

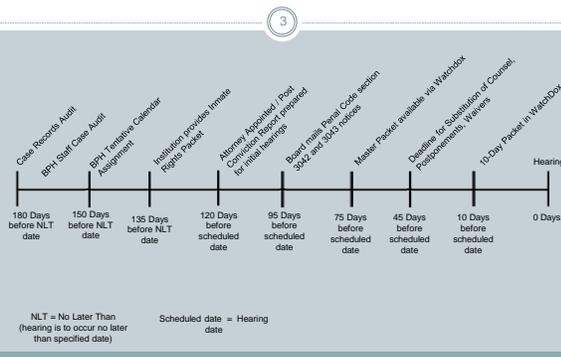
Board of Parole Hearings 

Pre-Hearing Preparation and Motions

Topics Covered

1. Hearing Timeline
2. Reviewing a Central File
3. Materials Available to Attorneys
4. Client Interviews and Preparing Documents for the Hearing
5. Substitution of Counsel
6. Waivers, Stipulations, Postponements, & Continuances

Hearing Timeline



180 Days before NLT date: Case Records Avail

150 Days before NLT date: BPH Staff Case Audit

135 Days before NLT date: BPH Tentative Calendar Assignment

120 Days before scheduled date: Institute provides inmate Program Packet

95 Days before scheduled date: Attorney Appointed / Post Conviction Report prepared

75 Days before scheduled date: Board mails final Code section 3042 and 3043 notices

45 Days before scheduled date: Master Packet available via WebBox

10 Days before scheduled date: Deadline for Substitution of Counsel, Postponements, Waivers

10-Day Packet in WebBox

0 Days: Hearing

NLT = No Later Than (hearing is to occur no later than specified date)

Scheduled date = Hearing date

Reviewing a Central File

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Paperless

- All inmate C-Files are digital
- SACCO inmates have paper c-files
- Generally, use CD and terminal at an institution

Electronic Records Management System (ERMS)

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Central File Components

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- Case Summary
- Legal
- Classification Chronos
- Disciplinary
- General Chronos
- Miscellaneous
- Holds/Warrants/Detainers
- Parole
- BPH
- Confidential(Cal. Code Regs., tit. 15, § 2235.)

Hearing Packet (WatchDox)

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1. Case Summary
2. Legal
3. Classification
4. Disciplinary
5. General Chronos
6. Miscellaneous
7. BPH
8. Confidential – 810 Form

Master Hearing Packet for a Suitability Hearing

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BOARD OF PAROLE HEARINGS INITIAL/SUBSEQUENT PAROLE HEARING PACKET CHECKLIST	
1. CASE SUMMARY (Case # [redacted]) <ul style="list-style-type: none"><input type="checkbox"/> Legal Status Summary (SOMMS)<input type="checkbox"/> Public/Arrest Reports (commitment offense)<input type="checkbox"/> Probation Officer's Report (commitment offense)	6. MISCELLANEOUS <ul style="list-style-type: none"><input type="checkbox"/> Vocational/Self Help Certificates
2. LEGAL <ul style="list-style-type: none"><input type="checkbox"/> Abstract of Judgment (commitment offense)<input type="checkbox"/> Minute Order (commitment offense)<input type="checkbox"/> Sentencing Transcripts (commitment offense)<input type="checkbox"/> Appellate Court Decision(s) (commitment offense)<input type="checkbox"/> In Re Thompson (if applicable) (abstract of judgments from cases convicted of while serving life the sentence)<input type="checkbox"/> Talk Terms (if applicable for DSL inmate)	7. BPH <ul style="list-style-type: none"><input type="checkbox"/> BPH 1002 Notice of Hearing Rights (current hearing only)<input type="checkbox"/> BPH 1003 Request for Attorney/BPH1001(a) Waiver of Attorney (current hearing only)<input type="checkbox"/> BPH 1073/1073(a) ADA Accommodations (current hearing only)<input type="checkbox"/> PTA Approval Package (includes 1040/1040a, etc.) (if applicable)<input type="checkbox"/> [ERMS/ETIS]<input type="checkbox"/> Admin. Review Approval - Misc. Dec. (if applicable) [ERMS/ETIS]<input type="checkbox"/> In Rem Decision [ETIS]<input type="checkbox"/> Governor's Reversal Letter [ERMS/Legal Drive]<input type="checkbox"/> Face Sheet & Decision Portion of Transcript for last decision (denial/grant/stip)<input type="checkbox"/> BPT 1004 Program Reports<input type="checkbox"/> BPH 1007 PC 3042 Notice of Hearing & Responses (current hearing only)<input type="checkbox"/> Risk Assessments (2009 & forward)<input type="checkbox"/> Letters of Support (current hearing)<input type="checkbox"/> Letters of Opposition Non-Confidential (current hearing only)<input type="checkbox"/> Parole Plans (current hearing only)
3. CLASSIFICATION <ul style="list-style-type: none"><input type="checkbox"/> CDC 1030 Confidential Info. Disclosure<input type="checkbox"/> CDC 1280 Classification Change (most recent annual) (SOMMS)	8. CONFIDENTIAL <ul style="list-style-type: none"><input type="checkbox"/> CDC-810 Confidential Info. Listing<input type="checkbox"/> CDC-810A Confidential Info. Listing - Knowledge of Receipt
4. DISCIPLINARY <ul style="list-style-type: none"><input type="checkbox"/> CDC 113 (all)<input type="checkbox"/> CDC 120A Custodial Counseling Chrono (since last hearing)	
5. GENERAL CHRONOS <ul style="list-style-type: none"><input type="checkbox"/> CDC 1288 General Chrono (since last hrg)<input type="checkbox"/> CDC 1288 Educational progress reports (last 5 years) (SOMMS/ERMS)<input type="checkbox"/> CDC 1290-C Recommendation for Adaptive Support (most recent)<input type="checkbox"/> CDC 101 Work Supervisor Reports (last 5 years)	

