

1 OFFICE OF THE COUNTY COUNSEL
2 Alison A. Barratt-Green, County Counsel (148360)
3 Marcos A. Kropf, Assistant County Counsel (180898)
4 950 Maidu Avenue, Suite 240
5 Nevada City, CA 95959
6 Tel: (530) 265-1319 Fax: (530) 265-9840

7
8
9 Attorneys for Nevada County Sheriff's Office

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NEVADA

11 PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 vs.

14 JACOB SIEGFRIED,

15 Defendant.

Case No.: F11-00317

**NEVADA COUNTY'S BRIEF IN
SUPPORT OF SCHEDULED
CONFERENCE CONCERNING ITS
MOTION TO VACATE CONTACT
VISIT ORDER**

Date: May 24, 2013

Time: 1:30 p.m.

Dept: I or II

Honorable Thomas M. Anderson

21 The Sheriff's Office permits meetings between attorneys and criminal defendants in
22 secure, private and confidential meeting rooms. For safety and security reasons, there is a glass
23 barrier separating the participants. Additionally, defendants and their attorneys are permitted to
24 have barrier-free meetings in a courthouse holding cell, should the defendant be making an
25 appearance in court. Furthermore, the Sheriff's Office, in its discretion, and on a case-by-case
26 basis, may permit barrier-free meetings, scheduled in advance, depending on the circumstances.
27 Defendant is not entitled to more.

28 There is no constitutional right, or other right, to barrier-free meetings between criminal
29 defendants and their attorneys. In any case, the Sheriff's Office has determined, in accord with
30 its sole and exclusive authority over the jail, that its restrictions are necessary to maintain the
31 security, integrity and safety of the facility. Accordingly, and based on the reasons set forth in
32

1 the County's motion to vacate the Court's order for contact visits and this Brief, the Court's
2 order for contact visits should be vacated.

3 **I. FACTS**

4 The Sheriff's Office currently permits what it considers contact visits, in that an attorney,
5 and his or her client, may have face-to-face meetings in confidential, private and secure meeting
6 rooms, separated only by a glass partition (Pettitt Dec. ¶ 8.) The partition has a pass-through slot
7 permitting contact through the ability to pass items back and forth. (Pettitt Dec. ¶ 8.) These
8 rooms have secure phone systems that allow confidential communication between attorneys and
9 their clients. (Pettitt Dec. ¶ 9.) Prisoners and their attorneys can also communicate through the
10 glass when the pass-through slot is open. (Pettitt Dec. ¶ 9.) The rooms also contain sound
11 deadening material to maintain the confidentiality of communications. (Pettitt Dec. ¶ 10.)

12 Additionally, criminal defendants and their attorneys can have barrier-free, face-to-face
13 meetings in a courthouse holding cell, should the court request that the Sheriff's Office transport
14 a defendant to that location for a court appearance. (Pettitt Dec. ¶ 17.) Moreover, the Sheriff's
15 Office will accommodate requests for barrier-free meetings between attorneys and their clients,
16 in its discretion, on a case-by-case basis. (Pettitt Dec. ¶ 16.) The Sheriff's Office has
17 accommodated these requests at least a dozen times since February. (Pettitt Dec. ¶ 16.)

18 Defendant does not have a constitutional, or other right, to barrier-free meetings with his
19 attorney. In any case, the Sheriff's Office has determined, for safety and security reasons, that
20 meetings between attorneys and prisoners are restricted to designated secure, confidential and
21 private meeting rooms set up for that purpose. Accordingly, the County requests that
22 Defendant's motion be denied.

23 **II. PRISONERS DO NOT HAVE A CONSTITUTIONAL, OR OTHER RIGHT, TO**
24 **BARRIER FREE CONTACT VISITS, AND IN ANY CASE, THE JAIL MAY**
25 **IMPOSE RESTRICTIONS ON HOW VISITS ARE CONDUCTED IN ORDER TO**
26 **FURTHER INSTITUTIONAL SECURITY AND SAFETY CONCERNS**

27 The "law does not give prison inmates the absolute right to have contact visits with their
28 counsel." (*Small v. Superior Court* (2000) 79 Cal.App.4th 1000, 1014.) The law only requires
29 that an inmate be able to confer with his or her counsel, in private. (*Id.*; *Barber v. Municipal*
30 *Court* (1979) 24 Cal.3d 557, 578.) There is no requirement, constitutional or otherwise,
31 mandating that a criminal defendant has to be able to touch his or her attorney. There is no
32

1 requirement, constitutional or otherwise, that a criminal defendant has to be able to meet with his
2 attorney without a physical barrier between them. The Constitution and the law only require that
3 a criminal defendant and his attorney be afforded the reasonable opportunity to communicate in
4 absolute privacy. (*Barber* 24 Cal.3d 578.) Even then, the Jail is free to impose reasonable
5 restrictions on visits between a criminal defendant and his attorney for institutional security
6 purposes. (*People v. Torres* (1990) 218 Cal.App.3d 700, 706.)

