# BOARD OF PAROLE HEARINGS

**ADMINISTRATIVE DIRECTIVE NO: 2013-03A**

**SUBJECT: STANDARDS FOR REVIEW OF REQUESTS FOR WAIVERS, STIPULATIONS, POSTPONEMENTS, AND CONTINUANCES**

## INTRODUCTION

"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." (**California Code of Regulations, title 15, section 2253(a)**.) However, the Board of Parole Hearings recognizes that "[o]ccasional circumstances may require the delay of a scheduled hearing." (*Ibid.*)

**California Code of Regulations, title 15, section 2253** provides four actions by which a parole consideration hearing can be delayed: 1) voluntary waivers; 2) stipulations of unsuitability; 3) postponements; and 4) continuances. Multiple types of actions may be relevant in a given situation. Often a decision regarding the type of action to select will be based on the timing of the request, the desired outcome of the request, and a determination of whether the circumstances warrant such an action. Importantly, all decisions to delay a scheduled parole consideration hearing are made at the discretion of the Board of Parole Hearings.

This Administrative Directive provides direction for hearing officers with the Board of Parole Hearings in reviewing requests for voluntary waivers, stipulations of unsuitability, postponements, and continuances.

## LEGAL AUTHORITY

Voluntary Waivers

"A prisoner may request to voluntarily waive his or her life parole consideration hearing for any reason. Requests shall be made in writing to the board and shall state the reason for the request." (**California Code of Regulations, title 15, section 2253(b)**.)

"In requesting a voluntary waiver, the prisoner shall be deemed to have waived his or her right to a life parole consideration hearing ... . A prisoner may waive his or her hearing for one, two, three, four or five years." (**California Code of Regulations, title 15, section 2253(b)(1)**.) "Prisoners may waive no more than three consecutive life parole consideration hearings." (**California Code of Regulations, title 15, section 2253(b)(5)**.)

"A request for a voluntary waiver of a life parole consideration hearing should be submitted to the board at the earliest possible date that the prisoner becomes aware of the circumstances leading to the request, but shall be no later than 45 calendar days prior to the date of the scheduled hearing. A request made no later than 45 days prior to the scheduled hearing shall be presumed to be valid." (**California Code of Regulations, title 15, section 2253(b)(2)**.) "A request for a voluntary waiver ... submitted less than 45 calendar days prior to the scheduled hearing shall be presumed to be invalid and shall be denied by the board unless good cause is shown and the reason(s) given were not and could not reasonably have been known to the prisoner 45 calendar days prior to the scheduled hearing." (**California Code of Regulations, title 15, section 2253(b)(3)**.)

Stipulations of Unsuitability

"At any time prior to a life parole consideration hearing a prisoner may offer to stipulate to unsuitability for parole." (**California Code of Regulations, title 15, section 2253(c)(1)**.)

Postponements

"The hearing panel chair or board executive officer may postpone a life parole consideration hearing, upon its own motion or at the request of a prisoner, due to the unavailability of a hearing panel; the absence or untimeliness of required ... notices, documents, reports or required prisoner accommodations; or exigent circumstances such as illness of attending parties, natural disasters or institutional emergencies." (**California Code of Regulations, title 15, section 2253(d)(1)**.)

"A prisoner may request that the board postpone a life parole consideration hearing to resolve matters relevant to his or her parole consideration ... . The board may grant a postponement only upon the affirmative showing of good cause on the part of the prisoner and only if the prisoner did not and could not have known about the need for the postponement earlier than when he or she made the postponement request." (**California Code of Regulations, title 15, section 2253(d)(2)**.)

Continuances

"After the commencement of a life parole consideration hearing, the hearing panel chair may continue a hearing only upon a showing of good cause which was unknown, and could not reasonably have been known ... prior to the commencement of the hearing." (**California Code of Regulations, title 15, section 2253(e)**.) "In considering a continuance, the hearing panel chair shall weigh the reasons and the need for the continuance and any convenience to the board, department, or appearing parties and determine what will best serve the interest of justice." (**California Code of Regulations, title 15, section 2253(e)(1)**.)

"Good Cause"

"Good cause" is a requirement for postponements, continuances, and at times, for waivers. **Black's Law Dictionary (9th ed. 2009)** defines "good cause," in relevant part, as "[a] legally sufficient reason." "Good cause" is defined in the **California Code of Regulations, title 15, section 2000(b)(50)** as "[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."

## DIRECTIVE

VOLUNTARY WAIVERS

*Effect of Voluntary Waiver*

With a voluntary waiver, the inmate is giving up his or her right to a hearing for the length of the voluntary waiver (one, two, three, four, or five years). A voluntary waiver does not constitute a decision regarding the inmate's suitability for parole. An inmate may not waive his or her right to a parole consideration hearing more than three consecutive times. An inmate who has received a voluntary waiver is not eligible to submit a petition to advance his or her next hearing.

