

ADA Overview – Inmates with Disabilities October 2013

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Objectives

- ▶ By the end of this session, all attorneys who may be appointed to represent inmates at BPH proceedings will have an understanding of the following:
 - CDCR's programs for providing services and accommodations to inmates with disabilities
 - Helpful information regarding interviewing and preparing for hearings for inmates with disabilities, and assisting inmates at hearings

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Overview of Session

- ▶ Key concepts regarding the ADA
- ▶ Item-by-item discussion of types of disabilities
 - Overview of CDCR's programs and services
 - What you should keep in mind regarding each type of disability
- ▶ Effective Communication and Foreign Language
- ▶ The attorney's role in the hearing process
 - Pre-hearing
 - At time of hearing
- ▶ Hypothetical Scenarios for Discussion

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Handouts

- ▶ Documents provided for your reference
 - Copy of this PowerPoint
 - *Armstrong I* Remedial Plan – CDCR's plan for most disabilities
 - *Clark* Remedial Plan – CDCR's plan for inmates with developmental disabilities
 - *Armstrong II* Remedial Plan – BPH's plan for all ADA inmates
 - CDCR Forms
 - CDCR 128-C2, Developmental Disability Program Screening Results
 - CDCR 1824, Reasonable Modification or Accommodation Request
 - CDCR 7385, Authorization for Release of Medical Information
 - CDCR 7410, Comprehensive Accommodation Chrono
 - BPH Forms
 - BPH 1073, Notice and Request for Assistance at Parole Proceedings
 - BPH 1074, Request for Reasonable Accommodation – Grievance Process
 - DEC's External – Attorney Access reference document
 - Foreign Language Interpreter – Telephonic Services reference document
- ▶ Health Care and ADA Codes handout
- ▶ Most handouts are available on BPH's website.

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Americans with Disabilities Act

- ▶ **Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008**
 - Comprehensive civil rights law that prohibits discrimination and guarantees that people with disabilities have equal opportunities. Title II (42 U.S.C. section 12131 et seq.) applies to "public entities".
 - "No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. section 12132)

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ADA Definitions

- ▶ **Disability** – A physical or mental impairment that substantially limits one or more of the major life activities.
- ▶ **Major Life Activity** – A basic activity or function performed by the average person without difficulty such as caring for one's self, or performing manual tasks, such as seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Also includes limitations with major bodily functions.

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ADA Continued

- ▶ **The ADA favors broad coverage.**
 - Disabled persons include those with a record of impairment; or those regarded as having an impairment.
 - Determinations regarding whether an impairment substantially limits one or more major life activities is made without regard to any ameliorative effects of mitigation measures (e.g. medical equipment, hearing aids, mobility devices).

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Reasonable Accommodation

- ▶ **Reasonable Accommodation** – Modification or adjustments to programs or services that provide a qualified inmate with *equal access to and/or effective communication* in the programs, activities, and services.
- ▶ **What does this mean for BPH hearings?**
 - Inmate's ability to review and understand relevant documents and make other preparations for the hearing
 - Access to the hearing room
 - Participation in the hearing
 - With regard to the determination of parole suitability – potential impact of disability on programming, disciplinarys, parole plans, ability to develop insight or recall events, etc.

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Effective Communication

- ▶ An inmate's ability to effectively participate in his parole suitability hearing is of **great importance**.
- ▶ To the extent possible, the inmate should be able to understand:
 - The questions being asked and the issues at stake
 - The options available
 - The consequences
 - Have the opportunity to challenge any incorrect information being considered

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Types of Disabilities

- ▶ Vision
- ▶ Hearing
- ▶ Mobility
- ▶ Medical
- ▶ Mental Health
- ▶ Developmental Disabilities
- ▶ Learning
- ▶ Speech and Language
- ▶ *Co-Occurring Disabilities* – As we discuss various types of disabilities, keep in mind that an inmate may have multiple disabilities.
- ▶ The Board of Parole Hearings provides reasonable accommodation to all inmates.

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VISION IMPAIRMENTS



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What is a Vision Impairment?

- ▶ Vision impairment can range from blindness to needing glasses.
- ▶ For CDCR's purposes, vision impairment means the inmate is unable to see or read.
- ▶ **Codes:**
 - **NV** – Correctable with Lenses to Less Than 20/20
 - **PV or DPV** – Blind: Not Correctable; impacts placement

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Overview of Programs/Services for Inmates with Vision Impairment

- ▶ Getting around the prison
 - Typically housed in same prisons
 - White Canes
 - Inmate Assistants
 - Vests
- ▶ Help with reading and writing
 - Assistive Devices available in law libraries and upon request
 - Large Print Materials
 - Audio Books/Recordings
 - Computer Text to Talk
 - Library Zoom Text Technology
- ▶ Inmate Disability Assistance Program

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Issues to Consider for Inmates with Vision Impairment

- ▶ Inmate will likely need assistance with reading and writing.
- ▶ Inmate may not be able to participate fully in education, vocation, or work assignments.
- ▶ Inmate may need assistance in getting to self-help programming.
- ▶ Inmate may need assistance in navigating chow hall, showers, yard, etc.
- ▶ Disciplinary Process – Disability is taken into account, when relevant.

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Vision Impairment – Tips for Communication

- ▶ Speak to your client when you approach.
- ▶ State clearly who you are; speak in a normal tone of voice.
- ▶ Describe your actions, if necessary.
- ▶ Don't be embarrassed if you use common expressions such as "see you later" that seem to relate to the disability.
- ▶ When speaking in a group, identify yourself and the person to whom you are speaking.
- ▶ Don't be afraid to ask your client how to do something if you are unsure.
- ▶ Offer assistance, but wait until assistance is accepted before acting.

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Vision Impairment – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - Ensure your client was given an opportunity to review the c-file and all relevant documents with any needed assistance.
 - Assist your client with letters of support or parole plans, as needed.

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Pre-Hearing Continued

- ▶ Prison Programming:
 - Discuss with your client his programming, or lack of programming.
 - Did your client's disability have an impact on what programs he could attend?
 - How did CDCR accommodate your client's access to programming?
 - Did your client accomplish what he could to the best of his abilities?

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Pre-Hearing Continued

- ▶ Disciplinary:
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, a blind inmate may not be able to see a boundary line when cited for going out of bounds.

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Vision Impairment – What do you need to know for a BPH hearing?

- ▶ During the hearing:
 - Ensure your client understands all written documents being reviewed and discussed. Help narrate the hearing by describing what's happening, if necessary.
 - For non-blind, ensure your client has brought glasses to the hearing, and/or utilize the magnifying device in the hearing room.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinarys, etc.)

Remember – *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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Vision Impairment – Plaintiffs' Perspective

- ▶ Prison Law Office – Counsel in the *Armstrong* Class Action Lawsuit



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HEARING IMPAIRMENTS



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What is a Hearing Impairment?

- ▶ Hearing impairment can range from hard of hearing to deaf.
- ▶ Persons are considered deaf if their hearing loss is such that they are unable to understand speech and must rely on vision for communication.
- ▶ Codes:
 - **NH or DNH** – Has a hearing problem. Needs hearing aid(s) or to be spoken to in a loud voice.
 - **PH or DPH** – Deaf: Not able to hear. Needs either written notes, lip reading, or sign language for communication.

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Overview of Programs/Services for Inmates with Hearing Impairment

- ▶ Getting around the prison
 - Typically housed in same prisons
 - Vests
 - Modified Procedures for Verbal Announcements
 - Flickering Lights
 - Door-to-Door Notifications
- ▶ Help with communication
 - Sign Language Interpreters
 - Written Language
 - Lip Reading
 - Hearing Aids/Assistive Listening Devices
- ▶ Inmate Disciplinary Process

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Issues to Consider for Inmates with Hearing Impairment

- ▶ Hearing aids may not be working properly
- ▶ Inmate may have an awkward writing style, as if writing in a foreign language.
- ▶ Inmate may not know American Sign Language, or may only know a modified “slang” version of sign language.
- ▶ Inmate may not be able to participate fully in education, vocation, or work assignments.
- ▶ Inmate may not be able to participate fully in self-help programs.

