

IN THE APPELLATE COURT OF ILLINOIS  
THIRD JUDICIAL DISTRICT

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DONALD SNYDER, et. al.,	)	Appeal from the Circuit Court
	)	of the Twelfth Judicial Circuit
Respondents-Appellants	)	Will County, Illinois
	)	
v.	)	No. 2000 MR 289
	)	
STEPHEN GUZZO,	)	The Honorable
	)	Charles P. O'Connor
Petitioner-Appellee.	)	Judge Presiding

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**BRIEF AMICUS CURIAE OF THE MACARTHUR JUSTICE CENTER**

**IN SUPPORT OF APPELLEE STEPHEN GUZZO**

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**INTRODUCTION AND STATEMENT OF INTEREST OF THE AMICUS CURIAE**

The MacArthur Justice Center submits this brief as amicus curiae in support of petitioner Stephen Guzzo in order to address the legality of the Illinois Department of Corrections (“Department”) policy that was the basis of the trial court’s decision in favor of Mr. Guzzo. That policy is an unwritten, non-public rule whereby the Department denies eligibility for meritorious good conduct credit (“Meritorious Good Time”) on the basis of purported evidence of domestic violence in a prisoner’s criminal record (the “Unwritten Domestic Policy”).<sup>1</sup> The Department

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<sup>1</sup> The trial court described the policy as applying to people like respondent Guzzo who have been charged or arrested but not convicted of domestic battery and those against whom an order of protection was entered. C 296. In fact, the policy also applies to people convicted of domestic battery, and this brief addresses that broader policy, termed the Unwritten Domestic Policy.

has used the Unwritten Domestic Policy to deny Meritorious Good Time to thousands of inmates, including Mr. Guzzo.

The MacArthur Justice Center is a public interest law firm affiliated with the University of Chicago Law School. The Justice Center litigates cases that raise constitutional or significant issues in the field of criminal justice. The Justice Center represents a class of all prisoners who have been or may in the future be denied eligibility for Meritorious Good Time because their criminal records contain an arrest, charge, or prior conviction for domestic battery or the existence of an order of protection, in the lawsuit styled Cogdill v. Snyder, 1 MR 1, which is pending in the Circuit Court for the Seventh Judicial District, Sangamon County, Illinois. In that lawsuit, the plaintiffs seek a declaratory judgment that the Unwritten Domestic Policy is illegal under the statute governing Meritorious Good Time, 730 ILCS 5/3-6-3(a)(3), the “MGT Statute,” and under the Illinois Administrative Procedure Act, 5 ILCS 100/1-1, *et seq.* (the “IAPA”). The Cogdill plaintiff class was certified and the defendant’s motion to dismiss was denied on April 20, 2001; the plaintiffs’ motion for summary judgment is pending.

In the course of representing the plaintiffs in Cogdill, the MacArthur Justice Center has developed an expertise on the issue of Meritorious Good Time. In particular, we are familiar with admissions that Department officials have made in other litigation and we have considered legal issues not fully developed below that bear directly on the issues before the court in this appeal.

In this appeal, respondents have asked this court to reverse the trial court’s decision on the ground that the court did not make a proper legal determination under the Illinois Habeas Corpus Act, 735 ILCS 5/10-101, *et seq.* (“Habeas Corpus Act”). Essential to that determination, as respondents concede, is whether the trial court was correct in deciding that the Unwritten

Domestic Policy is unlawful and that respondent Donald Snyder (the “Director” or “Director Snyder”) abused his discretion in denying Meritorious Good Time to Mr. Guzzo based on the Policy. These are the questions the amicus curiae will address below, where it will show why the trial court’s decisions were correct under the Illinois statute governing Meritorious Good Time and under the IAPA requirements for rule-making and discretionary power.

