

STATE OF INDIANA) IN THE TIPPECANOE COUNTY COURT SYSTEM
)ss:
COUNTY OF TIPPECANOE) CAUSE NO. 79001-0901-00001 SUPERIOR COURT NO 1

JEFFREY MARK OLSON, on his own)
behalf and on behalf of a class of those)
similarly situated,)

Plaintiffs,)

v.)

TRACY BROWN, in his official capacity)
as Sheriff of Tippecanoe County,)

Defendant.)

FILED
2009 JAN -2 P 12: 21
CAME TO HAND
AT ___ O'clock ___ M.
JAN 07 2009
Tracy A. Brown
Sheriff of Tippecanoe County
LAFAYETTE, IN

**VERIFIED CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Introductory Statement

1. This is a class action lawsuit for declaratory and injunctive relief brought by Jeffrey Olson, who is presently confined in the Tippecanoe County Jail, against Sheriff Tracy Brown, who is the duly elected Sheriff of Tippecanoe County and who is therefore responsible for the operations of the jail. Mr. Olson seeks to enjoin the practices and/or policies of the defendant (a) whereby inmates' incoming mail from courts is opened outside the presence of the inmate to whom it is addressed; (b) whereby inmates' incoming mail that is clearly identifiable as legal mail is opened outside the presence of the inmate to whom it is addressed; (c) whereby inmates are not permitted reasonable access to the law library; and (d) whereby grievances filed by inmates do not receive a response within a reasonable period of time. These practices and/or policies violate Indiana law and the First and Fourteenth Amendments to the United States Constitution.
2. This action is brought pursuant to Indiana law and 42 U.S.C. § 1983.

Parties

3. Jeffrey Mark Olson is an adult male who is presently confined in Tippecanoe County Jail.
4. Tracy Brown is the duly elected Sheriff of Tippecanoe County, and is sued in his official capacity.

Class Action Allegations

5. This action is brought by the plaintiff on his own behalf and on behalf of a class of those similarly situated pursuant to Rule 23(A) and (B)(2) of the Indiana Rules of Trial Procedure.
6. The putative class is defined as follows:

Any and all persons currently confined, or who will in the future be confined, in the Tippecanoe County Jail.
7. All requirements of Rule 23(A) are met in this cause in that:
 - a. The class is so numerous that joinder of all members is impractical. The capacity of the Tippecanoe County Jail is five hundred forty-six (546), and it frequently operates at or near capacity.
 - b. There are questions of law or fact common to the class: whether conditions in the Tippecanoe County Jail and the treatment of persons confined to the Tippecanoe County Jail violate the United States Constitution and Indiana law.
 - c. The claims of the representative party are typical of those of the class.
 - d. The representative party will fairly and adequately protect the interests of the class.
8. The further requirements of Rule 23(B)(2) of the Indiana Rules of Trial Procedure are met in this cause in that the defendants, at all times, have acted or refused to act in a manner generally applicable to the class, thereby making final injunctive and declaratory relief appropriate with respect to the class as a whole.

Factual Allegations

9. Jeffrey Mark Olson is an adult male who is presently incarcerated in the Tippecanoe County Jail and has been since August 29, 2008.
10. The Tippecanoe County Jail is a holding facility for the Indiana Department of Correction, and therefore houses numerous persons who have been sentenced to the Department of Correction.
11. On or about November 1, 2003, Mr. Olson was sentenced to serve ten (10) years in the Indiana Department of Correction. Prior to serving this time, he was incarcerated in the Federal Bureau of Prisons. However, he has recently begun serving his state sentence, and is being held at the Tippecanoe County Jail pending his transfer to a different facility.
12. During his stay at Tippecanoe County Jail, Mr. Olson has experienced numerous problems that he felt should be resolved. Among these problems were the following:
 - He has a pending civil lawsuit in the United States District Court for the Eastern District of Kentucky, but upon his arrival at Tippecanoe County Jail, Mr. Olson's legal work was taken and placed in storage.
 - Mr. Olson has not been permitted access to the law library even though he is representing himself in a pending legal action and has experienced other legal problems.
 - Mr. Olson has received numerous orders and motions from the federal court in which his civil action is pending, but each of these documents was opened outside of Mr. Olson's presence and then given to him without the envelope.
 - Mr. Olson's legal mail, particularly legal mail from the ACLU of Indiana, was opened by jail staff outside of his presence, and he was provided with letters from attorneys but not with the envelope in which they came, and with the address and telephone number of the sender redacted from the letter itself.
 - Officers of Tippecanoe County Jail have provided Mr. Olson with the incorrect prescription medications.
 - The eating utensils and cups that are provided to Mr. Olson and other inmates are not clean, and the inmates are not provided with any instruments to wash or sanitize their own utensils.