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Sign Language is the Preferred Method of Communication

- ▶ **Sign Language Interpretation is the preferred method of communication for a hearing with a deaf inmate.**
- ▶ However, you may encounter a situation where the inmate became deaf later in life and didn't learn ASL.
- ▶ Written notes are the least preferred method of communication, and shall only be used as the sole source of communication in a hearing as a last resort, or at the inmate's request.
 - When written notes are used, it is essential to ensure an inmate's reading/writing level is sufficient to allow for written notes.
 - If written notes are used for communication between the inmate and hearing panel, they must be maintained for the record.

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Hearing Impairment – Tips for Communication

- ▶ Gain your client's attention before speaking.
- ▶ Look directly at your client; speak clearly; keep hands away from your face.
- ▶ Speak directly to your client, not to an interpreter.
- ▶ Don't be embarrassed if you use common expressions such as "Did you hear about that?" that seem to relate to the disability.
- ▶ Don't be afraid to ask your client how to do something if you are unsure.
- ▶ Offer assistance, but wait until assistance is accepted before acting.

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Hearing Impairment – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - Determine the best form of communication (sign language interpreter, lip reading) and arrange for its availability at the interview.
 - Assist your client with letters of support or parole plans, as needed.

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Pre-Hearing Continued

- ▶ Prison Programming:
 - Discuss with your client his programming, or lack of programming.
 - Did your client's disability have an impact on what programs he could attend?
 - How did CDCR accommodate your client's access to programming?
 - Did your client accomplish what he could to the best of his abilities?

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Pre-Hearing Continued

- ▶ Disciplinary:
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, a deaf inmate may not respond to a verbal instruction from a correctional officer.

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Hearing Impairment – What do you need to know for a BPH hearing?

- ▶ During the hearing:
 - Ensure your client is able to communicate at the hearing utilizing the best form of communication.
 - Ensure your client understands what is being discussed at the hearing, to enable his or her full participation.
 - For non-deaf, ensure your client has brought hearing aids to the hearing. Ensure all participants are speaking loudly and clearly.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinarys, etc.)

Remember – *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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Hearing Impairment – Plaintiffs’ Perspective

- Prison Law Office – Counsel in the *Armstrong* Class Action Lawsuit



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MOBILITY IMPAIRMENTS



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What is a Mobility Impairment?

- Mobility impairment includes any limitations in transporting oneself, and may include use of an assistive device, such as a wheelchair, walker, or cane.
- Codes:
 - DPW** – Full time wheelchair user – Requires wheelchair and wheelchair-accessible housing at all times.
 - DPO** – Intermittent wheelchair user – Requires lower bunk and wheelchair accessible path of travel. Does not require wheelchair accessible housing. May require in-cell accommodations (e.g. grab bars)
 - DPM** – Mobility impairment, impacting placement – Cannot walk 100 yards without pausing (with or without assistive device), cannot use stairs, requires lower bunk.
 - DNM** – Mobility impairment, not impacting placement – May require relatively level terrain and no obstructions in path of travel.

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Overview of Programs/Services for Inmates with Mobility Impairment

- Health Care Appliances
 - Wheelchairs
 - Canes
 - Walkers
 - Special Shoes
- Housing Accommodations
 - Wheelchair-accessible cells, toilets, and showers
 - Ramps and Elevators
 - Grab Bars
 - Lower Bunks
 - Lower Tier Housing
 - Extra Mattresses
- Path of Travel – CDCR may need to make modifications to the path of travel for the inmate to travel to the chow hall, or to a program or assignment.
- Vests – Inmates with mobility limitations are not required to stand up for count or get down for an alarm.

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Issues to Consider for Inmates with Mobility Impairment

- Inmate may not be able to participate fully in vocation or work assignments.
- May need assistance getting around to self-help programs and other locations.
 - Inmate Disability Assistance Program
- Disciplinary Process – Disability is taken into account, when relevant.
- The **CDC Form 7410**, Comprehensive Accommodation Chrono, is vital to determining program assignment and any needed assistance.

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CDC 7410

DEPARTMENT OF CORRECTIONS

COMPREHENSIVE ACCOMMODATION CHRONO

INSTRUCTIONS: A physician shall complete this form if an inmate requires an accommodation due to a medical condition. Complete the accommodations to be provided, and if the accommodations do not improve, if the accommodations do improve, with the date the accommodations expire, if any. A new form shall be provided when a change in accommodations is required or upon receipt of updated accommodations. Any new form generated shall include previous accommodations, if they still apply. Chronic releasing personnel accommodations shall be reviewed annually. This form shall be retained as a permanent record at all institutions.

INMATE INFO

Name: _____

1. Number from What/Other Access F/T _____ 2. Single Cell One (One-Care) _____ F/T _____

3. Current Cell Call F/T _____ 4. Personnel Only (PO) Care only _____ F/T _____

5. Confined (Personnel Category) F/T _____ 6. Other _____ F/T _____

MOBILITY/PHYSICAL IMPAIRMENT

Name: _____

7. Limit Function F/T _____ 8. Wheelchair Type _____ F/T _____

9. Brn F/T _____ 10. Hearing Aid _____ F/T _____

11. Canes _____ F/T _____ 11. Special Diet _____ F/T _____

12. Case (Type) _____ F/T _____ 12. Other _____ F/T _____

13. Stair _____ F/T _____ 13. Other _____ F/T _____

14. Hearing _____ F/T _____ 14. Other _____ F/T _____

15. Other _____ F/T _____ 15. Other _____ F/T _____

OTHER

Name: _____

16. Therapist Ref. (Specify) _____ F/T _____

17. All other accommodations (Include the institution) _____ F/T _____

18. Communication Assistance _____ F/T _____

19. Therapist Visit with IOP _____ F/T _____

20. Wheelchair accessible Bath _____ F/T _____

20. Other _____ F/T _____

PHYSICIAN'S STATEMENT TO JOB ASSIGNMENT

Based on the above, are there any physical limitations to job assignment? Yes No

If Yes, specify: _____

DATE: _____

INSTITUTION: _____

OFFICER'S NAME (Last, First, Middle Initial) (if absent): _____

APPROVED BY (Name of physician): _____

DATE: _____

COMPREHENSIVE ACCOMMODATION CHRONO

DATE: _____

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Mobility Impairment – Tips for Communication

- ▶ If possible, put yourself at the same level as your client's eye-level (e.g. sitting).
- ▶ Do not lean on your client's wheelchair or other assistive device.
- ▶ Offer assistance, but wait until assistance is accepted before acting.
- ▶ Don't be afraid to ask your client how to do something if you are unsure.

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Mobility Impairment – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - Make special arrangements for an interview space, as needed.
 - Assist your client with letters of support or parole plans, as needed.

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Pre-Hearing Continued

- ▶ Prison Programming:
 - Discuss with your client his programming, or lack of programming.
 - Did your client's disability have an impact on what programs he could attend?
 - How did CDCR accommodate your client's access to programming?
 - Did your client accomplish what he could to the best of his abilities?

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Pre-Hearing Continued

- ▶ Disciplinary:
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, an inmate with mobility limitations will likely not be able to "get down" during an alarm.

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Mobility Impairment – What do you need to know for a BPH hearing?

- ▶ Morning of the Hearing:
 - Ensure your client was able to get to the hearing room and wait for the allotted hearing time without significant difficulty.

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Mobility Impairment – What do you need to know for a BPH hearing?

- ▶ During the hearing:
 - Request comfort breaks on behalf of your client, as needed. This includes taking breaks from sitting by standing and walking around, or assistance with body shifting.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinarys, etc.)

Remember – *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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Mobility Impairment – Plaintiffs’ Perspective

- ▶ Prison Law Office – Counsel in the *Armstrong* Class Action Lawsuit



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Time for a Break



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MEDICAL IMPAIRMENTS



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What is a Medical Impairment?

