

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

**PRISON LEGAL NEWS, a project of
the HUMAN RIGHTS DEFENSE
CENTER,**

Plaintiff,

v.

**JOSEPH K. LESTER, Sheriff of
Cleveland County, in his individual and
official capacities; CLEVELAND
COUNTY BOARD OF
COMMISSIONERS; and DOES 1-10, in
their individual and official capacities,
Defendants.**

**Case No. CIV-16-0198-HE
JURY TRIAL DEMANDED**

COMPLAINT

The plaintiff, Prison Legal News (“PLN”), a registered trade name and project of the Human Rights Defense Center (“HRDC”), for its complaint against the defendants, states as follows:

I. INTRODUCTION.

1. PLN brings this action to enjoin censorship of its publications and other correspondence mailed to prisoners at the F. Dewayne Beggs Detention Center (the “Jail”), in violation of the First and Fourteenth Amendments to the United States Constitution. Defendants’ policies and practices prohibit delivery of mail from the plaintiff and other senders, and fail to provide notice of and an opportunity to challenge each instance of censorship as required under the United States Constitution.

II. JURISDICTION AND VENUE.

2. This action is brought pursuant to 28 U.S.C. §1331 (federal question), as this action arises under the Constitution and laws of the United States, and pursuant to 28

U.S.C. §1343 (civil rights), as this action seeks redress for civil rights violations under 42 U.S.C. §1983.

3. Venue is proper under 28 U.S.C. §1391(b). At least one defendant resides within this judicial district, and the events giving rise to the claims asserted herein all occurred within this judicial district.

4. The plaintiff's claims for relief are predicated upon 42 U.S.C. §1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to the plaintiff by the First, Fifth, and Fourteenth Amendments to the U.S. Constitution and laws of the United States.

5. This Court has jurisdiction over claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202, and Rules 57 and 65 of the Federal Rules of Civil Procedure, as well as nominal and compensatory damages, against all the defendants.

6. The plaintiff's claim for attorneys' fees and costs is predicated upon 42 U.S.C. §1988.

7. The plaintiff is informed, believes, and therefore alleges that in engaging in the conduct alleged herein, the defendants acted with the intent to injure, vex, annoy, and harass the plaintiff, and subjected the plaintiff to cruel and unjust hardship in conscious disregard of the plaintiff's rights with the intention of causing the plaintiff injury and depriving it of its constitutional rights.

8. As a result of the forgoing, the plaintiff seeks exemplary and punitive damages against the individual Defendants.

III. PARTIES.

9. The plaintiff, HRDC, is a not-for-profit, Washington charitable corporation recognized under §501(c)(3) of the Internal Revenue Code with principal offices in Lake Worth, Florida. Prison Legal News is a registered trade name and a publishing project of HRDC which publishes a monthly, seventy-two (72) page black-and-white journal of prison news and analysis named *Prison Legal News: Dedicated to Protecting Human Rights*, in addition to distributing approximately fifty (50) different books of interest to prisoners, some of which are published by PLN and some of which are published by other publishers and merely distributed by PLN.

10. Defendant Joseph K. Lester is currently the Sheriff of Cleveland County, Oklahoma, and is sued in his individual and official capacities. At all relevant times, he acted under the color of state law. The defendant Lester has ultimate responsibility for the promulgation and enforcement of all Jail staff policies and procedures and is responsible for the overall management of the Jail, including all aspects of the Jail's mail services.

11. The defendant Cleveland County Board of Commissioners is located in Norman, Cleveland County, Oklahoma. It was at all times commissioned to have oversight of the Cleveland County Sheriff's Office.

12. The true names and identities of the defendants DOES 1 through 10 are presently unknown to PLN. Each of the defendants DOES 1 through 10 are or were employed by and are or were agents of the defendants when some or all of the challenged

prisoner mail policies and practices were adopted and/or implemented. Each of the defendants DOES 1 through 10 are or were personally involved in the adoption and/or implementation of the mail policies for prisoners, and/or are or were responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of Jail staff who interpret and implement these prisoner mail policies. They are sued in their individual and official capacities. PLN will seek to amend this Complaint as soon as the true names and identities of the defendants DOES 1 through 10 have been ascertained.

13. At all times material to this action, the actions of all the defendants as alleged herein were taken under the color of state law.