## **THE UNWRITTEN DOMESTIC POLICY**

### **The General Practice or De Facto Policy of the Department**

The legislature has provided that the Department shall establish rules and regulations for awarding Meritorious Good Time to implement the legislature’s directive that the Director may award up to 180 days Meritorious Good Time for eligible prisoners based on their “meritorious service” during their incarceration, as he deems proper. *See* the MGT Statute.<sup>2</sup> The MGT Statute specifically provides that prisoners serving sentences for conviction of certain enumerated crimes are ineligible for Meritorious Good Time or eligible for no more than 90 days. Pursuant to the MGT Statute, the Department has established rules and regulations for awarding Meritorious Good Time. Ill. Admin. Code tit. 20, § 107.200, *et seq.*, the “MGT Administrative Rule.”

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<sup>2</sup> The MGT Statute provides as follows:

The rules and regulations [on early release] shall also provide that the Director may award up to 180 days additional good conduct credit for meritorious service in specific instances as the Director deems proper; except that no more than 90 days of good conduct credit for meritorious service shall be awarded to any prisoner who is serving a sentence for conviction of [various felonies]. Notwithstanding the foregoing, good conduct credit for meritorious service shall not be awarded on a sentence of imprisonment imposed for conviction of [various felonies].

The MGT Administrative Rule describes the procedures for deciding whether to award Meritorious Good Time, tells what factors will be considered in making that decision, and enumerates the crimes that reduce or eliminate an inmate's eligibility based on the statutory criteria related to sentences being served. The Rule does not mention the Unwritten Domestic Policy.

The Unwritten Domestic Policy was the subject of an evidentiary hearing held by the trial judge on December 20, 2000, in the lawsuit DeJesus v. Snyder, 00 MR 155, which is a consolidated action pending in the Circuit Court for the Seventh Judicial District, Sangamon County. (On January 3, 2001, the claims about Meritorious Good Time in the DeJesus case were stayed pending the resolution of Cogdill v. Snyder, the case in which the amicus represents the plaintiff class). Testimony at that evidentiary hearing by the Department's Transfer Coordinator, Judie Egelhoff; her predecessor, Diane Jockisch; and Director Snyder (by affidavit), along with deposition testimony of Ms. Egelhoff admitted as evidence in this case, have established the following facts:

Director Snyder, who has authority for administering Meritorious Good Time, has delegated his authority under the MGT Statute to the Transfer Coordinator's office. *See* affidavit of Director Snyder in DeJesus v. Snyder, attached hereto as Tab 1, ¶ 3. The current Transfer Coordinator is Judie Egelhoff, who has held that position since 1999. *See* Transcript of testimony of Diane Jockisch and Judie Egelhoff from the evidentiary hearing of December 20, 2000, in DeJesus v. Snyder, attached hereto as Tab 2, p. 42 (Egelhoff). *See also* C 116, deposition testimony of Judie Egelhoff, dated November 30, 2000, "Egelhoff Dep.". Ms. Egelhoff was preceded by Diane Jockisch, who was Transfer Coordinator from 1988 to 1999. Tab 2 p. 61 (Jockisch).

Ms. Egelhoff's and Ms. Jockisch's testimony makes clear that denying Meritorious Good Time based on the Unwritten Domestic Policy is a consistent practice or de facto policy of the Department. According to Ms. Egelhoff, the Department practice "is that if there is a domestic battery in the [inmate's] past that he would not be considered for either MGT or SMGT [Supplemental Meritorious Good Time]." Tab 2 p. 47. Ms. Egelhoff also testified that this practice has been in place since she began working in the Transfer Coordinator's office in 1988. Tab 2 pp. 47-48. The practice applies to inmates who were arrested for domestic violence, irrespective of whether they were convicted or even charged pursuant to an arrest. C 139 Egelhoff Dep. It also applies to inmates whose rap sheets include orders of protection regardless of whether or not the order has expired or was violated. Tab 2 pp. 47-48, 55, 66 (Egelhoff).