- ▶ Medical impairments include any physiological disorder or condition affecting one or more systems of the human body.
- ▶ Inmates with medical impairments can range from requiring 24-hour nursing care to requiring frequent or routine medical appointments.

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Overview of Programs/Services for Inmates with Medical Impairment

- ▶ Levels of Acuity
- ▶ Medical Appointment Types
- ▶ Specialized Medical Housing
- ▶ Specialized Medical Treatment

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Levels of Acuity

- ▶ **Acute care** is the highest acuity level for inmates with acute medical conditions requiring inpatient treatment.
- ▶ **Skilled Nursing** level of care is for inmates with non-acute chronic medical conditions who require constant nursing care and have significant deficiencies with activities of daily living (ADLs).
- ▶ **Assisted Living** is for inmates who require some assistance with ADLs, but are capable of handling most ADLs on their own.
- ▶ **Palliative Care** is "comfort" based care to inmates with terminal illness and 6 months or less to live.
 - **End of Life issues may include:** Physician's Orders for Life-Sustaining Treatment (POLSTs), Do Not Resuscitate orders (DNRs), and Penal Code 3200 petitions for inmates without decision-making capacity.

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Medical Appointment Types

- ▶ **Routine Appointments:** includes general health check-up or follow-up appointments
- ▶ **Lab Work/X-Rays:** may be required either as follow-up for a routine appointment or in response to an urgent need.
- ▶ **Special Appointments:** includes appointments for with medical specialists, such as an orthopedic specialist; may also include MRIs, CT scans, etc. on either a routine or urgent/emergent basis.
- ▶ **Chronic Care Management:** includes care for chronic illnesses (e.g., hepatitis) and care for inmates requiring skilled nursing or assisted living care

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Specialized Medical Housing

- ▶ **General Acute Care Hospital (GACH)** can provide medical treatment at all levels of care including acute (same as a community hospital). Only a few institutions have GACHs.
- ▶ **Correctional Treatment Centers (CTC)** provide skilled nursing level of care for inmates in non-acute chronic medical conditions. (Mental Health Crisis Beds and Suicide Watch/Precaution are also typically in CTCs.) Not all institutions have CTCs.
- ▶ **Outpatient Housing Units (OHU)** provide skilled nursing or assisted living for inmates with longer term medical issues. (Some OHUs may be used for assessment of possible mental health issues.)
- ▶ **Community Hospitals** may be used to provide emergency or specialized treatment for institutions without GACHs.
- ▶ **Hospice** provides palliative "comfort" care to inmates with terminal illness and six months or less to live.
- ▶ **Treatment and Triage Area (TTA)** acts as the ER to triage patients. TTAs determine whether the institution's medical facilities can address the problem or, if not, they send the inmate to an outside hospital.

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Specialized Medical Treatment

- ▶ Inmates receive all medically necessary care. This may include reconstructive procedures, but not purely cosmetic procedures.
- ▶ **No treatments are blanketly prohibited.** All medically necessary treatment is determined on a case-by-case basis.

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Issues to Consider for Inmates with Medical Impairment

- ▶ **When an inmate is in a medical facility, he or she is treated primarily as a medical patient.**
 - For example, inmates with Alzheimer's or dementia who are being treated in a medical facility are not also included in the Developmental Disability Program (discussed later).
- ▶ Inmate may not be able to participate fully in education, vocation, or work assignments, and may not be able to access self-help programs.
- ▶ If the inmate is working, he or she may need accommodations to the work schedule or duties.
- ▶ CDCR may need to ensure the inmate is taking his or her medications.
- ▶ Disciplinary Process – Disability is taken into account, when relevant.

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Medical Impairment – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - Meet with your client early to ensure plenty of time to make special arrangements to go to the medical area, if necessary. You may need to make multiple attempts.
 - If communication is difficult, ask staff if they have suggestions on how to interact with your client, whether they think your client would be more alert at a different time of day, etc.
 - Contact BPH Scheduling with any requests for bedside hearings (e.g., if your client cannot move from his/her hospital bed), time-shifted hearings, etc.

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Pre-Hearing Continued

- ▶ Prison Programming:
 - Discuss with your client his programming, or lack of programming.
 - Did your client's disability have an impact on what programs he could attend?
 - How did CDCR accommodate your client's access to programming?
 - Did your client accomplish what he could to the best of his abilities?

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Pre-Hearing Continued

- ▶ **Disciplinaries:**
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, an inmate with declining health may be cited for failure to report to work or other assignment if he hasn't yet received a medical restriction.

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Medical Impairment - What do you need to know for a BPH hearing?

- ▶ **Morning of the Hearing:**
 - Ensure your client was able to get to the hearing room and wait for the allotted hearing time without significant difficulty.
 - Ensure your client has received his or her medications for the day, and determine how those medications may impact your client's level of alertness at the hearing. Inform the panel.
 - If your client doesn't want to come to the hearing, make sure he or she understands the potential impact his lack of attendance may have on the hearing discussion.
 - Difficult logistics should not be a reason to not hold a hearing with the inmate in attendance.

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Medical Impairment - What do you need to know for a BPH hearing?

- ▶ **During the hearing:**
 - Request comfort breaks on behalf of your client, as needed. This includes taking breaks from sitting by standing and walking around, or assistance with body shifting.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinaries, etc.) and ability to obtain parole plans.

Remember - *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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Additional BPH Actions

- ▶ **Medical Parole**
- ▶ **PC 1170(e)**

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Penal Code § 3550 (Medical Parole)

- ▶ Allows for conditional parole of inmates with medical conditions that render them permanently unable to perform ADLs and in need of 24-hour nursing care. The condition must have not existed at the time of sentence.
- ▶ Medical Parole is available for determinate sentence and indeterminate sentence inmates. It is not available for inmates sentenced to death or life without parole (LWOP).
- ▶ Medical Parole hearings are separate and distinct from parole suitability hearings.

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Penal Code § 3550 Cont. (Medical Parole)

- ▶ In addition to CDCR health care staff, the inmate, the inmate's family, or the inmate's attorney can make a request to the Chief Medical Officer for the inmate to be considered for medical parole. (PC 3550(d) and 15 CCR 3359.1(b))
- ▶ If the CMO believes the inmate meets the criteria, Health Care Services identifies a community placement, and BPH holds a hearing to determine if "the conditions under which the [inmate] would be released would not reasonably pose a threat to public safety." (PC 3550(a))

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Penal Code § 1170(e) ("Compassionate Release")

- ▶ Allows for recall of sentence/resentencing and immediate release for inmates when (1) inmate is terminally ill with six months or less to live or suffers from a medical condition that renders the inmate permanently unable to perform ADLs and in need of 24-hour total care and (2) conditions of release do not pose a threat to public safety.
- ▶ This process is separate from both medical parole and parole suitability hearings.

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Medical Impairment - Plaintiffs' Perspective

- ▶ Prison Law Office - Counsel in the *Armstrong* Class Action Lawsuit



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MENTAL HEALTH IMPAIRMENTS



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What is a Mental Health Impairment?

- ▶ The ADA defines "mental impairment" as any mental or psychological disorder, such as emotional or mental illness.
- ▶ CDCR provides mental health treatment in accordance with its Mental Health Services Delivery System (MHSDS).

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Mental Health Terminology

- ▶ Diagnosis & "Axis"
- ▶ Global Assessment of Functioning (GAF) score
- ▶ Medical Necessity

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Mental Health Diagnosis & "Axis"

- ▶ Under the Diagnostic & Statistical Manual of Mental Disorders, 4th Edition (DSM-IV), there is a 5-Axis system of Diagnosis:
 - **Axis I:** Clinical Disorders
 - **Axis II:** Personality Disorders & Developmental Disability
 - **Axis III:** General Medical Condition (generally deferred to medical)
 - **Axis IV:** Psycho social & Environmental Problems (living in prison, etc.)
 - **Axis V:** GAF score
- ▶ *NOTE:* This system is changing under the newly developed DSM, 5th Edition (DSM-V)

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Clinical vs. Personality Disorder

- ▶ **Clinical Disorder:** includes disorders such as schizophrenia or other psychotic disorders, mental disorders from genetic condition, mood disorders (bipolar, depression), substance-related disorders (alcohol/drugs), anxiety disorders, eating/sleeping disorders, etc.
 - Often treatable by psychotropic medications
- ▶ **Personality Disorder:** includes disorders such as paranoid personality, borderline personality, antisocial personality, and dependent personality.
 - Generally NOT treatable by medications.