IV. FACTUAL ALLEGATIONS.

14. In addition to the publication of the monthly journal *Prison Legal News*, the plaintiff also offers and sells or otherwise distributes approximately fifty (50) different softcover books about the criminal justice system, legal reference books, and self-help books of interest to prisoners, including *The Habeas Citebook: Ineffective Assistance of Counsel* (“The Habeas Citebook”), which describes the procedural and substantive complexities of Federal *habeas corpus* litigation, and the *Prisoners’ Guerilla Handbook to Correspondence Programs in the United States & Canada* (“Prisoners’ Handbook”), which provides prisoners information on enrolling at accredited higher education, vocational, and training schools. The plaintiff’s books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, dealing with health care issues while incarcerated, attending correspondence courses, and similar

topics.

15. The plaintiff distributes its journal, its books, and other publications to prisoners in approximately 2,600 correctional facilities located in all fifty states, including those operated by the Oklahoma Department of Corrections, and those operated by the Federal Bureau of Prisons, such as the El Reno Federal Correctional Institute, the Great Plains Correctional Institute, and the ADX Supermax at Florence, Colorado, the most secure prison in the United States.

16. For more than 25 years, the core of the plaintiff's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. PLN's mission, if realized, has a salutary effect on public safety

17. PLN engages in core protected speech and expressive conduct on matters of public concern, such as the operation of prison facilities, prison conditions, prisoner health and safety, and prisoner rights. The plaintiff's books, as described above, contain political speech and social commentary, which are entitled to the highest protection afforded by the U.S. Constitution.

A. Censorship and Lack of Due Process.

18. The defendants have censored the following materials from PLN: (1) individually addressed issues of the monthly journal, *Prison Legal News*; (2) individually addressed copies of the softcover book, *The Habeas Citebook*; (3) individually addressed

copies of the softcover book, *Prisoners' Handbook*; (4) informational brochure packets sent in standard business-sized (#10) envelopes separately addressed to select individual prisoners at the jail; (5) HRDC's annual fundraiser publication addressed to individual PLN subscribers; and (6) other individually addressed enveloped mail containing copies of judicial opinions in *Clement v. California DOC*, 364 F.3d 1148 (9th Cir. 2004), *Prison Legal News v. Columbia County*, 2012 U.S. Dist. LEXIS 74030 (D. Or. 2012), and *Prison Legal News v. Ventura County*, 2014 U.S. Dist. LEXIS 84574 (C.D. Cal. 2014). Altogether, since September 2015, the defendants have censored PLN's monthly journal, books and other correspondence on at least one hundred and ninety-eight separate occasions. Restricting the speech of PLN and other senders of censored mail on the ground that the mail is not a postcard is not a policy that is rationally related to any legitimate penological interest. Implementation of this irrational policy violates PLN's First Amendment right to communicate its speech with prisoners. The defendants' censorship policies, practices, and customs have a chilling effect on PLN's future speech and expression directed toward people confined at the Jail. The defendants' policies, practices, and customs are unconstitutional both facially and as applied to the plaintiff.

19. In each of the above instances of censorship, the defendants also violated PLN's Fourteenth Amendment right to Due Process of law because the defendants failed to notify the plaintiff of the reason for rejecting its mail and to provide the plaintiff an opportunity to appeal the censorship of its mail.

20. According to the Jail's website (<http://www.ccsso-ok.us/203/Mail-to-Inmates>), the Jail has a mail policy that restricts all incoming mail, with the exception of

legal mail, to postcards only that are larger than 3" x 5" but smaller than 5" x 7". The prohibition on any incoming mail (other than legal mail) that is not a postcard within these size parameters operates to the effect that Jail staff censor all books, magazines or any other incoming publications which have been mailed by PLN. On information and belief, the Jail also has a policy and practice banning all publications and other correspondence that may be bound with staples.

B. Censorship of *Prison Legal News*.

21. At least one-hundred and one (101) copies of *Prison Legal News* individually addressed to prisoners at the Jail have been censored by the defendants since September 2015 and were not delivered to the prisoners who were intended to receive them. Twenty-six (26) of those issues of *Prison Legal News* were sent back to the plaintiff by return mail, at PLN's expense, with writing suggesting various reasons for their rejection and return by jail staff persons, including the following: (1) "Postcards Only"; (2) "No magazines"; (3) "No staples"; (4) "Refused"; and (5) "Return to Sender." The plaintiff did not receive returned copies of the other issues, but on information and belief, these issues were never delivered to their intended recipients who were incarcerated at the Jail.

22. The defendants did not provide any notice to PLN of the reasons for censorship, nor did they provide notice to PLN of any opportunity to appeal the censorship decisions.

23. Plaintiff will continue to mail copies of *Prison Legal News* and other publications to subscribers, customers, and other individuals imprisoned at the Jail.