Department staffers overseeing Meritorious Good Time are aware that domestic violence is not included within the law itself as a factor excluding inmates from consideration for Meritorious Good Time. Nevertheless, they apply it as an exclusionary factor "as a matter of practice." C 153 (Egelhoff Dep.). Although denying inmates' consideration for Meritorious Good Time because of an incident of domestic violence is described by Department employees as a "practice," the employees admit that they apply the practice in every circumstance. Ms. Egelhoff testified that she could not recall anyone who has been charged with domestic battery ever being granted Meritorious Good Time. Tab 2 p. 27. She also conceded that if she began approving such requests, she "probably wouldn't have a job." Tab 2 p. 49. Ms. Egelhoff's predecessor, Diane Jockisch, similarly admitted that when she was in charge, such a person would have been granted Meritorious Good Time only if that person's history had not been reported to her. Tab 2 p. 68 (Jockisch).

The Unwritten Domestic Policy is unwritten and nonpublic. According to Ms. Egelhoff, the Department's practice of excluding inmates based on domestic violence is not recorded anywhere in writing. C 141 (Egelhoff Dep.). Ms. Egelhoff did not receive written notice of the practice but learned about it from her predecessor. Tab 2 pp. 48 and 51 (Egelhoff). There are no letters or memos to wardens that specify what the practice is. C 141 (Egelhoff Dep.). The only written rules, regulations, or policies that deal with the meaning of Meritorious Good Time or with the procedures for granting or denying it or computing the amount of time granted are Rule 107 (the MGT Administrative Rule) and the MGT and SMGT Forms (for computing Meritorious Good Time and Supplemental Meritorious Good Time), which do not mention domestic violence. C 130-131, 166 (Egelhoff Dep.). *See also* MGT Administrative Rule.

#### **The Unwritten Domestic Policy Applied to Mr. Guzzo**

On December 14, 2001, the trial court found that Director Snyder had "abused his authority in the exercise of his discretion of awarding meritorious good time (MGT) credits to inmate Stephen Guzzo" and found "capricious and arbitrary the practice of the Director of the Ill. Dept. of Corrections not to award MGT credits to any committed person solely because that person has been arrested for domestic battery or subjected to an order of protection." C 296. The trial court ordered the Director to conduct a review of Mr. Guzzo's request for Meritorious Good Time consistent with his findings within 13 days.

On December 27, 2000, following that review, the trial court found that Mr. Guzzo had been denied Meritorious Good Time because "he was arrested for non-spousal domestic battery, which charge was nolle prosequi." C 324. The court held that "the policy of the Illinois Department of Corrections of denying meritorious good time and supplemental meritorious good time solely because an inmate has been charged or arrested but not convicted of domestic battery

is unconstitutional and in violation of Illinois law.” C 323. The court also found that Mr. Guzzo should be discharged because his continued custody was unconstitutional and/or cause for discharge under the Habeas Corpus Act. The trial court ordered the Department to award Mr. Guzzo 54 days of Meritorious Good Time and to discharge him. C 327. Also on December 27, 2000, respondents (Director Snyder and James Page) filed a notice of appeal. C 328.

## ARGUMENT

### I. THE UNWRITTEN DOMESTIC POLICY IS AN ABUSE OF THE DIRECTOR’S DISCRETION

Respondents concede, “[h]ad Guzzo been able to establish that the Director of the Department of Corrections abused his discretion, the trial court might have correctly found that a post-conviction occurrence entitling Petitioner to relief had occurred.”<sup>3</sup> Brief and Argument for Respondents-Appellants (“Resp. Br.”), p. 9. The amicus submits that the evidence provided by Department officials in DeJesus v. Snyder and in this case, and the arguments the plaintiffs have developed in Cogdill v. Snyder, show that the Director in fact did abuse his discretion under Illinois statutes by denying Meritorious Good Time to Mr. Guzzo through the Unwritten Domestic Policy.

Respondents have not contested the trial court’s finding that Mr. Guzzo was denied Meritorious Good Time based on the Department’s policy of denying good time because of a domestic battery in an inmate’s background. Because there is no dispute about the primary facts and the appellant raises a question of law, the proper standard of review is *de novo*, as respondents have noted. Resp. Br. p. 4. *See also* Kleinwort Benson North America, Inc. v.

