



## PRISON LAW OFFICE

General Delivery, San Quentin, CA 94964-0001  
Telephone (510) 280-2621 • Fax (510) 280-2704  
www.prisonlaw.com

*Director:*  
Donald Specter

*Deputy Director:*  
Sara Norman

*Legal Director:*  
Margot Mendelson

### **Your Responsibility When Using the Information Provided Below:**

When we wrote this informational material we did our best to give you useful and accurate information because we know people in prison often have difficulty obtaining legal information and we cannot provide specific advice to all who request it. Laws change frequently and are subject to differing interpretations. We do not have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, hire a lawyer to address your specific problem. If you use this information it is your responsibility to make sure the law has not changed and is applicable to your situation. Most materials you need should be available in your law library.

### **SENDING LEGAL MAIL TO ATTORNEYS AND THE COURTS**

(updated January 2023)

We received your letter about California Department of Corrections and Rehabilitation (CDCR) policies on confidentiality, postage, or copying for legal mail to lawyers or the courts. We cannot provide you with individual advice or assistance, but we hope the information in this letter will be useful to you. The letter summarizes CDCR rules about your legal mail rights, other rights concerning legal mail, and what you can do if you are having problems with your legal mail.

#### **I. CDCR Regulations About Legal Mail**

Title 15 of the California Code of Regulations (“15 CCR”) sets rules about the handling of legal mail in CDCR institutions.

##### **A. Who Can Send or Receive Legal Mail?**

Incarcerated people have a right to correspond confidentially with:

- All state and federal elected officials
- All state and federal officials appointed by the governor or the president
- All city, county, state, and federal officials responsible for the incarcerated person’s present, prior, or anticipated custody, parole, or probation
- County agencies regarding child custody proceedings
- All state and federal judges and courts
- An attorney at law, on active status or otherwise eligible to practice law, who is listed with a state bar association
- All officials of a foreign consulate

- The CDCR Secretary, Undersecretary, Chief Deputy Secretaries, Executive Director, Assistant Secretaries, Division Directors, Deputy Directors, Associate Directors, the Chief of Inmate Appeals, and the Lead Ombudsman’s Office
- A legitimate legal service organization that consists of an established group of attorneys involved in representing incarcerated people in court proceedings. Such organizations include (but are not limited to):
  - Prison Law Office
  - The ACLU
  - California Appellate Project
  - The Young Lawyers Section of the American Bar Association
  - The National Association of Criminal Defense Lawyers.<sup>1</sup>

## **B. How to Send Legal Mail**

If you are “indigent” (meaning you have had \$25 or less in your prison trust account for 30 straight days), prison staff should provide you with writing paper, a pen or pencil, and stamped envelopes for five 1-ounce First-Class letters each week.<sup>2</sup> You can use these materials to write and send your legal mail.<sup>3</sup> If you want to send a legal mail letter or package that is more than one ounce, you must give the appropriate number of your free envelopes to staff with the items to be mailed; if the package is over five ounces, you must give all five envelopes. Staff can also provide you with a bigger envelope if needed.<sup>4</sup> In addition, if you are indigent, you have a right to get free, unlimited postage for sending legal mail to any court or to the California Attorney General’s Office (which usually represents the state or prison officials in criminal appeals, habeas corpus cases, and prison conditions lawsuits).<sup>5</sup> If you are not indigent, then you must pay for postage for any legal mail, including mail to the courts.<sup>6</sup>

You can send confidential mail to any person or organization on the list in section I-A of this letter. When sending mail to an attorney, you should use their official office address. To identify the letter as legal mail, write “Confidential” or “Confidential Legal Mail” clearly on the front of the envelope.<sup>7</sup> Then present your letter and envelope *unsealed* to the staffperson who collects your outgoing mail.<sup>8</sup>

---

<sup>1</sup> 15 CCR § 3141(c).

<sup>2</sup> 15 CCR § 3138(a). See also 15 CCR § 3000 (definition of “indigent”). Even if you are in disciplinary detention, you may request a pencil and paper so you can correspond with an attorney or prepare legal documents, as well as any other legal materials you need to meet any upcoming court deadlines. 15 CCR § 3164(b).

<sup>3</sup> 15 CCR § 3138(g).

<sup>4</sup> 15 CCR § 3138(b).

<sup>5</sup> 15 CCR § 3138(h).

