

## MEMORANDUM

TO: Chairman/Commissioner Croce

FROM: Brian M. Callahan

RE: Inmate Access to Legal Reference Material

DATE: April 26, 2001

Due to recent court decisions that conflict with the Commission's minimum standards, questions have been raised by local facility administrators regarding their obligation to provide inmates with access to legal reference material. Specifically, it has been asked whether inmates who are represented by legal counsel must be provided access to legal reference material. To clarify this obligation, the following advisory legal opinion is offered. Accordingly, facilities should contact their County Attorney to discuss this matter and the potential liability associated therewith.

It is well settled that prisoners have a constitutional right of access to the courts. Bounds v. Smith, 430 U.S. 817, 822, 97 S.Ct. 1491, 1494 (1977). In Bounds, the United States Supreme Court held that this fundamental constitutional right requires correctional authorities to "assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." Id. At 828 (emphasis added). In 1996, the Supreme Court revisited the Bounds decision in Lewis v. Casey, 518 U.S. 343, 116 S.Ct. 2174 (1996). In Casey, the Court held that Bounds "did not create an abstract, free-standing right to a law library or legal assistance." Lewis, at 2180. Rather, "[t]he right that Bounds acknowledged was the (already well-established) right of access to the courts." Id. at 2179. Inmate access to law library facilities was therefore only one constitutionally acceptable method to assure meaningful access to the courts, and the Court did not wish to foreclose alternative means to achieve that goal. Therefore, based on the decisions in Bounds and Lewis, it appears that an inmate represented by legal counsel would have no constitutional right of access to a law library, or any other legal reference materials provided by a correctional facility.

Inmates of local correctional facilities in New York State, however, have been granted rights of access to legal reference material superior to those guaranteed by the United States Constitution. Part 7031 of the Commission's Minimum Standards provides that "[e]ach prisoner confined in a local correctional facility is entitled to legal services" [9 NYCRR §7031.1(a)(1)]. 9 NYCRR 7031.1(b) defines legal services as "access to: legal counsel, legal reference materials and supplies, a notary public, and other legal assistance." [emphasis added]. Therefore, pursuant to the Commission's Minimum Standards, every prisoner incarcerated in a local correctional facility,

regardless of whether or not represented by legal counsel, is entitled access to legal reference material as provided for in 9 NYCRR §7031.4.

An attorney's representation of an inmate would only affect the inmate's access to legal reference materials not available within a facility pursuant to 9 NYCRR §7031.4(e). Such material, "not available within a facility or from prisoner's legal counsel" must, pursuant to 9 NYCRR §7031.4(g) and (h), be requested by the inmate and made available by the facility within a reasonable time. If an inmate is represented by legal counsel, such materials are presumably "available" from his attorney, thus limiting the facility's obligation. However, each inmate, whether represented or not, has the right of access to legal reference material which must be maintained within a local correctional facility pursuant to 9 NYCRR §7031.4(b) and (d).

Although each inmate, pursuant to the Minimum Standards, has a right of access to legal reference material, adequacy of this access varies from inmate to inmate. The issue of whether or not an inmate is currently being represented by an attorney is the single most important factor in determining the extent to which he needs to use the law library. If he does not have an attorney, his need to do research in the library is much greater than if he already has a retained or court-appointed attorney to do the research for him. See Tate v. Carlson, 609 F.Supp. 7, 9 (SDNY 1984). Jail personnel should thus assess the particular requirements for access to the law library in terms of the unique facts of each prisoner's situation. They should afford prisoners, particularly unrepresented prisoners, appropriate library access; keeping in mind the varying time requirements caused by deadlines, imminent trial dates, and the need to respond promptly to motions, arguments and orders when encountered.

Plainly there are many interpretations of adequacy, which is why the courts normally leave "the precise accommodation to be made" up to "the good faith judgment" of the facility. Wolff v. McDonnell, 418 U.S. 539, 569, 94 S.Ct. 2963 (1974). As such, correctional authorities may make reasonable restrictions on the times the law library is available for use. Walker v. Mintzes, 771 F.Supp. 920 (6<sup>th</sup> Cir. 1985); Twyman v. Crisp, 584 F.2d 352, 357-58 (10<sup>th</sup> Cir. 1978).