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<sup>3</sup> The applicable statute provides that a cause for discharge under the Habeas Act occurs “[w]here, though the original imprisonment was lawful, nevertheless, by some act, omission or event which has subsequently taken place, the party has become entitled to be discharged.” 735 ILCS 5/10-124(2).

Quantum Financial Services, Inc., 181 Ill.2d 214, 218, 692 N.E.2d 269 (1998). Likewise, although a court accords deference to administrative rules properly promulgated under the IAPA, the question of the scope of an agency's power and authority is a question of law. County of Knox ex rel. Masterson v. The Highlands, 188 Ill.2d 546, 554, 723 N.E.2d 256(1999).

There are two principles of law applicable to Mr. Guzzo's claim that mandate the conclusion that, in fact, the Director and the Department did abuse their discretion in denying Meritorious Good Time to Mr. Guzzo. First, they acted outside the scope of their authority under the MGT Statute (a point developed in Subsection A). Second, they abused their discretion because they violated the IAPA's provisions on rule-making and discretionary power. *See* Subsection B.

**A. The Unwritten Domestic Policy is Outside the Authority of the MGT Statute.**

To ensure that agency discretion is used appropriately, Illinois courts require that the legislature articulate "intelligible legislative standards" when delegating authority. Stofer v. Motor Vehicle Casualty Co., 68 Ill.2d 361, 371, 369 N.E.2d 875 (1977). The legislature's "affirmative authority" embodied in such standards acts to protect against "the misguided acts of a particular bureaucracy." *Id.* at 371. The standards assist the courts as well. "Without sufficient statutory directions against which to compare administrative regulations, the mere existence of judicial review is not a meaningful safeguard against administrative abuses." *Id.* at 371.

Once such standards are established, the agency cannot impose by regulation or practice a requirement that is inconsistent with the statute conferring the authority. Hernandez v. Fahner, 135 Ill.App.3d 372, 381-382, 481 N.E.2d 1004 (1<sup>st</sup> Dist. Ill. 1985) (holding that the policy of requiring applicants for compensation under the Crime Victims Compensation Act to submit

proof of citizenship exceeded the agency’s statutory authority, because the statute’s use of the word person “meant all persons regardless of immigration status or citizenship”). *See also* Albazzaz v. Ill. Dept. of Professional Regulation, 314 Ill.App.3d 97, 105, 731 N.E.2d 787 (1<sup>st</sup> Dist. 2000). Instead, any power or authority must find its source “within the provisions of the statute by which it is created.” County of Knox ex rel. Masterson v. The Highlands, 188 Ill.2d 546, 554, 723 N.E.2d 256 (1999), *quoting* Bio-Medical Laboratories, Inc. v. Trainor, 68 Ill.2d 540, 551 (1977). Importantly, a grant of discretion “cannot be used to justify a policy that is inconsistent with or exceeds the specific language of the Act.” Hernandez, 135 Ill.App.3d at 381-382.

The MGT Statute is part of the Unified Code of Corrections (730 ILCS 5/1-1, *et seq.*, the “Code”), which governs the operations of the Department. The Code provides that the Department has the power to establish rules and regulations for administering a system of good conduct credits (730 ILCS 5/3-2-2(1)(n)) and further provides that the Department “*shall* prescribe rules and regulations for the early release on account of good conduct of persons committed to the Department . . . .” 730 ILCS 5/3-6-3(a)(1) [emphasis supplied].

The MGT Statute provides as follows:

The rules and regulations [on early release] shall also provide that the Director may award up to 180 days additional good conduct credit for meritorious service in specific instances as the Director deems proper; except that no more than 90 days of good conduct credit for meritorious service shall be awarded to any prisoner who is serving a sentence for conviction of [various felonies]. Notwithstanding the foregoing, good conduct credit for meritorious service shall not be awarded on a sentence of imprisonment imposed for conviction of [various felonies].

730 ILCS 5/3-6-3(a)(3).

The intelligible standards of the MGT Statute require (1) that the system of Meritorious Good Time be administered pursuant to rules and regulations, (2) that the Department and its Director award Meritorious Good Time based on factors related to meritorious service, and (3) that only certain inmates be excluded from consideration.

