

BOARD OF PAROLE HEARINGS
Executive Board Meeting
Monday, November 17, 2014

Meeting called to order at 1:05 p.m.

Roll call: Commissioners Anderson, Labahn, Minor, Montes, Peck, Richardson, Roberts, Singh, Turner and Zarrinam present. Commissioners Fritz and Garner were absent.

CONSENT CALENDAR

Commissioner TURNER moved to approve the minutes of the October 20-24, 2014 meeting. Commissioner SINGH seconded the motion, which was carried unanimously.

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer

SHAFFER introduced Commissioner MICHELE MINOR, who was recently appointed to the Board. SHAFFER outlined her professional experience and welcomed her.

SHAFFER stated that the Board is working to enable attorneys to review an inmate's central file at any institution. The Board is also working to secure annual gate clearance for deputy district attorneys and privately-retained attorneys. The 2013 hearing attendance records will be used to determine which deputy district attorneys and privately-retained attorneys attended the most hearings and that list will be submitted for possible annual gate clearances. SHAFFER stated that she will report further at next month's meeting.

SHAFFER stated that electronic hearing packets started being distributed on October 31, 2014. She invited feedback on the process.

An updated status report will be filed today with the Three-Judge Panel and will include information on the status of youth offender, elderly parole, and expanded medical parole hearings. Information about the proposed parole process for non-violent, second-strike inmates will be filed with the court on December 1, 2014. SHAFFER stated that there have been 16 expanded medical parole hearings. In addition, 97 inmates, over the age of 60 and serving more than 25 years, have been granted parole by the Board since the court's order was issued on February 11, 2014. This information is usually posted online with the court by the 15th day of each month.

Report from Chief Counsel, Howard Moseley

MOSELEY stated that proposed regulations concerning hearings held pursuant to Penal Code section 3000.1 have been submitted to the Office of Administrative Law (OAL). He introduced

Senior Staff Attorney, HEATHER McCRAY, who provided an overview of the proposed regulation changes. The changes are intended to remove conflicts in the existing regulations and to conform with current law. The OAL reference number for the proposed regulations is Z-2014-0128.

MOSELEY described Proposed Administrative Directive 2014-03C, which provides guidance on the handling of audio, video, and other electronically-stored statements filed with the Board. Parties submitting such material must also provide a written transcript of the statement contained on the electronic media. The transcript will be marked as an exhibit at the hearing and later scanned into CDCR's computer system, ERMS, pursuant to Administrative directive 2014-03A. The Board will retain the original transcript of the statement. The Board will vote on the draft directive at the next meeting and MOSELEY invited feedback.

Staff Attorney, SUSAN BOOTH described Proposed Administrative Directive 2014-05, which clarifies the scope of victim impact statements presented at a hearing. BOOTH explained that Penal Code section 3043(b)(1) defines who may present an impact statement at a parole consideration hearing. The statute also defines the scope of the statement. Penal Code section 3043.2 permits a prosecutor to represent the views of the victim, his or her immediate family and next of kin. The draft directive lists the persons who are entitled to present a victim impact statement. The draft directive clarifies that the victim's attorney or a prosecutor may present the statement. MOSELEY again invited feedback on the draft directive, upon which the Board will vote at the next meeting.

DISCUSSION ITEMS

Staff Attorney, TRACY YOUNG gave a presentation on Proposed Administrative Directive 2014-03A, which the Board considered at the October, 2014 meeting. The directive defines the official written record at parole hearings.

Public Comments

JILL KLINGE, Alameda County District Attorney's Office, stated that there is ambiguity about the 10-day limit in the directive for submitting documents before a hearing. It is uncertain whether the directive refers to business or calendar days. She pointed out that inmates must complete their review of the central file 10 days before the hearing. Inmates might be unable to review documents that are submitted on the 10th day before the hearing.

MOSELEY stated that the Penal Code provisions on this issue and those of the California Code of Regulations are inconsistent. The intention of the proposed directive is to clarify the Board's practice, which is to use calendar days. The matter has been identified for regulatory amendment.

There was a discussion about how the Board's practice may affect cases that are moved to an earlier day in the hearing week and that commissioners should take this into account when determining whether or not to move a hearing to an earlier day of the week.

Commissioner SINGH moved to adopt Administrative Directive 2014-03A.

Commissioner ROBERTS seconded the motion, which was carried unanimously.

Staff Attorney, SUSAN BOOTH gave a presentation on Proposed Administrative Directive 2014-04, which the Board considered at the October 2014 meeting. The Board received feedback from stakeholders and the directive's title has been changed to "The Right of Victims to Submit Written Impact Statements and the Right of Inmates to Review Written Records 10 Days Prior to a Hearing." The introduction has also been modified. The purpose of the directive is to make clear that a victim impact statement is not subject to the 10-day limit for submitting documents before a hearing.

BOOTH stated that victims may make written and oral statements. The hearing is transcribed and the oral statement will become part of the official record.

Commissioner RICHARDSON moved to adopt Administrative Directive 2014-04.

Commissioner MONTES seconded the motion, which was carried unanimously.

