

**OFFICE OF ADMINISTRATIVE LAW**

300 Capitol Mall, Suite 1250  
Sacramento, CA 95814  
(916) 323-6225 FAX (916) 323-6826

ENDORSED FILED  
IN THE OFFICE OF

2010 MAY 10 PM 1:14



**SUSAN LAPSLEY**  
Director

*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

Date: May 10, 2010

To: Fernando Medina ("Petitioner")

From: Chapter Two Compliance Unit

Subject: **2010 OAL DETERMINATION NO. 8 (S)**  
**(CTU2010-0312-02)**  
(Summary Disposition issued pursuant to Gov. Code, sec. 11340.5;  
Cal. Code Regs., tit. 1, sec. 270(f))

Petition challenging as underground regulations various documents concerning "Blank Greeting Cards" issued by California State Prison, Pelican Bay.

On March 12, 2010, you submitted a petition to the Office of Administrative Law (OAL) asking for a determination as to whether a policy regarding blank greeting cards at California State Prison, Pelican Bay, constitutes an underground regulation. The rule you challenge is contained in: 1) Operations Manual Supplement No. 54010.8.1 and 2) D.O.M.<sup>1</sup> 54010 Supplement Attachment 8 – Unauthorized Items via Regular Mail, attached hereto as Exhibit A and B, respectively.<sup>2</sup> The rule, as provided in the Operations Manual Supplement No. 54010.8.1 and D.O.M. 54010 Supplement Attachment 8 – Unauthorized Items via Regular Mail, states:

Blank greeting cards and homemade/computer-generated greeting card stock in excess of 20-weight paper will not be permitted to be received through incoming mail at PBSP.

In issuing a determination, OAL renders an opinion only as to whether a challenged rule is a "regulation" as defined in Government Code section 11342.600,<sup>3</sup> which should have been, but was not adopted pursuant to the Administrative Procedure Act (APA).<sup>4</sup> Nothing in this

<sup>1</sup> The D.O.M. is the Department Operations Manual published by the California Department of Corrections and Rehabilitation.

<sup>2</sup> Additional documents were also provided concerning Petitioner's personal situation and are not relevant to this summary disposition.

<sup>3</sup> "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

<sup>4</sup> Such a rule is called an "underground regulation" as defined in California Code of Regulations, title 1, section 250, subsection (a):

analysis evaluates the advisability or the wisdom of the underlying action or enactment. OAL has neither the legal authority nor the technical expertise to evaluate the underlying policy issues involved in the subject of this determination.

Generally, a rule which meets the definition of a "regulation" in Government Code section 11342.600 is required to be adopted pursuant to the APA. In some cases, however, the Legislature has chosen to establish exemptions from the requirements of the APA. Penal Code section 5058, subdivision (c), establishes exemptions expressly for the California Department of Corrections and Rehabilitation (CDCR):

(c) The following are deemed not to be "regulations" as defined in Section 11342.600 of the Government Code:

(1) Rules issued by the director applying solely to a particular prison or other correctional facility....

This exemption is called the "local rule" exemption. It applies only when a rule is established for a single correctional institution.

In *In re Garcia* (67 Cal.App.4<sup>th</sup> 841, 845), the court discussed the nature of a "local rule" adopted by the warden for the Richard J. Donovan Correctional Facility (Donovan) which dealt with correspondence between inmates at Donovan:

The Donovan inter-institutional correspondence policy applies solely to correspondence entering or leaving Donovan. It applies to Donovan inmates in all instances.

...

The Donovan policy is not a rule of general application. It applies solely to Donovan and, under Penal Code section 5058, subdivision (c)(1), is not subject to APA requirements.

Similarly, the rule challenged by your petition applies solely to the inmates of the California State Prison, Pelican Bay and was issued by the warden of California State Prison, Pelican Bay. Inmates housed at other institutions are governed by those other institutions' criteria for greeting cards. The rule you challenged was issued by the California State Prison, Pelican Bay, and applies only to inmates at California State Prison, Pelican Bay. Therefore, the rule is a "local rule" and is exempt from compliance with the APA pursuant to Penal Code section 5058(c)(1). It is not an underground regulation.<sup>5</sup>

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"Underground regulation" means any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, including a rule governing a state agency procedure, that is a regulation as defined in section 11342.600 of the Government Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is not subject to an express statutory exemption from adoption pursuant to the APA.

<sup>5</sup> The rule challenged by your petition is the proper subject of a summary disposition letter pursuant to title 1, section 270 of the California Code of Regulations. Subdivision (f) of section 270 provides:

(f)(1) If facts presented in the petition or obtained by OAL during its review pursuant to subsection (b) demonstrate to OAL that the rule challenged by the petition is not an underground regulation, OAL may issue a summary disposition letter stating that conclusion. A summary disposition letter may not be issued to conclude that a challenged rule is an underground regulation.

(2) Circumstances in which facts demonstrate that the rule challenged by the petition is not an underground regulation include, but are not limited to, the following:

(A) The challenged rule has been superseded.

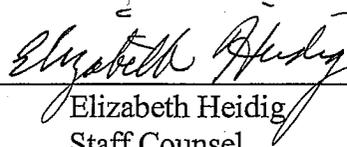
The issuance of this summary disposition does not restrict your right to adjudicate the alleged violation of section 11340.5 of the Government Code.



