

State of  
**IOWA**

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Governor, Kim Reynolds  
Lt. Governor, Adam Gregg

OFFICE OF THE STATE PUBLIC DEFENDER  
Jeff Wright, State Public Defender

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September 7, 2021

Warden Chris Tripp  
[chris.tripp@iowa.gov](mailto:chris.tripp@iowa.gov)  
Iowa State Penitentiary  
2111 330<sup>th</sup> Ave.  
Fort Madison, IA 52627

**RE: Legal Mail Policy of August 11, 2021**

Dear Warden Tripp:

Please consider this letter a formal notice that the above-referenced policy (a copy of said policy is attached for clarification) that you enacted has been brought to my attention by my clients.

Upon my review, this policy in which you open legal mail, make copies of it and then shred or destroy the originals is a violation of each incarcerated person's Sixth Amendment Right to Counsel. The Sixth Amendment of the United States Constitution provides for counsel and that includes access to counsel and confidential and privileged communication. The Iowa Constitution, Article 1, section 10 provides further that all persons facing criminal prosecutions or convictions involving the life and liberty of an individual have the right to counsel. Censorship as provided for in your policy violates every incarcerated person's civil rights: it deprives every person of their confidential attorney-client relationship and effective legal assistance and thereby denies meaningful access to the courts. See 42 U.S.C.A. §1983.

Copying of legal mail has long been prohibited. See *Morales v. Turman*, 326 F. Supp. 677 (E.D. Tex. 1971). There is no dispute that prison officials have been prohibited from interfering with postal communications between an inmate and his counsel which relate to the legality of either his criminal conviction or the conditions of his incarceration. See *Goodwin v. Oswald*, 462 F.2d 1237 (2d Cir. 1972); *Moore v. Ciccone*, 459 F.2d 574 (8th Cir. 1972); This is true even if the attorney is not the incarcerated persons' counsel of record. See *Fulwood v. Clemmer*, 206 F.Supp. 370, 376 (D.D.C.1962).

The effective protection of access to counsel requires that the traditional privacy of the lawyer-client relationship be implemented in the prison context. Communications by mail between an inmate and his attorney are sacrosanct,

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subject only to tests on incoming mail for the presence of contraband which fall short of opening it when the inmate is not present. *See Adams v. Carlson*, 488 F.2d 619, 631 (7th Cir. 1973)

Additionally, legal mail is governed by Iowa Administrative Code Section 201-20.4(2). Any changes to the administrative code must be done by administrative rule-making and your policy does not comport with administrative rule-making process. Pursuant to the administrative code, you are not allowed to read legal mail and only upon probable cause finding from a competent court, may you do anything more than verify that the mail does not contain contraband and is from the attorney on the envelope.

Finally, as an officer of the court I am bound by the Iowa Rules of Professional Conduct which require me to communicate with my clients in a timely manner (Rule 32:1.4) and I must ensure that my communications are confidential (R. 32:1.6). I must make all reasonable efforts to prevent inadvertent or unauthorized disclosure or unauthorized access to information related to the representation of a client. See R. 32:1.4(d).

Your policy prohibits me from fulfilling my ethical duties and denies every incarcerated person access to counsel and the courts. Iowa DOC and all ISP staff may not make copies of legal mail and shred originals. Please confirm in writing that this policy and practice has been rescinded.

A handwritten signature in black ink, appearing to read "Erica Nichols Cook", written over a light gray rectangular background.

Sincerely,  
Erica Nichols Cook  
Director, Wrongful Conviction Division  
[enicholscook@spd.state.ia.us](mailto:enicholscook@spd.state.ia.us)  
ENC/eanc

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