The conclusion that these standards limit and delineate the Department's discretion is supported by the Statute's legislative history. The system of Meritorious Good Time was established in 1977 in connection with the legislature's creation of a sentencing structure based on determinate sentencing. Lane v. Sklodowski, 97 Ill.2d 311, 454 N.E.2d 322 (1983). In contrast to the prior law granting the Department broad discretion, the new statute "carefully circumscribed" the Department's authority. *Id.* at 317. Viewed in this context, "it is inconceivable that the legislature could have intended . . . to grant the Director the unreviewable and unlimited authority to award any number of days of credit for meritorious service as he sees fit." *Id.* at 318. In Sklodowski the Department's error was to make multiple awards of Meritorious Good Time, but the Illinois Supreme Court's decision about the scope of the Department's discretion applies to the Unwritten Domestic Policy as well.

Underscoring the conclusion that the words "meritorious service" constitute a statutory limitation on the Director's discretion are truth-in-sentencing requirements concerning Meritorious Good Time. The truth-in-sentencing statute requires that, during sentencing in a criminal case, the judge must state "on the record in open court" the amount of Meritorious Good Time for which each person is eligible according to the statutory criteria and also state, "If the defendant, *because of his or her own misconduct or failure to comply with the institutional regulations*, does not receive those credits, the actual time in prison will be longer." 730 ILCS 5/5-4-1(c-2) [emphasis supplied]. This statement describes the proper rule for inmates not

deemed ineligible under the MGT Statute: Meritorious Good Time must be awarded (or denied) based on the inmate's conduct in prison. By denying consideration for Meritorious Good Time based on the Unwritten Domestic Policy, the Director acts outside the authority granted him under the MGT Statute.

Principles of administrative law also show why the Unwritten Domestic Policy is beyond the Director's authority. In Albazzaz v. Ill. Dept of Prof. Regulation, 314 Ill.App.3d 97, 105, 731 N.E.2d 787 (1<sup>st</sup> Dist. 2000), the plaintiff-physician filed a complaint for administrative review of a decision by the Department of Professional Regulation and its director suspending his medical license because of his misconduct with his female patients. The defendants had suspended the plaintiff's license for a minimum of five years and also had provided that if his license was restored, he would be prohibited from seeing female patients unattended. The court upheld the suspension but ruled that the condition on relicensing was beyond the department's authority. The administrative rule authorized the board to place "reasonable limitations" on doctors when "disciplinary action other than suspension or revocation" is taken, but the rule did not expressly state that conditions could accompany a suspension. In view of the lack of express authority for such a limitation, the court held that the department's action exceeded its authority. *Id.* at 104-105.

Similarly, in Aurora East Public School v. Cronin, 92 Ill.App.3d 1010, 1014-1015, 415 N.E.2d 1372, 1376 (2<sup>nd</sup> Dist. 1981), the Second District held invalid the state board of education's rule requiring local boards to meet certain percentage requirements for racial composition, where the enabling statute authorized the board to prevent segregation but did not authorize specific percentages. Likewise here, the Department and the Director exceed their

authority by creating their own mandatory bar to Meritorious Good Time based on criminal indicia not enumerated in the MGT Statute.

That conclusion accords with the basic rule of statutory construction that the expression of one thing or one mode of action in an enactment acts to exclude all others. Baker v. Miller, 159 Ill.2d 249, 260, 636 N.E.2d 551 (1994). The Second District applied that rule in Abatron, Inc. v. Dept. of Labor, 162 Ill.App.3d 697, 701, 515 N.E.2d 1336 (2<sup>nd</sup> Dist. 1987), where it found that the director of the department of labor exceeded his authority by initiating enforcement proceedings when the applicable statute expressly authorized complaints by “[a]n employee, employee representative or employer” but not, impliedly, by the department. In that case, as here, it was no answer that the statute gave the department general administrative powers or that it did not expressly prohibit it from bringing a complaint. The MGT Statute specifies the criminal factors that will foreclose consideration of an inmate for Meritorious Good Time; the Director does not have the authority to add to that list through the Unwritten Domestic Policy.

