

NEW YORK
CITY BAR

COMMITTEE ON CORRECTIONS

RICHARD T. WOLF

CHAIR

51 CHAMBERS STREET, ROOM 923

NEW YORK, NY 10007

Phone: (212) 788-7845

Fax: (212) 788-7860

rtwolf@boc.nyc.gov

PAUL A. MONTUORI

SECRETARY

265 POST AVENUE, SUITE 270

WESTBURY, NY 11590

Phone: (516) 841-3872

Fax: (516) 334-2539

pmontuori@montuorilaw.com

May 17, 2007

Hon. Steven M. Gold
Chief Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East, Rm. 1217
Brooklyn, NY 11201

Hon. Andrew J. Peck
Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street, Rm. 1370
New York, NY 10007

Dear Judges Gold and Peck:

I write on behalf of the membership of the Corrections Committee of the New York City Bar Association to propose a change to the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. We urge that the Joint Committee on the Local Rules recommend an amendment to the Local Rules, requiring that in all cases involving *pro se* litigants, counsel attach copies of decisions cited in their memoranda of law or other pleadings when those decisions are unreported and/or available solely in electronic databases.

The Committee has recently undertaken an investigation of the adequacy of New York State prison law libraries. In the course of this investigation the Committee has learned that the vast majority of prison law libraries do not provide access to electronic databases (Westlaw or Lexis)¹. The law libraries stock only printed case reporters. Inmates who file petitions for civil relief (e.g. Article 78 petitions challenging parole denials, habeas corpus petitions) in State or federal court, however, inform us that they often receive opposition papers from local District

¹We know of four county correctional facilities in the state of New York with prison law libraries that provide access to Westlaw or Lexis via CD-Rom technology. We do not believe that the New York State Department of Correctional Services currently plans to provide Westlaw or Lexis access at the sixty-nine State prison facilities. Inmates in the custody of the Federal Bureau of Prisons also do not have access to electronic resources.

Attorneys Offices, the Office of the New York State Attorney General or the office of the local United States Attorney citing unreported cases and/or cases only available in electronic databases

Being unable to read the full cases cited by their opponents puts inmates at a decided disadvantage. Currently, prison inmates must make motions to the court where their civil cases are pending, requesting an extension of time to respond to their opponents' papers and an order directing that opposing counsel attach copies of the unreported cases they have cited in their papers. Not only is this step a burden on inmates, but it costs the court systems time and effort that could be better spent on substantive concerns.

We note that the problem of unequal access to case materials is not confined to prison inmates. As a general rule, it is safe to say that other *pro se* individuals likely do not have easy access to electronic databases.

We believe that, in matters involving *pro se* litigants that are pending before the federal District Courts for the Southern and Eastern Districts of New York requiring opposing counsel to attach copies of unreported cases is a simple solution to this problem. The right to equal access to the courts outweighs the negligible task of printing out and attaching unreported cases.

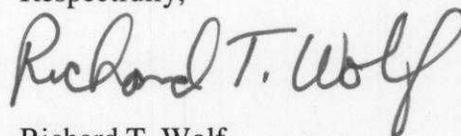
Consequently, we propose to amend Local Rule 7.1, Memoranda of Law, by adding the following language at the conclusion of that Rule:

In cases involving *pro se* litigants, memoranda of law or other pleadings that contain citations to unreported decisions and/or those exclusively reported on computerized databases (e.g. Westlaw, Lexis, Juris, etc.) shall be accompanied by printed copies of the decisions.

This proposed rule is similar to rules that are already in affect in other jurisdictions. For example, Local Rule 7.1(a)(1) for the Northern District of New York has the same language as the proposed amendment, except the Northern District local rule is not limited to cases involving *pro se* litigants. New Jersey District Court Local Rule 9.1(a)(3)(D) requires plaintiffs to attach copies of unreported cases in Social Security cases. Additionally, several judges of the Southern and Eastern Districts already require that the Court be supplied with copies of certain unreported cases cited in memoranda of law. (*See* the individual practices of Judges Keenan, Robinson, Cogan, and McMahan.)

The proposed rule change is a simple and non-burdensome means of continuing to ensure that all litigants who appear before the federal District Courts for the Southern and Eastern Districts of New York have a level playing field in that they have equal access to the cases being used to support or challenge their arguments.

Respectfully,



Richard T. Wolf
Chair, Committee on Corrections

cc: Members of the Committee on Corrections