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January 26, 2009

State Board,

As you have been previously informed, CCPOA is actively litigating the validity of the CDCR Apprenticeship program. On Friday (January 23, 2009) we filed the attached writ with the Sacramento Superior Court.

Upon further developments on this case, we will notify you via e-mail, as well as posting on the CCPOA web page.

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SACRAMENTO

12 CALIFORNIA CORRECTIONAL PEACE)
13 OFFICERS ASSOCIATION,)

14 Petitioner,)

15 vs.)

16 JOHN DUNCAN, in his official capacity)
17 as the Director of Department of Industrial)
18 Relations and Administrator of)
19 Apprenticeship, and VANESSA)
20 HOLTON, in her official capacity as the)
21 Hearing Officer on California Correctional)
22 Peace Officers Association's Complaint to)
23 the Administrator of Apprenticeship,)

24 Respondents,)

25 and)

26 CALIFORNIA DEPARTMENT OF)
27 CORRECTIONS AND REHABILITATION)
28 and DIVISION OF APPRENTICESHIP)
STANDARDS,)

Real Parties in Interest.)

CASE NO.

VERIFIED PETITION FOR WRIT OF
MANDATE

[CCP § 1085 et seq.]

TO THE SUPERIOR COURT:

1. Pursuant to California Code of Civil Procedure section 1085 et seq., Petitioner CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION ("CCPOA"), files this Petition for Writ of Mandate and asks the Court to issue an order directing the Respondents to

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1 follow the applicable statutes and regulations pertaining to CCPOA's Complaint to the
2 Administrator of Apprenticeship.

3 **THE PARTIES**

4 2. CCPOA is a California nonprofit mutual benefit corporation, organized under the
5 laws of the State of California with its principal office in West Sacramento, Yolo County,
6 California. CCPOA is the labor representative for correctional peace officers in California and
7 represents all levels of correctional peace officers, including officers who are participating in the
8 Apprenticeship Program imposed by the California Department of Corrections and Rehabilitation
9 ("CDCR").

10 3. CCPOA has standing in this matter. CCPOA is the Charging Party in the underlying
11 administrative action and is beneficially interested in the issuance of the writ. The lack of a
12 properly sponsored and administered Apprenticeship Program, coupled with CDCR's continued
13 insistence that new correctional officers sign apprenticeship agreements, deprives many members
14 of CCPOA of the full benefits of their position, including seniority-based benefits such as the right
15 to post and bid for open positions. Deregistration of the Apprenticeship Program will cancel the
16 approval of the program to operate. Thus, deregistration will clearly remove CDCR's authority to
17 force new correctional officers to sign apprenticeship agreements and will vitiate existing
18 apprenticeship agreements. CCPOA's members will continue to suffer harm if the Court does not
19 issue a writ of mandate directing Respondents to render a decision immediately.

20 4. Respondent JOHN DUNCAN ("Director Duncan") is the Director of the California
21 Department of Industrial Relations, and in that capacity also serves as the Administrator of
22 Apprenticeship for the purpose of resolving apprenticeship complaints filed pursuant to Labor
23 Code section 3081 and 8 CCR sections 201-203.

24 5. Respondent VANESSA HOLTON ("Ms. Holton") is an attorney employed as Chief
25 Counsel at the California Department of Industrial Relations and has been designated by Director
26 Duncan as the hearing officer for the purpose of conducting a hearing and issuing a proposed
27 decision on CCPOA's Complaint to the Administrator of Apprenticeship.

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1 hearing and discovery were not necessary. A true and correct copy of the May 23, 2008 letter from
2 CDCR's counsel is attached hereto as Exhibit D.

3 12. In May 28, 2008, counsel for CCPOA wrote to Director Duncan, reiterating that
4 CCPOA wanted a hearing on its Complaint as soon as possible, and explained why some limited
5 additional discovery would be appropriate. A true and correct copy of the May 28, 2008 letter
6 from CCPOA's counsel is attached hereto as Exhibit E.

7 13. On May 28, 2008, Director Duncan wrote a letter to counsel for CCPOA and CDCR
8 indicating that he was prepared to appoint a representative to hold a hearing and prepare a
9 proposed decision on CCPOA's Complaint, but that he first wanted all parties to stipulate to that
10 procedure and to waive any alleged procedural infirmities with his proposal. Director Duncan
11 directed counsel to address their positions to Department Chief Counsel, Vanessa L. Holton. A
12 true and correct copy of Director Duncan's May 28, 2008 letter to counsel is attached here to as
13 Exhibit F.