Providing interested persons with notice of matters that affect them is one of the principal reasons why legislatures must articulate intelligible standards for agency discretion. *See* Stofer v. Motor Vehicle Casualty Co., 68 Ill.2d 361, 372, 369 N.E.2d 875 (1977). The secrecy of the Unwritten Domestic Policy denies prisoners information about this Policy, which determines whether they will be eligible for six-months’ shorter prison sentences. Secret rules about eligibility blind-side judges as well as prisoners, since sentencing courts can and do consider a defendant’s potential good time in passing sentence. *See* People v. Reedy, 186 Ill.2d 1, 708 N.E.2d 1114 (1999). What judges do *not* consider are most of the factors underlying the

Unwritten Domestic Policy, since their low reliability means that their consideration at sentencing would be prejudicial error.<sup>4</sup>

The legislature's grant of authority in the MGT Statute does not allow the Department to deny Meritorious Good Time based on these improper factors. The Director's denial of Meritorious Good Time to Mr. Guzzo and thousands of other inmates using these factors is, thus, an abuse of his discretion and outside his lawful authority.

**B. The Unwritten Domestic Policy Violates the IAPA Provision Governing Discretionary Power and the MGT Administrative Rule.**

1. The Unwritten Domestic Policy violates the IAPA provision governing discretionary power.

The IAPA requires, "Each rule that implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. The standards shall be stated as precisely and clearly as practical under the conditions to inform fully those persons affected." 5 ILCS 100/5-20. This requirement is not a mere technical rule; it is important to the fundamental principle that agency discretion should be confined and structured and that governmental rules should be accessible to the people they affect. It also is in keeping

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<sup>4</sup> The Unwritten Domestic Policy denies consideration *solely* based on (1) a mere arrest or charge of domestic violence, (2) a conviction of domestic battery, even if the charge involves no physical violence (domestic battery, a Class A Misdemeanor, provides liability, *inter alia*, where a person "[m]akes physical contact of an insulting or provoking nature" with a household member), or (3) the mere entry of an order of protection, regardless of whether the order remains in effect or was violated. (Orders of protection may be obtained by or on behalf of any person who has been abused, meaning "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation . . ." 750 ILCS 60/103(1) and (12). They are entered based on the civil burden of preponderance of the evidence and without the right to a jury, 750 ILCS 60/101(1), and may be entered *ex parte* (750 ILCS 60/217-219).) Courts are unanimous in concluding that a judge may not consider a "mere arrest, standing alone," without further proof of the conduct alleged. People v. Mattingly, 180 Ill.App.3d 573, 580, 536 N.E.2d 257, 261 (4<sup>th</sup> Dist. 1989). *See also*, People v. Gomez, 247 Ill.App.3d 68,74, 617 N.E.2d 320, 324 (1<sup>st</sup> Dist. 1993), *citing* People v. Richardson, 123 Ill.2d 322, 361, 528 N.E.2d 612 (1988) (prejudicial error for sentencing judge even to consider testimony involving misconduct not resulting in a prosecution without determining that the evidence is both reliable and relevant).

with the provision of the MGT Statute requiring that the Department promulgate rules and regulations to govern Meritorious Good Time. The Unwritten Domestic Policy violates the IAPA's requirement that rules implementing discretionary power be articulated to the people affected by them, and its use by the Director is an abuse of his discretion.

