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United States District Court, D. Idaho.

Susan CORNETT, Katherine Jensen, John Henry, and Timothy Hiser, on their own behalf and on behalf of all others similarly situated, Plaintiffs,
v.
Richard DONOVAN, Director, Idaho Department of Health and Welfare, and Stephen C. Weeg, Administrator, State Hospital South, in their official and individual capacities, Defendants.

No. CV91–0231–E–EJL. | Feb. 4, 1992.

Attorneys and Law Firms

Stephen L. Pevar, American Civil Liberties Union, Denver, Colorado, Joseph Stanzak, Twin Falls, Idaho, for Plaintiffs.

Larry Echohawk, Attorney General, Weldon B. Stutzman, Attorney General's Office, Division of Health & Welfare, Boise, Idaho, for Defendants.

Opinion

ORDER

LODGE, District Judge.

***1** Plaintiffs in this action are present or former residents of State Hospital South in Blackfoot, Idaho (SHS). This lawsuit has taken a decided turn toward negotiated resolution. The "Stipulation for Settlement and Dismissal" filed January 27, 1992, is evidence of this: "The only issue remaining is a legal issue regarding the scope of the constitutional right of access.... Following resolution of the sole remaining legal issue, the case may be dismissed with prejudice by the Court."

Both parties agree that the duty regarding the constitutional right of access stems from *Bounds v. Smith,* 430 U.S. 817 (1977). Both agree that this duty requires that SHS provide either a law library or a lawyer for matters of habeas corpus and civil rights. SHS has decided against installing a law library at SHS. Instead, SHS has contracted with the Bingham County Public Defender's Office for representation services. The issue for the court is to determine whether this duty to provide representation ceases once the habeas corpus petition or civil rights complaint has been filed, or whether this duty continues through to the completion of the action.

The plaintiffs contend the representation is meaningless unless the representation continues through to completion of the matter. The defendants take the position the duty has been satisfied once the habeas corpus petition or civil rights complaint has been filed.

Plaintiffs contend the answer to the specific question can be found in *Bonner v. City of Prichard,* 661 F.2d 1206 (11th Cir.1981) (*en banc*). However, *Bonner* did not involve questions of attorney representation. *Bonner* merely dealt with a prisoner's right to maintain a 42 U.S.C. § 1983 civil rights cause of action while a prisoner. In fact, Bonner was represented by court appointed counsel. *Bonner* does not control this court's determination.

Defendants contend the answer can be found in *Nordgren v. Milliken,* 762 F.2d 851 (10th Cir.1985). The issue in *Nordgren* centered on a magistrate's finding that "[t]here is no constitutional requirement that the assistance of lawyers be provided to the plaintiffs by the defendants in the defense or prosecution of civil action beyond the pleading stage." *Id.* at 852. Following an historical analysis of the issue, the court held the right of access requirement did not require the assistance of counsel through the completion of the habeas corpus or civil rights complaint. *Id.* at 854–55.

This issue has its genesis in *Bounds.* In defining the constitutional right of access to the courts, the Supreme Court stated:

> The issue in this case is whether States must protect the right of prisoners to access to the courts by providing them with law libraries or alternative sources of legal knowledge.

Bounds, 430 U.S. at 817.

> It is now established beyond doubt that prisoners have a constitutional right of access to the courts.

Id. at 821.

> ***2** "[t]he state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus."

Id. at 822. (Citations omitted).

> [c]ounsel must be appointed to give

> indigent inmates "a meaningful appeal" from their convictions.

Id. at 823. (Citations omitted).

> [Prisoners' rights to court access] was unanimously extended to cover assistance in civil rights actions in *Wolff v. McDonnell,* 418 U.S. 539, 577–580 (1974).

Id.

> "[M]eaningful access" to the courts is the touchstone.

Id. (Citations omitted).

> We hold, therefore, that the fundamental constitutional right of access to the courts requires prison 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. (Note 17)
>
> Note 17: Since our main concern here is "protecting the ability of an inmate to *prepare a petition or complaint,*" *Wolff v. McDonnell,* 418 U.S., at 576, it is irrelevant that North Carolina authorizes the expenditure of funds for appointment of counsel in some state post-conviction proceedings for prisoners whose claims survive initial review by the courts. * * * Moreover, this statute does not cover appointment of counsel in federal habeas corpus or state or federal civil rights actions, all of which are encompassed by the right of access. * * * *

Id. at 828. (Emphasis added).

The constitutional right to meaningful access can be satisfied by either adequate law libraries or legal assistance. The goal of providing inmates with either the books or the assistance is the ability of the inmate to prepare and file meaningful legal papers. The constitutional requirement, as interpreted by the Supreme Court in *Bounds,* is satisfied upon the preparation and filing of meaningful legal papers. This court believes *Bounds* both posed the question and provided the answer with regard to the issue which is the subject here. This court believes resort to circuit court opinions for interpretation of *Bounds* is unnecessary. However, if resort were had to that level, the court would be inclined to follow the 10th Circuit in *Nordgren* and reject the 11th Circuit's opinion as stated in *Bonner.*

In an eleventh hour brief, plaintiffs have cited *Morrow v. Harwell,* 768 F.2d 619, 623 (5th Cir.1985). *Morrow* held a bookmobile lending library was inadequate and did not meet the requirements of *Bounds. Morrow* disagreed with the first circuit holding, in *Cepulonis v. Fair,* 732 F.2d 1, 6 (1st Cir.1984), that a *Bounds* library will satisfy constitutional requirements and that legal assistance in addition to the library is not required. This court finds *Morrow* unpersuasive.

The intent of the *Bounds* ' court was clearly stated in the *Bounds* decision. The right to be protected is meaningful access to the courts. Stated more specifically by the *Bounds* court, this right requires a law library or legal assistance so that inmates might prepare and file meaningful legal papers. There is no indication in *Bounds* that this right is any greater, or requires a greater response than assistance in the preparation and filing stage.

***3** Therefore, and as stated above, and the court being fully advised in the premises, it is the opinion of this court that the *Bounds* duty of SHS to provide legal assistance ceases upon the filing of the habeas corpus petition or civil rights complaint, or, in a situation where a court directs a reply to a responsive pleading, upon the filing of the reply.

The parties have stipulated that this is the sole remaining issue, and once this issue has been resolved, the case may be dismissed. This issue has been resolved; therefore, this case is DISMISSED.

IT IS SO ORDERED.