

Attorney: Invasive searches persist at MCI Norfolk

By: Kris Olson May 27, 2015



In the March 9 issue of Lawyers Weekly, Boston's Patricia A. DeJuneas shed light on "strip searches" of female attorneys at MCI Norfolk. Sharing a copy of a letter she had sent Daniel Bennett, secretary of the state's Executive Office of Public Safety and Security, DeJuneas wrote that the searches "not only violate our rights, but also those of our clients."

As DeJuneas described in her letter, she was asked by a female officer to step behind a curtain, lift her top to breast level, pull away her bra, and "shake it." In speaking with other female attorneys, DeJuneas said she found her experience to be "not uncommon."

The letter drew a swift pledge of new procedures from Department of Correction Deputy Commissioner Thomas Dickhaut and led to a confab in early May between members of Bennett's office and, among others, representatives of the Massachusetts Bar Association and Committee for Public Counsel Services, an office particularly affected by the invasive search practices given that its female lawyers are required by law to visit their incarcerated clients.

Out of that meeting grew a proposal for policy changes. In a letter signed by the MBA, CPCS and DeJuneas, several changes were suggested for implementation by July 1 and subsequent incorporation into the state regulations. Among the proposed changes: a clarification that a "pat down" search is "an external search of an attorney's clothing" and a presumption that an underwire bra is setting off a wand or scanner, absent "probable cause" to think otherwise.

Beyond the bra scenario, pat-down searches could only be conducted after "the DOC duty attorney or superintendent of the institution, or, if neither are available, the shift commander" grants permission. Details regarding the searches would then be documented in reports. The revised rules for attorney searches would be posted at each institution's entrance, and DOC staff would receive training.

According to Public Safety and Security spokesman Felix Browne, state officials are taking the call for changes seriously. He writes in an email that his office and the DOC are "currently clarifying regulations regarding searches of attorneys at DOC facilities to ensure attorneys' personal privacy is protected without compromising prison security."

DeJuneas, however, fears that any momentum toward positive change has ground to a halt. When she submitted a public records request for documents related to attorney searches conducted during the period from Jan. 1, 2010, through Feb. 26, 2015, the DOC's general counsel, Sheryl F. Grant, informed DeJuneas it would cost over \$4,300. Incorporated in that estimate was an hourly labor rate of \$35, which DeJuneas notes equates to an employee earning \$72,800 annually.

While Grant attributed the high cost to the fact that most of the records DeJuneas requested are "manually maintained" and "not segregated based on whether the subject matter pertains to attorneys or searches of attorneys," DeJuneas believes something more nefarious is afoot: retribution against her for prompting an investigation by the Civil Rights Division of the Attorney General's Office.

Absent the requested documents, DeJuneas says there's no way to know whether the searches result from a "rogue officer" or are "coming from the top."

Browne reiterates that the cost estimate is legit. He writes that the DeJuneas was provided with a cost estimate for a paralegal to retrieve, review and redact more than 2,200 pages of documents, "the vast majority of which are paper rather than electronic documents."

He adds that the state contends that the names of visitors, attorneys and inmates on logs that DeJuneas has requested constitute Criminal Offender Record Information, which must be redacted, adding to the cost.

“Retribution” may have taken another form as well, DeJuneas says. On May 16, she returned to MCI Norfolk to visit a client. After her underwire bra set off the metal detector, she says she requested but was refused a “wand search”; instead, she was asked to consent to a “further” search — a word taken from the regulations.

“If an MCI Norfolk ‘pat down’ search involves showing and shaking a bra, I could not imagine what a ‘further’ search might involve,” she writes in a letter hand-delivered to Bennett on May 18. Officers relented when she stood her ground, she adds. Still, the experience was troubling.

She asks rhetorically in her letter: “Is this a game, to bully women attorneys who dare to represent prisoners? Does DOC approve when its staff harass, humiliate, and indecently search women?”

DeJuneas says her hopes are fading fast that Bennett’s office has an interest in an “informal resolution” of her complaint. She says she’ll reluctantly sue, hoping merely to force policy changes. Any money she may recover from such a suit will be donated to prisoners’ legal services, she adds.

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