

Inmate Legal Associations

Directive #7-76
Issued by:

February 9, 1977
Arthur J. Simpson, Jr., J.A.D.
Acting Administrative Director of the Courts

Herewith for information and advice to all judges is a letter from Chief Justice Hughes to Appellate Division Presiding Judge Conford which sets forth Supreme Court policy as to the above associations.

Please take the necessary implementing action in all vicinages.

February 2, 1977

Honorable Milton B. Conford
Presiding Judge for Administration

Dear Judge Conford:

I have your letter of January 26 dealing with the question raised by Judge Fritz as to whether the appellate clerks should accept briefs or other papers filed by "Inmate Legal Associations" on behalf of prisoners. I have considered with the Court the pro's and con's of whether an "Inmate Legal Association" should be permitted to file in its name, even if countersigned by the *pro se* prisoner litigant, briefs or other papers otherwise acceptable on a *pro se* basis for filing by appellate clerks. The "con" view was expressed by Judge Fritz in his letter to you of November 18, 1976, and by your present letter to me of January 26, 1977. The "pro" view was expressed in the usual careful and knowledgeable opinion of Ed Stern of December 13, 1976.

As Ed Stern rightly says, the reality of inmate legal assistance to the *pro se* prisoner cannot be discouraged, under the *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969) principle, validating that assistance by a "jailhouse lawyer" as providing necessary constitutional access to the courts. On the other hand, those coming before the courts in the habiliments of lawyers should be lawyers subject to discipline, lest the courts be overwhelmed by false, frivolous and repetitious barrages of legal papers. I would recall here the present relevance of the aphorism of Judge Learned Hand concerning abuse of the courts:

While it is quite true that an order dismissing one writ of *habeas corpus* does not formally estop the relator from suing out another on the same grounds, that does not mean that he may again and again call upon the court to repeat its rulings. Even this great writ can be abused, and when the question has once been decided upon full consideration, there must be an end, else the court becomes the puppet of any pertinacious convict. [*United States ex rel. McCann v. Thompson*, 144 F. 2d 604, 606 (2d Cir. 1944)].

Apart from his legal arguments, advocating relaxation of the present rule opposing the practice, I recognize Ed Stern's strategic purpose, which I understand and share. It is well-known that when prisoners think "someone is listening -- someone cares," there is a substantial conducement to inmate composure and prison peace. Thus where law library access is provided in prisons, inmates are preoccupied in searching for the needle in the legal haystack of their cases and (at least I have been told) prison unrest markedly diminishes. By analogy it might seem sensible, and costless, to grant inmate legal

associations the dignity of co-signing the court papers.

However, I think such would not be costless in final analysis, for it would weaken and distort the legal process. The courts are besieged enough without inviting new assaults on frivolous and repetitious grounds. For that reason you are authorized to direct the Clerk of the Appellate Division that prisoners who submit papers endorsed with the name "Inmate Legal Association" or such, be advised that such papers are not acceptable and that, in the absence of formal counsel, they are to be filed by the prisoner himself, and only by him.

At the same time, compatible with *Johnson v. Avery*, and to avoid needless inmate frustration, the prisoner should be advised that the assistance to him of the inmate legal association, in preparation of his papers or otherwise, is not proscribed.

We shall give the same directive to the Clerk of this Court, and the Administrative Director will transmit it to the Assignment Judges for information and compliance of the trial courts.

EDITOR-S NOTE

No change has been made to the original text.