

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

-----)	
PRISON LEGAL NEWS,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
FULTON COUNTY and	)
SHERIFF MYRON FREEMAN,	)
individually and in his official	)
capacity as Fulton County Sheriff,	)
	)
Defendants.	)
-----)	

CIVIL ACTION  
FILE NO. 1:07-CV-2618-CAP

**AMENDED COMPLAINT**

**COMES NOW** Plaintiff PRISON LEGAL NEWS and files this **Amended Complaint** challenging Fulton County and Fulton County Sheriff Myron Freeman’s policy barring prisoners’ receipt of any and all books, magazines, and newspapers (other than religious publications). This policy is challenged both on its face, and as applied to *Prison Legal News*. Despite an order in *Daker v. Barrett*, No. 1:00-CV-1065-RWS (July 22, 2002) finding this Reading Materials Policy unconstitutional, the policy is still being applied as to *Prison Legal News*, whose subscribers’ copies of the publication are being returned to the sender. **This Amended Complaint**

**addresses the new policy adopted after this lawsuit, as well as the revisions to the new policy enacted in consultation with Plaintiffs.**

**JURISDICTION**

1.

This action arises under the authority vested in this Court by virtue of 42 U.S.C. §§ 1983 & 1985, 28 U.S.C. § 1331, 28 U.S.C. §§ 2201 & 2202, 28 U.S.C. § 1343(3) and 28 U.S.C. § 1367 (pendent jurisdiction). Venue is proper in this Court.

**PARTIES**

2.

Plaintiff PRISON LEGAL NEWS publishes a subscriber based publication for inmates, lawyers and advocates about prison issues in the United States and abroad.

3.

Defendant FULTON COUNTY oversees and is responsible for the Fulton County Jail. Defendant MYRON FREEMAN is the Fulton County Sheriff and is responsible for establishing final policies and procedures for the Fulton County Jail relating to inmate mail.

## **FACTUAL ALLEGATIONS**

### **Prison Legal News**

4.

*Prison Legal News* (PLN) is an independent, monthly magazine that provides review and analysis of prisoner rights, court rulings and news about prison issues. PLN has a national focus on both state and federal prison issues, with international coverage as well. PLN provides information that enables prisoners and other concerned individuals and organizations to seek the protection and enforcement of prisoner's rights at the grass roots level.

5.

PLN began operations in 1990 and is a 501(c)(3) non-profit organization. PLN's business office is located in Seattle, Washington. PLN's editorial office is located in Brattleboro, Vermont.

6.

PLN is primarily funded by subscription and advertising revenue and book sales and individual donations.

7.

PLN's coverage includes articles regarding court access, disciplinary hearings, prison conditions, excessive force, mail censorship, jail litigation, visiting,

telephones, religious freedom, free speech, prison rape, abuse of women prisoners, retaliation, the Prison Legal Reform Act (PLRA), medical treatment, AIDS, the death penalty, control units, attorney fees and much more.

8.

As of May 2007 PLN has a circulation of approximately 6,700 hardcopy issues per month. PLN also has subscribers in European and Asian countries. About 65% of PLN's subscribers are state and federal prisoners. The balance of PLN's subscribers include civil and criminal trial and appellate attorneys, public defender agencies, judges, journalists, academics, paralegals, public and university libraries, prison law libraries, investment bankers, prison rights activists, students, family members of prisoners and concerned private individuals. State-level government officials also subscribe to PLN, including attorney generals, prison wardens, and members of other prisoner related agencies. PLN has prisoner subscribers in all fifty states. Based on PLN's November 2005 reader survey each subscriber's magazine is read by an average of almost 9 people, so the monthly readership of PLN is around 54,000.

9.

PLN has "regular" writers and also solicits and publishes articles written by other writers, many of them in prison. Authors who have published in PLN include:

Noam Chomsky, Dan Savage, William Kunstler and Ron Kuby, Mumia Abu-Jamal, Ken Silverstein, Jennifer Vogel, Adrian Lomax, Raymond Luc Levasseur, John Perotti, Willie Wisely, Christian Parenti, William Greider, and Noelle Hanrahan.

**Fulton County Mail Policy**

10.