14 14. The parties submitted their written positions to Ms. Holton regarding the appropriate
15 procedures for the hearing. Copies of these proposals are attached hereto as Exhibits G and H. On
16 July 10, 2008, Ms. Holton held a pre-hearing conference at which time CCPOA again requested
17 an evidentiary hearing on its Complaint. Ms. Holton requested, and the parties agreed, that the
18 parties would first brief the following three preliminary legal issues prior to holding an evidentiary
19 hearing:

- 20 a. Whether from July 1, 2005, to the present the Apprenticeship
21 Program of the California Department of Corrections and
22 Rehabilitation ("CDCR") has been in violation of California Labor
23 Code section 3075(a) on the basis that the program has not been
24 sponsored by a joint labor-management committee?
- 25 b. If the Apprenticeship Program is in violation of Labor Code section
26 3075(a), what are the consequences of such a violation?
- 27 c. If the Apprenticeship Program is not in violation of Labor Code
28 section 3075(a), what procedures govern CCPOA's complaints
about the program?

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1 15. The parties agreed to brief these issues in lieu of having an immediate evidentiary
2 hearing. CCPOA made it clear, however, that if the hearing officer's decision on these issues did
3 not result in a decision by the Administrator of Apprenticeship to immediately deregister the
4 Apprenticeship Program, CCPOA wanted a prompt evidentiary hearing to address the numerous
5 deficiencies in the Apprenticeship Program that also justify deregistration of the program. Ms.
6 Holton stated that she intended to resolve these issues expeditiously and that she would address
7 CCPOA's request for an evidentiary hearing after resolving these preliminary legal issues.

8 16. On July 10, 2008, after the pre-hearing conference, Ms. Holton circulated an e-mail,
9 indicating that the parties had agreed that 8 CCR sections 201-203 governed the proceedings and
10 that the parties had agreed to brief the three legal issues referenced above in lieu of an immediate
11 evidentiary hearing. A true and correct copy of Ms. Holton's e-mail is attached hereto as Exhibit I.

12 17. On August 25, 2008, the parties completed their briefing on these three discrete legal
13 issues. Nearly four months have passed and still Director Duncan and Ms. Holton have not
14 rendered their decision on these issues. This delay in resolving these issues, and if necessary,
15 affording CCPOA an evidentiary hearing on its Complaint, is grossly unfair to CCPOA and is in
16 violation of 8 CCR section 202.

17 18. Pursuant to 8 CCR section 202(a), the Administrator of Apprenticeship has 60
18 calendar days from the date of the filing of CCPOA's Complaint to determine whether or not to
19 dismiss that Complaint. In this case, the Administrator of Apprenticeship (Director Duncan) did
20 not dismiss CCPOA's Complaint. Therefore, pursuant to 8 CCR section 202(b), the Administrator
21 of Apprenticeship is required to hold a hearing in accordance with the procedure set forth in that
22 section. Those procedures include allowing the parties to present evidence, both in writing and
23 through witness testimony. The initial phase of that hearing took place through the written briefs
24 submitted by the parties.

25 19. Pursuant to 8 CCR section 202(d), within 60 days of a hearing on CCPOA's
26 Complaint, the Administrator of Apprenticeship is required to issue a decision on the Complaint.
27 It has been nearly 120 days since the parties completed the first, and possibly only phase, of

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1 CCPOA's hearing on its Complaint, and still Ms. Holton and Director Duncan have not issued a
2 decision.

3 20. CCPOA is entitled to a peremptory writ of mandate under Code of Civil Procedure
4 section 1085 because of the unlawful actions and omissions by Ms. Holton and Director Duncan
5 in failing to follow the requirements of 8 CCR section 202 to render a decision on the first phase
6 of the hearing on CCPOA's Complaint within 60 days of the hearing, which was completed on
7 August 25, 2008, when the parties submitted their final briefs on this phase of the hearing.

8 21. CCPOA lacks any plain, speedy, and adequate remedy in the ordinary course of law
9 to protect their rights and the rights of the public to compel Ms. Holton and Director Duncan to
10 perform their legal obligations and to refrain from violating the law as alleged herein. Each day
11 that passes with such unlawful activity being performed by Ms. Holton and Director Duncan
12 accelerates the harm to CCPOA's members. Ms. Holton and Director Duncan have a clear and
13 present legal duty to render a decision on the first, and possibly only, phase of the hearing on
14 CCPOA's Complaint within 60 days of the completion of that Hearing, but they have failed to
15 render a decision after nearly 120 days.