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Global Assessment of Functioning (GAF) Score

- ▶ Number from 1–100 that reflects the overt level of the patient's functioning.
- ▶ Scores generally reflect the following:
 - **100:** No symptoms
 - **90:** Minimal symptoms, good functioning
 - **80:** Transient symptoms that are expected reactions to psychosocial stressors
 - **70:** Mild symptoms OR some difficulty in social occupational or school functioning
 - **60:** Moderate symptoms OR moderate difficulty in social, occupation or school

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Global Assessment of Functioning (GAF) Score Cont.

- **50:** Serious symptoms OR any serious impairment in social occupational or school functioning
- **40:** Some impairment in reality testing or communication OR major impairment in several areas such as work or school, family relations, judgment, thinking or mood
- **30:** Behavior is considerably influenced by delusions or hallucinations OR serious impairment in communication or judgment OR inability to function in almost all areas
- **20:** Some danger of hurting self or others OR occasionally fails to maintain minimal personal hygiene OR gross impairment in communication
- **10:** Persistent danger of severely hurting self or others OR persistent inability to maintain minimal personal hygiene OR serious suicidal act with clear expectation of death

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Medical Necessity

- ▶ Under the Mental Health Services Delivery System within CDCR, treatment and monitoring is required for inmates demonstrating current symptoms of certain serious Axis I diagnoses *OR* if the person requires treatment as a medical necessity.
- ▶ "Medical Necessity" for this purpose is defined as:
 - **"Mental health intervention is necessary to protect life and/or treat significant disability/dysfunction in an individual diagnosed with or suspected of having a mental disorder."**

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Overview of Programs/Services for Inmates with Mental Health

- ▶ Mental Health Levels of Care
- ▶ Mental Health Housing
- ▶ Suicide Watch / Suicide Precaution
- ▶ Penal Code § 2602 Process
- ▶ Disciplinary Process – Rules Violation Reports (CDCR 115) for Mental Health Patients

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CDCR Mental Health Levels of Care

- ▶ Outpatient
 - Correctional Clinical Case Management System (CCCMS)
 - Enhanced Outpatient Program (EOP)
- ▶ Inpatient
 - Mental Health Crisis Bed (MHCB)
 - Intermediate Care Facility (ICF)
 - Acute

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CCCMS

- ▶ The Correctional Clinical Case Management System (CCCMS) program is the lowest level of mental health care
- ▶ Designed to provide outpatient treatment to higher functioning inmates
- ▶ CCCMS patients receive treatment including, but not limited, to: treatment plans, quarterly sessions with a primary clinician, and medication management.

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CCCMS

Under the MHSDS Program Guide, treatment criteria for placement in CCCMS program include:

- ▶ Qualifying Axis I diagnosis or medical necessity
- ▶ Stable functioning in GP, ASU, or SHU
- ▶ Criteria is not met for higher levels of care
- ▶ Exhibits symptom control or is in partial remission as a result of treatment
- ▶ Generally has GAF score of 50 or higher.

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EOP

- ▶ The Enhanced Outpatient Program (EOP) is the highest level of outpatient mental health care.
- ▶ Separate housing, designed to provide outpatient treatment to inmates with difficulties functioning in general population.
- ▶ These inmates may be vulnerable to exploitation.
- ▶ EOP patients receive treatment including, but not limited, to: treatment plans, ten hours per week of group therapy, weekly contact with primary clinician, and medication management.

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EOP

Under the MHSDS Program Guide, treatment criteria for placement in EOP program include:

- ▶ Qualifying Axis I diagnosis or medical necessity
- ▶ Acute onset of or significant decompensation of serious mental disorder characterized by symptoms such as increased delusional thinking, hallucinations, etc. AND/OR inability to function in GP
- ▶ Generally has GAF score of less than 50
- ▶ Must be housed separately from non-EOP inmates

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MHCB

- ▶ The Mental Health Crisis Bed (MHCB) provides short-term inpatient care in a Correctional Treatment Center (CTC) for inmates in mental health crisis.
- ▶ Length of stay up to 10 days, unless clinical exception.
- ▶ MHCB patient may have acute symptoms of a serious mental disorder.
- ▶ An inmate with no known mental health history may suffer acute symptoms, while another with mental illness in remission may have recurring symptoms. Both could potentially be placed in MHCB.

77

MHCB

Under the MHSDS Program Guide, treatment criteria for placement in MHCB program include:

- ▶ Qualifying Axis I diagnosis or medical necessity
- ▶ Marked impairment and dysfunction in most areas (daily living activities, communication and social interaction) requiring 24-hour nursing care; AND/OR Dangerousness to Others/Self as a result of a serious mental disorder
- ▶ Generally has GAF score of less than 30

78

ICF

- ▶ Intermediate Care Facility (ICF) programs provide longer-term intermediate and non-acute inpatient mental health treatment for inmates
- ▶ For males: generally provided by Dept. of State Hospitals (DSH) either in a DSH hospital or at a DSH program in a CDCR prison
- ▶ For females: provided by CDCR at California Institution for Women (CIW)

79

ICF

- ▶ Under the MHSDS Program Guide, treatment criteria for placement in ICF program include:
 - Qualifying Axis I or other diagnosis with active symptoms AND generally one of the following:
 - Inability to function at EOP level of care
 - Requiring high structured inpatient psych care
 - Behavior considerably influenced by psychotic symptoms OR serious impairment in communication or judgment
 - Inmates can also be referred to ICF for neurological/neuropsychological consultation, inpatient diagnostic evaluation, or trial of the medication Clozapine

80

ACUTE

- ▶ Acute programs provide short-term, intensive inpatient treatment to inmates with acute symptoms.
- ▶ Admissions usually range from 30 to 45 calendar days.
- ▶ For males: generally provided by Dept. of State Hospitals (DSH) either in a DSH hospital or at a DSH program in a CDCR prison
- ▶ For females: provided by CDCR at California Institution for Women (CIW)

81

ACUTE

- Under the MHSDS Program Guide, treatment criteria for placement in an Acute Program include one of the following:
- ▶ Inmate suffers impairment of functioning with signs and symptoms of either:
 - acute major mental disorder or
 - acute exacerbation of a chronic major mental illness

(Symptoms can include: inability to perform normal routines of institution or provide for own basic needs, or significant risk of harming self or others)
 - ▶ Inmate assessed as severe suicidal risk.
 - ▶ Inmate engages in self-injurious behavior and is likely to develop serious medical complications.
 - ▶ Inmate has symptoms or secondary conditions that require inpatient treatment.

82

Special Housing for Mental Health

- ▶ Inpatient Housing with Department of State Hospitals (DSH) (Male)
- ▶ Special Female Inpatient Housing
- ▶ Segregated Housing

83

Inpatient Housing with DSH

- Acute Care is provided by DSH at the following locations:
- ▶ Vacaville Psychiatric Program (VPP) at California Medical Facility (CMF) for all security levels
 - ▶ California Health Care Facility (CHCF) in Stockton

84

Inpatient Housing with DSH

ICF care is provided by DSH at the following locations:

- ▶ VPP at CMF for inmates who do not require high security
- ▶ Atascadero State Hospital (ASH) for inmates who do not require high security
- ▶ Coalinga State Hospital (CSH) for inmates who do not require high security (transfer from another DSH program only)
- ▶ Salinas Valley Psychiatric Program (SVPP) at Salinas Valley State Prison (SVSP) for high security inmates.
- ▶ California Health Care Facility (CHCF) in Stockton for multiple security levels

85

Special Female Inpatient Housing

- ▶ Psychiatric Inpatient Program (PIP) provides all non-MHCB inpatient mental health care (Acute and ICF level) for female inmates at the California Institution for Women.
- ▶ This is a CDCR-operated program (not run by DSH).

