

**MARIN SUPERIOR COURT**

DATE: 10/31/07      TIME: 9:00 A.M.      DEPT: B      CASE NO: CV061436

PRESIDING: HON. LYNN O'MALLEY TAYLOR FOR THE HON. TERRENCE R. BOREN

REPORTER: SUSAN KLOTZ

CLERK: LOUISE MORRIS

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PLAINTIFF:    MICHAEL MORALES, ET  
AL

vs.

DEFENDANT:   CALIFORNIA DEPT. OF  
CORRECTIONS AND REHABILITATION,  
ET AL

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NATURE OF PROCEEDINGS: 1) MOTION FOR SUMMARY JUDGMENT – [DEFT]  
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
2) MOTION FOR SUMMARY JUDGMENT – OR, IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION [PLTF] MICHAEL MORALES [PLTF] MITCHELL SIMS

**RULING**

**THE PARTIES HAVE FILED CROSS-MOTIONS FOR SUMMARY JUDGMENT IN THIS DECLARATORY RELIEF ACTION THAT SEEKS TO INVALIDATE THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION'S (CDCR ) LETHAL INJECTION PROTOCOL, OFFICIALLY KNOWN AS SAN QUENTIN OPERATIONAL PROCEDURE, NO. 0-770 (OP 770), ON THE GROUND THAT THE CDCR WAS REQUIRED TO, BUT DID NOT, COMPLY WITH THE ADMINISTRATION PROCEDURES ACT (APA) WHEN IT ADOPTED THIS REGULATION.**

**THE UNDISPUTED EVIDENCE ESTABLISHES THAT OP 770 IS A RULE OR REGULATION OF GENERAL APPLICATION AND DEFENDANTS WERE REQUIRED TO COMPLY WITH THE APA. (GOVT. CODE § 11346 ET SEQ.) NONE OF THE EXCEPTIONS TO THIS RULE RAISED BY DEFENDANTS APPLY, AND PLAINTIFFS' MOTION IS GRANTED. DEFENDANTS' CROSS-MOTION IS DENIED.**

**THE "SINGLE-FACILITY" EXCEPTION UNDER PEN. CODE § 5058(c) DOES NOT APPLY BECAUSE OP 770 PRESCRIBES DUTIES ON WARDENS AND CDCR OFFICIALS OUTSIDE OF SAN QUENTIN.**

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FURTHER, IT CANNOT BE DENIED THAT OP 770 IMPLEMENTS A STATEWIDE POLICY ON LETHAL INJECTIONS FOR CONDEMNED INMATES, INCLUDING THOSE CONDEMNED INMATES WHO ARE HOUSED AT OTHER INSTITUTIONS THROUGHOUT THE STATE AND LATER TRANSFERRED TO SAN QUENTIN PRIOR TO THEIR EXECUTION.

THE OSTENSIBLE PURPOSE UNDERLYING THIS EXCEPTION IS TO AFFORD PRISON OFFICIALS THE FLEXIBILITY TO ADOPT RULES AND REGULATIONS TO ADDRESS PROBLEMS OF A LOCAL NATURE, UNIQUE TO THAT INSTITUTION AND WHICH DO NOT REQUIRE A STATEWIDE SOLUTION; E.G., REGULATIONS OF A TEMPORARY NATURE, PILOT PROGRAMS, OR URGENT POLICY CHANGES NECESSARY TO DEAL WITH MATTERS AFFECTING PRISON SECURITY AT THAT PARTICULAR INSTITUTION. (SEE E.G. *IN RE GARCIA* (1998) 67 CAL.APP.4TH 841, 845.)

ALSO, OP 770 IS A REGULATION THAT APPLIES TO A CERTAIN CLASS OF INMATES, AND THUS IS A RULE OF GENERAL APPLICATION WHICH IS SUBJECT TO THE APA. (SEE *SHERWIN-WILLIAMS CO. V. SOUTH COAST AIR QUALITY MANAGEMENT DIST.* (2001) 86 CAL.APP.4TH 1258, 1283, QUOTING *TIDEWATER MARINE WESTERN, INC. V. BRADSHAW* (1996) 14 CAL.4TH 557, 571.)

OP 770 APPLIES TO A CERTAIN CLASS OF INMATES: I.E., THOSE CONDEMNED PRISONERS WHOSE EXECUTION DATES HAVE BEEN SET AND ARE TO BE EXECUTED BY LETHAL INJECTION AT SAN QUENTIN. (COMPARE *FAUNCE V. DENTON* (1985) 167 CAL.APP.3D 191, 196 [STATEWIDE RULES REGULATING AMOUNT AND TYPE OF PERSONAL PROPERTY PRISONERS MAY POSSESS IN THEIR CELLS]; AND *STONEHAM V. RUSHEN* (1984) 156 CAL.APP.3D 302, 309 [POINT-SCORING SYSTEM FOR PRISON PLACEMENT IS REGULATION OF GENERAL APPLICATION AND DIRECTOR MUST COMPLY WITH APA PROCEDURES].)

BECAUSE OP 770 WAS NOT ADOPTED IN COMPLIANCE WITH THE APA, AN ORDER DECLARING IT TO BE INVALID IN THIS RESPECT IS PROPER. (SEE GOVT. CODE § 11350(a).)

ALSO, AN ORDER GRANTING INJUNCTIVE RELIEF TO ENJOIN THE ENFORCEMENT OF THIS INVALID REGULATION IS ALSO PROPER. (SEE E.G., *FAUNCE, SUPRA*, 167 CAL.APP.3D AT P. 196; ALSO *HOLLENBECK LODGE (486) I.O.O.F. V. WILSHIRE BOULEVARD TEMPLE* (1959) 175 CAL.APP.2D 469, 476 [BOTH DECLARATORY AND COERCIVE RELIEF MAY BE GRANTED IN THE SAME ACTION].)

DEFENDANTS' OBJECTION TO THE ADMISSION OF THE DEPOSITION TESTIMONY OF STEVEN ORNOSKI AND KINGSTON PRUNTY, TAKEN IN ANOTHER CASE (EXS. J & K), IS SUSTAINED AS PLAINTIFFS HAVE MADE NO SHOWING THESE WITNESSES WERE UNAVAILABLE. (EV. CODE § 1291(a)(1).)

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