C. Censorship of *The Habeas Citebook*.

24. The defendants have censored copies of one of PLN's softcover books, *The Habeas Citebook*, mailed to prisoners held in custody at the Jail. Since September 2015, the plaintiff mailed ten (10) individually addressed copies of *The Habeas Citebook* to prisoners at Jail, which were subsequently censored. All of these copies of *The Habeas Citebook* were sent back to the plaintiff by return mail, at PLN's expense, with no explanation, other than a handwritten note stating: "Refused."

25. The defendants did not provide any notice to PLN of the reason for the censorship, or allow it an opportunity to appeal the censorship decisions.

26. The plaintiff will continue to mail copies of its softcover book, *The Habeas Citebook*, as well as other books that it distributes to prisoners at the Jail.

D. Censorship of *Prisoners' Handbook*

27. The defendants have censored copies of another of PLN's softcover books, *Prisoners' Handbook*, mailed to prisoners held in custody at the Jail. Since September 2015, the plaintiff mailed thirteen (13) individually addressed copies of *Prisoners' Handbook* to prisoners at Jail, which were subsequently censored. Eleven (11) of these copies of *Prisoners' Handbook* were sent back to the plaintiff by return mail, at PLN's expense, with no explanation, other than a handwritten note stating: "Refused." The plaintiff does not know how or in what manner the defendants disposed of the other two copies of *Prisoners' Handbook*. On information and belief, these books were never delivered to the specified prisoner-addressee.

28. The defendants did not provide any notice to PLN of the reason for the

ensorship, or allow it an opportunity to appeal the censorship decisions.

29. The plaintiff will continue to mail copies of its softcover book, *Prisoners' Handbook*, as well as other books that it distributes to prisoners at the Jail.

E. Censorship of Informational Brochure Packets.

30. The plaintiff sends prisoners an "Informational Brochure Packet," which includes three single-page items in a #10 sized business envelope: (1) a PLN Brochure and Subscription Order Form; (2) a PLN Book List; and (3) a Published Books Brochure. These brochures are sent directly to individuals who have requested information about the plaintiff's publications and to others who are identified by PLN as people likely to be in need of the information that the plaintiff distributes.

31. Since September 2015, PLN has mailed twenty-three (23) individually addressed informational brochure packets to prisoners at the Jail, which on information and belief, were subsequently censored. Twelve (12) of the information brochure packets were returned to the plaintiff, at PLN's expense, with no explanation, other than a handwritten note stating: "postcards only." The plaintiff does not know how or in what manner the defendants disposed of the other eleven (11) copies of the informational brochure packets. On information and belief, these items were never delivered to the specified prisoner-addressee.

32. The plaintiff will continue to mail copies of its Informational Brochure Packets to prisoners at the Jail.

F. Censorship of Judicial Opinions

33. Since September 2015, PLN mailed forty-three (43) copies of judicial

opinions in *Clement v. CCA*, *Prison Legal News v. Columbia County*, and *Prison Legal News v. Ventura County* to individual prisoners in envelopes, which on information and belief, were subsequently censored by the defendants. Twelve (12) of these judicial opinions were returned to the plaintiff, at PLN's expense, with no explanation, other than a handwritten note stating: "postcards only." The plaintiff does not know how or in what manner the defendants disposed of the other thirty-one (31) copies of judicial opinions. On information and belief, these items were never delivered to the specified prisoner-addressee.

34. The plaintiff will continue to mail enveloped correspondence to prisoners at the Jail.

G. Censorship of the 2015 Annual Fundraiser Publication

35. Each year, PLN sends out its annual fundraiser publication to all of its subscribers. The annual fundraiser publication includes a copy of HRDC's annual report and specific news and information selected to elicit a charitable response from its recipients. A separate copy of the 2015 annual fundraiser publication was individually addressed and mailed to each of the eight (8) *PLN* subscribers in the Jail on October 19, 2015, but on information and belief instead of being delivered to its intended recipients at the Jail it was censored without notice to the plaintiff of the reason for the censorship nor any notice of any opportunity for PLN to appeal the censorship decisions.

36. The plaintiff will continue to mail its annual fundraiser publication to prisoners at the Jail.

V. Defendants' Unconstitutional Mail Policy and Practice is Ongoing.

37. The plaintiff publishes and distributes content concerning the rights of prisoners and the means by which they may obtain relief from unconstitutional conditions of confinement. As a result, PLN is informed and believes that the defendants have retaliated against the plaintiff by refusing to deliver PLN's written materials to prisoners held at the Jail.

