THE LAW OFFICE OF THE SOUTHERN CENTER FOR HUMAN RIGHTS
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# KNOW YOUR RIGHTS: ACCESS TO THE COURTS

**Basics:** People in prison have a constitutional right of access to the courts.[1] However, that right "is neither absolute nor unconditional."[2] The United States Supreme Court has made it difficult for incarcerated people to bring litigation challenging their right of access to the courts.

## TYPES OF COURT ACCESS CLAIMS

There are three basic kinds of court access claims that prisoners can bring: (1) right to assistance claims; (2) interference claims; (3) retaliation claims.[3]

**(1) Right to Assistance in Bringing Legal Claims**: In *Bounds v. Smith*, 430 U.S. 817, 821 (1977), the United States Supreme Court held that prison officials must "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." This may sound like a significant protection for prisoners. However, to enforce the *Bounds v. Smith* obligation, a prisoner must meet the "actual injury" requirement imposed by the Supreme Court in *Lewis v. Casey*, 518 U.S. 343 (1996).[4] Under *Lewis*, it is not enough for a prisoner to show that a prison/jail has an inadequate law library or imposes unreasonable restrictions on prisoner-litigants. Instead, a prisoner must show that the inadequacy of the law library or legal assistance program caused an "actual injury" by "hinder[ing] his efforts to pursue a legal claim."[5] In addition to showing actual injury, the prisoner must show that the claim, which has been "frustrated or impeded," is non-frivolous, or arguable.[6] The Supreme Court has also held that prisoners are not entitled to legal resources enabling them to file every type of claim; instead, the only tools the state is required to provide are those which prisoners need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement.[7]

> **What is an "Actual Injury"?** Courts have not been entirely clear about what constitutes "actual injury." *Lewis v. Casey* outlined two examples of what may constitute actual injury. A person in prison could show that his complaint was dismissed "for failure to satisfy some technical requirement which, because of deficiencies in the prison's legal assistance facilities, he could not have known."[8] Alternatively, a person in prison could

[1] *Bounds v. Smith*, 430 U.S. 817, 821 (1977).
[2] *Cofield v. Alabama Public Service Com'n*, 936 F.2d 512, 517 (11th Cir. 1991).
[3] J. Boston, D. Manville, *Prisoners' Self-Help Litigation Manual, 4th Edition*, Oxford University Press (2010).
[4] *Lewis v. Casey*, 518 U.S. 343, 349 (1996); *see also Barbour v. Haley*, 471 F.3d 1222, 1225 (11th Cir. 2006).
[5] *Lewis*, 518 U.S. at 351.
[6] *Id*. at 353.
[7] *Id*. at 355.
[8] *Id*. at 351.

show that he had suffered from actionable harm and that the law library's inadequacies prevented him from filing a complaint altogether.[9]

**Law Libraries and Other Forms of Legal Assistance:** In theory, prison authorities are required to provide "adequate law libraries or adequate assistance from persons trained in the law" to help prisoners prepare and file "meaningful" legal documents.[10] An adequate law library should include books that prisoners are likely to need.[11] Some lower courts in other jurisdictions have specified that adequate law libraries should include: relevant state and federal statutes; state and federal law reporters from the past few decades; Shepard's citations; and basic treatises on habeas corpus, prisoners' civil rights, and criminal law.[12] In general, the Eleventh Circuit requires a law library to supply the "tools… 'that the inmates need in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement.'"[13]

Though providing access to a law library is one constitutionally acceptable method to assure meaningful access to the courts, courts have held that other means of providing access to the courts are equally acceptable.

For example, in the place of law libraries, prison authorities may implement alternative legal assistance programs to protect a prisoner's right of access to the courts.[14] As a result, prison authorities are not required to grant prisoners physical access to the law library when there are other legal assistance programs available.[15] Other possible alternatives to providing prisoners with access to the courts might include: training prisoners as paralegal assistants to work under a lawyer's supervision, hiring part-time lawyers as consultants, or using staff attorneys from prison legal assistance organizations or public defender offices, among other options.[16]

Because courts have held that the right of access to the courts may be protected by means other than a law library, some courts have held that the offer of court-appointed counsel (whether such representation is accepted or waived by the prisoner) satisfies the state's obligation to provide a prisoner with access to the courts.[17]

Remember that you must have evidence of an "actual injury" in order to show a *Bounds v. Smith* violation.

