

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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RONALD C. WESTON, JR., CLERK
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

ra

GARY KNOP, et al,

Plaintiffs,

v.

File No. 4:84-CV-651

PERRY M. JOHNSON, et al,

HON. RICHARD A. ENSLEN

Defendants.

**DEFENDANTS' FINAL PLAN FOR THE
LEGAL WRITER PROGRAM DATED MAY 30, 1996**

1. The attached document entitled "Knop v. Johnson Final Plan for the Legal Writer Program" is incorporated herein.
2. This plan is submitted to satisfy three (3) orders of the Court, as follows:
 - a. The March 26, 1996 District Court Order and Opinion requiring Defendants to submit a revised plan for legal assistance by May 17, 1996;
 - b. The December 22, 1994 District Court Order and Opinion permitting Defendants to submit the plan in a form that they propose following a pilot or trial implementation of the program; and
 - c. The Sixth Circuit Court of Appeals' 1992 decision in this case, Knop v. Johnson, 977 F. 2D 966 (6th Cir. 1992).
3. This plan is also submitted consistent with Public Law 104-134, an omnibus act whose Title VIII is designated the *Prison Litigation Reform Act* (PLRA) signed into law on April 26, 1996. Section 802 of Title VIII amends 18 U.S.C. § 3626, in part, by requiring the following:

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Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief. 18 U.S.C. §3626 (a)(1)

"Prospective relief" is defined by this act as "all relief other than compensatory monetary damages". 18 U.S.C. § 3626(g)(7).

4. The rule of statutory construction holds that a court is to apply the law in effect at the time it renders its decision. Landgraf v. USI Film Products, 511 U.S. 323, 128 L.Ed 2d 229; 114 S.Ct. 1483, 1496 (1995). "[W]here the congressional intent is clear [as to the retroactive effect of the law], it governs. Id.; accord Kaiser Aluminum & Chemical Corp. v. Bonjorno, 494 U.S. 827, 837 (1990). That application of the prospective relief provision of the PLRA applies to the access to court issue currently on appeal before this Court is evidenced by section 802(b)(1) of the Act :

(b) APPLICATION OF AMENDMENT. –

(1) IN GENERAL– Section 3626 of title 18, United States Code, as amended by this section, shall apply with respect to all prospective relief whether such relief was originally granted or approved before, on, or after the date of the enactment of this title.

5. The "Final Plan for the Legal Writer Program", as attached, is consistent with this statutory directive; corrects the constitutional violations found by the Sixth Circuit Court of Appeals in its 1992 decision; and reflects a remedy that is narrowly drawn and the least intrusive to the operation of the correctional system. Defendants' final plan is being submitted under the assumption that it will

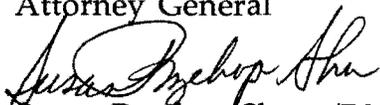
become a court order. (One part of the plan has not been finalized relative to the criteria that defines what intelligence level of the prisoner is constitutionally necessary to prepare coherent pleadings. See, Plan § I.A.) Defendants intend to comply with the plan by essentially mirroring the legal writer program currently in operation at the Michigan Reformatory.

RELIEF

The Court is requested to accept this proposal as the Final Plan of the Legal Writer Program.

Respectfully submitted,

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Date: May 31, 1996

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document(s) was served upon the attorneys of record or parties appearing in pro per in the above cause by mailing the same to them at their respective address with postage fully prepaid thereon, on the 31st day of May, 1996.



Final Plan for the Legal Writer Program

Knop, et al v Johnson, et al

977F.2d996 (6th Circuit 1992)

May 30, 1996



Michigan Department of Corrections

Kenneth L. McGinnis, Director

INTRODUCTION

Defendants submit this document as their proposed Final Plan pursuant to the District Court order of December 22, 1994. This plan is consistent with the Sixth Circuit Court of Appeals' decision in Knop v. Johnson, 977 F.2d 996 (6th Cir. 1992).

By submitting this final plan, Defendants do not agree that everything that was ordered by the District Court in the December 22, 1994 Order is legally mandated by the United States Constitution, and preserve their objections to the plan, pending final order of the federal court. As acknowledged by the District Court during the March 22, 1996 Status Conference, this final plan is being submitted subject to the U.S. Supreme Court decision anticipated to be issued in the case of Lewis v. Casey, and the other applicable case law issued since the December 22, 1994 Order was entered in this case. This plan is subject to provision of 18 U.S.C. §3626 et al, as amended by the Prison Litigation Reform Act, Title VIII of P.L. 104-134 signed into law on April 26, 1996.

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I. CRITERIA FOR PRISONERS NEEDING ASSISTANCE

The prisoner legal writers will provide assistance to eligible prisoners who signify a desire for assistance and who meet any one of the following criteria:

- (1) Those prisoners who cannot read and write English.
- (2) Those prisoners who lack the intelligence necessary to prepare coherent pleadings.
- (3) Prisoners eligible for services outside of segregation will continue to receive and be eligible for services while in segregation. Other prisoners in segregation will be eligible if there is evidence that the prisoner is unable to identify the books or materials needed to be used to develop a legible and coherent pleading, and faces a ten-day deadline.

