



BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2015-04

SUBJECT: EX PARTE COMMUNICATION

INTRODUCTION

This Administrative Directive addresses ex parte communication between a hearing panel member and any interested parties (inmates, inmate counsel, prosecutors, victims, and observers). This directive provides guidance as to when ex parte communication is permissible, when it is impermissible, and what actions need to be taken in the event of impermissible ex parte communication.

LEGAL AUTHORITY

General Rule Prohibiting Ex Parte Communication

Government Code section 11430.10 states:

- (a) While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an interested person outside the agency, without notice and opportunity for all parties to participate in the communication.
- (b) Nothing in this section precludes a communication, including a communication from an employee or representative of an agency that is a party, made on the record at the hearing.
- (c) For the purpose of this section, a proceeding is pending from the issuance of the agency's pleading, or from an application for an agency decision, whichever is earlier.

Permissible Ex Parte Communication

Government Code section 11430.20 states:

A communication otherwise prohibited by Section 11430.10 is permissible in any of the following circumstances:

- (a) The communication is required for disposition of an ex parte matter specifically authorized by statute.
- (b) The communication concerns a matter of procedure or practice, including a request for a continuance, that is not in controversy.

Required Action in the Event of Impermissible Ex Parte Communication

Government Code section 11430.50 states:

- (a) If a presiding officer receives a communication in violation of this article, the presiding officer shall make all of the following a part of the record in the proceeding:
 - 1) If the communication is written, the writing and any written response of the presiding officer to the communication.
 - 2) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.
- (b) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.
- (c) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:
 - 1) The party shall be allowed to comment on the communication.
 - 2) The presiding officer has discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

Government Code section 11430.60 allows for the disqualification of a presiding officer to eliminate the effect of an ex parte communication.

California Code of Regulations, title 15, section 2250 entitles an inmate to an impartial hearing panel. If a hearing panel member is "actually prejudiced against or biased in favor of the prisoner to the extent that he cannot make an objective decision," that member must be disqualified.

DIRECTIVE

1. Permissible Ex Parte Communication

Matters of Procedure or Practice Not in Controversy

Hearing panel members may communicate with an interested party on noncontroversial issues, such as scheduling or other purely procedural matters. The best practice in

these situations is to refer the individual to BPH Program Operations if the matter was raised prior to the week of the hearing. If communication with an interested party on noncontroversial issues is unavoidable, hearing panel members shall communicate in a manner that avoids the appearance of unfairness to one party.

Uncontested requests for waivers and postponements (but not stipulations) are issues of procedure, and therefore, hearing panel members are not required, but are encouraged, to include all interested parties in the disposition of such matters.

2. Impermissible Ex Parte Communication

There shall be no ex parte communication, direct or indirect, between a hearing panel member and any interested party (inmates, inmate counsel, prosecutors, victims, and observers) on a contested matter in the absence of or without the express consent of all parties regarding a case to which they have been assigned or that is pending decision review.

Inmates Represented by an Attorney

If an inmate is represented by an attorney at the time he or she makes a request for a voluntary waiver, stipulation, or postponement, hearing panel members shall not engage in ex parte communications with the inmate. As such, hearing panel members shall not act on the request unless the attorney concurs with the request by co-signing BPH Form 1001(a). Likewise, an attorney may not submit a request for a voluntary waiver, stipulation, or postponement without the inmate's signature.

3. Remedy in the Event of an Impermissible Ex Parte Communication

In the event a hearing panel member receives impermissible ex parte communication, that information shall be made a part of the record at the hearing, pursuant to Government Code section 11430.50. The hearing panel member shall also refer the matter to the BPH Legal Division to discuss whether disqualification is appropriate.

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

APPROVED BY:



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DATE: 12/21/2015