7 The United States Supreme Court has repeatedly underscored the rule that jail officials
8 should be given wide-ranging deference in the operation of the jails. (*Small v. Superior Court*
9 (2000) 79 Cal.App.4th 1000, 1013-1014.) Moreover, the burden does not lie with the Jail to
10 justify the reasonableness of its rules or policies as they relate to safety, security or penological
11 interests. (*Jones v. North Carolina Prisoners' Labor Union* (1977) 433 U.S. 119, 128.) Those
12 judgments are within the province of correctional authorities and it is an abuse of the court's
13 discretion to substitute its judgment for that of those officials charged with the day-to-day
14 operations of the jail. (*Small* 79 Cal.App.4th at 1013-1014; *see also Jones* 433 U.S. at 128
15 [Proper deference to the informed discretion of prison authorities demands that they, and not the
16 courts, make the difficult judgments which reconcile conflicting claims affecting the security of
17 the institution, and the welfare of the prison staff].)

18 In this case, Defendant has not, and cannot even make the minimal showing that he was
19 not afforded the reasonable opportunity to communicate in absolute privacy. The law requires
20 nothing more, and Defendant has not provided any valid authority to the contrary. Instead, he
21 attempts to rely on a case that is neither binding, correct, nor even persuasive on facts
22 distinguishable from this case. *Ching v. Lewis*, (9th Cir. 1990) 895 F.2d 608, involved a case in
23 which a prisoner could not communicate with his counsel, without yelling through holes in a
24 glass partition. That is not the case here. In Nevada County criminal defendants and their
25 counsel may talk to each other over a phone, or through the glass when the pass through slot is
26 open. (Pettitt Dec. ¶ 9.) Furthermore, Criminal defendants and their attorneys are free to have
27 non-barrier type visits in the courthouse holding cell, should they be there for a court appearance.
28 (Pettitt Dec. ¶ 17.) Additionally, it is unclear what the court in *Ching* considered a "contact
29 visit." In Nevada County, criminal defendants and their attorneys can pass material to each other
30 through a pass-through slot, or in other words make contact. (Pettitt Dec. ¶ 8.) In any case, the
31 Ninth Circuit's questionable decision is contrary to that of California state courts and the United
32

1 States Supreme Court, which has repeatedly deferred to the judgment of jail officials on the issue
2 of visitation restrictions. (*See Turner v. Safley* (1987) 482 U.S. 78, 84-85 [Prison administration
3 is the responsibility of the legislative and executive branch, not the courts, and separation of
4 powers concerns counsel a policy of judicial restraint.]) Furthermore, the vast majority of
5 federal authority is contrary to *Ching*. (*Mann v. Reynolds* (10th Cir. 1995) 46 F.3d 1055, 1060
6 [Sixth Amendment does the require unfettered contact between inmate and counsel.]; *Lenz v.*
7 *Washington* (4th Cir. 2006) [Not every restriction on counsel’s opportunity to investigate or
8 consult with his client violates the Sixth Amendment.]; *O’Dell v. Netherland* (4th Cir. 1997) 112
9 F.3d 773, 775 [The Sixth Amendment does not provide a right to contact visits with members of
10 a legal team, including attorneys and paralegals.]

11 In any case, the Jail has rational reasons for how it permits meetings between criminal
12 defendants and prisoners. It has determined that barrier-free visits jeopardize the security of the
13 Jail and the safety of its prisoners, staff, and visiting attorneys. (*See Pettitt Dec. generally and ¶*
14 *15.*) As the United States Supreme Court has made clear, “the Constitution does not require that
15 detainees be allowed contact visits when responsible, experienced administrators have
16 determined, in their sound discretion, that such visits will jeopardize the security of the facility.”
17 (*Block v. Rutherford* (1984) 468 U.S. 576, 589.) “There is no dispute that internal security of
18 detention facilities is a legitimate governmental interest.” (*Id.* at 586.) “That there is a valid,
19 rational connection between a ban on contact visits and internal security of a detention facility is
20 too obvious to warrant extended discussion.” (*Id.*) “There are many justifications for denying
21 contact visits entirely, rather than attempting the difficult task of establishing a program of
22 limited visitation. (*Id.* at 587.) Indeed, the Supreme Court has determined that a blanket
23 prohibition on contact visits is an entirely reasonable, non-punitive response to legitimate
24 security concerns, consistent with the Fourteenth Amendment. (*Id.* at 589.)

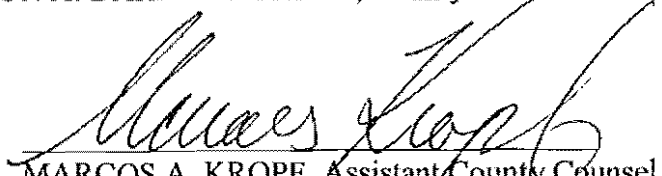
25 Criminal defendants can have barrier free visits with their attorneys in the court holding
26 cell, should they be at the courthouse for an appearance. (Pettitt Dec. ¶ 17.) Defendants can have
27 barrier-free visits at the discretion of Jail staff on a case-by-case basis, based on the
28 circumstances. (Pettitt Dec. ¶16.) Otherwise, defendants may meet and communicate with their
29 attorneys in confidential, private and secure meeting rooms, divided by a barrier, ensuring the
30 safety of the attorney, staff, other prisoners and maintaining the integrity and security of the
31
32

1 facility. The law does not require more. Accordingly, the County requests that the Court vacate
2 its contact visit order.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

DATED: May 20, 2013

OFFICE OF THE COUNTY COUNSEL
ALISON A. BARRATT-GREEN, County Counsel

By: 
MARCOS A. KROPF, Assistant County Counsel
Attorneys for Nevada County Sheriff's Office