86

Segregated Housing – CCCMS

- ▶ CCCMS inmates do not receive special housing. They are generally housed with general population (GP) inmates, (but must be at an institution that provides CCCMS level of care.) Transfer may be required.
- ▶ Segregated population CCCMS inmates are also housed with GP segregated inmates, but are required to receive their normal CCCMS clinical monitoring & treatment noted above.

87

Segregated Housing – EOP

- ▶ **ASU EOP HUB:** 11 institutions designated to provide specialized EOP care for inmates in Administrative Segregation Units (ASU)
- ▶ **PSU (Psychiatric Services Unit):** EOP care for inmates serving Security Housing Unit (SHU) terms.
- ▶ When a segregated inmate is placed into the EOP program, or when an EOP inmate is placed in segregation, this triggers timeline requirements for transfer to either an ASU EOP Hub or PSU, depending on placement.
- ▶ Placement in segregated housing should not affect your ability to access your client.

88

Suicide Watch/Suicide Precaution

- ▶ Suicide Watch and Suicide Precaution are NOT levels of mental health care.
- ▶ They refer to procedures for providing a safe environment to an inmate with active suicidal ideation/threats as well as procedures to prevent the inmate from harming self or others.
- ▶ Inmates do not have to be previously included in the MHSDS to be placed on suicide watch or precaution.

89

Suicide Watch

- ▶ Under the MHSDS Program Guide: when an inmate is in an MHCB because of suicide risk *and is in immediate danger of* self-injurious behavior, he or she shall be placed on **Suicide Watch**
- ▶ The inmate will be placed in a safety cell and receive both continuous observation and 15-minute nursing checks.
- ▶ If your client is placed on Suicide Watch, this will likely affect your ability to access your client until the watch is lifted.

90

Suicide Precaution

- ▶ When an inmate is in an MHCB because of high risk of attempting self-injurious behavior, but *is not in immediate danger*, he or she shall be placed on **Suicide Precaution**.
- ▶ The inmate will be placed in a safety cell and receive behavioral checks by staff at staggered intervals not to exceed 15 minutes.
- ▶ If your client is placed on Suicide Precaution, this may affect your ability to access your client until the precaution is lifted.

91

Penal Code § 2602 Process

- ▶ Penal Code § 2602 (formerly "Keyhea") outlines the process for CDCR to petition for an administrative order to involuntarily administer psychotropic medications to inmates who, as a result of a serious mental disorder, have become (as defined by statute):
 - Dangerous to others
 - Dangerous to themselves
 - Gravely disabled and incompetent to refuse medications
- ▶ Penal Code § 2602 orders require annual hearings for renewals.

92

Rules Violation Report (CDCR 115) Process for Mentally Ill Inmates

- ▶ When an inmate receives a CDCR 115, prior to adjudication before the hearing officer, the inmate **must** receive a mental health evaluation (CDCR 115-MH) if:
 - The inmate is in the MHSDS at any level of care other than CCCMS.
 - The inmate is at the CCCMS level of care and (1) the accused violation is a Division A, B, or C level offense (highest) or (2) the accused violation carries a possible SHU term.
 - The inmate is at any level of care or is not a participant in MHSDS, but was exhibiting "bizarre, unusual, or uncharacteristic behavior" at the time of the offense.

93

CDCR Form 115-MH

- ▶ The purpose of the mental health evaluation is to determine:
 - (1) whether any mental health factors would negatively affect the inmate's ability to understand the disciplinary process such that a staff assistant should be assigned
 - (2) whether the inmate's mental disorder appeared to contribute to the behavior that led to the CDCR 115
 - (3) if found guilty, whether the hearing officer should consider any mental health factors in assessing the penalty

94

CDCR Form 115-MH

- ▶ Hearing officers are not required to accept the conclusions of the evaluator in a CDCR 115-MH, and may still determine that the inmate should be found guilty of the offense.
- ▶ Thus, if your client committed a recent rules violation, a review of any related CDCR Forms 115-MH (mental health evaluations) may indicate mitigating factors that should be brought to the hearing panel's attention.

95

Issues to Consider for Inmates with Mental Health

- ▶ MHSDS inmates and programming issues
- ▶ Movement between levels of care
- ▶ No cure for mental illness

96

MHSDS Inmates & Programming

- ▶ Due to weekly group treatment and programming requirements, inmates in EOP or higher levels of care are not required to have work assignments.
- ▶ Inmate's programs may be more focused toward group therapy issues than traditional self-help courses
 - **Group Therapy** courses often focus on understanding and dealing with mental illnesses.
 - **Self-help** courses generally focus on better understanding criminal actions, dealing with anger, victim awareness, etc.

97

Movement between Levels of Care

- ▶ Be aware that inmates in the MHSDS can move between levels of care depending on the current status of their mental illnesses and mental health needs.
- ▶ When a level of care changes, an inmate may require transfer to a new institution that provides that level of care. Transfer must be made within MHSDS timeline requirements.
- ▶ Between your client interview and the hearing, your client may have improved and been decreased in level of care, or deteriorated and increased in level of care.
- ▶ Always be aware of your client's current mental health level of care, if applicable, and how it might impact your interviews and the hearing.

98

No Cure for Mental Illness

- ▶ It is important to note that, unlike most medical issues, mental illnesses generally have no cure.
- ▶ Treatment may relieve symptoms, but this should not be considered a cure.

99

Mental Health – Tips for Communication

- ▶ Calmly get your client's attention.
- ▶ Be specific and concrete. Do not use abstract concepts.
- ▶ Use simple language. Avoid words with multiple meanings. Avoid expressions.
- ▶ Minimize distractions (quiet area, minimal paperwork).
- ▶ Use open-ended questions.
- ▶ Be aware of non-verbal communication.

100

Mental Health – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - Meet with your client early to ensure plenty of time to make special arrangements, if necessary (e.g. DSH facility, Mental Health Crisis Bed). You may need to make multiple attempts.
 - If communication is difficult, ask staff if they have suggestions on how to interact with your client (e.g. – whether they think your client would be more alert at a different time of day, etc.).
 - Assist your client with letters of support or parole plans, as needed.
 - Contact BPH Scheduling with any special requests for hearings, including hearings in medical areas, DSH facilities, etc.

101

Pre-Hearing Continued

- ▶ Prison Programming:
 - Discuss with your client his programming, or lack of programming. *Remember that the EOP program has its own programming.*
 - Did your client's disability have an impact on what programs he could attend?
 - Did your client accomplish what he could to the best of his or her abilities? Has your client reached a plateau?
 - Did your client comprehend his or her programming? Inform the panel.
 - For example, does your client understand the 12 Steps of a 12-Step program?

102

Pre-Hearing Continued

- ▶ **Disciplinary:**
 - Review the written documentation of disciplinarys, including any mental health evaluations for the disciplinary.
 - Discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, did the inmate make an aggressive motion toward staff because he was feeling threatened or paranoid when the staff person asked him to do something?
 - E.g. – Was the inmate not taking his or her medications?
 - E.g. – Had the inmate just received upsetting news?

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Mental Health – What do you need to know for a BPH hearing?

- ▶ **Morning of Hearing:**
 - Ensure your client has received his or her medications for the day, and determine how those medications may impact your client's level of alertness at the hearing.
 - Example: if your client's medication routine is to take medications in the morning, but the medications have a sedating effect on your client, be prepared to explain this to the panel why your client might have a flatter or less emotional effect during the hearing.
 - If your client's level of care has recently changed, ask your client why.

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Mental Health – What do you need to know for a BPH hearing?

