

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TARA BALLENGER,)	
)	
Plaintiff,)	
)	
v.)	No. 2:13-cv-4177-NKL
)	
COUNTY OF MORGAN, MISSOURI,)	
)	
Defendant.)	

CONSENT ORDER AND JUDGMENT

Upon the parties' joint motion for entry of consent judgment, the Court, having reviewed and taken notice of the pleadings herein, and with the consent of Plaintiff and Defendant, hereby enters Judgment as follows:

I. FINDINGS

1. Plaintiff Tara Ballenger regularly corresponds with an individual in custody of the Morgan County Adult Detention Center by sending written materials by mail. The written materials Plaintiff has sent include letters, newspaper and magazine clippings, photocopies of articles, and books. On several occasions, these written materials have been confiscated by Morgan County personnel after being rejected for allegedly violating inmate-mail policies. On these occasions, Morgan County has not provided her notice of the rejection or the opportunity to contest the decision to reject her written materials. Notice of the rejection and the opportunity to contest the decision is and was provided to the inmate at the Detention Center.

2. On July 16, 2013, Plaintiff brought this action pursuant to 42 U.S.C. § 1983 asserting that the failure to provide her notice of the rejection of written materials and the opportunity to contest the decision to reject the written materials violates her right to due process under the Fourteenth Amendment.

3. Defendant denies any wrongdoing and denies that plaintiff suffered any injury or deprivation of right, but is nonetheless willing to adopt a policy that provides senders of written materials both notice and an opportunity to appeal when communications with detainees at the Morgan County Adult Detention Center are rejected or seized by Defendant.

4. A copy of the mail policy that the Morgan County Adult Detention Center is willing to adopt is attached hereto as an exhibit.

II. ORDER

Based on the aforementioned Findings, the Court hereby orders as follows:

1. Within seven days of entry of this order, Defendant, its officers, agents, and employees shall adopt, and thereafter maintain, a policy that provides senders of written materials both notice and an opportunity to appeal when communications with detainees at the Morgan County Adult Detention Center are rejected or seized by employees or official of the Morgan County Adult Detention Center.

2. Any policy adopted or maintained shall, at a minimum, provide for written notification to the sender of any written material that is rejected or seized within five days of the rejection or seizure; the notice will identify the material or contraband rejected with reasonable specificity; the notice shall specify the reason for rejection and then

notify the sender of the opportunity to appeal the rejection; the notice shall include a copy of the mail policy, or provide an Internet link to where the policy may be found; the appeal will be considered by an individual other, and of higher rank, than the individual who made the original decision to reject the written material; the sender shall be notified in writing of the decision on the appeal within ten days after the appeal is received; and rejected written materials will be returned to the sender after an unsuccessful appeal, if requested.

3. The attached mail policy that the Morgan County Adult Detention Center is willing to adopt meets each of the criteria set forth in ¶ 2.

4. Within seven days of entry of this order, Defendant shall post, and thereafter maintain, a copy of the Morgan County Adult Detention Center's mail policy on its website, if Defendant maintains such a website.

5. Defendant shall naturally retain the ability and right to amend its policy or adopt any new policies consistent with standards established or suggested by state or federal statute, Constitutional amendment, judicial decisions, or case law.

6. Within seven days of entry of this order, Defendant shall review all previously rejected written material sent by Plaintiff. If, after this review, any written material is still rejected, Defendant shall notify Plaintiff in accordance with the requirements of this order.

7. Defendant shall pay to Plaintiff's attorneys \$4,431.78 as attorneys' fees and costs pursuant to 42 U.S.C. § 1988. In all other respects, the parties agree that they will bear their own attorneys' fees and costs.

8. This Judgment fully and finally resolves the claims asserted in Plaintiff's Complaint, and Judgment is hereby entered.

9. This Court retains jurisdiction to enforce this Judgment, as provided by the Federal Rules of Civil Procedure.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: September 9, 2013
Jefferson City, Missouri



Morgan County Adult Detention Center



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Version 2013.01

Mail Policy

A. Policy

- a. It is the policy of the Morgan County Adult Detention Center to provide an efficient, orderly, and supervised mail operation for inmates.

B. Procedures

a. General Guidelines

- i. Mail is picked up and deposited in the mail carton and picked up by the Jail Clerk Monday through Friday at approximately 0900 hours.
- ii. Mail and mail containers will be thoroughly inspected and searched prior to entering the facility.
- iii. Certified or registered mail shall be processed in conformance with U.S. Postal regulations.
- iv. The facility shall permit inmates to send or receive sealed letters to or from specific classes of persons and organizations, including, but not limited to: court officials, legal counsel, officials of the confining authority, government officials, State Board of Probation and Parole, and the media.
- v. Inmate mail will be sorted according to housing assignment and inmate name.
- vi. If the inmate is no longer housed in this facility, the mail will be returned to the sender.
- vii. All correspondence must have the inmate's official mailing address (return address for outgoing mail, sending address for incoming mail). The official mailing address is:

Full Name (Booking Number)
c/o Morgan County Adult Detention Center
211 East Newton Street Suite 2
Versailles, Missouri 65084

- viii. Inmates may write to anyone they choose; however their correspondence could be restricted if officials of the detention facility find that the correspondence violates the statutes of law, violated the wishes of persons who receive the correspondence, or poses a threat to the security and order of the detention facility.
- ix. There will be no censorship of incoming mail or outgoing mail; however, mail will be inspected for contraband.