<sup>6</sup> 15 CCR § 3165(b), (d).

<sup>7</sup> 15 CCR § 3142(a)-(c).

<sup>8</sup> 15 CCR § 3142(d). If you need to submit a Form 193, Inmate Trust Withdrawal with your legal mail to pay for court filing fees or other legal costs, you may either (1) submit your mail and form 193 together in an unsealed envelope so that staff can enclose a check before they send the mail or

In your presence, the staffperson can remove the documents from the envelope upside down so they are unable to read the contents. They may remove pages and shake them to check for prohibited items. If everything is OK, the staffperson must put the documents back in the envelope, seal the envelope, and sign along the seal.<sup>9</sup> The mail room is supposed to send out the legal mail each working day.<sup>10</sup>

If the staffperson finds a prohibited item when they shake out your legal mail, they will confiscate the item and either give the letter back to you or mail the letter without the item.<sup>11</sup>

Prison staff further cannot inspect your outgoing confidential mail in any other way unless they have “cause.” Cause means a reasonable belief that your mail is being sent to someone who is not entitled to receive legal mail or that your mail contains contraband. If staff determine that the envelope contains contraband or there is a misrepresentation of the sender or receiver’s identity, staff may examine and read the letter and any enclosures.<sup>12</sup>

Staff can file a rule violation report (RVR or 115) against you if they believe you are using confidential mail to send contraband, for personal correspondence, or to communicate with someone who is not entitled to receive confidential mail from you. If staff believe an attorney was involved in misconduct regarding legal mail, the attorney can lose their confidential mail privileges temporarily or even permanently. If the staff find evidence that you and/or your correspondent have violated the law or are planning to violate the law, staff also may refer the mail-related misconduct to the district attorney to consider bringing criminal charges.<sup>13</sup>

### **C. How to Receive Legal Mail**

For incoming mail to be treated as confidential, the envelope must show the name, title, organization name (if any) and return address of the person or organization who is sending you the mail. An attorney’s return address must match the address listed with the State Bar.<sup>14</sup> It is a good idea for the sender to put a statement on the envelope that the mail is “Confidential” and/or “Legal Mail,” although this is not required by CDCR rules.<sup>15</sup>

Staff must open your incoming legal mail only in your presence. Staff may remove the pages and shake them to check for physical contraband, but staff may not “scan” the contents or read any

---

(2) attach the form 193 and a stamped addressed envelope to the sealed legal mail so that staff can send the check in that separate envelope. 15 CCR § 3133(c).

<sup>9</sup> 15 CCR § 3142(d).

<sup>10</sup> 15 CCR § 3165(a).

<sup>11</sup> 15 CCR §§ 3142(e), 3144.

<sup>12</sup> 15 CCR § 3142(e), 3144.

<sup>13</sup> 15 CCR §§ 3142(e), 3144.

<sup>14</sup> 15 CCR §§ 3141(d), 3143.

<sup>15</sup> See 15 CCR § 3143.

of the words.<sup>16</sup> You will have to sign a logbook or receipt showing the date you received the mail, your name and CDCR number, and the sender's name and address.<sup>17</sup>

As with outgoing legal mail, staff cannot further inspect your incoming confidential mail further unless they have "cause." Cause includes a reasonable belief that the letter is received from someone who not is entitled to confidential correspondence or that the envelope contains contraband. If staff determines that the envelope contains contraband or there is a misrepresentation of the sender's identity, staff may examine and read the letter.<sup>18</sup> If the mail includes an enclosure, you may either consent to or refuse an examination of the suspected enclosure. If you consent to an examination and staff determines the enclosure can be safely received, you will be allowed to have the enclosure. If you refuse an examination, staff will give you the choice of mailing the enclosure back to the sender or throwing it away.<sup>19</sup>

Staff can file a rule violation report (RVR or 115) against you if they believe you are using confidential mail to receive contraband, for personal correspondence, or to communicate with someone who is not entitled to send confidential mail to you. If staff believe an attorney was involved in misconduct regarding legal mail, the attorney can lose their confidential mail privileges temporarily or even permanently. If the staff find evidence that you and/or your correspondent have violated the law or are planning to violate the law, staff also may refer the mail-related misconduct to the district attorney to consider bringing criminal charges.<sup>20</sup>

A related concern is about staff reading people's legal mail and documents during searches. Staff should not read legal mail during searches. To try to avoid staff mistakenly reading your legal mail, keep your legal mail in its original envelopes and keep it separate from your personal mail.