16 **PRAYER FOR RELIEF**

17 WHEREFORE Petitioner CCPOA prays for judgment as follows:

18 1. That the Court issue a preemptory writ of mandate, commanding Ms. Holton and
19 Director Duncan, in his capacity as Administrator of Apprenticeship, to immediately render a
20 decision on the three pending legal issues that arise from CCPOA's Complaint to the
21 Administrator of Apprenticeship, and, if that does not dispose of the case by ordering
22 deregistration of the Apprenticeship Program, to immediately afford CCPOA an evidentiary
23 hearing pursuant to 8 CCR section 202.

24 2. For such other and further relief as the Court may deem just.

25 Respectfully submitted,
26 STERN, VAN VLECK & McCARRON, LLP

27 Dated: January 22, 2009

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John C. McCarron
Attorney for Petitioner

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16 JOHN DUNCAN, in his official capacity)
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26 CALIFORNIA DEPARTMENT OF)
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STANDARDS,)

Real Parties in Interest.)

CASE NO.

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
MANDATE

24 Petitioner California Correctional Peace Officers Association ("CCPOA") has filed a
25 Petition for Writ of Mandate pursuant to Code of Civil Procedure section 1085, seeking to compel
26 John Duncan, in his capacity as the Director of the Department of Industrial Relations and
27 Administrator of Apprenticeship ("Director Duncan"), and his appointed hearing officer, Vanessa
28 Holton ("Ms. Holton"), to follow the applicable statutes and regulations pertaining to CCPOA's

1 Complaint. Director Duncan and Ms. Holton have failed to decide certain legal issues raised by
2 CCPOA within the timeline set by the applicable regulations.

3 **A. BACKGROUND FACTS**

4 The California Department of Corrections and Rehabilitation ("CDCR") requires
5 correctional peace officers to complete an apprenticeship program ("the Apprenticeship Program")
6 before those officers reach journeyman status and have the full benefits of their position, such as
7 full salary and the ability to post and bid for positions. The Apprenticeship Program has been
8 widely criticized as being a useless paper mill that fails to serve its intended goal of training
9 correctional officers. The Apprenticeship Program is also being operated in violation of state law.

10 In early 2006, CCPOA filed a Petition for Writ of Mandate with this Court (Case No.
11 06CS00613) that, among other things, challenged the legality of the Apprenticeship Program. In
12 November of 2007, in response to a motion by CDCR, this Court dismissed that portion of
13 CCPOA's Writ for failure to exhaust administrative remedies. Consequently, on March 13, 2008,
14 CCPOA filed a Complaint with the Director of DIR/Administrator of Apprenticeship, seeking
15 deregistration of the Apprenticeship Program. That administrative Complaint has now been
16 pending for over ten months with no decision on the merits of CCPOA's arguments.

17 After filing its Complaint with the Administrator of Apprenticeship in March of 2008, it
18 took several months and several requests by CCPOA to get Director Duncan to appoint a hearing
19 officer to address CCPOA's Complaint. The facts leading up to the appointment of Vanessa
20 Holton as the hearing officer are outlined in detail in CCPOA's Petition. Ultimately, on July 10,
21 2008, Ms. Holton, the designated hearing officer on CCPOA's Complaint, conducted a pre-
22 hearing conference at which time CCPOA again requested a prompt evidentiary hearing on its
23 Complaint. Ms. Holton, requested, and the parties agreed that the parties would first brief three
24 preliminary legal issues prior to holding an evidentiary hearing. Those legal issues are:

- 25 (1) Whether from July 1, 2005, to the present the Apprenticeship
26 Program of the California Department of Corrections and
27 Rehabilitation ("CDCR") has been in violation of California Labor
28 Code section 3075(a) on the basis that the program has not been
sponsored by a joint labor-management committee?

- 1 (2) If the Apprenticeship Program is in violation of Labor Code section
2 3075(a), what are the consequences of such a violation?
3 (3) If the Apprenticeship Program is not in violation of Labor Code
4 section 3075(a), what procedures govern CCPOA's complaints
5 about the program?