10-Day Hearing Packet for a Suitability Hearing

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- | BOARD OF PAROLE HEARINGS
10-DAY HEARING PACKET CHECKLIST |
|---|
| <input type="checkbox"/> CASE SUMMARY |
| <input type="checkbox"/> LEGAL |
| <input type="checkbox"/> CLASSIFICATION |
| <input type="checkbox"/> DISCIPLINARY |
| <input type="checkbox"/> GENERAL CHRONOS |
| <input type="checkbox"/> MISCELLANEOUS |
| <input type="checkbox"/> BPH |
| <input type="checkbox"/> CONFIDENTIAL |

Late Mail Folder

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- Includes any materials received within 10 days of the hearing
- Usually contains letters
- Inmate documents and victim impact statements forwarded to participants

Client Interviews

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- Meet in advance of 45-day deadline for postponements and waivers
- Review Hearing Packet
- Review C-File
- Review DECS for communication issues
- Bring New BPH 1003 form
- Meeting with the client
 - Gate Clearance
 - Check Institution Status

Client Interviews

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Failure to meet with client more than 45 days before hearing is not good cause for a waiver.

Preparing Documents for the Hearing

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- Inmate entitled to present relevant documents at hearing
- Documents should be brief, pertinent, and clearly written
- Panel will accept up to 20 single-sided or 10 double-sided pages of material (not including support letters)

(Cal. Code Regs., tit. 15, § 2249.)

Administrative Directive 2013-06

New Form

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Provided with these materials

BPH 1003 (Hearing Rights Form) to request:

1. Waiver
2. Postponement
3. Substitution of counsel
4. Waive counsel

Substitution of Counsel

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- California Code of Regulations, title 15, section 2256(c) entitles inmates to an attorney at state expense
- New BPH form 1003 (Hearing Rights Form)
- If inmate wants to substitute with private counsel, must submit a BPH form 1003

Administrative Directive 2014-02

Substitution of Counsel

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Panel attorney remains appointed counsel, until Board approves request for substitution of counsel:

Board notifies in two ways:

1. Email Revision of calendar (sent to former and newly retained attorney)
2. Updated Grid Calendar (showing all assigned hearings)

Inmate telling you he has a new attorney is not sufficient. Email lifer analyst email if unsure.

BPH Form 1003

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- Must be signed by **both** inmate and private counsel
- Must be submitted **at least 45 days** prior to hearing date. Private counsel **must be ready** to proceed with scheduled hearing date.
- If submitted within 45 days of hearing, board will deny or approve.
- If submitted during week of hearing, presiding hearing officer will deny or approve request.