- ▶ **During the hearing:**
 - To the greatest extent possible, try to ensure your client understands what is being discussed at the hearing, to enable his or her participation. Take breaks to consult with your client, as needed.
 - Check in with your client periodically to ensure he or she continues to understand what is being discussed throughout the hearing. It's okay to interrupt the hearing panel with your concerns regarding your client's continuing comprehension of the hearing.
 - Represent your client's best interests, but also provide your client an opportunity to express his or her opinions. This may require frequent consultations with your client.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinarys, etc.) and ability to obtain parole plans.

Remember – THE ATTORNEY IS THE BEST ACCOMMODATION.

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Mental Health – Plaintiffs' Perspective

- ▶ Prison Law Office – Counsel in the *Armstrong* Class Action Lawsuit



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Time for a Break



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DEVELOPMENTAL DISABILITY



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What is Developmental Disability?

- ▶ A person with a developmental disability has low cognitive functioning and/or a substantial limitation in adaptive functioning.
- ▶ Adaptive functioning refers to a person's ability to perform activities of daily living and cope with everyday interactions and events.
 - Adaptive Functioning Deficits related to: communication, academic, self-care, socialization, self-advocacy/ use of resources, work, health and safety, self-direction, leisure
- ▶ Examples of developmental disability include autism and intellectual disability (formerly known as mental retardation).

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Common Characteristics of Person w/ Developmental Disability

- ▶ Communication below age level
- ▶ Reasoning is more concrete than abstract
- ▶ Short attention span and memory
- ▶ Inability to retain information
- ▶ Difficulty with simple tasks
- ▶ Does not understand the consequences of actions
- ▶ Exhibits behaviors that may be mistaken for noncompliance
- ▶ Focuses on the immediate/short term
- ▶ Immature social relationships
- ▶ Overly compliant and desire to please
- ▶ Vulnerable to exploitation

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Comparison – Developmental Disability and Mental Illness

Developmental Disability	Mental Illness
Usually low IQ	IQ not a factor
Behavior is usually rational for their "mental age"	Behavior is often irrational for their "mental age"
Training and repetition may improve life skills.	Treatment may relieve symptoms.

Co-Occurring Disabilities – Some individuals will have both developmental and mental health disabilities.

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Overview of Developmental Disability Program (DDP)

- ▶ CDCR assesses all inmates at intake for possible inclusion in the Developmental Disability Program.
- ▶ Although true developmental disability has an onset prior to age 18, CDCR also includes in the DDP individuals with similar needs who may have a condition that developed during adulthood such as traumatic brain injury, mild dementia, etc.
- ▶ An inmate may be referred for assessment for inclusion in the DDP at any time, even by an attorney or family member.
 - Whenever making a referral for Medical, Mental Health, or Developmental Disability, you can send a letter to the prison, directed to the Chief Executive Officer.

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Developmental Disability Codes

- ▶ Not included in the Developmental Disability Program:
 - NCF
 - NDD
- ▶ Included in the Developmental Disability Program:
 - DD1
 - DD2
 - DD3

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Designations of Inmates Not Included in the DDP

- ▶ NCF
 - Has adequate cognitive functions
 - Does not require adaptive functioning evaluation
- ▶ NDD
 - May have low cognitive functioning, but has been determined to not require adaptive support services.

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4

DDP Counselors

- ▶ All inmates are assigned a Correctional Counselor (CCI), and all Correctional Counselors have been trained on the requirements of the *Armstrong* and *Clark* Remedial Plans. (*Armstrong* covers ADA; *Clark* covers DDP.)
- ▶ DDP-designated institutions have additional counselors, designated as DDP Counselors, who typically handle the DDP caseload.
- ▶ DDP Counselors typically do the following:
 - Regularly check-in with inmates to: ensure adaptive support services are being provided; assist with completion of forms and documents; monitor for potential victimization.

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DDP Counselors Cont.

- Communicate with work supervisors and teachers regarding inmate's progress.
- When the inmate is close to parole, assist the inmate in contacting available community resources (e.g. Regional Center or Dept. of Developmental Services referrals).
- Participate in Interdisciplinary Support Team (IDST) meetings as a committee member.
- Act as a Staff Assistant at due process events (e.g. classification hearings, BPH hearings).

12
2

Issues to Consider for Inmates in DDP – Assignment to Programs

- ▶ An inmate in the DDP has regular meetings with an Interdisciplinary Support Team, upon inclusion in the DDP and as follows:
 - DD1 – once a year
 - DD2 – every six months
 - DD3 – every three months
- ▶ IDST meetings are in addition to regular classification committee meetings.
- ▶ Note: At an IDST meeting, there is both a CCI committee member and a Staff Assistant for the inmate. The Staff Assistant may or may not have a prior relationship with the inmate.

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Issues to Consider – Assignment to Programs Cont.

- ▶ The IDST ensures all of the inmate's needs are being met and evaluates the inmate's eligibility to participate in educational, vocational, and work assignments.
- ▶ An inmate will only be excluded from an assignment if:
 - the inmate would be unable to perform the essential functions of the assignment, despite the provision of accommodations/ adaptive support services (e.g. lower production quantities, oral rather than written tests, etc.);
 - the assignment would pose a safety risk;
 - or the provision of accommodation for the assignment would fundamentally alter the program or present an undue financial or administrative burden.

12
4

Issues to Consider for Inmates in DDP – Disciplinary Process

- ▶ All CDCR institution staff are required to provide adaptive support services for inmates in the DDP, regardless of whether housed in a DDP unit.
- ▶ Prior to initiating disciplinary action, staff must consider an inmate's adaptive support needs.
 - An inmate in the DDP may not be aware his or her conduct is a violation; may not have the cognitive ability to retain information; or may not be able to comprehend the consequences of actions.
- ▶ Staff are encouraged to attempt to address problematic behavior informally, and to ensure the inmate understands the consequences of continued misconduct.

12
5

Issues to Consider – Disciplinary Process Cont.

- ▶ If informal intervention is not successful or the behavior was of a serious nature, staff initiate disciplinary action.
- ▶ At the CDCR 115 hearing, the hearing officer must give consideration as to whether the inmate's disability contributed to the violation, and whether adaptive support services were provided.
- ▶ If a CDCR 115 is sustained, the Chief Disciplinary Officer reviews the CDCR 115 and consults with a clinician regarding the findings and disposition. The Chief Disciplinary Officer may affirm, modify, or reverse the CDCR 115.

12
6

Developmental Disabilities – Tips for Communication

- ▶ Calmly get your client's attention.
- ▶ Be specific and concrete. Do not use abstract concepts.
- ▶ Speak slowly.
- ▶ Use simple language. Avoid words with multiple meanings. Avoid expressions.
- ▶ Minimize distractions (quiet area, minimal paperwork)
- ▶ Use open-ended questions.
- ▶ Be aware of non-verbal communication.

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Developmental Disabilities – Effective Communication Cont.

- ▶ Inmates in the DDP may be able to parrot (repeat back) or answer a "yes or no" question without fully comprehending the information provided.
- ▶ An effective technique is to have the inmate repeat back the direction or information in his/her own words. Then evaluate the response to determine if the inmate adequately understood the information being provided. If not, try a different approach.

12
8

Developmental – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - If communication is difficult, ask staff if they have suggestions on how to interact with your client. Try different phrasing of questions. Be simple and direct. Avoid cluttered space and distractions.
 - Assist your client with letters of support or parole plans, as needed.

12
9

Pre-Hearing Continued

- ▶ Prison Programming:
 - Review your client's programming with him or her. Has the classification committee found him or her not eligible to be assigned to educational, vocational, or work?
 - Did your client accomplish what he could to the best of his abilities? Has your client reached a plateau?
 - Did your client comprehend his or her programming?
 - For example, does your client understand the 12 Steps of a 12-Step program?

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Pre-Hearing Continued

- ▶ Disciplinary:
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, did your client fail to report to work because he or she was confused without assistive prompting?

13
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Developmental – What do you need to know for a BPH hearing?

- ▶ Morning of Hearing:
 - Meet with your client again the morning of the hearing. He or she may not remember your prior meeting.
 - If your client's DDP status has recently changed, ask your client why.
 - To the greatest extent possible, try to ensure your client understands the purpose of the hearing and what will happen.