#### **D. How to Get Copies of Legal Documents to Send in Legal Mail**

If you have \$25.00 or more in your prison trust account, you must pay for the copying of documents needed to file or pursue a legal action in court.<sup>21</sup>

If you do not have money in your trust account and are not represented by an attorney, CDCR must provide you with free copying of any of these types of documents:

- petition for a writ of habeas corpus and supporting documents
- traverse or reply to a petition for writ of habeas corpus, and supporting documents
- summons and complaint for a civil action and supporting documents
- other documents needed for a civil action
- petition for a hearing in an appellate court

---

<sup>16</sup> 15 CCR § 3143(a).

<sup>17</sup> 15 CCR § 3143(b).

<sup>18</sup> 15 CCR § 3144.

<sup>19</sup> 15 CCR § 3145.

<sup>20</sup> 15 CCR § 3144.

<sup>21</sup> 15 CCR §§ 3162(a), 3165(b).

- appellant’s opening brief, appellant’s reply brief, and other documents for a direct appeal
- petition for writ of certiorari to the U.S. Supreme Court
- motion to proceed in “forma pauperis” (without paying court fees because you have no money)
- other documents that are necessary for a lawsuit, if you can explain why those documents are necessary for your case.<sup>22</sup>

Generally, the prison law library will not copy a document that is longer than 50 pages (including all attachments and exhibits). If you want to have a longer document copied, you must provide a written explanation of why you need a copy of the full document for your case.<sup>23</sup>

Notarization of legal documents is not normally required for filing a court action or a sworn declaration. If you do have a situation where you want or need to notarize a document, you will need to pay a fee for prison staff to provide you with a notary service.<sup>24</sup>

## II. Other Rights About Legal Mail

### A. California Statutes

A California statute protects the rights of incarcerated people regarding legal mail. That law states that incarcerated people have the right to “correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.”<sup>25</sup> The right to confidentiality extends to documents enclosed in legal mail.<sup>26</sup> However, even if prison staff open your legal mail outside your presence, it is unlikely that this will result in dismissal of any criminal case that is discussed in your mail unless you can show that staff actually read the letter and that you have been prejudiced by their failure to follow the law.<sup>27</sup>

### B. U.S. Constitution

---

<sup>22</sup> 15 CCR § 3162(c).

<sup>23</sup> 15 CCR § 3162(b).

<sup>24</sup> 15 CCR § 3165(c).

<sup>25</sup> Cal. Penal Code § 2601(b); *In re Jordan* (1972) 7 Cal.3d 930 (finding unlawful the former prison rules allowing staff to open and read contents of attorney mail); *In re Short* (1976) 55 Cal.App.3d 268 (ordering prison officials to adopt regulation requiring presence of incarcerated person when opening court mail). The right to confidential correspondence also applies to attorneys in other nations (*In re Gonzales* (1989) 212 Cal.App.3d 459) and in other states (*In re Gordon* (1974) 12 Cal.3d 575, 580).

<sup>26</sup> See *In re Jordan* (1974) 12 Cal.3d 575 (finding unlawful a former prison rule treating enclosures in attorney mail as non-confidential). Also, California prisons may not ban mail containing legal materials printed from the internet. See *Clement v. CDCR* (9th Cir. 2004) 364 F.3d 1148, 1150.

<sup>27</sup> See *People v. Poe* (1983) 145 Cal.App.3d 574, 576-580.

Federal courts have held that the U.S. Constitution protects the rights of incarcerated people to correspond confidentially with attorneys.

In 1974, the United States Supreme Court observed that restrictions on legal mail might infringe on several constitutional rights— the First Amendment right to free speech, the Sixth Amendment right to a confidential attorney-client relationship, and the Fourteenth Amendment due process guarantee of access to the courts. However, the Court concluded that none of these rights were violated by the state of Nebraska’s proposed policies of requiring attorneys to mark their envelopes as being from an attorney, barring prison staff from reading attorneys’ letters, and requiring staff to open attorneys’ letters in the presence of the incarcerated recipients.<sup>28</sup> In other cases, the United States Supreme Court has established that incarcerated people have a right of access to the courts, but a violation of that right is established only if a person shows that they were actually hindered in their efforts to pursue a legal claim resulting in the loss of a nonfrivolous, arguable claim.<sup>29</sup>

Since then, the federal Ninth Circuit Court of Appeals (the federal appellate court with jurisdiction over California and other Western states) has decided many cases that define the scope of the rights of incarcerated people to send and receive legal mail.<sup>30</sup>

---

<sup>28</sup> *Wolff v. McDonnell* (1974) 418 U.S. 539, 574-576; see also *Thornburgh v. Abbott* (1989) 490 U.S. 401, 407 (incarcerated people have First Amendment right to send and receive mail).