2. The Unwritten Domestic Policy is outside the MGT Administrative Rule.

The MGT Administrative Rule (Ill. Adm. Code tit. 20, § 107.200, *et seq.*) implements the Director's discretionary power to award Meritorious Good Time. The Rule specifies the standards by which the Director exercising his power, stating (1) who may award Meritorious Good Time (the Director or his designee, *Id.* at 107.205); (2) what matters may be considered in determining "whether or not" to award Meritorious Good Time;<sup>5</sup> (3) who may apply for Meritorious Good Time (any inmate, the Director, or any Department employee, *Id.* at 107.210(b) and (c)); (4) what is the maximum length of Meritorious Good Time (180 days, *Id.* at 107.210(d)); and (5) which persons are ineligible for Meritorious Good Time or ineligible for more than 90 days (on account of the conviction for which they are serving a sentence, *Id.* at 107.210(e) and (f)). The Rule does not mention the Unwritten Domestic Policy.

Because the Unwritten Domestic Policy denies consideration for Meritorious Good Time based on factors wholly unrelated to those enumerated in the MGT Administrative Rule, it violates the IAPA and constitutes an abuse of the Director's discretion. Once an administrative agency adopts rules or regulations under its statutory authority for carrying out its authorized

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<sup>5</sup> The MGT Administrative Rule says, "in determining whether or not to grant good conduct credits for meritorious service, the Director may examine, among other matters," certain factors related to meritorious service, namely, the inmate's master record file; his or her in-prison reports and recommendations, disciplinary record, job performance, and educational and other achievements; and whether the inmate has been helpful in specific instances while in prison. Ill. Admin. Code tit. 20 § 107.210.

duties, it is bound by those rules. Holland v. Quinn, 67 Ill.App.3d 571, 574, 385 N.E.2d 92, 94 (1<sup>st</sup> Dist. 1978). The agency cannot arbitrarily disregard the rules or apply them in a discriminate manner, even where the statute confers absolute discretion in a particular area. Pace Realty Group, Inc. v. Property Tax Appeal Board, 306 Ill.App.3d 718, 729-730, 713 N.E.2d 1249 (2<sup>nd</sup> Dist. 1999). In this case, the Department is bound by the MGT Administrative Rule, which does not include the Unwritten Domestic Policy.<sup>6</sup>

In Nolan v. Hillard, 309 Ill.App.3d 129, 722 N.E.2d 736 (1<sup>st</sup> Dist. 1999), a group of Chicago police officers challenged new promotion policies that required an officer to have a minimum level of college credits to be eligible for the rank of sergeant. The plaintiffs argued that the educational requirement was not listed in the promotion eligibility rule promulgated by the police department, which stated that the relevant factors were seniority, performance on job-related fitness tests, and evaluation of job performance. *Id.* at 143. The court agreed. Although the existing promotion criteria constituted a non-exhaustive list, the list consisted entirely of matters concerning a candidate's employment. Therefore, "matters beyond the candidate's professional duties, such as his or her educational background, were outside the list and not proper considerations during the promotional process." *Ibid.* "[T]he Department is under a legal duty to follow its own rules," and those rules did not include an educational requirement. *Id.* at 143-144. Similarly, in Albazzaz v. Ill. Dept of Prof. Regulation, 314 Ill.App.3d 97, 105, 731 N.E.2d 787 (1<sup>st</sup> Dist. 2000), the court held that the plaintiff-physician was entitled to be evaluated based solely on the set of factors promulgated by the Medical Licensing Board. "This list (though non-exhaustive) purports to contain the sole bases for a Board's review," and the

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<sup>6</sup> Alternatively, the Unwritten Domestic Policy is an invalid rule because it was not promulgated pursuant to IAPA procedures.

Board was limited to them “without regard to the ‘requirements’ set by the Board which imposed [the plaintiff’s suspension].” *Id.* at 106.

Likewise here, the MGT Administrative Rule “purports to contain the sole bases” for the Director’s review of Meritorious Good Time. Barring inmates from consideration based on wholly unrelated factors is outside the Director’s authority. The Unwritten Domestic Policy is outside the MGT Administrative Rule and violates the IAPA’s restrictions on discretionary authority, just as it is beyond the power delegated to the Department under the MGT Statute. The Policy is therefore illegal, and the Director’s use of it to deny Meritorious Good Time is an unlawful abuse of his discretion.

**CONCLUSION**

For the foregoing reasons, this court should affirm the trial court’s decision.

Respectfully submitted,

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