13
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Developmental – What do you need to know for a BPH hearing?

- ▶ During the hearing:
 - To the greatest extent possible, try to ensure your client understands what is being discussed at the hearing, to enable his or her participation. Take breaks to consult with your client, as needed.
 - Check in with your client periodically to ensure he or she continues to understand what is being discussed throughout the hearing. It's okay to interrupt the hearing panel with your concerns regarding your client's continuing comprehension.
 - Represent your client's best interests, but also provide your client an opportunity to express his or her opinions. This may require frequent consultations with your client.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinarys, etc.) and ability to obtain parole plans.

Remember – *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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3

Staff Assistant at Hearing

- ▶ A staff assistant will be present to assist at the hearing.
- ▶ The staff assistant is usually a DDP counselor, who regularly works with inmates in the DDP.
- ▶ A staff assistant does not provide legal advice or advocacy.
- ▶ The role of the staff assistant is to assist an inmate in the DDP to understand and participate (to the best of his or her abilities) in the proceeding.

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4

Staff Assistant at Hearing Cont.

- ▶ Use the staff assistant as a tool for communication.
 - Give the staff assistant a seat at the table.
 - Let the staff assistant interject when it appears your client is having difficulty understanding something. The staff assistant may have different techniques or a fresh approach in explaining a complex concept.

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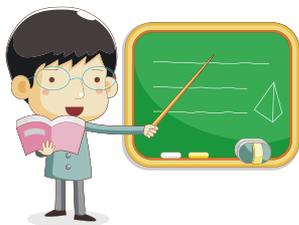
Developmental – Plaintiffs' Perspective

- ▶ Prison Law Office – Counsel in the *Clark Class Action Lawsuit*



13
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Learning Disability



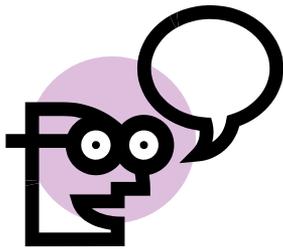
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What is a Learning Disorder?

- ▶ A learning disorder is a cognitive disorder that affects the ability of persons with normal intellect to learn academic and social information.
- ▶ Common types of learning disabilities are dyslexia and dyscalculia.
- ▶ CDCR does not test inmates for learning disabilities. Instead, all inmates are potentially learning disabled if they:
 - Have a Test of Adult Basic Education (TABE) score of 4.0 or below; or
 - An inmate self-identifies as having a learning disorder.

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Speech and Language Disability



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What is a Speech and Language Disorder?

- ▶ Speech Disorders include:
 - Stuttering
 - Articulation – Difficulty forming sounds & stringing sounds together, substituting one sound for another, omitting a sound, etc.
 - Voice Disorders – inappropriate pitch, loudness, or quality
- ▶ Language Disorders include:
 - Delayed Language – delayed development of vocabulary and grammar
 - Aphasic – The loss of speech and language abilities resulting from stroke or head injury
- ▶ When you encounter a speech and language disorder, it will likely be in the context of a medical disorder or other disability.

14
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Programs/Services for Inmates with Learning or Speech

- ▶ Special Education services are available.
- ▶ Inmate may need help with reading and writing
 - Typewriters
 - Computers
 - Staff Assistance or Inmate Assistance
- ▶ Inmate may need accommodation to participate in vocation or work assignments, such as allowing for more time to complete tasks.
- ▶ Inmate may not be able to participate fully in self-help programs.
- ▶ Disciplinary Process – Disability is taken into account, when relevant.

14
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Speech and Language – Tips for Communication

- ▶ Speak slowly and clearly.
- ▶ Know that the human brain has various inputs for information: reading comprehension, speech recognition, and speech comprehension.
- ▶ If one form of communication doesn't work, try another. Try to determine the inmate's preference.
 - Persons with aphasia may have no other option than written notes.
 - Persons with learning disabilities may be illiterate and unable to read notes.

14
2

Learning or Speech – What do you need to know for a BPH hearing?

- ▶ Pre-Hearing:
 - Ensure your client was given an opportunity to review the c-file and all relevant documents with any needed assistance.
 - Pay special attention to needed assistance if learning disabled.
 - Know the file thoroughly – For speech impaired, you may have to act as your client's voice.
 - Assist your client with letters of support or parole plans, as needed.

14
3

Pre-Hearing Continued

- ▶ Prison Programming:
 - Discuss with your client his programming, or lack of programming.
 - Did your client's disability have an impact on what programs he could attend?
 - How did CDCR accommodate your client's access to programming?
 - Did your client accomplish what he could to the best of his abilities? Has your client reached a plateau?
 - Did your client comprehend his or her programming?
 - For example, was your client able to participate in written exercises required for the program?
 - Did your client understand the verbal discussion at group meetings?

14
4

Pre-Hearing Continued

- ▶ **Disciplinaries:**
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's disability relevant to what happened?
 - For example, was your client unable to read written documentation explaining expectations for his or her behavior?
 - Was your client unable to comprehend a verbal instruction?

14
5

Learning or Speech – What do you need to know for a BPH hearing?

- ▶ **During the hearing:**
 - Ensure the hearing panel knows and uses the best method of communication.
 - To the greatest extent possible, try to ensure your client understands what is being discussed at the hearing, to enable his or her participation.
 - Check in with your client periodically to ensure he or she continues to understand what is being discussed throughout the hearing. It's okay to interrupt the hearing panel with your concerns regarding your client's continuing comprehension of the hearing.
 - Take breaks to read documents with your clients, as needed.
 - Represent your client's best interests, but also provide your client an opportunity to express his or her opinions.
 - Educate the hearing panel about the impact of your client's disability on his or her life in prison (programming, disciplinaries, etc.) and ability to obtain parole plans.
- Remember – *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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Foreign Language



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Foreign Language

- ▶ Effective communication is critical to the parole suitability hearing process. The goals of effective communication are to understand and to be understood.
- ▶ Inmates who do not speak English need to be able to effectively communicate in the parole proceedings.
- ▶ Sometimes, inmates who speak English as a second language may forget some of their English skills when faced with the stress of a parole suitability hearing.

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8

Programs/Services for Inmates who Speak Foreign Language

- ▶ CDCR offers ESL education classes.
- ▶ Inmate may not be able to participate fully in vocation or work assignments.
- ▶ Inmate may not be able to participate fully in self-help programs.
- ▶ Inmate will likely need help with reading and writing.
 - Translated Forms
 - Interpreter Services
- ▶ Disciplinary Process – Inmate will receive an interpreter at a CDCR 115 hearing.

14
9

Foreign Language – What do you need to know for a BPH hearing?

- ▶ **Pre-Hearing:**
 - Arrange for translation during the interview.
 - Ensure your client has had an opportunity to review the c-file and all relevant documents, with any needed assistance.
 - Assist your client with letters of support or parole plans, as needed.

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Pre-Hearing Continued

- ▶ **Prison Programming:**
 - Discuss with your client his programming, or lack of programming.
 - Did your client's language barrier have an impact on what programs were available to him or her?
 - If your client participated in English-speaking programs, how much of what he learned was he able to understand and retain?
 - Did your client accomplish what he could to the best of his abilities?

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1

Pre-Hearing Continued

- ▶ **Disciplinary:**
 - Review the written documentation and discuss with your client his disciplinary history.
 - How does he explain what happened?
 - Is your client's language barrier relevant to what happened?
 - For example, was your client written up for failing to follow an order that he may not have understood?

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Foreign Language – What do you need to know for a BPH hearing?

- ▶ **During the hearing:**
 - Ensure your client understands everything being reviewed and discussed.
 - Use the interpreter as a tool for communication.
 - Give the interpreter a seat at the table.
 - Let the interpreter interject when it appears something is being lost in translation.
 - Educate the hearing panel about the impact of your client's language barrier on his or her life in prison (programming, disciplinary, etc.) and ability to obtain parole plans.