*Review of Request for Voluntary Waiver*

All requests for voluntary waivers must be reviewed for approval by the Board of Parole Hearings. Notably, voluntary waivers are the only type of action for hearing delay that has a different standard for review based upon the timing of the request. This shift in review occurs at 45 calendar days prior to the scheduled parole consideration hearing.

*No Later Than 45 Calendar Days Prior to the Hearing*

Generally speaking, a request for a voluntary waiver submitted no later than 45 calendar days prior to the date of the scheduled hearing signed by both the inmate and counsel shall be presumed valid. Absent extraordinary circumstances, a hearing officer shall approve the request. The hearing officer shall approve the request for voluntary waiver for the period of time requested (one, two three, four, or five years).

*Less Than 45 Calendar Days Prior to the Hearing*

A request for a voluntary waiver submitted less than 45 calendar days prior to the scheduled hearing shall be presumed invalid, and shall only be approved if the following two elements are met to the satisfaction of the hearing officer:

1) Good cause is shown, AND
2) The reason(s) given were not and could not reasonably have been known to the inmate 45 calendar days prior to the scheduled hearing.

*Element One* - Whether there is "good cause" is a determination made solely at the discretion of the hearing officer, who may require the inmate provide testimonial or documentary evidence explaining the reason for the request. A finding of "good cause" means the hearing officer has found the reason for the request to be legally sufficient or, in other words, there is a factual basis and good reason for the request. One factor for consideration is whether proceeding with the hearing would be a miscarriage of justice.

*Element Two* - Whether "[t]he reason[s] given were not and could not reasonably have been known to the prisoner 45 calendar days prior to the scheduled hearing," is also a determination made solely at the discretion of the hearing officer, who may require the inmate provide testimonial or documentary evidence explaining the circumstances of the request. Depending upon the circumstances of the request, factors for the hearing officer to consider include whether there was due diligence on behalf of the inmate, and whether the inmate was the cause of any delays.

If both elements are met, a hearing officer shall approve a request for voluntary waiver submitted less than 45 calendar days prior to the date of the scheduled hearing for the period of time requested (one, two three, four, or five years).

When reviewing a request for a voluntary waiver at the hearing, the hearing officer shall determine whether the request is made knowingly and voluntarily.

## STIPULATIONS OF UNSUITABILITY

### *Effect of Stipulation of Unsuitability*

By stipulating to unsuitability, the inmate is admitting he or she is currently unsuitable for parole for a specified length of time (three, five, seven, 10, or 15 years). All offers to stipulate unsuitability must be reviewed for approval by the Board of Parole Hearings, including the length of time. An inmate who has stipulated to unsuitability is eligible to submit a petition to advance his or her next hearing in accordance with Penal Code section 3041.5(d).

### *Review of Offer for Stipulation of Unsuitability*

There is no good cause standard for a hearing officer to review an offer to stipulate unsuitability, and there is no requirement regarding the timing of an offer to stipulate unsuitability other than it must occur prior to the start of the hearing. All offers to stipulate unsuitability shall be accepted by the hearing officer without need for explanation. However, the hearing officer shall also set a denial length (three, five, seven, 10, or 15 years) after conducting the analysis required by Penal Code section 3041.5(b)(3). If the inmate does not agree with the denial length set by the hearing officer, the inmate may withdraw the offer to stipulate unsuitability.

When reviewing an offer for stipulation of unsuitability at a hearing, the hearing officer shall determine whether the request is made knowingly and voluntarily.

## POSTPONEMENTS

### *Effect of Postponement*

A postponement is the simple act of postponing a scheduled hearing. A postponement does not constitute a decision regarding the inmate's suitability for parole. Postponed hearings shall be rescheduled on the next available hearing calendar, unless otherwise specified by the hearing officer. Postponements may be requested by the inmate or by any other participant in the scheduled hearing, or may be initiated by the Board of Parole Hearings. An inmate who has received a postponement is not eligible to submit a petition to advance his or her next hearing.

*Review of Request for Postponement*

Specified reasons for postponement are enumerated in regulation, and do not require analysis by the Board of Parole Hearings for approval. All other reasons for postponement require a finding of good cause and analysis by the Board of Parole Hearings for approval.