- The Tippecanoe County Jail's library is out-of-date, and does not carry recent publications.
- The Tippecanoe County Jail charges ten dollars (\$10.00) for each medical visit and an additional seven dollars (\$7.00) for each medication, including each refill of previously prescribed medications.
- Mr. Olson believes that the commissary prices at the Tippecanoe County Jail, including the prices for pre-paid phone cards, are excessive.
- The Tippecanoe County Jail has not and does not respond to any of the grievances that have been filed by Mr. Olson, and does not provide inmates with copies of grievances when they are filed.

Mr. Olson therefore filed grievances over each of these issues, and kept a journal recounting his filed grievances. In this journal, Mr. Olson recorded the precise language of each grievance he filed and each appeal of this grievance contemporaneously with the filing of the grievances.

13. Pursuant to the grievance policy of Tippecanoe County Jail, an inmate who wishes to file a grievance over an issue may do so. After a grievance is filed, the jail is responsible for responding to the grievance within seven (7) days. If the inmate does not agree with this decision, he or she may appeal the decision. The jail then has ^{fifteen (15)}~~seven (7)~~ days to respond to the appeal. If the decision is still adverse to the inmate, at this point the grievance procedure has been exhausted.
14. On September 8, 2008, Mr. Olson received through the mail an envelope from the United States District Court for the Eastern District of Tennessee. On the outside, the envelope was clearly marked as originating from "Clerk, United States District Court." Prior to being tendered by jail staff to Mr. Olson, this envelope had been opened outside of his presence, and all staples from the documents had been removed. The member of the jail staff who presented the envelope to Mr. Olson explained that he did not understand the

first two (2) pages, which were print-outs from the federal court's electronic filing system. The envelope contained legal documents that had been filed in a lawsuit for which the plaintiff is representing himself.

15. On September 8, 2008, Mr. Olson submitted a grievance to the jail staff over the issue of the opening of legal mail. The jail did not respond to this grievance, and on September 18, 2008, Mr. Olson therefore submitted a grievance concerning the jail's failure to respond to his grievance and an appeal of the grievance that had received no response. To this date, the jail has not responded to either grievance, and Mr. Olson has therefore timely and properly exhausted the jail's grievance procedure. A true and correct copy of Mr. Olson's grievance and grievance appeal, which was completed by hand contemporaneously with the tender of these documents to jail staff, is attached and incorporated herein as Exhibit 1.
16. On October 17, 2008, Mr. Olson received through the mail an envelope from the Parke County Circuit Court. On the outside, the envelope was clearly marked as originating from "Clerk, Parke County Court, Kim Shorter." Prior to being tendered by jail staff to Mr. Olson, this envelope had been opened outside of his presence. The envelope contained legal documents that had been filed in a second lawsuit for which the plaintiff is representing himself.
17. On October 17, 2008, Mr. Olson submitted a grievance to the jail staff over the issue of the opening of legal mail. The jail did not respond to this grievance, and on October 26, 2008, Mr. Olson therefore submitted a grievance concerning the jail's failure to respond to his grievance and an appeal of the grievance that had received no response. To this date, the jail has not responded to either grievance, and Mr. Olson has therefore timely

and properly exhausted the jail's grievance procedure. A true and correct copy of Mr. Olson's grievance and grievance appeal, which was completed by hand contemporaneously with the tender of these documents to jail staff, is attached and incorporated herein as Exhibit 2.

18. Both on October 28, 2008, and on November 8, 2008, Mr. Olson received through the mail legal documents from courts. On the outside, both envelopes were clearly marked as originating from courts. However, prior to being tendered by jail staff to Mr. Olson, both envelopes had been opened outside of his presence. The envelope contained legal documents that had been filed in lawsuits for which the plaintiff is representing himself.
19. Mr. Olson has also received correspondence from various attorneys since his incarceration at Tippecanoe County Jail, and will continue to receive legal mail from various attorneys. In the past, he has received mail that had been previously opened by jail staff from the United States District Court for the Eastern District of Kentucky, the Parke County Circuit Court, the Office of the Federal Defender, and the ACLU of Indiana. Each piece of mail was clearly marked either with the return address of a court-of-law or with the phrase "legal mail." However, each piece of mail was opened outside of Mr. Olson's presence.
20. On September 18, 2008, Mr. Olson requested that he be permitted to visit the law library in order to conduct legal research concerning pending legal proceedings for which Mr. Olson is representing himself. Mr. Olson's request was denied, and he was informed by jail staff that access to the law library had been denied as punishment to all inmates of Tippecanoe County Jail who resided on C-Pod. Mr. Olson did not know what the C-Pod inmates were being punished for. Mr. Olson subsequently requested that he be permitted

to visit the law library on numerous occasions. However, to this date, he has not been permitted to visit the law library.