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- x. Items considered to be detriment to the safe and orderly operation of the Morgan County Adult Detention Center are prohibited and considered to be "contraband." Contraband items include, but are not limited to:

Any illegal drugs, alcoholic beverages, deadly weapons, dangerous instruments, explosives or any other article or item that could be used to endanger other persons or the preservation of order in the facility. Any item construed as an aid to escape. Any item which could be used to disguise or alter the appearance of the inmates or detainees.

- xi. Pornographic and/or "sexually suggestive" photographs and/or drawings are prohibited.
 - xii. There will be no limit on the number of letters an inmate may send out provided they can pay for the paper, pencils and stamps. If an inmate is unable to pay for these items, they may request them through commissary. Once Inmate Accounts has verified that the inmate meets the indigent requirements the request will be forwarded to the Detention Shift Supervisor for issuance. The inmate will be provided enough writing materials for two (2) letters per week.
 - xiii. Incoming mail must have the inmate's complete name and booking number. Incoming mail must have the sender's name and complete return address.
 - xiv. Mail will not be distributed to any inmate unless they are wearing the proper attire.
 - xv. Inmates may not receive money in the form of personal checks or money orders by the way of correspondence (mail). Acceptable forms of sending money include using the kiosk in the lobby or contacting Access Corrections at (866) 345-1884 or www.inmatedeposits.com.
 - xvi. Inmates whose families live out of state and for whom packages are the only mode of receiving items should have their family member contact the Detention Supervisor and receive instruction regarding items of acceptability and mailing procedures. This will be a one-time occurrence. Any packages sent without prior approval or after the initial package has been received will be returned to sender. Any contraband items will be disposed of as directed by policy and procedure. Mail containing pens, pencils, pads and stamps will not be accepted. These items can be ordered off commissary. Mail must have a return address.
- b. Inmate Mail
 - i. Incoming Non-privileged Mail
 - 1. Mail will be opened and inspected for contraband and/or money and logged into the Inmate Mail Log.



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2. Money in the form of cash received in the mail will be handled as follows:
 - a. Sending cash is not recommended. If cash is sent, it should be sent via certified mail.
 - b. Money received will be logged in the inmate's computerized file under Keefe account.
 - c. Each individual transaction will require a separate entry.
 - d. All money transactions must be accurate. If a transaction is inaccurately entered, it will severely complicate the balance of the Jail Inmate Account. If you need verification of the amount entered, have another Detention employee count the money along with you. The only forms of money transactions that will be accepted are listed below. Any other form of transaction must either be placed in the inmate's property bag or file, with the understanding that the Morgan County Sheriff's Office will not be held responsible for it, or the inmate can release it to a friend/family member (using a request form).
 - 1.) Cash (U.S. currency only)
 - 2.) Cashier's Check from another facility
 - 3.) Check from a United States government institution (other jail, prison, Department of Treasury. Etc.)
 - e. The DATE and TIME of each transaction is automatically entered when the transaction is added.
 - f. The Officer will enter his/her DSN in the section provided along with their personal password.
 - g. The Officer will then enter the booking number of the individual.
 - h. The Officer will change the dropdown box to Kiosk Cash.
 - i. The Officer will hit deposit.
 - j. The Kiosk will turn blue and you will deposit the money in the kiosk.
 - k. The system will automatically count the money and the officer will hit ok if they agree with the amount that is being placed on the account.
 - l. The Officer will select the transaction that was placed on the account and right click and print.
 - m. The Officer and inmate will sign the copy and placed in their file.
3. If contraband is found within individual inmate mail, the contraband contents will be confiscated and a Mail Rejection Form will be filled out and given to the inmate. The sender of contraband will receive a copy of



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the Mail Rejection form. A copy of the Mail Rejection Form will be kept on file in the inmate's file.

