

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PRISON LEGAL NEWS,

Plaintiff,

v.

ANTHONY BETTERTON, et al.,

Defendants.

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Case No. 2:12-CV-699-JRG

AGREED FINAL JUDGMENT

IT IS HEREBY AGREED by and between the undersigned counsel for Plaintiff and Defendants (collectively, the “Parties”), and the Court finds and orders as follows:

1. On November 1, 2012, Plaintiff Prison Legal News (“PLN”) filed its Complaint in this matter, seeking injunctive and declaratory relief, damages, and attorneys’ fees and costs against the Defendants. The Complaint alleged an unlawful policy, practice and custom of censoring incoming magazines, periodicals, and mail addressed to prisoners at the Upshur County Jail in violation of the First and Fourteenth Amendments to the United States Constitution and Article I, Section 8 of the Texas Constitution. The Complaint also alleged violations of due process of law for failure to give PLN notice of rejected mail and an opportunity to appeal those rejection decisions.

2. Also on November 1, 2012, PLN filed its Motion for Preliminary Injunction, requesting an injunction prohibiting Defendants from continuing to censor publications at the Upshur County Jail. The Court granted PLN’s motion in part and entered a preliminary injunction on September 30, 2013.

3. Defendants Anthony Betterton, Jill McCauley, and Upshur County, Texas, (“Defendants”) have denied the allegations of the Complaint and raised various affirmative defenses.

4. The Parties have advised the Court that a settlement has been reached in this case and, in connection therewith, the Parties have agreed to the following terms and conditions regarding censorship of incoming magazines, periodicals, and mail addressed to prisoners at the Upshur County Jail:

(A) Defendants have agreed to adopt and implement a new written policy and procedure regarding correspondence and incoming publications for prisoners at the Upshur County Jail, attached hereto as Exhibit A – Correspondence and Incoming Publications Plan (the “New Policy”). These procedures shall govern the review, handling, and distribution of all future correspondence and incoming publications to individuals in custody of the Upshur County Jail—including, but not limited to, those sent by PLN.

(B) Subject to the restrictions contained in the New Policy, Defendants agree to distribute publications such as Plaintiff’s monthly journal, *Prison Legal News*, and PLN’s other publications including its brochures, letters, books, and magazines to inmates currently housed at the Upshur County Jail and to provide constitutionally adequate notice to senders, such as PLN, and inmates and an opportunity to appeal in accordance with the New Policy when mail is censored or rejected.

5. The Parties agree, and the Court orders, that Defendants will establish, implement, and enforce the policies and procedures set forth in the New Policy.

6. The Parties further agree, and the Court orders, that within 30 days of the date of entry of this Agreed Judgment, Defendant Sheriff Anthony Betterton or his designee will ensure that the

New Policy has been fully implemented. This includes disseminating a copy of the New Policy to all employees of the Upshur County Jail and confirming that each recipient has read the same, disseminating the New Policy to members of the general public by posting it conspicuously on a website maintained by or on behalf of the Upshur County Sheriff's Office, and disseminating a copy of the New Policy to inmates by including it in the inmate handbook and by posting a copy in common areas for at least fourteen days.

7. Defendants will file with the Court written confirmation of their compliance with the terms set forth in this Agreed Judgment no later than ninety (90) days after the date of its entry.

8. The Parties agree that the provisions herein fully and fairly accommodate their interests regarding the claims asserted in this suit, that the Court should adopt and approve this Agreed Judgment, and that this Agreed Judgment (together with the Parties' Settlement Agreement and the New Policy) resolves all claims alleged by PLN in this case.

9. PLN's claims against Defendants are dismissed with prejudice pursuant to the Parties' Settlement Agreement and this Agreed Judgment. This Court retains jurisdiction of this action to enforce the terms of the Parties' Settlement Agreement and this Agreed Judgment and to resolve any disputes regarding compliance with the New Policy.

10. The Parties agree to execute the Settlement Agreement within seven (7) days of filing the Agreed Final Judgment. After the Parties have executed the Settlement Agreement, on or before December 13, 2013, the Agreed Final Judgment will become final.

SO ORDERED.

AGREED TO IN SUBSTANCE AND IN FORM:

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Exhibit A

Upshur County Correspondence and Incoming Publications Plan

UPSHUR COUNTY SHERIFF'S OFFICE
JAIL DIVISION
CORRESPONDENCE AND INCOMING PUBLICATIONS PLAN

I. OBJECTIVE

The objective of this Correspondence and Incoming Publications Plan is to provide for the handling of privileged and non-privileged correspondence, both outgoing and incoming, and for the collection and distribution of that correspondence. For purposes of this plan, the terms "correspondence" and "mail" are defined to include all incoming publications, such as periodicals, newspapers, magazines, and books sent to inmates.

II. GENERAL

Inmates are allowed to send as many letters of as many pages as they desire, to whom ever they desire (unless prohibited by law, e.g. protective and restraining orders), provided they can pay for postage and supplies. Inmates may receive correspondence in any quantity, amount and number of pages, and will be allowed to retain writing materials, stamps and correspondence in reasonable amounts.

Inmate to inmate correspondence is allowed, provided it is routed through the postal service.

Inmate mail will normally be delivered to inmates on the same day it is received from the postal service. Outgoing mail is picked up by 10 a.m. each day and will be delivered to the postal service on the same day it is received from the inmates.

