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January 13, 2017

NANCY ANKERS WHITE
 General Counsel

Civil Clerk
 Suffolk Superior Court
 12th Floor
 Three Pemberton Square
 Boston, MA 02108

RE: Muise v. Ryan, et al.
 No. 1484CV03452-A

Dear Sir/Madam:

Enclosed for filing in the above-captioned case, please find the following papers:

- DEFENDANT KELLY RYAN'S MOTION FOR RECONSIDERATION, and,
- DEFENDANT KAREN DINARDO'S MOTION FOR SEPARATE AND FINAL JUDGMENT.

Please direct the Motion for Reconsideration to Judge Robert J. Kane. Thank you for your attention to this matter.

Sincerely yours,

David J. Rentsch
 Associate General Counsel

Enclosures

✓ cc: Timothy Muise, pro se (W66927)
 MCI-Norfolk

ACCESS TO THE COURTS:

ACTUAL INJURY;

Must "show that that the alleged deficiencies hindered their efforts to present a nonfrivolous claim." Puleio v. Comm. of Corr., 52 Mass. App. Ct. 302, 311 (2001).

"An actionable claim involving a challenge to a sentence or to conditions of confinement 'has been lost or rejected, or that the presentation of such claims is currently being prevented, because this capability of filing suit has not been provided.'" Jiles v. Dept. of Corr., 55 Mass. App. Ct. 658, 662 (2002).

"Actual injury derives from the doctrine of standing and requires a prisoner to demonstrate that any alleged shortcomings in a legal library or assistance program hindered his efforts to pursue a legal claim involving direct or collateral attacks on sentences or challenges to conditions of confinement." Worcester Inmates v. Worc. County Jail & H.O.C., 2016 U.S. Dist. LEXIS 25156

*** ... Policies as imposing an intentional barrier to plaintiff's right of access to the courts... ***

"i.e. "that a nonfrivolous legal claim had been frustrated or was being impeded." Lewis v. Casey, 518 U.S. 343, 351-53

"Or that he had suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable to even file a complaint." Lewis, at 351

"others assume that obstacles that impair the ability to present one's case effectively are also actionable." Cody v. Weber, 256 F. 3d 764 at 768 (8th Cir. 2001). Holding the advantage defendants obtained by reading the plaintiff's private legal papers constituted actual injury.

Nonfrivolous = frustrate or impede

Sometimes such interference results from prison policy. Procunier v. Martinez, 416 U.S. 396, at 419.

"I write separately only to emphasize my view that prison authorities do not have a general right to open and read all incoming and outgoing prisoner mail." Procunier at 422.

"A prisoner's free and open expression will surely be restrained by the knowledge that his every word may be read by his jailors and that his message could well find its way into a disciplinary file, be the object of ridicule, or even lead to reprisals. A similar pall must be cast over the free expression of the inmate's correspondence."

Procunier at 396

SUMMARY JUDGMENT:

The Court draws "all logically permissible inferences" from the facts in the favor of the non-moving party." Willitts v. Roman Cath. Archbishop of Bost., 411 Mass. 202, 203 (1991).

"Summary judgment is appropriate when 'viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law.'" Regis College . Town of Weston, 462 Mass. 280, 284 (2012).