County Technical Assistance Service
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December 25, 2024

Telephone Calls to Attorneys

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Telephone Calls to Attorneys

Reference Number: CTAS-1421

Inmates must be permitted telephone access to contact the courts and their attorneys under certain circumstances. *Green v. Nadeau*, 70 P.3d 574, 578 (Colo. App. 2003). However, some reasonable restrictions on inmates' ability to access counsel by telephone does not deny inmates "their constitutional right to access the courts and counsel." *Mullins v. Churchill*, 616 N.W.2d 764, 770 (Minn. App. 2000) (upholding policies regulating inmate use of telephones that required inmates to provide attorney's name and telephone number and explanation of why inmate could not contact attorney by mail). The right to counsel under the federal Constitution is the right to counsel's effective assistance, and not the right to perfect representation or unlimited access to counsel. The right to confer with counsel does not include the right to confer by telephone with counsel as frequently as the inmate or the attorney desires. *Washington v. Meachum*, 680 A.2d 262, 282 (Conn. 1996). *See also Aswegan v. Henry,* 981 F.2d 313, 314 (8th Cir. 1992) (stating "[a]lthough prisoners have a constitutional right of meaningful access to the courts, prisoners do not have a right to any particular means of access, including unlimited telephone use") (citations omitted).

> The federal courts have had a few opportunities to deal specifically with the question of restrictions placed upon telephone communications between attorneys and prisoners. In Williams v. ICC Committee, 812 F.Supp. 1029 (N.D. Cal. 1992), for example, the court said that an inmate could state a claim only if he could demonstrate that the phone was his only avenue for meaningful access to his lawyer because he was unable to contact the lawyer by mail, or was denied visits from his lawyer. In another case, Bellamy v. McMickens, 692 F.Supp. 205 (S.D. N.Y. 1988), the court ruled that a prisoner's civil rights were not violated simply because he could not telephone his attorney whenever he wanted, but was subject to delays imposed by prison regulations.

Hall v. McLesky, 83 S.W.3d 752, 759 (Tenn. Ct. App. 2001). In *Hall*, the court held that the temporary interruption of telephone service to an inmate's attorney did not prejudice the inmate such that he was deprived of his constitutional right to meaningful access to the courts, and thus, the inmate could not invoke the protections of 42 U.S.C. § 1983. The court found that the restriction imposed upon the inmate's access to his attorney was of limited scope and duration and was related to a legitimate regulatory purpose on the part of prison administration. *Id*.

In *Ishaaq v. Compton,* 900 F.Supp. 935, 941 (W.D. Tenn. 1995), the court found that denying a convicted inmate's request to make a telephone call to his attorney, on the ground that the inmate lacked sufficient money in his trust fund account, did not deny the inmate access to the courts in violation of the First Amendment and could not be the basis for a § 1983 civil rights claim where the inmate failed to demonstrate actual interference.

"The essence of this right is, however, the access itself, not the convenience of the access. Convenience is not a right of constitutional magnitude. Any inconvenience an inmate experiences in handling a lawsuit is merely 'part of the penalty that criminal offenders pay for their offenses against society.'" *Id*. at 941, (citations omitted).

"The choice among various methods of guaranteeing access to the courts lies with prison administrators, not inmates or the courts." *Id*., *citing Knop v. Johnson*, 977 F.2d 996, 1008 (6th Cir. 1992). "The alternative avenues open to state authorities to protect a prisoner's right of access to the courts are precisely that – alternatives. The choice between alternatives lies with the state. A prisoner who chooses not to avail himself of the alternative provided has no basis – constitutional or otherwise – for complaint." *Id*. *See also Love v. Summit County*, 776 F.2d 908, 914 (10th Cir. 1985) ("In addition, the state, not the inmate, has the right to choose among constitutionally adequate alternatives.").

Limited access to attorney telephone calls is not a constitutional violation as long as inmates can communicate with their counsel in writing or in person. *Ingalls v. Florio,* 968 F.Supp. 193, 203-204 (D. N.J. 1997). *See also Pino v. Dalsheim,* 558 F.Supp. 673, 675 (S.D. N.Y. 1983) (unlimited personal and mail communication with attorney constitutionally sufficient because state is not required to provide best manner of access). Policies requiring inmates to obtain prior written authorization to telephone their attorneys and limiting those calls to one per week have been found reasonable in light of the inmates' ability to correspond with attorneys through mail and during prison visits. *Robbins v. South*, 595 F.Supp. 785, 789-790 (D. Mont. 1984).

In *Cacicio v. Secretary of Public Safety*, 665 N.E.2d 85, 92 (Mass. 1996), the Massachusetts Supreme Court held that regulations that placed time limits on attorney telephone calls and prohibited toll-free calls did not violate an inmate's right to effective assistance of counsel, where the inmate was permitted to make unmonitored telephone calls to five separate attorneys on the inmate's calling list as well as three

legal services organizations. The court found that these limitations, "when viewed in conjunction with an inmate's ability to use the mails and have visits, provide sufficient access to attorneys." *Cf. Beyah v. Putman*, 885 F.Supp. 371, 374 (N.D. N.Y. 1995) (Prison officials can restrict inmates' access to counsel by telephone as long as the inmates have some other avenue of access.); *Bellamy v. McMickens,* 692 F.Supp. 205, 214 (S.D. N.Y. 1988) (Although prisoners have a right to gain access to counsel from prison, they have no right to unlimited telephone calls and "restrictions on inmates' access to counsel via the telephone may be permitted as long as prisoners have some manner of access to counsel.").

In *Tucker v. Randall*, 948 F.2d 388, 390-391 (7th Cir. 1991), the Seventh Circuit Court of Appeals noted that in certain circumstances, denying a pretrial detainee access to a telephone for four days after his arrest may violate the Constitution. The court stated that the Sixth Amendment right to counsel would be implicated if a pretrial detainee was not allowed to talk to his lawyer for the entire four-day period. However, in *United States v. Manthey*, 92 Fed.Appx. 291, 297 (6th Cir. 2004), the Sixth Circuit Court of Appeals stated that the failure of a pretrial detainee's attorney to accept collect telephone calls does not violate the inmate's due process right of access to the courts when the inmate has the assistance of an attorney during the course of his criminal trial.

In *Carter v. O'Sullivan*, 924 F.Supp. 903, 911 (C.D. Ill. 1996), the district court found that a 19-day delay in contacting a convicted state inmate's attorney, after the inmate refused to put the attorney on his call list, did not deprive the inmate of the reasonable opportunity to communicate with his attorney. The court further found that the inmate was unable to show any prejudice to pending or contemplated litigation, which is a requirement for liability under 42 U.S.C. § 1983.

Providing telephone access to counsel is clearly one appropriate way to guarantee an inmate an opportunity to have his or her legal claims, both civil and criminal, properly framed and brought before a court of competent jurisdiction. However, this is only one of several ways of assuring inmates the opportunity to present their legal claims to the courts. Reasonable access to a law library within the correctional facility, consultation with attorneys or their representatives through the mails and personal visits, and consultation with attorneys over the telephone within facility guidelines are all valid methods of ensuring that inmates are not denied the access to the courts. *Washington v. Meachum*, 680 A.2d 262, 285 (Conn. 1996) (citations omitted).

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