The Fulton County Jail has a policy, adopted and/or ratified by Defendant-Freeman as final decision-maker for Defendant Fulton County, that reading materials mailed to inmates are returned to the sender without notice to the inmate-subscriber. The policy provides: “Books, magazines, and newspapers for inmates shall not be accepted. The only exceptions are religious publications (soft covered), that is ordered directly from the publisher or provided by approved religious groups. Copies of books or publications, etc., shall not be accepted.” (hereinafter “Reading Materials Policy”) (Policy V (J)(1) titled “Inmate Mail Procedures” dated January 1, 2002). This policy was continued, affirmed and/or ratified by Defendant Freeman by order dated January 3, 2005.

11.

The Reading Materials Policy was challenged by an inmate, and found to be unconstitutional in *Daker v. Barrett*, No. 1:00-CV-1065-RWS (July 22, 2002).

12.

Clearly established law dictates the unconstitutionality of the Reading Materials Policy.

13.

Since the *Dakar* decision, Defendants have failed to abandon the Reading Materials Policy. Several inmates have filed additional lawsuits challenging the policy, and continued denial of reading materials. *See, e.g., Daker v. Barrett*, No. 1:05-MI-0398 (Dec. 28, 2005); *Robertson v. Freeman*, No. 1:06-CV-01940-CAM (Aug. 1, 2006).

14.

PLN has several subscribers to its publication housed in the Fulton County Jail. These inmates are sent copies of PLN by standard, first-class mail.

15.

These subscribers have not received their copies of PLN, and have reported filing grievances concerning the publication ban.

16.

Copies of PLN, sent to inmate-subscribers, have been returned to PLN by the Defendants or destroyed. PLN has also been informed by subscriber-inmates that they have not received copies of PLN. PLN is only aware of one copy of its

publication reaching a subscriber in the Fulton County Jail in the last year.

17.

PLN has suffered financial damages, as well as particularized loss of their constitutional rights.

18.

Because Defendant-Freeman has continued to engage in the constitutionally impermissible Reading Materials Policy for several years since a finding of unconstitutionality, and in the face of several lawsuits and grievances, punitive damages are available due to his reckless, and deliberate indifference to constitutional rights and his actual knowledge of continued enforcement of unconstitutional policies.

19.

All actions of defendants were under color of law and pursuant the policies and procedures of Fulton County.

Amended Publications Policy

20.

This lawsuit was filed on October 27, 2007 challenging the then-existing Fulton County Jail's publications policy.

21.

The parties have engaged in settlement discussions and correspondence on issues concerning the policy, damages and attorneys fees since the filing of this action. Much progress has been made, but issues remain.

22.

On January 4, 2008, Defendants adopted a new publications policy a true and correct copy of which is attached hereto as Exhibit "A". Plaintiff had not previously viewed said amended policy.

23.

The following week, Plaintiff submitted a memoranda to Defendants outlining concerns with the constitutionality of the revised policy including the (1) the lack of notice to the sender for rejected publications, (2) the bar on publications sent by a distributor (as opposed to the publisher itself), and (3) the preference for religious publications over non-profit publications.

24.

On February 4, 2008, this Court held a hearing on Plaintiff's Motion for a Preliminary Injunction and entered an order granting said injunction, specifying that "defendants are HEREBY ENJOINED from the use of the old mail policy; the defendants are REQUIRED to enforce the new mail policy; and the defendants are



REQUIRED to inform the plaintiff and the court should it make any change to the new policy.”

25.

Subsequently, in February 2008, as the result of further settlement discussions, the Plaintiffs provided proposed revisions to the policy to address concerns with the constitutionality of the new policy.

26.

The parties have reached an agreement concerning the language of the revised policy that adequately addresses the concerns of Plaintiff.

27.

The revised policy, incorporating Plaintiff's concerns, is awaiting adoption by the Defendants.

28.

The Plaintiff has received a report from inmates that magazines continue to be rejected for delivery at the jail in reliance by jail staff upon the now enjoined former publications policy.

29.

Absent an order enjoining the Defendants to follow the new policy, as amended, it is not absolutely clear that they will not return to the old policy or fail to

abide by the new policy in light of the previous finding of unconstitutionality, several subsequent lawsuits identifying the prior ruling and determination of unconstitutionality, Defendants failure to correct the policy over several years and Defendants failure to fully comply with their new policy even after this Court's injunction.