III. INDIGENT MAIL

If requested, indigent inmates shall be provided with a reasonable amount of writing materials and postage to correspond with their attorneys and the courts, and a sufficient amount to post three (3) personal letters per week. A negative balance will be maintained on the inmate's commissary account for indigent postage and correspondence supplies. Should one of these inmates receive monies in excess of \$5.00, the amount will be deducted from his/her account. The inmate will be advised of this action in writing.

IV. PROHIBITED MAIL

Some correspondence may be rejected, on a case-by-case basis, provided it falls under one of the following definitions:

- a. Material that contains information regarding the manufacture of explosives, weapons, or drugs;

- b. Material that a reasonable person would construe as written solely for the purpose of communicating information designed to achieve the breakdown of jails through inmate disruption such as strikes or riots;
- c. Material for which a specific factual determination has been made that it is detrimental to inmate's rehabilitation because it would encourage deviant, criminal, or sexual behavior or otherwise be adverse to legitimate penological interests.

The inmate and the sender will be informed within five days of any rejection of mail pursuant to (a), (b), or (c) above, or Section (VI), below. Notice to the inmate and the sender shall include the specific reason for rejection; notice of the opportunity for appeal; and specific information regarding the procedures for requesting an appeal. Notice to the sender shall be deemed to be given three days after such is postmarked as first-class mail, postage prepaid, properly addressed and placed within the care of the United States Postal Service. Notice to the inmate shall be deemed to be given when hand-delivered to the inmate while incarcerated in the Upshur County Jail. If the inmate is no longer held in the Upshur County Jail, no notice to the inmate is required. The inmate or the sender or both may request an appeal within 14 days of their notice of rejection.

Appeals shall be considered and decided by the Sheriff of Upshur County, Texas ("Sheriff") within five days of receipt of a request for appeal. If the Sheriff is unable to hear an appeal within the time allotted, the Chief Deputy Sheriff of Upshur County ("Chief Deputy") may consider and decide the appeal. If both the Sheriff and the Chief Deputy are unable to hear an appeal within the time allotted, the Chief Jail Administrator for Upshur County, Texas may consider and decide the appeal. Appellants shall be informed in writing of the hearing official's decision within 72 hours of the decision being made.

Any rejected mail will be retained and filed in the inmate's personal property file. Each letter or publication will be accepted or rejected individually. If a prisoner refuses delivery of mail, the Jail shall obtain a written confirmation signed by the prisoner and so indicating such refusal.

Any mail received for an inmate which is not delivered because the inmate is no longer in custody when the mail is received at the Upshur County Jail shall not be considered rejected mail under these provisions.

V. PRIVILEGED MAIL

Correspondence addressed to or received from the following persons or organizations is considered privileged:

1. Officials and other personnel of the federal, state, and local courts;
2. All federal officials and officers, including the President of the United States;
3. State officials and officers, including the Texas Commission on Jail Standards and the Governor;
4. Representatives of bona fide news media; and
5. Mail marked "Legal Mail" or "Attorney-Client Privileged."

Correspondence received from individuals described in these categories shall not be read by staff nor interfered with; however it should be opened and inspected for contraband, but only in the presence of the inmate. If there is probable cause to suspect that the incoming letter is part of an attempt to formulate, devise, or otherwise effectuate a plan to escape from the jail, or to violate state or federal laws, officials shall obtain a search warrant prior to opening and reading the correspondence of the individual involved. Correspondence sent to the above mentioned individuals may not be opened or interfered with unless a search warrant is obtained.

If privileged mail is rejected as prohibited mail under Section IV above, both the sender and recipient shall be notified of the reason for such action and will be presented with the opportunity for an appeal as described in Section (IV) above.

VI. NON PRIVILEGED MAIL

Non-privileged mail is defined as all mail which is not subject to a privilege. All incoming or outgoing non-privileged mail may be read. If contraband is found or if the content of the correspondence threatens a legitimate penological interest, it may be confiscated and the inmate and the other correspondent will both be advised of this action. A copy of the original correspondence shall be retained pending disposition of any appeals.

Contraband defined in the penal code or code of criminal procedure as illegal shall be turned over to the criminal investigation division and disposed of according to law. If currency, money orders, or checks are discovered in either incoming or outgoing mail, they will be deposited into the inmate correspondent's individual trust fund account.

Outgoing non-privileged correspondence is delivered unopened to the jail staff. The staff person may choose to read a letter, should s/he feel it is advisable to do so.

A log will be kept of all incoming and outgoing correspondence and will include the name and address of both the sender and the addressee.

Inmates may receive only correspondence through the mail. No clothing, shoes, food, etc. are allowed. Publications such as newspapers, books, magazines, newsletters, brochures, and other written correspondence are all specifically allowed, as are newspaper clippings, pages from magazines, internet downloads, printouts of web pages and/or email messages, and any other type of written material which a) does not pose a threat to any of the Defendants' legitimate penological interests and b) is not considered contraband.

In the event that any correspondence or its contents is destroyed, withheld, or otherwise censored (beyond being opened and read) in accordance with the terms of this section, both the sender and recipient shall be notified of the reason for such action and will be presented with the opportunity for an appeal as described in Section (IV) above.