OPEN COMMENTS

JILL KLINGE, Alameda County District Attorney's Office, referred to the effect moving a case to an earlier date in the hearing week will have on the 10-day rule for submitting documents to consider. She stated that moving a hearing to an earlier date in the hearing week should not invalidate the district attorney's otherwise timely submission of documents. KLINGE stated that she would welcome a further opportunity to discuss the issue of central file review. She stated that it is unclear where documents should be sent for inclusion in the electronic hearing packets. The problem resulted in the postponement of a recent case. KLINGE recommended that the last sentence of the first paragraph in Legal Authority section of Proposed Administrative Directive 2014-05 be amended to ".....may be covered, including but not limited to:"

VANESSA NELSON-SLOANE, Life Support Alliance, stated that there is a widespread problem with inmates' receiving CDC-115 rules violation reports for taking prescribed medication. Life Support Alliance has identified 12 institutions where this has occurred, as recently as two weeks ago. It has received over 40 complaints from inmates and has referred the matter to the State Senate. Inmates receiving a CDC-115 are subject to sanctions, such as losing visiting privileges and termination of programming. Some inmates have asked whether they should take their prescribed medication to hearings. NELSON-SLOANE asked that panels should take this issue into account when assessing the weight to be attached to a CDC-115.

Meeting recessed at 1:42 p.m.

Referral to consider for rescission hearing, pursuant to California Code of Regulations, title 15, section 2450 *et seq*

F. DELEO, FRANK

H-73348

ALEXIS DE LA GARZA, Los Angeles County District Attorney's Office, requested that the Board order a rescission hearing.

G. LOYA, FERNANDO

K-67157

OSCAR MAYORGA, victim's brother, ELIZABETH MAYORGA, victim's sister and LESLIE KOLB, Sacramento County District Attorney's Office requested that the Board order a rescission hearing.

Referral by the Governor pursuant to Penal Code section 3041.1 and California Code of Regulations, title 15, section 2044 to request review of a parole decision by the full Board

H. FERGUSON, KENNETH

K-11229

ALIDA HEDRICK, victim, CHRISTINE WARD, victim's support and PHYLLIS SHESS, San Diego County District Attorney's Office requested that the Board order a rescission hearing.

MARC NORTON, inmates' attorney, submitted that there is no legal foundation to order a rescission hearing.

I. KENNEDY, DWAYNE

E-77932

REBECCA RABKIN, inmate's attorney, submitted documents for the Board's consideration.

YOLANDA KENNEDY, inmate's sister, ROBERT KENNEDY, inmate's father and DWAYNE MOODY, inmate's friend, supported his parole grant.

KEITH WATTLEY, Uncommon Law and inmate's attorney, submitted that the Board should not order a rescission hearing.

ALEXIS De LE GARZA, Los Angeles County District Attorney's Office, requested that the Board order a rescission hearing.

J. SOLIS, JESSE

H-59423

PHYLLIS SHESS, San Diego County District Attorney's Office, and CHRISTINE WARD, victim's support, requested that the Board order a rescission hearing.

Referral by a hearing panel member, pursuant to Penal Code section 3041(a), to request review of a parole decision by the full Board

K. MATTHEWS, WOOD

H-59423

ALEXIS De LE GARZA, Los Angeles County District Attorney's Office, submitted that the decision denying the inmate parole should stand.

Referral, pursuant to Penal Code section 3041 to either grant or deny parole when there is a tie vote

L. ROLLO, GARY

B-71815

Public comment prohibited, pursuant to Penal Code section 3041(e).

OPEN COMMENTS

MARC NORTON, attorney, expressed concern that, at a recent hearing, the deputy commissioner had imposed a 10 minute limit on his statements. He stated that the deputy commissioner's conduct had been inappropriate. He submitted that there have been other occasions when imposing the limit has compromised the inmate's right to effective representation. NORTON gave notice that, upon receipt of the hearing transcript, he will request that the panel's decision be vacated.

VANESSA NELSON-SLOANE, Life Support Alliance, stated that she and GAIL BROWN recently attended a meeting with inmates at the California Institution for Women. The inmates expressed interest in recent legal changes and in the work of the commissioners. The atmosphere was positive and constructive, addressing issues like insight and remorse.

ALEXIS DE LA GARZA, Los Angeles County District Attorney's Office, referred to a hearing where arrangements had been made for the victims to participate via video conferencing. She expressed concern that the commissioner had sought to use teleconferencing when technical difficulties arose, and had appeared reluctant to consider methods to ensure that the victims had a video link to the hearing. DE LA GARZA was critical of how the hearing was handled.

CHRISTINE WARD, Crime Victims Action Alliance, supported the amendment to Proposed Administrative Directive 2014-05, as suggested yesterday by JILL KLINGE.

HARRIET SALARNO, Crime Victims United, thanked CHRISTINE WARD for the training that she provided last month. She stated that the petition to advance hearing process is extremely

stressful for victims. She stated that victims have a constitutional right to be represented at hearings. Intensive questioning of their counsel by panel members is upsetting and inappropriate. SALARNO questioned the practice of only appointing attorneys to be deputy commissioners. She expressed reservations about the restorative justice model.

Meeting adjourned at 11:18 a.m.

Board of Parole Hearings
Scheduled and Backlog Hearings Report
Penal Code section 3041(d)
December, 2014

