

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT



POLK COUNTY
POLK COUNTY COURTHOUSE
255 N. BROADWAY • 3RD FLOOR
POST OFFICE BOX 9000-PD
BARTOW, FLORIDA 33831
PHONE: 863/534-4200

HARDEE COUNTY
413 WEST ORANGE STREET
WAUCHULA, FLORIDA 33873
PHONE: 863/773-6758

HIGHLANDS COUNTY
510 FERNLEAF AVENUE
POST OFFICE BOX 3741
SEBRING, FLORIDA 33871
PHONE: 863/402-6724

June 4, 2010

PLEASE REPLY TO
Bartow

Hon. Grady Judd
Polk County Sheriff
455 North Broadway
Bartow, FL 33830-3998

RE: Inmate Phone Calls

Dear Sheriff Judd:

I am writing in response to Ms. Denmark's recent letter informing me of your unilateral decision to change the decades-old policy regarding phone calls from our clients in jail. My staff and I have reviewed the case that Ms. Denmark was kind enough to enclose, and while we do not agree that the law (especially the federal law) is as cut-and-dried as she suggests, the purpose of this letter is not to debate your legal authority to record and monitor attorney-client calls made from the jails. Rather, I want to discuss whether this change in policy makes sense for your office, for the other criminal justice stakeholders and ultimately, for the taxpayers of Polk County.

If there is a benefit to your office from recording and monitoring phone calls from our clients to their lawyers, it is certainly not obvious to those of us outside of your office. But it is obvious that your decision will be very expensive to us and to the entire criminal justice system. The expenses will manifest themselves in terms of extra staff time and extra delay in processing the cases – delays that will ultimately increase the time it takes to move folks out of the county jails and on to prison, probation or freedom.

It is obvious that no ethical lawyer would knowingly participate in phone conversations with a client that he or she knows are being recorded and therefore not confidential. Accordingly, this office will have an immediate short-term "benefit" in the reduction of our call volume (perhaps by more than 70%) when we decline to accept these calls. While that change is very attractive to some of our staff, the system-wide cost will be significantly greater.

Most of those attorney-client conversations will still need to occur, they simply will occur in person at the jail, at the courthouse or over the secure video link (assuming you continue to allow it). All of those options require considerable staff time – both ours and yours.

Folks that have been doing this work for a long time know that if you eliminate routine calls from clients to their lawyers you will slow down the case processing significantly. Of course longer case processing means longer jail stays. Clearly, client decisions about plea offers, notice of court dates, making family arrangements for release and other aspects of handling cases that can now be accomplished in minutes by phone without involving your correctional officers, will soon require considerably more of your staff time to accomplish.

Either our lawyers will need to make extra trips to the jails, wasting gas and time (it is 52 miles round-trip to south county jail), or we will be successful (in conjunction with the private bar and regional

counsel) in getting the courts to allow us to have our clients brought to us here in the courthouse. Either way, the taxpayers lose. Obviously, if our lawyers and staff are tied up on the road and waiting for a scarce attorney booth, they can not handle as many cases and your staff time will increase in moving the clients in and out of the attorney booths. Even if we are successful in getting judges to transport the clients to the courthouse for attorney-client conferences, we might save gas and some staff time, but your staff costs will skyrocket. Additionally, constructing attorney booths in the courthouse may become an issue as well.

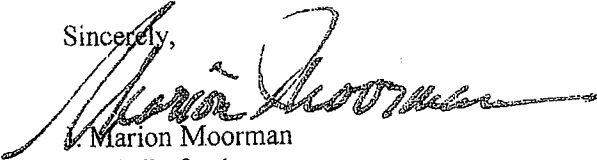
Currently, you have ten attorney booths (two reserved for video links) at the south county jail and eight (with one reserved for a correctional officer's office) at central. I am sure that our lawyers and representatives of RCC and the private bar will confirm that these scarce resources are presently overcrowded and that the waiting time to use them will increase significantly if you make this drastic and unnecessary change.

In order to address the case-processing time and other issues discussed above, the courts, the county, my office and yours worked together to obtain and implement a federal grant to create a video link from the south county jail to our office. The grant proposal allowed the private bar to use the link as well. Funded and built for five simultaneous channels, almost from the outset, it has functioned with only two because of your staff limitations (only one this week). Assuming your recent decision does not impact this remaining communication channel, and if it could be restored to its original federally-funded design parameters, the video link would still not come close to replacing the call volume we receive from clients at the jails daily. Moreover, the video link requires considerable staff involvement at your end - involvement that is not necessary under the status quo.

Finally, I hope you will discuss with Ms. Denmark whether or not she thinks that our Constitutions, and hence our courts, would ever permit any jail to operate in an environment that permits no private telephone communication between inmates and their lawyers. Even if your decision to record and monitor all attorney-client calls from the "public" phones in the housing areas is lawful, I feel certain that some provision for confidential telephone contact is Constitutionally required. The problem for both of us, and for the taxpayers, is that any other "secure line" system will be very costly indeed and a cost the Polk County Board of County Commissioners has not budgeted for.

Please let me know as soon as you can if you agree with this practical analysis and if you will agree to keep the system that has worked for all of us for so long. If you are aware of problems or abuses with the present system, I would welcome the opportunity to correct them if I can.

Sincerely,



Marion Moorman
Public Defender

cc

Hon. J. David Langford, Circuit Judge

Hon. Jerry Hill, State Attorney

Hon. Beth Harlan, Administrative County Judge

Mr. Wayne Durden, Assistant State Attorney

Ms. Julia Williamson, Esq. Pres., Polk County Criminal Defense Attorneys

Ms. Karen Meeks, Esq., Pres., Polk County Trial Lawyers

Mr. John Hendry, Esq., Interim Regional Civil and Criminal Conflict Counsel

Ms. Cassandra L. Denmark, Esq., Director, Office of Legal Affairs, PCSO