

## BEST PRACTICES FOR REPRESENTING INMATES WITH DISABILITIES

### Assignment of Case:

- **MANDATORY** - Review DECS for potential disabilities prior to your first client contact.
- **MANDATORY** – Make an entry into DECS (click “Enter Accommodations Provided”) to document how you are planning to accommodate any relevant disabilities during the client interview. An entry is required for all cases. If an entry is made before the client interview, you should make a new entry following the client interview if there were any changes to the plan as entered.
- Review the WatchDox packet for relevant information
  - Risk Assessment – description of medical status and disabilities; description of any cognitive limitations or capacity for insight
  - CDC 128C-2 for inmates with developmental disabilities
- Review your client’s hearing history
  - When did your client last fully participate in a hearing?
- **MANDATORY** - Review the central file.
- For MDO hearings – review the clinical reports in the MDO packet.

### Client Interview:

- Interview Preparations:
  - **MANDATORY** – “[M]eaningfully consult” with your client at least 45 days prior to the scheduled hearing.
  - For inmates with disabilities, schedule the interview a little earlier than normal in case you are unable to meet with your client on your first attempt; make multiple attempts as needed.
    - Identify and utilize the best form of communication
    - **MANDATORY** – Do not rely on written communication if the inmate is designated as developmentally disabled (DD1, DD2, DD3), participating in significant mental health treatment (EOP, MHCB, DMH, ICF, PIP, or ACUTE), is learning disabled (DNL), is blind (DPV) or vision-impaired (DSV), or has a Test of Adult Basic Education (TABE) score of 4.0 or lower.
  - Make special arrangements to interview, as needed
    - Arrange for live Sign Language Interpreter (SLI) – schedule appointment with prison, and notify [BPH.ADAUnit@cdcr.ca.gov](mailto:BPH.ADAUnit@cdcr.ca.gov) to ensure SLI is available at the appointment time
      - **MANDATORY** – You must have an SLI if indicated in DECS.
    - **MANDATORY** - Use foreign language interpreters, if needed, for effective communication.
    - For assistance with special interview locations or for special accommodations at the interview, contact the prison’s Litigation

Coordinator, the ADA Coordinator, or the Chief Executive Officer (who oversees medical, mental health, and DDP)

- For MDO hearings: contact the Atascadero Parole Sub-Unit
  - **MANDATORY** – Immediately contact BPH Headquarters with any problems meeting and communicating with your client, or obtaining relevant documents: [BPHLiferAnalyst@cdcr.ca.gov](mailto:BPHLiferAnalyst@cdcr.ca.gov). Make reasonable efforts to resolve the problems with the institution.
- Conducting the Interview:
    - Explain the hearing process to your client
    - **MANDATORY** – Review and discuss the following with your client, at a minimum:
      - Relevant Risk Assessments
      - Parole Plans
      - Disciplinary History
    - It is recommended you also review and discuss:
      - Disciplinary Concerns
      - Programming
      - Insight
    - Review and discuss any requests for waivers, stipulations, and postponements
      - Stipulations are not an option pre-hearing
      - Pre-hearing requests for waivers and postponement require both the attorney's and inmate's signatures on the BPH Form 1001(a)
      - MDO hearings – There are no waivers or stipulations; request postponements as soon as you become aware of the need for a postponement.

### **Hearing Preparations:**

- Review the BPH 1073 in DEC's approximately two weeks prior to the scheduled hearing
- Contact BPH with any special concerns about the planned accommodations (Section IV of the BPH 1073) at the hearing: [BPH.ADAUnit@cdcr.ca.gov](mailto:BPH.ADAUnit@cdcr.ca.gov)
- Learn more about your client's medical status or disability status
  - Medical Waiver – CDCR Form 7385
  - DSH – DSH Form G.A. #20.8 HIMD Overlay MH 5671 (Rev 05/13)
- Learn more about your client's parole plans, and assist when possible
- Plan your legal arguments
  - Do my client's physical limitations make him or her less dangerousness?
  - Do my client's cognitive limitations impact his or her ability to develop insight into the life crime, criminal history, history of gangs or substances, prison disciplinaries, etc.?
  - If my client does not have parole plans, does he or she expect to have family support, social security benefits, veteran's benefits, etc.?
- Check DEC's again shortly before the hearing to see if your client's disabilities or housing location has changed.

### **Day of Hearing:**

- Arrive early to meet with your client again and refresh his or her recollection of the hearing process.
  - **MANDATORY** – At a minimum, you must arrive on time and remain available for the entire hearing day.
- Ensure your client has received necessary medications that morning, that the hearing will not be disrupting his or her medications schedule, etc. Ensure your client has brought glasses, hearing aids, etc. to the hearing room.
  - Any concerns? Tell the hearing panel early in the day so that the issue can be remedied prior to the start of the hearing.
- Encourage your client to participate in the hearing.

### **During the Hearing:**

- Ensure the panel has reviewed all of your client's disabilities on the record.
- Ensure all accommodations have been made to facilitate your client's participation in the hearing.
  - **MANDATORY** – Raise appropriate and timely objections if you believe your client's ADA needs remain unaddressed.
- Periodically check-in with your client during the hearing to ensure ongoing understanding.
  - Interrupt the hearing panel if it appears your client does not understand something.
- Ask for comfort breaks, as needed.
- Advocate on behalf of your client, with regard to how his or her medical status or disabilities may impact:
  - Your client's ability to program or understand programming.
  - Your client's ability to understand prison rules and social situations, and to avoid disciplinaries.
  - Your client's capacity to develop insight into the life crime, criminal history, history of gangs or substance, prison disciplinaries.
  - Your client's ability to develop parole plans, and what alternatives may be available to him or her.
  - With regard to Marsy's Law denial lengths, advocate for what is reasonable given your client's age, medical status and disabilities, and capacity for further programming and insight.

### **Post-Hearing:**

- **MANDATORY** - If you feel your client's ADA needs were violated by the Board, file a timely post-hearing grievance (BPH Form 1074, Request for Reasonable Accommodation – Grievance Process).
- If you feel CDCR has not accommodated one of your client's needs, assist your client in filing a CDCR Form 602 appeal.

- If you are concerned about your client's level of medical or mental health care, or if you want to make a referral for medical parole, write a letter to the Chief Executive Officer at the prison.
- If you have any concerns with the substance of the hearing, write a letter to BPH Legal. Because BPH only has 120 days to conduct decision review, please send letters as soon as possible after the hearing.
- For MDO hearings or complaints against DSH alleging failure to provide ADA accommodations, patients should utilize the standard patient complaint procedure through the Patients' Rights Advocate (PRA) at ASH (DSH A.D. No. 931).

**Throughout the Process:**

- **MANDATORY** – Conduct yourself in a competent and professional manner at all times, and with all parties.