A. Identification of Eligible Prisoners Needing Assistance

Categories 1 and 2:

Identification of prisoners in Categories 1 and 2 above will be determined by the appropriate Departmental staff.

Those prisoners who cannot read and write English above a 6.0 grade level will be eligible for assistance. This criteria is chosen based upon existing case law and is conditioned upon the future final decision by the federal court as to what grade level is constitutionally necessary.

The pilot program ordered by this Court did not afford enough time or data to determine whether a higher grade level is constitutionally justified. On an interim basis, the Department intends to provide assistance to those prisoners who cannot read and write English above 8.9 as measured by the test chosen by the Department. Any prisoner who has obtained a GED will not be eligible for assistance. This interim criteria was chosen in order to facilitate activities of the Legal Writer Program already developed and implemented and to afford time to obtain additional data.

Where the test is written in English, it is assumed that the reading and language scores of any non-English speaking prisoner will be below the chosen grade level for assistance. If an eligible prisoner subsequently achieves competency at the chosen grade level or above, that prisoner will not be eligible for services. In these situations, a prisoner will be retested prior to being declared ineligible.

Category 3:

Identification of prisoners in Category 3 will occur as the result of a screening process. Using the kite system, any prisoner classified to administrative segregation, may request assistance.

B. Notification to Prisoners of How to Obtain Assistance

All incoming prisoners will be given notice at the institutional orientation regarding the assistance that is available, and how to obtain that assistance. All prisoners already assigned to the facility will be given notice regarding the assistance that is available, and how to obtain assistance.

Notification will be provided to prisoners who request legal assistance based on the screening process described in Section I. This notification to prisoners may also advise prisoners that additional assessment will be required to determine their eligibility for assistance. Prisoners who refuse to participate in the testing and assessment process will be considered ineligible for assistance until such time that they agree to cooperate.

Until the screening process is completed, any prisoner requesting assistance, which is within the scope of the program, and who has a pending deadline will be provided assistance. If the prisoner is determined to be ineligible for service once the screening process is completed, assistance will be discontinued.

Prisoners may request assistance by using the institutional kite system. Final determination to classify a prisoner as eligible for assistance will be made by the Legal Writer Program staff responsible for this program with assistance as needed from other staff.

II. CRITERIA FOR SELECTION OF LEGAL WRITERS AND LEGAL WRITER STUDENTS

Consistent with this plan, the Department will provide training programs. Sufficient legal writers needed to assist eligible prisoners who signify a desire for assistance will be identified and trained as determined by the Department. To be eligible for the Legal Writer Training Program, a prisoner must meet all of the criteria established by the Department.

A. Identification

Final determination to classify a prisoner as a legal writer student or legal writer will be made by the Classification Director with the recommendation of the appropriate Classification Committee. An eligible prisoner who passes the required course work as well as the competency exam may be classified as a legal writer. This classification does not guarantee any prisoner a work assignment in this classification.

The Department reserves the right at its sole discretion to evaluate, on an individual basis, any prisoner who is determined to have had legal writer training at the post secondary level or above. Prisoners who meet this criteria must be able to successfully pass a competency test prior to being considered for classification as a legal writer.

Removal of prisoners from the legal writer student or legal writer classification will occur based on

criteria approved by the Director of the Department of Corrections.

III. TRAINING PROGRAM FOR LEGAL WRITERS

A. Scope of Training

Training will be provided in the following areas:

- (1) Federal and State court systems including post conviction relief afforded by MCR 6.500, et. seq. and federal habeas corpus claims.
- (2) Administrative Law Including Department Administrative Rules, and prisoners rights in administrative hearings for purposes of exhaustion of remedies.
- (3) Criminal Law and Procedures including issue identification and constitutional rights of the accused.
- (4) Constitutional rights of prisoners.
- (5) Research and writing including preparation of approved court forms and briefs.

A standardized curriculum will be used in all training programs which will be reviewed and updated, by the Department as necessary.

B. Competency Exam

Before a legal writer student is eligible to be assigned as a legal writer and assist other prisoners, he must successfully pass a competency test developed by and/or chosen by the Department. Obtaining a passing score on the competency test does not guarantee that a prisoner will be classified to an assignment as a legal writer. However, to be eligible to take the competency test, legal writer students must obtain passing scores on each unit of instruction determined to be appropriate by the Department.

C. Delivery of Training

The number of prisoners selected for each class will be determined by Departmental staff administering this program. Legal writer students must attend all classes. There will be no excused absences. If a prisoner is absent from a class, he will be terminated from the program.

IV. ACCESS TO SERVICES

Prisoners who are determined to be eligible for assistance and who signify a desire for the assistance of a legal writer, as outlined in this plan, will be provided the services of a legal writer. To obtain

assistance, eligible prisoners must send a kite to the Legal Writer Program institutional office requesting assistance. Upon receipt of the kite, the callout system will be activated for general population prisoners.

Interpreters will be made available for non-English speaking prisoners whose English skills are such that they cannot effectively communicate with their assigned legal writer.