4. All incoming certified mail will be signed for and logged on the Inmate Mail Log.
5. Inmates are permitted to retain a reasonable amount of personal letters in their personal area. Excessive materials will be placed in the inmate's property or released to a person designated by the inmate.

ii. Incoming Privileged Mail

1. Correspondence deemed privileged must have specific and clearly printed verbiage on the face of the envelope, specifically stating the correspondence is to be "Legal Mail," "Attorney/Client Confidentially," etc. All senders must be adequately identified on the envelope as well as the address, authority, and/or office from which the correspondence originated.
2. Privileged mail will be processed and delivered following the same guidelines as non-privileged mail, with the following exception:
 - a. Privileged mail will be opened and inspected for contraband in the presence of the receiving inmate. The privileged mail will not be otherwise read by jail personnel.

iii. Outgoing Mail

1. Outgoing mail will be collected by the Booking Officer Monday through Friday.
2. All outgoing mail will be logged into the Inmate Mail Log.
3. The Jail Clerk will pick up mail Monday through Friday at approximately 0900 hours.

iv. Inspection of Inmate Mail

1. Letters may be read for the discovery of correspondence containing any of the following:
 - a. Plans for sending contraband in or out of the Detention Facility.
 - b. Plans for criminal activity
 - c. Instructions for the manufacture of weapons, drugs, drug paraphernalia or alcoholic beverages
 - d. Threat of blackmail or extortion
 - e. Plans for escape or unauthorized entry
 - f. Code not understood by the examiner (scanner)
 - g. Plans for activities in violation of Detention Facility rules
 - h. Other material which would, if communicated, creates a serious danger to the safety and security of the Detention Facility.



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2. Incoming correspondence may be rejected on the basis of a Court Order or if it contains the following:
 - a. Information regarding the manufacture of explosives, weapons or drugs
 - b. Content intended to encourage or assist in disrupting the orderly operation of the facility, such as through a criminal act, riot, work stoppage or breach of jail rules
 - c. Sexually explicit photographs and/or drawings.
 - d. Correspondence or material may not be inspected without damage.
3. When incoming correspondence is rejected due to its contents, the contraband or other rejected material will be placed in file with a Mail Rejection Form stapled to it. A copy of the Mail Rejection Form will be kept on file in the inmate's file and a copy will be sent to the inmate. This mail will **ONLY** be given to the inmate when released, or as allowed following an appeal of the notice of rejection. The mail not containing contraband or other rejected material will be delivered to the inmate, if that mail is not destroyed by the removal of contraband or other rejected material.
4. When incoming correspondence is rejected due to its contents, Morgan County Detention Center will send the sender of such mail a copy by U.S. Mail of the Mail Rejection Form provided to the inmate, as notice of the rejection. The Mail Rejection Form will identify the material or contraband rejected with reasonable specificity, will specify the reason for rejection and notify the sender of the opportunity to appeal the rejection. The notice will be sent to the sender of rejected mail within 5 days of receipt of the rejected material or contraband.
5. When outgoing mail is rejected, it will be returned to the inmate with a Mail Rejection Form. A copy will be kept on file in the Inmate File along with a copy of the correspondence in question.
6. In the event the letter contains evidence of a crime or correspondence deemed threatening to the safety and security of the facility, the letter will be seized and forwarded with an Incident Report to the Detention Administrator. Copies will remain on file in the Inmate File.
 - a. The Detention Administrator will forward the letter to the appropriate authorities for disposition.
- v. Opportunity of Sender to Appeal the Rejection of Mail Sent to Inmate
 1. Upon receipt of the copy of the Mail Rejection Form, the sender may request an appeal of the rejection. The request for appeal must be in



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writing, sent via U.S. mail, to the Jail Administrator, Morgan County Adult Detention Center, 211 East Newton Street, Suite 2, Versailles, Missouri 65084.

2. The appeal must state the specific reasons the sender believes the rejected mail should not have been rejected.
3. The senders request for appeal of rejected incoming inmate mail will be considered by the Detention Administrator, or other Detention Center officer assigned by the Administrator. The individual considering the appeal shall not be the individual originally rejecting the mail and shall be of higher rank. The sender will be notified of the Detention Center's decision on the appeal in writing within 10 days of the receipt of the request for appeal.
4. After the appeal is concluded, the inmate may authorize the rejected mail to be returned to the sender instead of holding the mail until he or she is released. The sender of rejected mail may also request it be returned. Mail which contains contraband or a discussion of commission of a crime or evidence of a crime will not be returned to the sender and may be referred to appropriate law enforcement authorities.

vi. Administrative Sanctions

1. Inmates who interfere with the Morgan County Adult Detention Center mail operations or policy and procedures, will be served with notice of charges by the Detention Supervisor.
2. An Incident Report will be submitted to the Detention Administrator for investigation.
3. Inmates found in violation will be charged.

vii. Security

1. Mail in the Morgan County Adult Detention Center will be handled, processed and stored with the highest level of security.

viii. Inmate-Employee Correspondence

1. Any Employee who receives personal mail from a past or present inmate should notify their supervisor and document the correspondence with an Incident Report.

ix. This policy will be posted on the Morgan County Adult Detention Center website page.



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Lt. Cody Worthley

Date: _____