### CAUSES OF ACTION

30.

Each and every allegation is incorporated herein for each claim for relief.

31.

Plaintiff has a free speech and press right to communicate with inmates through the distribution of *Prison Legal News* and inmates retain a right to receive the publication under the United States and Georgia Constitutions' free speech, free press and due process clauses.

32.

The Fulton County Jail's **former** absolute ban on subscription publications is in violation of the free expression protections of the United States and Georgia Constitutions.

33.

There are no individualized determinations made about particular publications by the Fulton County Jail **under its former policy**.

34.

A blanket prohibition on receipt of publications intended for delivery to and receipt by a prisoner is presumptively unconstitutional.

35.

The Fulton County Jail's **former** absolute ban on subscription publications is (1) overbroad and overinclusive, (2) arbitrary and capricious, (3) not reasonably related to legitimate penological interests and (4) gives unbridled discretion to licensing authorities in violation of the Due Process and Free Speech and Press protections of the United States and Georgia Constitutions.

36.

The Fulton County Jail's **former** absolute ban on subscription publications is not rationally related to a legitimate, neutral government objective, there are no alternate means for Plaintiffs or inmates to express themselves, the accommodation of the constitutional rights asserted will not have a detrimental impact on prison staff, inmates and the allocation of jail resources and the outright ban is an exaggerated response to prison concerns.

37.

The Fulton County Jail's **former** ban on subscription publications does not bear a logical connection between any asserted governmental interests and is too broad to render its absolute ban rational.

38.

The handful of publications in the Fulton County Jail library, primarily works of fiction provided when an inmate trustee pushes a cart through each zone periodically, provide insufficient alternative reading material for inmates, and Plaintiff has no alternative manner for communicating with their subscribers. On information and belief, no magazines or newspapers are available in the jail library and the *Atlanta Constitution* is the only publication sold in the jail commissary.

39.

Defendants cannot articulate or particularize a detrimental impact on prison staff, inmates or prison resources that would justify either the blanket ban or a particular ban on the distribution of the *Prison Legal News*. Distribution of publications through the regular mail distribution procedures would not create an excessive burden.

40.

The Fulton County Jail's **former** absolute ban on subscription publications is an exaggerated response in light of obvious alternatives such as (1) a "publishers only rule," (2) individualized determinations for security concerns, (3) utilization of disciplinary action if particular inmates abuse the mail/publications process.

41.

The Fulton County Jail's **former** absolute ban on subscription publications is also accompanied by a failure to notify inmates or PLN that publications have been rejected. The failure to notify inmates and PLN of the denial of publications impact the Plaintiff who has undertaken financial expense to maintain subscribers and to ensure delivery of the *Prison Legal News*. This failure to notify subscribers or Plaintiff or to provide a reasonable opportunity to challenge decisions to refuse distribution of publications to a neutral decisionmaker not involved in the initial decision violates procedural due process requirements of the United States and Georgia Constitutions.

42.

The **former** Reading Materials Policy states one exception to the absolute ban: "The only exceptions are religious publications (soft covered), that is ordered directly from the publisher or provided by approved religious groups." This exception

renders the Reading Materials Policy a content-based restriction on speech that favors religious expression in violation of the free expression, equal protection and separation of church and state provisions of the United States and Georgia Constitutions.

43.

The case law is clear as to the constitutional claims, and a previous decision held that the Defendants conduct was unlawful over five years ago. Defendant Freeman, individually, is not entitled to qualified immunity and his actions meet the requirements for punitive damages. Damages are not sought against Defendant-Fulton County.

### **PRAYERS FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court grant the following relief:

(a) Declaratory judgment that the Fulton County Jail's **former** Reading Materials Policy, an absolute ban on subscription publications, violates the Free Expression and Due Process clauses of the United States and Georgia Constitutions;

(b) Preliminary and Permanent Injunctive Relief against further enforcement of the **former** Fulton County Jail's Reading Materials Policy **and an order requiring that Defendants comply with the current policy as amended** per the agreement of counsel for the parties;

(c) Preliminary and Permanent Injunctive Relief permitting distribution of the *Prison Legal News*;

(d) Preliminary and Permanent Injunctive Relief requiring notification to PLN of any failure to distribute copies of the *Prison Legal News*;

(e) Nominal, compensatory and punitive damages against Defendant-Freeman in his individual capacity in an amount to be determined by a jury;

(f) Reasonable attorneys' fees, expenses and costs of litigation pursuant to 42 U.S.C. § 1988 and other applicable laws; and

(g) Such further relief as this Court deems just and proper.