Administrative Directive: 2014-02

Waivers, Postponements, Stipulations, and Continuances

Administrative Directives 2013-03A, 2013-03B, 2013-03C

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Waivers, Stipulations, Postponements, and Continuances

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California Code of Regulations, title 15, section 2253(a)

“The rights and interests of all persons properly appearing before a [B]oard [of Parole Hearings] life parole consideration hearing are best served when hearings are conducted as scheduled.”

Waivers, Stipulations, Postponements, and Continuances

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Four Ways a Hearing Can Be Delayed or Resolved Without a Full Hearing:

1. Voluntary Waiver
2. Stipulations of Unsuitability
3. Postponements
4. Continuances

(Cal. Code Regs., tit. 15, § 2253.)

Waivers

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- Waive for 1, 2, 3, 4 or 5 years
- May only waive three consecutive parole hearings (waivers frequently denied on this basis).
- Inmate **not** eligible to submit a petition to advance next hearing

(Cal. Code Regs., tit. 15, § 2253(b).)

Waivers (continued)

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- Presumed **valid** if submitted **more than 45 days** prior to hearing
- Presumed **invalid** if submitted **within 45 days** of hearing

A waiver submitted within 45 days of the hearing must show:

- 1) Good cause, AND
- 2) The reason(s) given were not and could not reasonably have been known to the inmate 45 days before the hearing

Good Cause

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“[A] finding by the board based upon a preponderance of the evidence that there is a factual basis and good reason for the decision made.”

(Cal. Code Regs., tit. 15, § 2000(b)(50).)

The “good cause” standard applies to:

- Waivers within 45 days of hearing
- Postponements for non-enumerated reasons
- Continuances at the motion of the panel

Good Cause

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Lack of Parole Plans is not good cause for a late submitted waiver.

Lack of insight is not good cause for a late submitted waiver.

Postponements

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- May be initiated by the hearing panel or the inmate
- Rescheduled on next available hearing calendar, unless panel specifies otherwise (max of 11 months)
- Inmate **not** eligible to submit a petition to advance next hearing

(Cal. Code Regs., tit. 15, § 2253(d).)

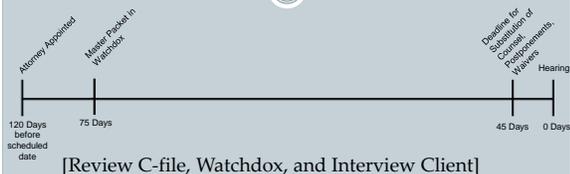
Postponements (continued)

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- Postponements for **enumerated reasons** are automatically valid. (Cal. Code Regs., tit. 15, § 2253(d)(1).)
- Postponements for **non-enumerated reasons** require the following:
 - 1) Inmate wants to resolve matters relevant to hearing;
 - 2) Good cause is shown; AND
 - 3) Inmate did not and could not have known about the need for a postponement any earlier

Hearing Timeline

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Do not wait to interview client, or submit request for a postponement or a waiver until the 45th day before hearing

Stipulations

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- Governed by Marsy's Law denial lengths (3, 5, 7, 10, or 15 years)
- Must be at hearing; victims entitled to be heard at hearing
- Inmate is eligible to submit a petition to advance next hearing

(Cal. Code Regs., tit. 15, § 2253(c)(1).)

Continuances

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- Initiated by hearing panel
- Occur after start of a hearing, but circumstances require a pause.

(Cal. Code Regs., tit. 15, § 2253(e).)

Continuances

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- Rescheduled on next available hearing calendar
- If same panel is not available, hearing is de novo
- Inmate **not** eligible to submit a petition to advance next hearing

Continuances

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Continuances require a showing of:

- 1) Good cause, and
- 2) Reason could not reasonably have been known by the party requesting the continuance prior to the hearing

BPH Form 1003

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To request a postponement or waiver...

do not give the form to the BPH Lifer Desk at the institution.

BPH Form 1003

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To request a postponement or waiver...

Attorney must email or fax the form to BPH lifer analyst:

- oEmail: bphliferanalyst@cdcr.ca.gov
- oFax: (916) 322-9337
