds from the inmates' SPO accounts ;
2. Declare unconstitutional and unlawful defendant's policy of refusing to allow inmates to receive books, magazines, and other publications from plaintiff and other publishers while they are on Level 1;
3. Declare unconstitutional and unlawful defendant's policy of refusing to allow inmates to order books or subscriptions which cost more than \$30.00.
4. Award plaintiff actual and punitive damages to be proven at trial for defendant's illegal and unconstitutional censorship of plaintiff's publication and books and his failure to notify plaintiff of its censorship, violation of plaintiff's due process

- rights and failure to deliver plaintiff's publications and books to inmates under the care, custody and control of defendant ;
5. Enter preliminary and permanent injunctions ordering defendant, his agents, employees, and all persons acting in concert with him to deliver to inmates in his care, custody and control free and gift books, magazines, and other publications from plaintiff and other publishers which are not otherwise barred from defendant's facilities that are not paid for with funds from the inmates' accounts;
  6. Award plaintiff reasonable costs and attorneys' fees pursuant to 42 USC § 1988; and
  7. Grant plaintiff such other relief as the Court deems just and reasonable in this matter.

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Bruce Plenk #17858  
16 East 13<sup>th</sup> St.  
Lawrence, KS 66044  
785 840-0077; FAX 842-3039  
Attorney for Plaintiff

#### REQUEST FOR PLACE OF TRIAL

Plaintiff requests that trial in this matter be set at Topeka, KS.