DATED: This the 25<sup>th</sup> day of March, 2008.

Respectfully submitted,

S/ GERALD WEBER  
Georgia Bar No. 744878

Post Office Box 5391  
Atlanta, GA 31107  
Tel: (404) 522-0507  
Email: [wgerryweber@gmail.com](mailto:wgerryweber@gmail.com)

S/ G. BRIAN SPEARS

Bar No. 670112

1126 Ponce de Leon Ave., N.E.  
Atlanta, Georgia 30306  
Tele: (404) 872-7086  
Fax: (404) 892-1128  
Email: [Bspears@mindspring.com](mailto:Bspears@mindspring.com)

Attorneys for Plaintiff





# Fulton County Sheriff's Office

## Jail Bureau Policies and Procedures

<b>Effective Date:</b> January 4, 2008	<b>Number:</b> 3000-01	<b>Pages:</b> 7
<b>Subject:</b> Mail, Telephone, Visiting/Program and Activity <b>Index:</b> Inmate Mail Procedures		<b>Distribution:</b> All Jail Bureau Personnel
<b>References:</b> 4-ALDF-2A-60, 5B-05 thru 5B-10		<b>Amends/Rescinds:</b> May 21, 2007
<b>Approving Authority Signature:</b> <i>M. E. [Signature]</i>		<b>Review:</b> Annually

### I. Purpose

To describe the procedures that shall be used by Jail Bureau personnel to process inmates' correspondence and packages.

### II. Policy

- A. Inmates in special management units can write and receive letters on the same basis as inmates in the general population.
- B. When the inmate bears the mailing cost there is no limit on the volume of letters he/she can send or on the length, language, or content, of mail, except when there is a reasonable belief that limitations are necessary to protect public safety or maintain facility order and security.
- C. Indigent inmates receive a specified postage allowance to maintain community ties, and necessary postage for privileged correspondence.
- D. Inmates have access to publications.
- E. Inmate mail, both incoming and outgoing, may be opened to intercept cash, checks, and money orders and to inspect for contraband. Mail is read, censored, and rejected based on legitimate facility interests of order and security. Inmates are notified, in writing, when in-coming or outgoing letters are withheld in part or in full.
- F. Inmates are permitted to send sealed letters to a specified class of persons and organizations, including, but not limited to, the following: courts; counsel; officials of the confining authority; state and local chief executive officers; administrators of grievance systems; and members of the paroling authority. Staff, in the presence of the inmates, may be allowed to inspect outgoing privileged mail for contraband before it is sealed. Mail to inmates from these specified classes of persons and organizations may be opened only to inspect for contraband and only in the presence of the inmate, unless waived in writing, or in circumstances which indicate contamination or other imminent threat to health and safety.
- G. Excluding weekends and holidays or emergency situations, incoming and outgoing letters are held for no more than 24 hours and packages are held for no more than 48 hours.

### III. Scope

This policy shall apply to all Jail Bureau personnel.

### IV. Definitions

#### A. Privileged Correspondence

Privileged correspondence is defined as mail between inmates and attorneys; legal aid services and other agencies providing legal services to inmates or paraprofessionals having a bona fide association with such agencies or attorneys; judges and clerks of federal, state, and local courts; grand juries; law enforcement agents or agencies; the media or public officials and their authorized representatives acting in official capacities.

#### B. Non-Privileged Correspondence

Non-privileged correspondence is defined as that correspondence that is not classified as privileged.

#### C. Rejected Mail

Correspondence or material that is sexually explicit, poses a threat to the security, order or discipline of the facility or that facilitates criminal activity.

#### D. Indigent Inmate

An inmate with a balance of three dollars (\$3.00) or less in his/her account for fourteen (14) consecutive days.