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[9] *Id.*
[10] *Bounds*, 430 U.S. at 828.
[11] Center for Constitutional Rights and the National Lawyer's Guild, The Jailhouse Lawyer's Handbook 64 (4th ed. 2003).
[12] *Id.*; *see also Johnson v. Moore*, 948 F.2d 517 (9th Cir. 1991); *Corgain v. Miller*, 708 F.2d 1241 (7th Cir. 1983); *Cruz v. Hauck*, 627 F.2d 710 (5th Cir. 1980).
[13] *Arthur v. Allen*, 452 F.3d 1234, 1250 (11th Cir. 2006) (quoting *Lewis*, 518 U.S. at 355-56).
[14] *Lewis*, 518 U.S. at 351; *Akins v. U.S.*, 204 F.3d 1086, 1090 (11th Cir. 2000) (explaining that access to a law library is only one means through which a prisoner's right of access to the courts can be protected).
[15] *Lewis*, 518 U.S at 356-57; *see also Bell v. Hopper*, 511 F. Supp. 452, 453 (S.D. Ga. 1981) (holding that a state has the option to choose the method by which it guarantees a prisoner's right of access to the courts and that "a law library is only one alternative which fills this responsibility").
[16] *Bounds*, 430 U.S. at 831.
[17] *See, e.g., Degrate v. Godwin*, 84 F.3d 768, 769 (5th Cir. 1996); *Bell*, 511 F. Supp. at 453; *Daker v. Ferrero*, No. 1:03-CV-2526-RWS, 2008 WL 822190, at *11 (N.D.Ga. Mar. 26, 2008); *Clayton v. Paulk*, No. 7:07-CV-76, 2007 WL 2187392, at *2 (M.D. Ga. July, 27 2007); *Green v. Kile*, No. CV605-129, 2006 WL 1805849, at *4 (S.D. Ga. June 29, 2006); *Loggins v. State*, 484 S.E.2d 758, 761 (Ga. App. 1997).

**Postage, Pens, Paper, Notaries**: "[I]ndigent inmates must be provided at state expense with paper and pen to draft legal documents, with notarial services to authenticate them, and with stamps to mail them."[18] However, indigent prisoners need not be given free, *unlimited* access to these materials and services. To give one example, the Eleventh Circuit Court of Appeals held that Alabama's policy of giving prisoners only two free stamps per week was adequate to allow exercise of the right of access to the courts.[19] In addition, under *Lewis v. Casey*, a prison/jail's obligation to provide these materials/services can only be enforced if the prisoner can show that the restriction in question frustrates or impedes his ability to bring a non-frivolous lawsuit.[20]

**"Jailhouse Lawyers"**: Prison officials cannot prohibit prisoners from helping each other with legal matters *if the prison/jail provides no reasonable alternative forms for legal assistance*.[21] But, if prison authorities *do* provide reasonable alternative means for legal assistance, they can prohibit or limit jailhouse lawyering.[22] To give one example, the Eleventh Circuit upheld a policy that barred prisoners from possessing legal papers with other prisoners' names on them, where the prisoners in the case did not show evidence of harm to particular litigation.[23] As a general rule, restrictions on prisoners' communications with other prisoners are constitutional if the restrictions are "reasonably related to legitimate penological interests."[24]

**(2) Interference Claims:** "[R]egulations and practices that unjustifiably obstruct the availability of . . . the right of access to the courts are invalid."[25] However, such regulations/practices will be upheld if they have a "reasonable relationship" to legitimate penological goals, and courts will give substantial deference to prison officials in examining the validity of restrictions.[26] Isolated individual actions, like the confiscation or destruction of legal papers or legal books, may also violate the right to court access.[27] Note that such claims are subject to the *Lewis v. Casey* "actual injury" requirement.[28]

**(3) Retaliation Claims:** The First Amendment prohibits state officials from retaliating against prisoners for exercising their right of access to the courts.[29] To proceed on a claim for retaliation, a prisoner must establish three elements: (1) his speech was constitutionally protected; (2) the prisoner suffered adverse action such that the defendant's allegedly retaliatory conduct would likely deter a person of ordinary firmness from engaging in such speech; and (3) there is a causal relationship between the retaliatory action and the protected speech.[30] With

