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“PRO PER” INMATES — PROPRIA PERSONA

BACKGROUND

In the California Court System, as in most other States, a person may represent themselves. This is commonly referred to as “Pro Per”, a short form of the Latin phrase *in propria persona* which is translated to "in one's own proper person". Occasionally the term “Pro Se” is used which is taken from the Latin phrase "on one's own behalf". The Supreme Court noted in the case *Faretta v. California*, 422 U.S. 806, 813 (1975) that "[i]n the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of counsel' ”.

Since accused are sometimes incarcerated waiting for, or during trial, they need special procedures to allow them to discover evidence, review the prosecution’s witness list, evidence, and other case related material. Pro Per inmates have special privileges, granted by the Court to allow them access to a computer, phone privileges, visits from attorneys and legal runners. They are also allowed to keep law books and other case related material in their cell as long as they conform to certain guidelines.

REASON FOR INVESTIGATION

The 2009-2010 Tulare County Grand Jury received a complaint from a Pro Per inmate alleging that his legal mail was tampered with, other mail was not received, he was not allowed to keep law books, colored pencils and compact discs (CDs) containing evidence in his cell. He also stated that he has no place to make confidential calls and he cannot make copies of legal documents.

PROCEDURES FOLLOWED

1. Interviewed relevant witnesses.
2. Inspected the law libraries at Main Jail and Bob Wiley Detention Facility.
3. Inspected inmate cells at Main Jail and Bob Wiley Detention Facility.
4. Inspected relevant documents.

FINDINGS

1. On one occasion the inmate's legal mail was opened in error.
2. The Bob Wiley Detention Facility and the Main Jail have law libraries with a phone equipped for non-recorded calls for Pro Per inmates.
3. The Superior Court Judge who oversees the Pro Per inmates, determine how much money is placed on the inmate’s pre-paid phone card during any seven day period (Monday-Sunday).
4. The law library at the Bob Wiley Detention Facility is enclosed and conversations cannot be overheard.

5. It is possible for other inmates or a Correctional Officer to hear a conversation from within the Main Jail law library.
6. The Tulare County Sheriff's Department has a Pro Per Policy and Procedures Manual (Manual).
7. The Manual outlines rules for telephone privileges. The Manual also states, "Violations of these rules related to the use of the telephone shall result in discipline and possible loss of Pro-Per privileges, including, but not limited to, the loss of the privilege to make telephone calls." One inmate's Personal Identification Number was used by other inmates and his telephone privileges were suspended.
8. The Manual states, "A committee, consisting of a Judge of the Superior Court, an Attorney of the Public Defender's Office, an Attorney of the County Counsel's Office, and a member of the Sheriff's Department will meet, no less than once annually to review this policy and procedures. The committee may make recommendations to the Sheriff on suggested changes to this policy and procedures". No such meeting has been documented since the last revision to the policy in September of 2003.
9. The Manual allows inmates who intend to "attack" their sentences or challenge the conditions of their confinement access to the law library. Pro Per inmates have priority over other inmates for access time.
10. The Manual allows inmates to check out audio and video equipment to use during their law library session. No outside equipment is allowed in the Jail.
11. The Manual allows inmates use of a computer to research law and other case related material. It also states, "The Sheriff will not be responsible for providing any computer instruction".
12. The Manual states, "Pro Per inmates will be given 10 hours of law library access in 3-5 sessions over a seven day period (Monday-Sunday)." Pro Per inmates are allowed law library access in accordance with the policy.
13. During a visit to the Main Jail the Grand Jury observed a computer in the law library. A Correctional Officer was asked to demonstrate the log-on procedure. The officer tried for approximately 30 minutes to access the legal website unsuccessfully. There were no instructions to access the legal website.
14. A subsequent visit to the Mail Jail law library revealed the same computer with type-written instructions taped to a cabinet. This computer was used by a member of the Grand Jury to access the legal website successfully using the new instructions provided. Reference cards were available to help search legal websites.
15. During a visit to the Bob Wiley Detention Facility, the Grand Jury observed the computer in the law library. Juror attempts to access the legal website were unsuccessful.
16. A subsequent visit to the Bob Wiley Detention Facility law library revealed that new instructions had been

posted and a Juror accessed the legal website without difficulty.

17. Legal Materials including softbound law books can be kept in one paperboard box, commonly referred to as a “banker’s box” in the inmate’s cell.
18. Anything that can be used as a weapon or modified into a weapon (CDs, video equipment, pencils, etc.) cannot be kept in the cell. Special short pencils can be purchased by the inmate.

CONCLUSIONS

It is apparent to the Grand Jury that positive change has taken place in the application of the Pro Per Policy. However, since the policy has not been reviewed as required, the law library’s computer access process was allowed to deteriorate to the point where they were not useful

and the Main Jail law library has no privacy it is still possible that a Pro Per Inmate’s legal defense could be compromised.

RECOMMENDATIONS

1. Review the Pro Per Policy and Procedures Manual annually as required in the document.
2. Inspect the law libraries semi-annually to insure they meet the requirements of the Pro Per Policy.
3. Provide privacy in the Main Jail law library.

RESPONSES REQUIRED

Tulare County Board of Supervisors
Tulare County Sheriff’s Department
Tulare County Council
Tulare County Public Defender