<sup>29</sup> *Lewis v. Casey* (1996) 518 U.S. 343, 351; *Christopher v. Harbury* (2002) 536 U.S. 403, 415. This can be a difficult standard to meet in the context of a legal mail claim. See, e.g., *Jordan v. Cicchi* (3d Cir. 2015) 617 F. App’x. 153, 157 (no showing of actual injury where person was represented by counsel on appeal and no evidence he would have been successful in challenging criminal case); *Baker v. Williamson* (3d Cir. 2011) 453 F. App’x. 230, 234 (incarcerated person was unsuccessful with claim that prison staff interfered with legal mail because person could not prove that the mail was sent to the prison or that the staff personally handled the mail); *Doe v. Selsky* (W.D.N.Y. 2013) 973 F. Supp. 2d 300, 303-304 (incarcerated person’s claim that prison staff tampered with legal mail to prevent them from exhausting administrative remedies failed because person was still able to exhaust administrative remedies).

<sup>30</sup> See, e.g., *Witherow v. Paff* (9th Cir. 1995) 52 F.3d 264, 265-266 (finding constitutional a Nevada prison regulation requiring brief visual inspection of outgoing mail to public officials without reading any portion of the contents, to check for dangerous items); *O’Keefe v. Van Boening* (9th Cir. 1996) 82 F.3d 322 (finding constitutional a Nevada policy that allowed confidential communication with only some types of government officials, and not others); *Keenan v. Hall* (9th Cir. 1996) 83 F.3d 1083, as amended by (1998) 135 F.3d 1318 (mail from courts generally consists of public documents and constitution is not violated if mail from courts is not treated as confidential legal mail); *Gomez v. Vernon* (9th Cir. 2001) 255 F.3d 1118, 1132-1134 (sanctioning Idaho government attorneys for reading, and using confidential communication between incarcerated people and their attorney); *Hayes v. Idaho Correctional Center* (9th Cir. 2017) 849 F.3d 1204 (holding that people have First Amendment interest in having properly marked legal mail, including civil legal mail, opened only in their presence); *Mangiaracina v. Penzone* (9th Cir. 2017) 849 F.3d 1191, 1195 (holding that the Sixth Amendment, in addition to prohibiting staff from reading prisoner legal mail, also protects the right

Two related Ninth Circuit cases provide a good example of the analysis that federal courts use when deciding whether a prison's legal mail policy or action violates First Amendment or Sixth Amendment rights. In those cases, the incarcerated person was challenging an Arizona prison system practice by which staff read outgoing legal mail page-by-page to check for "contraband," including looking to see whether the correspondence was about non-legal matters.<sup>31</sup> The Court affirmed that "the right to privately confer with counsel is nearly sacrosanct," and that interference with legal mail can violate the U.S. Constitution's First Amendment right of free speech, the Sixth Amendment right to assistance of counsel, and the Fourteenth Amendment right to due process, which includes the right of access to the courts.<sup>32</sup> The court then applied First Amendment and Sixth Amendment law:

