

DEPARTMENT OPERATIONS MANUAL

CHAPTER 1 — GENERAL ADMINISTRATION

ARTICLE 34 – OFFICE OF LEGAL AFFAIRS

Revised August 2006

15070.1 Office of Legal Affairs

The General Counsel/Assistant Secretary of the Office of Legal Affairs (OLA) reports to the Secretary of CDCR. The primary functions of the OLA are managing all litigation involving the Department; providing legal advice to the Secretary and the staff of the Department; and representing the Department in administrative proceedings. The legal work of the OLA is supervised by a Chief Deputy General Counsel and is divided into nine separate teams:

- The Business and Infrastructure Legal Team (BILT) serves as counsel to the CDCR on legal matters related primarily to its business operations and administrative functions. BILT specializes in representing the CDCR in transactions and disputes involving its vendor goods and services contracts, environmental issues and construction related matters.
- The Employment Advocacy and Prosecution Team/ Division of Juvenile Justice actively protects public safety by advising the Office of Internal Affairs, the Employee Relations Officers, and CDCR Hiring Authorities regarding the investigation and prosecution of those CDCR employees who have committed crimes or misconduct as specified in Government Code Section 19572.
- The Health Care Team focuses its efforts in matters related to inmate health care: from Penal Code (PC) section 2602 hearings to coordination with the Attorney General's (AG) office on class actions related to health care in the adult and juvenile institutions. In addition, the Health Care Team coordinates with the AG's office on inmate habeas petitions involving correctional health care.
- The Institutions Legal Team provides advice and functions as house counsel to administration and facilities staff on a broad spectrum of issues that pertain to inmates and wards. Examples of issues that are handled by this unit include use of force, mail and visiting, religion, discipline, and privacy. Also, the Institutions Legal Team manages major non-health care class action lawsuits involving the Department.
- The Labor and Human Resources Legal Team is the house counsel for all general personnel matters, with the sole exception of employee discipline; manages all employment litigation against the Department and its employees, serves as the Department's liaison with both the Office of the Attorney General and outside retained defense counsel and serves as the Department's representative at mediations and mandatory settlement conferences; provides direct legal support to the Office of Employee Wellness and field Return to Work Coordinators dealing with employee medical issues and requests for reasonable accommodation; provides direct legal support to the Office of Labor Relations, including grievance responses, management of labor relations-based litigation and assisting during contract and other union negotiations; assists the Office of Risk Management in evaluating and managing significant Workers' Compensation cases; provides direct support to the Office of Civil Rights in negotiations with the Department of Fair Employment and Housing and the federal Equal Employment Opportunity Commission, assists in the preparation of

settlement and other documents and reviews completed investigations to provide recommendations for clearance and remedial actions; represents the Department before the State Personnel Board in response to complaints of discrimination, harassment or failure to provide a reasonable accommodation, before CalOSHA concerning citations for work-place safety issues and before other administrative bodies as needed; and, finally works with other external control agencies to resolve issues concerning the Department's personnel practices.

- The Legal Access Team (LAT) is the first point of contact for those from the Department, its institutions and facilities, and other agencies seeking legal assistance. LATs goal is to facilitate timely and comprehensive legal services. The team is responsible for reviewing incoming requests for legal assistance, identifying the issues, and assigning the requests to the appropriate legal team for responses. Several modes of inquiry are available to our clients for easy access to legal services.

In addition, LAT assists the Department's custodians of records with processing and responding to third party subpoenas for records of inmates, wards, and parolees. The team strives to ensure that federal and state privacy rights of inmates, wards, and parolees are protected while complying with the rules of discovery. LAT is also responsible for assessing requests for records pursuant to federal and state law such as the Public Records Act.

The Team further facilitates training programs and publications to assist individuals working in the field who encounter legal issues on a daily basis.

- In April of 2000, the Office of Legal Affairs assembled the Liability Assessment and Litigation Management Team, LALMT (formally known as the Liability Response Unit), under the leadership of Catherine Bernstein, to begin meeting the litigation management demands of the immense volume of inmate civil actions pending against the Department and its employees.

LALMT evaluates each of the estimated 600 new civil lawsuits that are served on the Department and its employees each year, assessing liability, acting as liaison to defense counsel, and participating in the strategic planning of case management.

LALMT has conducted Litigation Coordinator workshops and a pilot litigation orientation program for CDCR employees that are being sued. Further training is planned. Through the interaction provided by training sessions and ongoing daily communication with the field, LALMT has become an identifiable resource for the institutions and regional offices that are responding to litigation demands and attempting to minimize our liability exposure.

- The Parole Team provides advice to Division of Adult Parole Operation (DAPO) and Board of Parole Hearing (BPH) management and program staff concerning parole policy and compliance with applicable parole law and the Americans with Disabilities Act (ADA). It provides officer-of-the-day telephone support to BPH Commissioners and Deputy Commissioners conducting 2,400 life term inmate hearings and 92,000 parole violation proceedings per year. It also responds to sentencing and parole-related questions from parole offices, judges, district attorneys, defense attorneys, probation offices and allied law enforcement, and to questions from victims and witnesses concerning pending hearings.

The Parole Team, in coordination with the Legal Access Team and BPH investigators, provide extensive reviews of BPH hearing decisions for legal sufficiency and recommend modifications as necessary. The team oversees the planning, organizing and conducting of training for BPH commissioners and deputy commissioners, and parole and institutional staff

regarding hearing policy and procedures, and provides legal support to staff responsible for drafting proposed regulations or regulation amendments.

The Parole Team analyzes and makes recommendations on current litigation, habeas petitions and administrative proceedings that may affect the BPH or DAPO; coordinating with the Office of the Attorney General.

The Parole Team assists in the drafting, amending or review of contracts for the services of attorneys, physicians, mental health clinicians, and interpreters related to parole proceedings. It negotiates, reviews, administers, audits and monitors program performance of the legal service contract for the provision of legal representation to 84,000 parolees facing revocation proceedings.

The Parole Team participates in and supports compliance monitoring activities relating to *Armstrong v. Schwarzenegger* and *Valdivia v. Schwarzenegger*. Attorneys monitor, supervise, and assure compliance with orders stemming from these class actions. The Parole Team also works closely with the Litigation Project Team that formulates litigation and compliance strategies in *Valdivia*, *Armstrong*, and *Rutherford*.

- The Litigation Project Team.

The legal support staff renders administrative and logistical support for these nine teams.

[Sections 15070.2 to 15070.3 are unchanged]