### V. Procedures

#### A. General Guidelines

1. Written policies and procedures that govern inmate correspondence are made available to both staff and inmates.
2. During the orientation process, inmates are informed of the mail procedures. This information is also stated in the *Inmate Handbook*.
3. Inmates in special management housing units can send and receive mail in the same manner as inmates in general population.
4. As long as an inmate can afford postage, **limitation shall not be imposed on the volume of mail sent**, or on the length, language, or content of mail, unless there is a reasonable belief that such limitations are needed to protect public safety, or the secure and orderly operation of the facility.

5. Incoming and outgoing mail shall not be held for more than twenty (24) hours and packages will not be held for more than 48 hours, excluding weekends and holidays.
6. Inmate mail privileges shall not be withdrawn as a form of punishment, except for violation of mail rules. Otherwise, *inmate mail can only be stopped or suspended by a Court Order.*
7. Both incoming and outgoing mail may be opened, inspected for contraband, read and censored and will be rejected if there is a reasonable belief that there is an imminent threat to persons or the security of the facility. Inmates are notified if incoming or outgoing mail is withheld in full or part.
8. If an inmate's mail is censored or rejected, the inmate and/or sender shall be notified of the reason(s) for the action. Inmates shall have the opportunity to appeal such decisions by submitting their appeal to the Inmate Grievance Division of the Legal Affairs Bureau.
9. Mail received for persons not in custody at the Fulton County Jail on the date of receipt of mail shall be returned to the Post Office. The Fulton County Jail does not operate a forwarding or return mail service.
10. Mail Room personnel shall maintain a **Daily Log** of all mail that is returned to the sender.

#### **B. Inmate Mail Limitations**

1. Inmates are prohibited from corresponding with inmates within the jail or with inmates in another jail or correctional facility, without written approval from the Chief Jailer.
2. Inter-relations mail [married couples or immediate family members] may be approved by the Chief Jailer. Inmates must submit a *Request to Communicate with an Incarcerated Family Member Form* for approval.
3. The Chief Jailer shall return the form to the inmate, stating if the request was denied or approved. If the request is approved, the Chief Jailer may include stipulations.
4. Transfer of funds from one inmate to another is prohibited, unless authorized by the Sheriff.

#### **C. Indigent Inmates**

1. For the purpose of establishing indigence, an inmate shall have three (\$3.00) or less in his/her account for fourteen (14) consecutive days. Verification of indigence shall be established within two (2) days after the inmate has submitted an indigent request to the Commissary.
2. Indigent status may be reassessed at the Commissary's discretion.
3. If the inmate qualifies as indigent, he/she may receive free stamps to allow for up to

five (5) privileged and five (5) non-privileged mailings every two (2) weeks. The Jail Bureau provides inmates without financial resources non-privileged mailings in the support of community ties (corresponding with family and friends).

#### D. Privileged Mail

1. Inmates are permitted to send sealed privileged mail to a specified class of persons and organizations, including but not limited to: Courts, officials of the confining authority; state and local chief executive officers; administrators of grievance systems; and members of the paroling authority. Incoming privileged mail **may only be opened to inspect for contraband in the presence of the inmate, unless waived by the inmate in writing or the mail is received in circumstances which indicate contamination or other imminent threat to health and safety.**
2. Mail Room staff shall stamp all privileged mail "**Legal Mail.**"
3. Staff shall deliver privileged mail to inmates Monday through Friday, and shall open the mail in the inmates' presence to intercept monies or other forms of contraband.
4. An ***Incident Report*** shall be written if contraband is found in privileged mail. The sender shall be notified by the Chief Jailer or designee that the contraband has been seized. If contraband is seized, the seizing staff member shall promptly deliver it to the watch commander for determination of appropriate action(s). The chain of custody shall be properly maintained.
5. Contraband that is legal outside correctional institutions shall be returned to the sender unless perishable. Perishables shall be disposed of.
6. Outgoing privileged mail shall not be opened, but may be held for a reasonable time not to exceed seventy-two (72) hours pending verification that is properly addressed to a person or agency, which falls under the privilege category (judges, the courts, etc.).