- The First Amendment right to freedom of speech protects the rights to send and receive mail, but prison rules may limit those rights through rules that "are reasonably related to legitimate penological interests." "Legitimate penological interests... include 'the prevention of criminal activity and the maintenance of prison security.'" A four-factor test is used to see if a prison mail policy is constitutional: (1) whether there is a rational connection between the policy and a legitimate governmental interest that prison officials are using to justify the policy; (2) whether there are other ways for incarcerated people to exercise their constitutional right; (3) how removing or changing the policy would impact prison staff, incarcerated people, and the prison's resources; and (4) whether there are any alternative policies that would satisfy prison government interests. "When a prison regulation affects outgoing mail as opposed to incoming mail, there must be a closer fit between the regulation and the purpose it serves." "This is because 'outgoing personal correspondence from prisoners [does] not, by its very nature, pose a serious threat to prison order and security.'" Applying this standard the Court held that the Arizona prisons' policy unreasonably intruded on First Amendment rights. First, the court found that although prison security was a legitimate governmental interest but observed that the prison officials failed to provide any evidence that outgoing legal mail had facilitated criminal activity. Second, the court found that although incarcerated people had other methods of communication available, those "alternative means do not entirely make up for the infringement on [the right to confidential legal mail]." Third, because prison officials failed to present evidence showing that incarcerated people had abused outgoing legal mail, the Court decided "there [wa]s no reason to conclude that a more limited inspection of outgoing mail would have an adverse effect." Fourth, the Court determined that an "obvious, easy alternative" was available: prison staff could check the address to ensure that outgoing legal mail is truly being sent to a licensed attorney, and could, in the incarcerated person's presence, check for physical contraband

---

of a prisoner to be present while legal mail relating to criminal proceedings is opened).

<sup>31</sup> *Nordstrom v. Ryan* (9th Cir. 2014) 762 F.3d 903, 907; *Nordstrom v. Ryan* (9th Cir. 2017) 856 F.3d 1265, 1271.

<sup>32</sup> *Nordstrom v. Ryan* (9th Cir. 2014) 762 F.3d 903, 909-910.

by removing the contents of the envelope upside down so staff would be unable to read the contents.<sup>33</sup>

- The Sixth Amendment right to assistance of counsel that applies to defendants in criminal cases. “The right to counsel is violated when (1) ‘the government deliberately interferes with the confidential relationship between a criminal defendant and defense counsel,’ and (2) the interference ‘substantially prejudices the criminal defendant.’” Applying this standard, the Court held that the Arizona prison policy was unconstitutional because the incarcerated person’s “right to privately confer with counsel [was] chilled;” the Court reached this decision even though the person was not currently facing criminal charges and was bringing a post-conviction legal challenge to his sentence.<sup>34</sup>

### III. How to Try to Solve Problems About Legal Mail

If you believe that prison officials or staff have violated your rights to confidential legal mail, you should file a 602 administrative grievance and appeal and pursue it to the highest level necessary. The administrative grievance and appeal may solve your problem. Even if it does not solve the problem, you almost always must complete the administrative grievance and appeal process before you will be allowed to proceed with any type of legal action concerning your legal mail and documents. Note that if you have received a notice that your legal mail is not being delivered, and you file your 602 within 30 days of receiving that notice, prison officials cannot dispose of the undelivered item while your grievance and appeal are being considered.

In addition, the attorney (or other person who is entitled to correspond confidentially with you) can file a complaint about confidential mail rules or policies or about violations of those rules. The attorney should send a letter to the Warden of the institution (to complain about an action by prison staff or a local prison policy) or to the Director of CDCR’s Division of Adult Institutions (to complain about a CDCR policy). The Warden or Director is supposed to respond within 15 working days. If there is not a satisfactory reply from the Warden, the attorney can send a letter to the Director of CDCR’s Division of Adult Institutions, who is supposed to respond within 20 working days.<sup>35</sup>

If an administrative grievance and appeal does not solve your problem, you may consider filing a legal action in court. A state court petition for writ of habeas corpus will usually be the easiest, quickest, and most appropriate type of legal action for a legal mail or documents claim. In some cases, you might consider filing a federal civil rights (“§ 1983”) lawsuit instead of a state habeas corpus petition.

---

<sup>33</sup> *Nordstrom v. Ryan* (9th Cir. 2017) 856 F.3d 1265, 1271-1274.

<sup>34</sup> *Nordstrom v. Ryan* (9th Cir. 2014) 762 F.3d 903, 910-911; *Nordstrom v. Ryan* (9th Cir. 2017) 856 F.3d 1265, 1271-1272.

<sup>35</sup> 15 CCR § 3137.



You can get more information about administrative appeals, state habeas corpus petitions, and/or federal civil rights lawsuits by writing to Prison Law Office to request free manuals on those topics. The manuals are also on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com). There is also information in *The California Prison and Parole Law Handbook*. The Handbook should be available in prison law libraries and on tablets, and is also on the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com). You can also write to Prison Law Office for information about how to order a paper copy of the book or how to be considered for a free copy of the book.