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[18] *Bounds*, 430 U.S. at 824-25.
[19] *Hoppins v. Wallace*, 751 F.2d 1161, 1162 (11th Cir. 1985).
[20] *Bass v. Singletary*, 143 F.3d 1442 (11th Cir. 1998).
[21] *Johnson v. Avery,* 393 U.S. 483 (1969).
[22] *Shaw v. Murphy*, 532 U.S. 223 (2001) (prisoner did not possess a First Amendment right to provide legal assistance to fellow prisoners beyond protection normally accorded prisoners' speech).
[23] *Bass v. Singletary*, 143 F.3d 1442 (11th Cir. 1998).
[24] *Turner v. Safley,* 482 U.S. 78, 89 (1987) ("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.").
[25] *Procunier v. Martinez*, 416 U.S. 396 (1974).
[26] *Al-Amin v. Smith*, 511 F.3d 1317, 1327 (11th Cir. 2008).
[27] *Wright v. Newsome*, 795 F.2d 964, 968 (11th Cir. 1986) ("The allegation that prison officials seized [prisoner's] pleadings and law book and destroyed other legal papers clearly states a claim of denial of access to the courts.").
[28] *Asad v. Crosby*, 158 Fed. Appx. 166 (11th Cir. 2005) (unpublished).
[29] *Wright v. Newsome,* 795 F.2d 964, 968 (11th Cir. 1986).
[30] *Bennett v. Hendrix,* 423 F.3d 1247, 1250, 1254 (11th Cir. 2005).

respect to the causal relationship element, a prisoner must demonstrate that correctional officials *intended* to retaliate for his exercise of a protected right (such as the right of free speech or access to the courts), and but for the retaliatory motive, the adverse act complained of would not have occurred.[31]

## THE "THREE STRIKES" LAW AND JUDICIAL ORDERS BLOCKING ACCESS TO COURTS

In an effort to curb litigation by incarcerated persons, the United States Congress passed the Prison Litigation Reform Act (PLRA), a federal statute that makes it more difficult for prisoners to pursue legal claims in federal court. The PLRA prohibits a prisoner from bringing a civil action *in forma pauperis* (without paying the filing fee) if the prisoner has, on three or more prior occasions, brought a lawsuit that was dismissed either as frivolous or because the complaint failed to state a claim for relief, "unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). In other words, if you have had three complaints (or appeals) dismissed as frivolous, malicious, or failing to state a claim, you cannot proceed *in forma pauperis* in federal court unless you can show that you are in imminent danger of serious physical injury.

Some courts have gone beyond the "three strikes" law and issued orders that even further limit certain prisoners from filing lawsuits. While courts are permitted to adopt restrictions that will protect against abusive filings, they may not "construct blanket orders that completely close the courthouse doors to those who are extremely litigious."[32] Thus, in *Miller v. Donald*, 541 F.3d 1091 (11th Cir. 2008), the Court of Appeals found that a trial court could not bar *in forma pauperis* filings by a Georgia prisoner who alleged that he was under imminent danger of serious physical injury.

## LEGAL MAIL

"[A] prisoner's constitutional right of access to the courts requires that incoming legal mail from his attorneys, properly marked as such, may be opened only in the inmate's presence and only to inspect for contraband."[33] The First Amendment also prohibits prison officials from adopting a pattern and practice of reading confidential attorney communications outside a prisoner's presence.[34] The "actual injury" requirement applies to access to courts claims, but not to First Amendment free speech claims.[35]

[31] *Smith v. Mosley*, 532 F.3d 1270, 1278 (11th Cir. 2008).
[32] *Cofield v. Alabama Public Service Com'n*, 936 F.2d 512, 517 (11th Cir. 1991).
[33] *Al-Amin v. Smith*, 511 F.3d 1317, 1325 (11th Cir. 2008).
[34] *Id.* at 1327.
[35] *Id.* at 1333-1334.

## RELATED MATTERS

**Statute of Limitations:** In Georgia and Alabama, civil rights claims brought under 42 U.S.C. § 1983 are subject to a 2-year statute of limitations, but violations of state law may have earlier limitations periods and notice requirements.[36]

**Exhaustion of Grievance Procedure**: Under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e), no legal action may be brought "with respect to prison conditions" under section 1983 or any other federal law, by a prisoner confined in any jail, prison, or other correctional facility "until such administrative remedies as are available are exhausted." In other words, if the prison/jail you are in has a grievance process, you must complete the grievance process before filing a lawsuit raising federal claims.

**Resources:** You may request a free copy of *The Jailhouse Lawyer's Handbook: How to Bring a Federal Lawsuit to Challenge Violations of Your Rights in Prison* by writing to The Center for Constitutional Rights at: Jailhouse Lawyers Handbook c/o The Center for Constitutional Rights, 666 Broadway, 7th Floor, New York, NY 10012.

**Please Note:** This document focuses on cases from the federal courts in Alabama and Georgia. It provides general information, but is not intended to be an exhaustive summary of the law. In addition, the law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.

[36] Section 1983 of Title 42 of the United States Code ("42 U.S.C § 1983") is part of the Civil Rights Act of 1871. This provision is the primary means of remedying constitutional violations by state actors. The provision was enacted to prevent post-Civil War racial violence in the Southern states. Section 1983 provides a mechanism for seeking redress for an alleged deprivation of a person's federal constitutional and federal statutory rights by persons acting under color of state law.