21. On September 18, 2008, Mr. Olson submitted a grievance to the jail staff over this issue. The jail did not respond to this grievance, and on September 29, 2008, Mr. Olson therefore submitted a grievance concerning the jail's failure to respond to his grievance and an appeal of the grievance that had received no response. To this date, the jail has not responded to either grievance, and Mr. Olson has therefore timely and properly exhausted the jail's grievance procedure. A true and correct copy of Mr. Olson's grievance and grievance appeal, which was completed by hand contemporaneously with the tender of these documents to jail staff, is attached and incorporated herein as Exhibit 3.
22. Since his arrival at Tippecanoe County Jail on August 29, 2008, Mr. Olson has submitted at least twenty-one (21) grievances and at least twenty-one (21) grievance appeals to the jail staff. Many of these grievances were submitted in August or September of 2008. Of these grievances, not one has received a response.
23. On October 25, 2008, Mr. Olson submitted a grievance to the jail staff over their failure to respond to grievances. The jail did not respond to this grievance, and on November 7, 2008, Mr. Olson therefore submitted an appeal of the grievance that had received no response. To this date, the jail has not responded to Mr. Olson's grievance, and Mr. Olson has therefore timely and properly exhausted the jail's grievance procedure. A true and correct copy of Mr. Olson's grievance and grievance appeal, which was completed by hand contemporaneously with the tender of these documents to jail staff, is attached and incorporated herein as Exhibit 4.

24. Mr. Olson is presently proceeding *pro se* in a civil lawsuit in the United States District Court for the Eastern District of Kentucky and in a separate lawsuit in Parke County, Indiana, and requires reasonable access to the law library in order to represent himself in these matters.
25. The Tippecanoe County Jail has a practice or policy of opening and reading mail from various courts, including orders and motions that have been filed in cases in which the inmate is a party, outside of the presence of the inmate.
26. The Tippecanoe County Jail has a practice or policy of opening clearly identifiable legal mail, including legal mail from the ACLU of Indiana, outside of the presence of the inmate to whom the mail is addressed.
27. The Tippecanoe County Jail has a practice or policy of refusing to permit inmates reasonable access to the law library.
28. The Tippecanoe County Jail has a practice or policy of failing to respond to grievances filed by inmates.
29. As a result of these practices or policies of the Tippecanoe County Jail, the plaintiff and the members of the putative class are suffering irreparable harm for which there is no adequate remedy at law.
30. The defendant has, at all times, acted or refused to act under color of state law.

Legal Claims

31. Tippecanoe County Jail's practice or policy of opening mail from courts outside the presence of the inmate to whom it is addressed violates the First and Fourteenth Amendments to the United States Constitution and Indiana law, IND. ADMIN. CODE tit. 210, r. 3-1-16(c).

32. Tippecanoe County Jail's practice or policy of opening mail that has been marked as legal mail outside the presence of the inmate to whom it is addressed violates the First and Fourteenth Amendments to the United States Constitution and Indiana law, IND. ADMIN. CODE tit. 210, r. 3-1-16(c).
33. Tippecanoe County Jail's practice or policy of refusing to permit inmates reasonable access to the law library violates Indiana law, IND. ADMIN. CODE tit. 210, r. 3-1-16(c).
34. Tippecanoe County Jail's practice or policy of failing to respond to grievances filed by inmates within a reasonable period of time violates Indiana law, IND. ADMIN. CODE tit. 210, r. 3-1-15(a).

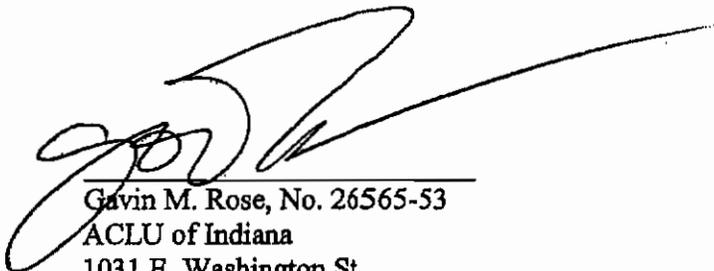
Request for Relief

WHEREFORE, the plaintiff and the putative class respectfully request that this Court:

1. Accept jurisdiction of this cause and set it for hearing.
2. Certify this cause as a class action with the class as defined above.
3. Declare that the defendant has violated the rights of the plaintiff and the class for the reasons specified in paragraphs 35 through 38, above.
4. Issue a preliminary injunction, later to be made permanent, enjoining the defendant from (a) opening inmates' incoming mail from courts outside the presence of the inmate to whom it is addressed; (b) opening inmates' incoming mail from attorneys that is clearly identifiable as legal mail outside the presence of the inmate to whom it is addressed; (c) failing to permit inmates to have reasonable access to the law library; and (d) failing to respond to grievances filed by inmates within a reasonable period of time.
5. Award the plaintiff and the class their costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

6. Award all other proper relief.

Respectfully submitted,



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*Attorneys for the plaintiff and the putative
class*

VERIFICATION

I hereby verify, under penalties for perjury, that the foregoing statements are true and correct to the best of my information and belief.

DATE Jan 2, 2009

Jeffrey Mark Olson
JEFFREY MARK OLSON, Plaintiff