#### E. Outgoing Mail Procedures

1. Inmates are permitted unlimited and uncensored correspondence with anyone, with the exception of other inmates. Outgoing mail ***shall not be limited***, unless such mail violates standard operating procedures, federal or state laws, or by court order.
2. Outgoing mail may be opened and the contents inspected to determine if:
  - a. The mail contains threats of physical harm against a person or threats of criminal activity;
  - b. The mail threatens blackmail or extortion;
  - c. The mail contains plans of escape;

- d. The mail consists of activity violating jail rules and regulations;
  - e. The mail is in code; or
  - f. The mail contains information that, if communicated, would create a clear and present danger of violence and physical harm to humans.
3. The Chief Jailer or designee shall inspect outgoing mail suspected of containing security threats or contraband. The Chief Jailer or designee shall initiate a formal investigation, and the evidence shall be processed in accordance with **SOP 10.3, Property and Evidence**.
  4. Outgoing mail will be collected once a day by staff, and is delivered to the Post Office daily except for weekends and holidays.

#### **F. Incoming Mail**

1. Mail shall not be held for more than twenty-four (24) hours, excluding weekends and holidays.
2. Incoming mail shall be monitored to determine any escape attempts, security or other rule violations or a conspiracy to introduce contraband into the facility.
3. Postal money orders received through the mail shall be taken to the inmate for signature. The money order will then be posted to the inmate's account, and the inmate shall receive a receipt for the transaction.
4. Money orders for inmates housed in jail annexes [Bellwood, etc.], shall have their money orders stamped "**For Deposit Only**," posted to their account, and the inmate shall receive a receipt for the transaction.
5. All incoming inmate mail shall be matched with the inmate's booking number and housing location before delivery. Inmates that are no longer in the Fulton County Jail will have their correspondence stamped "**Return to Sender**" and it will be returned to the Postal Office.
6. Certified or registered mail is also picked up by the mail staff. Certified and registered mail is processed in the same manner as all other incoming mail.
7. An **Incident Report** shall be written by mail room staff if contraband is discovered in incoming mail. The Chief Jailer shall be notified, and the processing of evidence shall be in accordance with **SOP 10.03, Property and Evidence Control**. The sender shall be notified regarding the discovery of contraband and the mode of notifying the sender shall depend on the nature of the seized contraband, i.e., letter, phone call, etc. Notification may be deferred if deemed appropriate in the course of a further investigation of the

circumstances.

8. Contraband that is legal outside of correctional institutions shall be returned to the sender unless perishable. Perishables shall be disposed of.
9. A log of all registered, insured and certified mail shall be maintained by Mail Room staff.

#### **G. Rejection of Mail**

1. Inmates shall be notified via *Rejected Mail Notification Form* when incoming or outgoing mail is rejected.
2. Reasons for rejection of mail may include, but are not limited to:
  - a. The mail contains threats of physical harm against a person or threats of criminal activity;
  - b. The mail threatens blackmail or extortion;
  - c. The mail contains plans for escape;
  - d. The mail concerns activities violating jail rules and regulations;
  - e. The mail is in code; or
  - f. The mail contains information that, if communicated, would create a clear and present danger of violence and physical harm to persons.

#### **H. Returned Mail Procedures**

1. Inmate mail returned to by the Post Office due to insufficient postage or an incorrect address shall be returned to the inmate.
2. Mail received for inmates no longer in custody at the Fulton County Jail shall be returned to the sender.

#### **I. Publications**

1. Books (soft cover only), magazines, and newspapers may be received **ONLY** if shipped directly from the publisher. Walden Books, Barnes & Noble, Borders, etc., are **NOT** publishers. Hard cover books will not be received, regardless of the source.
2. Books, magazines, and newspapers for inmates shall not be accepted via the mail from any other source. The only exception is for religious publications (soft covered), provided by approved religious groups. Copies of books or publications, etc., shall not be accepted.
3. Inmates may also obtain publications from the Perusal Library.
4. Each inmate may retain no more than a total of four (4) soft-covered reading materials in his/her cell, e.g., two (2) magazines and two (2) books.

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*Note: Dictionaries, religious publications and other prior approved program books are not included in this total.*

5. Inmates are not permitted to accumulate printed materials, or other mail in an excessive amount, as this may pose a fire hazard.

**J. Packages**

All packages shall be inspected for contraband.

**VI. Review**

This policy shall be reviewed at least annually.