Sufficient numbers of legal writers, as determined by the Department, will be assigned to provide assistance to prisoners who qualify for assistance and signify a desire for assistance. Meetings between prisoners and their assigned legal writer will occur, based on security needs.

Prisoners in segregation may signify a desire for assistance in two ways. First, they may make a verbal request to their counselor. Secondly, they may send a kite to the Legal Writer Program institutional office.

V. LEGAL WRITER DUTIES AND RESPONSIBILITIES

Legal writers will be authorized to help eligible prisoners who signify a desire for assistance in the following areas:

- (1) Collateral attacks upon a prisoner's conviction including petitions for habeas corpus relief or motions for relief from judgment pursuant to Michigan Court Rule 6.500 for the sole purpose of exhausting State remedies.
- (2) Constitutional and civil rights actions related to conditions of confinement.

Legal writers will not provide legal representation but will provide assistance to eligible prisoners to enable access to the courts. Legal writers will assist prisoners with preparation of court approved forms as well as any other pleadings necessary to initiate a case authorized by this plan. The assistance provided by the legal writers will be preparation of intelligible pleadings, and shall not include collateral matters related to the pleading such as discovery requests. Confidentiality associated with legal representation is not applicable to the assistance provided by the legal writers.

A. Assistance to Prisoners in Segregation

Prisoners in segregation who are not permitted to go to the Law Library may kite the institutional librarian to receive legal materials and references that are not available in the mini law library cell. Additionally, using the process defined in Section IV, eligible prisoners in segregation may signify an interest in obtaining assistance from a legal writer. To be eligible to receive assistance from a legal writer, prisoners in segregation must meet the criteria for eligibility as defined in Section I.

B. Legal Writers

Legal writers will be assigned to an appropriate work area as determined by the Department. Photocopying and postage costs will be the responsibility of the prisoner receiving legal assistance. Legal writers will not be allowed to keep other prisoners' legal work in their cell or room. Any prisoner legal documents being used in the preparation of pleadings can be secured in the legal writer work area.

VI. Staff Supervision

A Central Office Coordinator will be designated to oversee the implementation of the Legal Writer Program. The Department will designate staff at each facility to provide oversight of the Legal Writer Program.

VII. IMPLEMENTATION, MONITORING, AND TERMINATION

A. Interim Services

Until such time that the Legal Writer program is fully implemented, any pleadings which have been started for a prisoner may be completed by the assigned legal writer, in the case of institutional transfer of the prisoner receiving service. The pleading, once completed by the legal writer, may be mailed to the prisoner at his new institutional placement. Once the pleading is completed, continued correspondence between the legal writer and prisoner who received assistance is not anticipated. However, if correspondence is necessary, as determined by the Legal Writer Program staff, it will be governed by Departmental policy.

B. Schedule for Implementation

This implementation schedule is subject to the court adopting the plan proposed by the Department. If the Court orders changes in the plan, the Department will need to re-evaluate and revise the proposed schedule.

1. Michigan Reformatory

Continue to assess incoming prisoners to determine eligibility for assistance.
Continue to provide legal assistance to all eligible prisoners.

July 1996

Begin the second Legal Writer Training Program at the Michigan Reformatory

2. State Prison of Southern Michigan - South

September 1996

Identify prisoners who are potential legal writer students

October/November 1996

Deliver legal writer training

December 1996

Initiate Legal Writer Services

3. Egeler Correctional Facility - Cell blocks 1 and 2 only:

Under the current construction schedule, the Egeler Correctional Facility will close during the fall of 1996. As such, specifics relative to implementation of this plan at this facility are not addressed.

4. Marquette Branch Prison

September 1996

Identify prisoners who are potential legal writer students

October/November 1996

Deliver legal writer training

December 1996

Initiate Legal Writer Services

The implementation schedule is based upon the current construction schedule at the remaining Knop facilities. However, if the remaining cell blocks of the Knop facilities close at times other than currently projected, the Department will revise this schedule.

C. Monitoring

Monitoring and oversight of all institutional Legal Writer Programs will be established and administered by the Central Office Legal Writer Program Coordinator. During the first 90 days following implementation of services at each facility, the Legal Writer Program Coordinator will review selected pleadings which have been developed and filed to determine if the pleadings are timely and intelligible, written in coherent English, reflecting exposure to a modicum of legal research and the rudiments of prisoner rights law.

The work product of all new legal writers will be reviewed, as deemed necessary, by the Central Office Legal Writer Program Coordinator to determine if it is timely and intelligible, written in coherent English, reflecting exposure to a modicum of legal research and the rudiments of prisoner rights law.

Monitoring of this plan or any resulting order is not applicable to the new facilities which are

planned, and under construction.

D. Termination

The Department will advise the Court and the parties, through counsel, when the plan has been implemented and meets its constitutional goal. The Court's jurisdiction over the prospective relief ordered by this plan shall be terminated no later than provided by 18 U.S.C. §3626 et al, as amended by the Prison Litigation Reform Act, Title VIII of P.L. 104-134 signed into law on April 26, 1996.