6 The parties agreed to brief these issues in lieu of having an immediate evidentiary hearing.
7 CCPOA made it clear, however, that if the hearing officer's decision on these issues did not result
8 in a decision by the Administrator of Apprenticeship to immediately deregister the Apprenticeship
9 Program, CCPOA wanted a prompt evidentiary hearing to address the numerous deficiencies in
10 the Apprenticeship Program that also justified deregistration of the program. CCPOA maintained
11 that its Complaint was sufficiently broad to encompass deficiencies with the Apprenticeship
12 Program in addition to the Labor Code violation, or alternatively, that CCPOA should be allowed
13 to amend its Complaint to broaden the scope of the Complaint to include numerous other
14 deficiencies with the Apprenticeship Program. Ms. Holton stated that she intended to resolve the
15 three preliminary issues expeditiously and that she would address CCPOA's request for an
16 evidentiary hearing after resolving these preliminary legal issues.

17 Shortly after the July 10, 2008, pre-hearing conference, Ms. Holton circulated an e-mail to
18 counsel summarizing the results of the pre-hearing conference. In that e-mail, Ms. Holton noted
19 that the parties had agreed that 8 CCR sections 201-203 would govern the proceedings regarding
20 CCPOA's Complaint.

21 On August 25, 2008, the parties completed their briefing on the three legal issues that Ms.
22 Holton wanted to resolve prior to conducting an evidentiary hearing. Nearly four months have
23 passed and still neither Director Duncan nor Ms. Holton has rendered any decision on these issues.
24 This delay in resolving these issues, and if necessary, affording CCPOA an evidentiary hearing on
25 its Complaint, is grossly unfair to CCPOA and, more importantly, is in violation of 8 CCR section
26 202.

27 B. ARGUMENT

28 A Petition for Writ of Mandate pursuant to Code of Civil Procedure section 1085 is an
appropriate method to challenge ministerial acts by California state agencies. In order to obtain

1 such a writ, the Petitioner must show that they have no plain, speedy, and adequate alternative
2 remedy, that the Respondent has a clear and present ministerial duty to perform, and that the
3 Petitioner has a correlative clear and present beneficial right in the performance of that duty. The
4 ministerial duties are acts that a public officer is obligated to perform in a prescribed manner
5 required by law when a given state of facts exists (*See, e.g. Jackson v. Gourley* (2003) 105
6 Cal.App.4th 966, 969-70).

7 In this instance, it is clear that CCPOA does not have a plain, speedy, and adequate
8 alternative remedy. The only way for CCPOA to compel Director Duncan and Ms. Holton to
9 comply with the applicable statutes and regulations regarding CCPOA's Complaint is through this
10 Petition for Writ of Mandate.

11 It is equally clear that Director Duncan and Ms. Holton have a clear and present ministerial
12 duty, pursuant to 8 CCR section 202(d), to issue a decision on CCPOA's Complaint within 60
13 calendar days of a hearing on that Complaint. The briefing on the three legal issues, which
14 concluded in August of 2008, was undeniably part of the hearing on CCPOA's Complaint.
15 Depending on the outcome of the decision regarding the three legal issues, CCPOA may not
16 receive any further hearing on its Complaint. Thus, the briefing of these legal issues must be
17 regarded as the first (and possibly the only) phase of the hearing on CCPOA's Complaint.
18 Consequently, pursuant to 8 CCR section 202(d), Director Duncan and Ms. Holton should have
19 issued a decision on these issues within 60 calendar days of August 25, 2008. They have failed to
20 do so.

21 CCPOA has a clear and present beneficial right to have a hearing on its Complaint within
22 60 calendar days as prescribed by the applicable regulations. CCPOA's members continue to be
23 forced to participate in an illegal and mismanaged Apprenticeship Program to their detriment.
24 CCPOA has been challenging the Apprenticeship Program for well over two years, but its
25 challenges have met one delay after another.

26 CCPOA has therefore met its burden under Code of Civil Procedure section 1085 and is
27 entitled to a writ of mandate directing Ms. Holton and Director Duncan to take action on
28 CCPOA's Complaint.

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C. CONCLUSION

CCPOA asks this Court to exercise its power pursuant to Code of Civil Procedure section 1085 to issue an order compelling Director Duncan and Ms. Holton to follow the applicable regulations and to immediately issue a decision on the first phase of the hearing on CCPOA's Complaint. In addition, if that decision does not result in an order to deregister the Apprenticeship Program, CCPOA asks the Court to compel Director Duncan and Ms. Holton to promptly afford CCPOA an evidentiary hearing, as required by 8 CCR section 202(b), so that CCPOA can build an adequate record upon which to base its challenges to the Apprenticeship Program.

Respectfully submitted,
STERN, VAN VLECK & McCARRON, LLP

Dated: January 22, 2009

John C. McCarron
Attorney for Petitioner