38. Due to the defendants' actions described above, PLN has suffered damages, and will continue to suffer damages, including, but not limited to: the violation of the plaintiff's constitutional rights; the impediment of the plaintiff's ability to disseminate its political message; frustration of PLN's non-profit organizational mission; diversion of resources; loss of potential subscribers and customers; an inability to recruit new subscribers and supporters; the loss of reputation; and the costs of printing, handling, mailing, and staff time.

39. The defendants' actions and inactions were and are motivated by evil motive and intent, and were and are all committed under color of law and with at least a reckless indifference to the plaintiff's constitutional rights.

40. The defendants, and its agents, are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, the defendants are responsible for training and supervising the staff persons whose conduct has injured and continues to injure the plaintiff.

41. The defendants' unconstitutional policy, practices, and customs are

ongoing, continue to violate PLN's rights, and are the moving force behind the constitutional violations at issue in this case. The defendants' unconstitutional policy, practices, and customs will continue unless enjoined. As such, PLN has no adequate remedy at law.

42. The plaintiff is entitled to injunctive relief prohibiting the defendants from refusing to deliver its monthly journal, books, and other correspondence without any legal justification, and prohibiting the defendants from censoring mail without due process of law.

V. CLAIMS.

Count I—42 U.S.C. §1983

Violation of the First Amendment

43. Each paragraph of this Complaint is incorporated as if restated fully herein.

44. The acts described above constitute violations of the plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at the Jail, and the rights of prisoners confined at the Jail, under the First Amendment of the United States Constitution.

45. The plaintiff has a constitutionally protected liberty interest in communicating with incarcerated individuals by sending books, information packets, and other publications to them via U.S. Mail, a right clearly established under existing case law.

46. The conduct of the defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and at least a reckless indifference to

the rights of the plaintiff and others.

47. The plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of the defendants, and those policies were the moving force behind the violations.

48. The acts described above have caused damages to the plaintiff, and if not enjoined, will continue to cause damage to the plaintiff.

49. The plaintiff seeks declaratory and injunctive relief, and nominal and compensatory damages against all defendants. The plaintiff seeks punitive damages against the individual defendants in their individual capacities.

Count II—42 U.S.C. §1983

Violation of the Fourteenth Amendment

50. Each paragraph of this Complaint is incorporated as if restated fully herein.

51. The acts described above constitute violations of the plaintiff's rights, the rights of other correspondents who have attempted to or intend to correspond with prisoners at the Jail, and the rights of prisoners confined at the Jail, under the Fourteenth Amendment of the United States Constitution.

52. The plaintiff has a right under the Due Process Clause of the Fourteenth Amendment to receive notice and an opportunity to appeal when the defendants decide to prevent the plaintiff's mail from reaching prisoners at the Jail.

53. The defendants' policy and practice fails to provide the plaintiff with individualized notice of the censorship or an opportunity to be heard in refusing to deliver *Prison Legal News*, books and other correspondence from the plaintiff.

54. The conduct of the defendants was objectively unreasonable and was undertaken intentionally with malice, willfulness, and reckless indifference to the rights of others.

55. The plaintiff's injuries and the violations of its constitutional rights were directly and proximately caused by the policies and practices of the defendants which were the moving force behind the same.

56. The acts described above have caused damages to the plaintiff, and if not enjoined, will continue to cause damage to the plaintiff.

57. The plaintiff seeks declaratory and injunctive relief, and nominal and compensatory damages against all defendants. The plaintiff seeks punitive damages against the individual defendants in their individual capacities.

VI. Request for Relief

WHEREFORE, the plaintiff respectfully requests relief as follows:

58. A declaration that the defendants' policies and practices violate the Constitutional rights of the plaintiff and other senders of mail.

59. A preliminary and permanent injunction preventing the defendants from continuing to violate the Constitution, and providing other equitable relief.

60. Nominal damages for each violation of the plaintiff's rights by the defendants.

61. Compensatory damages in an amount to be proven at trial.

62. Punitive damages against the individual defendants in an amount to be proven at trial.

63. Costs, including reasonable attorneys' fees, under 42 U.S.C. §1988, and under other applicable law.

64. Any other such relief that this Court deems just and equitable.

VII. JURY DEMAND.

65. Prison Legal News hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: February 29, 2016

Respectfully submitted,

**HALL, ESTILL, HARDWICK,
GABLE, GOLDEN & NELSON, P.C.**

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**Pro hac vice applications to be filed.*

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