

Trevor Scott Maloney

[contact information redacted for web display]

July 28, 2015

Department of Correction, Legal Division
Attn: Ms. Jennifer Staples, Regulations Counsel
70 Franklin Street, Suite 600
Boston, MA 02110

Re: Law Student Access to DOC Facilities under Proposed Changes to 103 C.M.R. 486

Dear Ms. Staples:

I am a third-year student at Northeastern University School of Law, and I serve as the law student representative on the Massachusetts Association of Criminal Defense Lawyers' board of directors. I share all of MACDL's concerns about the proposed 103 C.M.R. 486, but my comments are directed particularly toward how these regulations affect law students' access to Department of Correction facilities.

Law students who work for public defender offices, private criminal-defense firms, civil rights organizations, and law school clinics that represent prisoners all need to access DOC facilities. Since beginning law school in fall 2013, I have visited numerous DOC facilities through my internship and clinical work. I will also visit incarcerated clients during my final year of law school. I am seeking work as a criminal defense attorney after I graduate in May 2016.

Both clinical students and legal interns who enter DOC facilities work under the supervision of lawyers. Law students, supervised by lawyers, do much of the same work that lawyers do: We meet with our clients one-on-one; deliver, receive, and review documents; occasionally take photographs; and advocate on behalf of our clients. The level of access granted to lawyers and law students should be the same, because lawyers and law students do the same work, and law students are always supervised by lawyers.

The Rules of Professional Conduct, governing lawyers in Massachusetts, provide that lawyers, under certain conditions, are responsible for ethical violations by the law students they supervise. The buck stops with the lawyer. Lawyers have every reason to ensure that law students working under their supervision behave professionally, ethically, and in compliance with DOC regulations and other applicable statutes, and that students have sufficient training to do their assigned work. When law students work for lawyers, the lawyers' reputation (and professional license) is on the line. Additionally, law students face penalties from their schools for unprofessional and unethical conduct, which could affect their admission to the bar.

The Rules of Professional Conduct, the supervision and training of law students by lawyers and schools, the application process for clinics and internships, the law school application process, and the oversight of the legal profession and law schools by the courts and

bar associations all work to keep lawyers and law students accountable. Onerous regulations that restrict law students' access to DOC facilities can only limit incarcerated clients' access to legal representation.

The proposed 486.06(2) onerously requires a letter from the student's dean at least a week before the student's initial visit to a DOC facility. The regulations do not explain why a week's notice is necessary, or what DOC officials are supposed to do during that week. Lawyers are officers of the court. If a lawyer says that a person is a law student, is working for her, and needs to access the facility, her word should be taken as true. A letter faxed to the facility and, perhaps, a phone call from the supervising lawyer the day of the visit should be sufficient.

In addition to the letter from their dean, the proposed 486.07(2) requires law students to provide a letter from their supervising attorney if the students are not accompanied by that attorney. (To the DOC's credit, this is an improvement; the older version of 486.07(2) could be read to require a letter from the attorney even if the attorney is there with the student.) This requirement for two letters is onerous. The supervising lawyers – officers of the court – can ensure that the law student is indeed a law student, and their word should be taken on its face. If the DOC does require further confirmation from the law school, that can be done with a simple phone call from the DOC staff to the law school.

I am also concerned that language in the regulations that applies to attorneys without explicitly applying to law students could prove problematic.

For instance, the proposed 486.07(7) requires correction officers to check in with their shift commanders before conducting "pat downs" on lawyers. The proposed regulation does not say if the CO must check with the shift commander before conducting pat downs on law students. The proposed 486.07(8) requires a CO to file an incident report after pat downs of lawyers and provide copies of these reports to lawyers. It does not say if incident reports are required after pat downs of law students. The proposed 486.07(10) requires that the Commissioner and/or General Counsel be notified when a lawyer is denied permission to enter a DOC facility. It does not say if this is required when a law student is denied permission.

The proposed 486.06(4) provides that investigators have access to attorney/client rooms, but is silent on law student access to attorney/client rooms. I have heard of many instances where law students have been denied access to attorney/client rooms, even when they are clearly available, simply because they are students. Law student access to attorney/client rooms should be explicitly allowed by the regulations. The proposed 486.06(5) could be read to prohibit an interpreter from accompanying a law student. Law students need access to attorney/client rooms and interpreters to complete their work just as much as lawyers do, and the regulations should reflect this.

Unless all of the proposed regulations explicitly encompass law students, it will be difficult for COs to consistently and fairly apply the regulations. The result could be unnecessary conflict between the DOC and those working with incarcerated clients, and unwarranted denial of necessary legal visits with incarcerated clients.

Finally, some regulations explicitly spell out a different level of access for lawyers and the law students they supervise. Proposed 486.08(1) and (2) allow lawyers to visit between 9:00 A.M. and 8:30 P.M., but law students (along with paralegals and investigators) unaccompanied by lawyers can only visit during institutional visiting hours. DOC facilities do not offer visiting hours every day of the week, and visiting hours are limited. This makes it unnecessarily difficult for law students with a full schedule of classes or full-time internships to meet with their clients. If DOC staff can make off-hour visits available, law students should be able to visit their clients during the same hours when lawyers can visit their clients.

I urge the DOC to adopt regulations that make clear that law students have the same level of access as their supervising lawyers, without unnecessary restrictions. This will facilitate prisoner access to legal representation, guaranteeing that the rights afforded to prisoners by the constitutions of the United States and the Commonwealth are protected.

Sincerely,

A handwritten signature in black ink, reading "Trevor S. Maloney". The signature is written in a cursive style with a long, sweeping underline.

Trevor S. Maloney
Candidate for Juris Doctor (2016), Northeastern University School of Law
Student Representative, Massachusetts Association of Criminal Defense Lawyers