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SUSAN LAPSLEY

Director



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Elizabeth Heidig

Staff Counsel

Copy: Wm. J. Barlow, PBSP  
Matthew Cate  
Timothy Lockwood  
John McClure

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- (B) The challenged rule is contained in a California statute.
  - (C) The challenged rule is contained in a regulation that has been adopted pursuant to the rulemaking provisions of the APA.
  - (D) The challenged rule has expired by its own terms.
  - (E) An express statutory exemption from the rulemaking provisions of the APA is applicable to the challenged rule. (Emphasis added.)**

# Exhibit A

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State Prison

OPERATIONS  
MANUAL

SUPPLEMENT

Replaces OP 205, 2008

Custody/Security Operations

Subchapter: 54000

Services

Section: 54010

Article 41 - Inmate Mail

and returned to Tower 3 upon completion of this task.

54010.8.1

ITEMS ENCLOSED IN  
INCOMING FIRST-  
CLASS MAIL

Approved Writing Paper, Envelopes, and Greeting Cards

- A. Writing paper will be included with indigent envelopes requested by indigent inmates.
- B. Writing paper and embossed envelopes may be purchased through the Canteen.
- C. Writing paper and envelopes/postcards are accepted through the mail. The acceptable limit is three writing tablets (8 ½ x 11 or 8 ½ x 14 white or lined yellow) or up to one ream of paper (standard 8½" x 11", 20 weight, maximum of 500 sheets). Forty (40) plain white nonstamped envelopes/postcards. No colored paper allowed. Letterhead paper is not allowed. Cotton paper and art paper are not allowed. Peel and stick envelopes are not allowed.
- D. General Population inmates may receive postage stamps, envelopes with or without the stamps previously applied or embossed envelopes through the mail. The ASU, PSU, and SHU inmates may only receive plain white nonstamped or embossed envelopes. Metered envelopes are not allowed in all institution housing areas.
- E. A limit of 40 pieces of postage (embossed or stamped envelopes/postcards) will be allowed for all inmates per mailing. The value of the stamps shall be commensurate of the rate of a Domestic First Class Rate Postage. During period of U. S. postage rate increase; 90 days from the date of the increase supplemental postage will be accepted not to exceed \$1 per mailing.
- F. Blank greeting cards are available through the Canteen and from the Chaplain on a limited basis. A limit of five greeting cards will be allowed to be received. Cards may not be musical, electronic, voice-recorded, or include glitter, plastic, or reflective material or exceed 8 ½ x 11 in size.

# Exhibit B

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D.O.M. 54010 SUPPLEMENT ATTACHMENT 8 - UNAUTHORIZED ITEMS VIA REGULAR MAIL

- 1 Gang related material
- 2 Ink pens, pencils, wire slips
- 3 Laminated or reflective items
- 4 Stickers
- 5 All items made of cloth material, food, tobacco, hygiene products
- 6 Identification card, bank card, credit card, phone card, cash, etc.
- 7 Posters/Altered Poster, or drawings larger than 8 1/2" x 11"
- 8 Tattoo patterns/gang logos
- 9 Plastic, metal, magnets, wood, plants or flowers
- 10 Non-tear cardboard, plastic, padded, or bubbled envelopes
- 11 Jewelry or handmade items
- 12 Musical cards, electronic, voice recorded, or include glitter, plastic, or reflective material
- 13 Computer disks, DVDs, CDs, Cassettes
- 14 Items unable to be searched without destroying
- 15 Glued on items/glitter, confetti, white-out
- 16 Hair, fake finger nails, lipstick, perfume, etc.
- 17 No Polaroid photos by mail
- 18 No negatives, slides, picture frames, albums, posters, holograms, lithograph, commercial art
- 19 Excess photographs: ASU (Max 10 per mailing), PSU/SHU/GP/Level 1 (Max 20 per mailing)
- 20 Excess postage stamps - Maximum 40 for GP/Level 1
- 21 Postage stamps NOT allowed in ASU/PSU/SHU
- 22 Stamps/Postage, used as payment, will not be allowed to purchase anything from any vendors.
- 23 Metered envelopes not allowed in all institutional housing areas. **NO PEEL & STICK ENVELOPES**

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- 24 Excess embossed envelopes and /or postcards (Maximum combined total of 40 for ASU/PSU/SHU)
- 25 Excess envelopes (Maximum 40 plain white non-stamped envelopes and/or postcards)
- 26 Excess manilla (Large) envelopes - 10 per mailing; No larger than 12" x 16"
- 27 Excess greeting cards - Maximum 5 per mailing for all institutional housing units
- 28 Excess writing paper - Max 3 tablets 8 1/2" x 11" or 8 1/2" x 14" white or yellow lined only, or 500 sheets, 20 weight, white only. **NO COTTON, COLORED, OR ART PAPER.**
- 29 Calendar - Maximum size allowed 12"x14" closed position
- 30 Mail containing unknown substances
- 31 Phone Books
- 32 Any correspondence deemed circumventing
- 33 Third party letters, reproduced material from magazines, publications
- 34 Photos depicting: Gang, gang signs/affiliations-Explosives/Weapons(Manufacturing/Design examples)  
Drugs, Fighting Techniques, Unlawful activities or, unclothed minors.  
Depictions in which genitalia of either gender and/or the breast of a female are exposed.
- 35 Publications coming from a private party
- 36 Trading cards, playing cards
- 37 Contests, lottery tickets, gambling items
- 38 Maps - Maximum 12" x 12" unfolded. No maps depicting areas within 10 mile radius of any institution

*Stop*  
*4.8.09*  
*Attachment*