*Enumerated Reasons for Postponement*

California Code of Regulations, title 15, section 2253(d)(1) sets forth specific reasons for postponement that do not require analysis by the Board of Parole Hearings for approval. These include "unavailability of a hearing panel; the absence or untimeliness of required ... notices, documents, reports or required prisoner accommodations; or exigent circumstances such as illness of attending parties, natural disasters or institutional emergencies." (*Ibid.*)

*Non-Enumerated Reasons for Postponement*

All reasons for postponement that are not enumerated in California Code of Regulations, title 15, section 2253(d)(1) require a good cause finding by the Board of Parole Hearings for approval. Pursuant to California Code of Regulations, title 15, section 2253(d)(2), a request for a postponement for a reason not enumerated in regulations shall only be approved if the following three elements are met to the satisfaction of the hearing officer:

1) The inmate desires to resolve matters relevant to his or her parole consideration hearing, AND
2) Good cause is shown, AND
3) The inmate did not and could not have known about the need for the postponement any earlier than when the request was made.

*Element One* – The inmate must explain what he or she intends to resolve, and the matter to be resolved must be relevant to the inmate's parole consideration hearing. Whether the matter is relevant to the inmate's parole consideration hearing is a determination made solely at the discretion of the hearing officer, who may require the inmate provide testimonial or documentary evidence explaining the reason for the request.

*Element Two* - Whether there is "good cause" is a determination made solely at the discretion of the hearing officer, who may require the inmate provide testimonial or documentary evidence explaining the reason for the request. A finding of "good cause" means the hearing officer has found the reason for the request to be legally sufficient or, in other words, there is a factual basis and good reason for the request. One factor for consideration is whether proceeding with the hearing would be a miscarriage of justice.

*Element Three* - Whether "the prisoner did not and could not have known about the need for the postponement earlier than when he or she made the postponement request," is also a determination made solely at the discretion of the hearing officer, who may require the inmate provide testimonial or documentary evidence explaining the circumstances of the request. Depending upon the circumstances of the request, factors for the hearing officer to consider include whether there was due diligence on behalf of the inmate, and whether the inmate was the cause of any delays. Unlike a request for a voluntary waiver, there is no timeframe associated with assessing the reasonableness of when the inmate should have become aware of the need for the postponement. The hearing officer shall merely evaluate whether the inmate's postponement request has been made at the earliest possible date, as reasonable.

If all three elements are met, the hearing officer shall approve a request for postponement for reasons not enumerated in regulation. Postponed hearings shall be rescheduled on the next available hearing calendar, unless otherwise specified by the hearing officer.

When reviewing a request for postponement at a hearing, the hearing officer shall determine whether the request is made knowingly and voluntarily.

## CONTINUANCE

### *Effect of Continuance*

A continuance occurs whenever a hearing that has been initiated and is substantially underway must be delayed for any reason. A request for a continuance can be initiated by the hearing officer or any other stakeholder at the hearing. A continued hearing does not constitute a decision regarding the inmate's suitability for parole. Continued hearings shall be rescheduled on the next available hearing calendar. An inmate who has received a continued hearing is not eligible to submit a petition to advance his or her next hearing.

*Review of Request for Continuance*

A decision whether to continue a hearing is made at the discretion of the hearing officer, and requires a finding of good cause and analysis by the Board of Parole Hearings for approval. A continuance shall only be approved after a finding of two elements, and then an additional weighing of varying interests in consideration of the interest of justice.

*Part One – Two Elements*

As a preliminary matter, the following two elements must be met to the satisfaction of the hearing officer before granting a continuance:

1) Good cause is shown, AND
2) The reason for the continuance was unknown or could not reasonably have been known prior to the commencement of the hearing.

*Element One* - Whether there is "good cause" is a determination made solely at the discretion of the hearing officer, who may require testimonial or documentary evidence explaining the reason for the request. A finding of "good cause" means the hearing officer has found the reason for the request to be legally sufficient or, in other words, there is a factual basis and good reason for the request.

*Element Two* - Whether the reason for the continuance was unknown or could not reasonably have been known prior to the commencement of the hearing is also a determination made solely at the discretion of the hearing officer, who may require testimonial or documentary evidence explaining the circumstances of the request. Depending upon the circumstances of the request, factors for the hearing officer to consider include whether there was due diligence on behalf of the party making the request for continuance.

*Part Two – Interest of Justice*

As a secondary matter, if both of the above elements are met, the hearing officer shall then weigh all of the varying interests of the Board of Parole Hearings, the inmate, and the other stakeholders at the hearing, in determining whether to continue the hearing. Specifically, California Code of Regulations, title 15, section 2253(e)(1) requires the hearing officer to "weigh the reasons and the need for the continuance and any convenience to the board, department, or appearing parties and determine what will

best serve the interest of justice". The ultimate issue for determination is whether a continuation would "best serve the interest of justice".

*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**<br>**Executive Officer, BPH** | **DATE:** 9/23/13 |