BOARD OF PAROLE HEARINGS

ADMINISTRATIVE DIRECTIVE NO: 2013-03

SUBJECT: REQUIREMENTS WHEN DISCUSSING WAIVERS, STIPULATIONS, AND POSTPONEMENTS WITH INMATES AT HEARINGS

INTRODUCTION

Most pre-hearing requests for waivers, stipulations of unsuitability, and postponements are submitted in writing and resolved prior to the scheduled hearing. For those that occur at the hearing, this Administrative Directive clarifies that all discussions between an inmate and the hearing panel regarding a request for waiver, stipulation of unsuitability, or postponement must be made on the record.

LEGAL AUTHORITY

Requests for waivers, stipulations of unsuitability, and postponements of life inmate parole suitability hearings are governed in large part by **California Code of Regulations, title 15, section 2253,** which states, among other things: "The rights and interests of all persons properly appearing before a board life parole consideration hearing are best served when hearings are conducted as scheduled. Occasional circumstances may require the delay of a scheduled hearing. It is the intention of the board to recognize the need and desirability to occasionally delay a scheduled hearing and to authorize said delays through a process of voluntary waiver or stipulation of unsuitability or to postpone or continue a scheduled life parole consideration hearing."

In general, such requests should be submitted to the board at the earliest possible date that the prisoner becomes aware of the circumstances leading to the request, however, any requests for waivers, stipulations of unsuitability, or postponements made the week of the scheduled hearing are to be resolved by the hearing panel. **(California Code of Regulations, title 15, sections 2253(b)(4), (c)(2) and (d)(4).)** In addition, **California Code of Regulations, title 15, section 2254** states, "A record (a verbatim transcript, tape recording or written summary) shall be made of all hearings."

On May 5, 2006, the court in ***In re Rutherford*** **(Super.Ct. Marin County, 2006, No. SC135399A)** ordered: "Any discussion between [the Board of Parole Hearings] and a prisoner about waiving or postponing a hearing or stipulating to parole unsuitability must

be had on the record." The ***Rutherford*** court issued a modified order on November 16, 2006, that a pre-hearing request need not be made on the record, stating an inmate's "request to waive a scheduled parole-suitability hearing, postpone such a hearing, or stipulate to unsuitability need not be made on the record if the request is made in writing and not during the same calendar week (running Sunday through Saturday) of the scheduled hearing." In the November 16, 2006 order, the ***Rutherford*** court clarified that at-hearing discussions regarding waivers, stipulations of unsuitability, or postponements must still be made on the record, stating, "This [ ] does not eliminate the Court's requirement that discussions between an [inmate] and members of the scheduled hearing panel about waiving the scheduled hearing, postponing the hearing, or stipulating to unsuitability be made on the record."

DIRECTIVE

If a request for waiver, stipulation of unsuitability, or postponement is made the week of a scheduled hearing, the hearing panel shall ensure, to the extent possible, that the inmate is present for any discussion regarding the request. The hearing panel shall also ensure that discussions between the inmate and the hearing panel regarding the request are made on the record and that a decision regarding the request is not reached until after an Americans with Disabilities Act (ADA) review is conducted.

Furthermore, if the request is for a waiver or stipulation of unsuitability, the hearing panel shall determine whether the request is made voluntarily. A best practice is for the hearing panel to conduct an interactive discussion on the record with the inmate (or the inmate's attorney if the inmate is not present) to confirm whether the request is voluntary. Attached to this Administrative Directive are sample questions the hearing panel may elect to use when discussing a request for a waiver, stipulation of unsuitability, or postponement.

(Note: see Administrative Directive No. 2012-02 for direction regarding the victim's right to be heard prior to the hearing panel's decision regarding a request for stipulation of unsuitability.)

This Administrative Directive shall take effect immediately. If you have any questions concerning the contents of this Administrative Directive please contact the legal office at (916) 324-7604.

APPROVED BY:	**JENNIFER P. SHAFFER** **Executive Officer, BPH**	**DATE:** 4/2/2013

BOARD OF PAROLE HEARINGS

SAMPLE QUESTIONS FOR DISCUSSION ON THE RECORD OF A REQUEST FOR WAIVER, STIPULATION OF UNSUITABILITY, OR POSTPONEMENT

The following are sample questions the hearing panel may elect to use on the record when discussing a request for a waiver, stipulation of unsuitability, or postponement.

To Counsel:

- Counsel, it is my understanding that your client requests a (waiver, stipulation of unsuitability, or postponement). Is that correct?
- What is the reason for the request?
- *When the inmate is not present and the request is for a waiver or stipulation of unsuitability:* Do you attest that your client is making this request voluntarily?

To Inmate:

- Mr./Ms. *Inmate's Last Name*, your attorney has requested a (waiver, stipulation of unsuitability, or postponement) on your behalf. Is that what you wish to do today?
- What is your reason for making the request?
- Have you taken any medications or other substances that would impede your judgment today?
- Do you understand that you have a right to a hearing today?
- Do you understand that by (waiving, stipulating to unsuitability, or postponing) you are giving up that right?
- Has anyone threatened you, or threatened anyone close to you, in order to get you to (waive, stipulate to unsuitability, or postpone)?
- Has anyone made any promises or representations, offered a reward or other advantage of any kind to you or someone you know, other then what we've discussed here today, in return for (waiving, stipulating to unsuitability, or postponing)?
- Are you (waiving, stipulating to unsuitability, or postponing) freely and voluntarily?