Remember – *THE ATTORNEY IS THE BEST ACCOMMODATION.*

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Learning, Speech, & Foreign Language – Plaintiffs' Perspective

- ▶ Prison Law Office – Counsel in the *Armstrong* Class Action Lawsuit



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Time for a Break



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5

Attorney as Accommodation

- ▶ *What does it mean when you hear us tell you the attorney is the accommodation?*
- ▶ **You are in the driver's seat for ensuring your client's disability is adequately addressed throughout the hearing process**
 - 1) **You need to provide accommodations**
 - Speak slowly, assist in reviewing documents, etc.
 - 2) **You need to ensure BPH provides accommodations**
 - Did all of your client's pre-hearing and at-hearing needs get met?
 - Did BPH consider your client's disabilities as they relate to his or her risk of current dangerousness?
 - 3) **You need to be accommodating (aka flexible)**
 - The way you prepare a case and represent a client may have to be altered when representing a client with disabilities.

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Attorney as Accommodation

- ▶ For inmates with specified disabilities, the inmate cannot waive counsel.
- ▶ **Mandatory Attorney Appointment:**
 - Mental Health – All inmates in the EOP, ICF/Acute, or MHC level of care.
 - Developmental – All inmates in the Developmental Disability Program.
 - Learning – All inmates with a TABE score (overall or reading) of 4.0 or below.
- ▶ **Presumptive Attorney Appointments**
 - Mental Health – CCCMS level of care

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Role of Inmate's Counsel



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Assignment of Case – Board Packet

- ▶ *At the time of appointment, what information will you receive?*
- ▶ **Board Packet:**
 - Includes lists of CDCR 115s and 128As, but does not include the narrative reports
 - Includes documentation of programming
 - Includes BPH Form 1073, but does not include CDC 128C-2 (DDP) or other 128C or 128MH chronos
- ▶ **Clinical Risk Assessment (*Very Useful*):**
 - Includes the clinician's summary of your client's medical, mental health, and disability status.
 - Note: The Risk Assessment may not be current with regard to health care information (e.g. the inmate had an intervening medical or mental health emergency such as a stroke).

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Assignment of Case – More Info

- ▶ *How do you obtain more information about an inmate's disabilities?*
- ▶ Arrange an interview – Where is your client located?
 - Contact the Litigation Coordinator to arrange interview.
- ▶ Review the C-File (hardcopy) and ERMS (electronic version) in SOMs
 - Many attorneys do this before the interview so as to be ready to discuss relevant issues during the interview, such as CDCR 115s, programming, parole plans, limitations due to disability, etc.
- ▶ Obtain a Medical Waiver – CDCR Form 7385

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Assignment of Case – DECs

- ▶ You have access to the Disability and Effective Communication System (DECs) via the Internet.
 - <https://rst attorney.cdcr.ca.gov>
- ▶ If you do not already have a DECs account, you will be provided one at the time you are appointed your first case.
- ▶ **It is the Board's expectation that you review DECs for information regarding your client and that you make an entry into DECs regarding any accommodations used for your client interview.**

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Access to DECs

A screenshot of a web login page. On the left is the California Department of Corrections and Rehabilitation logo. The text reads "California Department of Corrections and Rehabilitation Attorney Web Site". Below this is a "Login" section with "User Name:" and "Password:" labels, each followed by a text input field. A "Logon" button is below the fields. At the bottom, it says "Please email CDCR for technical support."

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Access to DECs

- Go to the website: <https://rstsattorney.cdcr.ca.gov>
- Enter the username and password provided by BPH.
- Affirm you have signed the terms and conditions for accessing CDCR information.
- To access your client's ADA information, click on "View an Offender's ADA/EC* History".
- To enter any accommodations you provided at a client interview, click on "Enter Accommodations Provided"

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DECs – Main Menu Screen



**California Department of
Corrections & Rehabilitation**
Attorney Web Site

Disability and Effective Communication System

[View an Offender's ADA / EC* History](#)

[Enter Accommodations Provided](#)

* Americans with Disabilities Act / Effective Communication

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DECs – View an Offender's ADA/ EC* History

- When you go into "View an Offender's ADA/EC* History", DEC's shows main tabs:
 - DAI Summary
 - View ADA/EC History (BPH Hearing History)
- The DAI Summary screen provides all of the disability codes associated with an inmate.
- The information listed reflects the inmate's current status, as entered into SOMs by staff in the institutions.
 - Notably, there is no information regarding medical status or housing location. CDCR is working on an enhancement to DEC's to show current housing program (e.g. CTC, GACH, OHU).

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DECs – DAI Summary Screen

Offender/Placement		Disability/Assistance	
DOC #		DDP Code	BCF
Name		Effective Date	01/26/2006
Institution	California Medical Facility	DDP Code	DMK, DPV
Bed Code	A T 1117001LP	DDP Date	06/18/2009
Placement	24	Needs	
Level	Medium A	Code	
Category		SD	
Level		Primary	Medical
Placement		Alternate	Medical
Facility		Learning	
Housing	Any floor with Elevator Pass, Lower/Bottom Deck, Level Terrain, No stairs in the path of Travel	TSB Score	0.4
Restrictions	No Lifting more than 30 Pounds, Requires Wheel Chair, TEMPORARY 12-31-9999 Months	TSB Date	02/03/2006
Physical Limitations		Healthcare	Brace, Cast, Mobility Vest, Wheelchairs, Egg Crate Mattress, Shoes
		Applicant	
		Device	Yes
		Use	
		Assistive	
		Barcode	
		Language	

Accommodation History

Date	Documentation	Magnifying Device
01/14/2009		

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DECs – View ADA/EC History

- The View ADA/EC History tab shows the user the ADA documentation for all prior and current BPH hearings. All documentation is listed on the BPH Form T073.
- The View ADA/EC History tab also shows the user any available "Source Documents" relevant to the inmate's disability status. This will include any prior entries by attorneys and FAD psychologists of accommodations provided during interviews.
- The View ADA/EC History tab also gives the user the opportunity to enter additional "Source Documents" to document accommodations provided at inmate interviews.

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DECs – View ADA/EC History

OFFENDER INFORMATION				
Offender's Name	Sex	Location		
		California Medical Facility		
1073 / 2271 FORMS				
Proceeding	File Review	Service of Rights	Hearing Type	Hearing Date
Lifer			Suitability	
	09/30/2008	12/01/2008	Documentation	01/14/2009
	09/30/2008	12/01/2008	Documentation	
SOURCE DOCUMENTS				
Document	Description	Location	Form Date	
CDC 128C	General Medical Chrono		01/15/2008	
CDC 1845	Inmate/Parolee Disability Verification	Pelican Bay State Prison	01/15/2008	
INSTITUTIONAL DATA				

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DECs – BPH Form 1073

- ▶ The BPH Form 1073 provides documentation of the ADA planning for a BPH hearing, and the actual accommodations provided at the hearing.
- ▶ The BPH Form 1073 consists of five parts:
 - **Section I – File Review –** Institution staff review the inmate's c-file and DEC's and document any identified disabilities.
 - **Section II – Inmate/Parolee Rights & Self-Identification –** Institution staff meet with the inmate to review the inmate's disabilities. The inmate describes (self-identifies) any disabilities he or she needs accommodated for the hearing and signs a hardcopy of the form. (This is done at the same time institution staff serve the inmate with notice of the hearing.)

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Form 1073 Sections I and II

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DECs – BPH Form 1073 Cont.

- ▶ Parts of the BPH Form 1073 continued:
 - **Section III – Initial Service of Rights –** Institution staff document what accommodations were provided to the inmate to ensure effective communication when meeting with the inmate pursuant to Section II. The institutional staff document whether the inmate appeared to understand or appeared to have difficulty understanding.
 - **Hardcopy vs. Electronic Copy –** At the conclusion of Section III, institution staff are to enter Sections I, II, and III into an electronic BPH Form 1073 in DEC's. The hardcopy (with the inmate's original signature) is saved in the c-file. BPH staff continue the process by entering Sections IV and V on the electronic version in DEC's. Notably, the hardcopy and electronic copy (Sections I, II, and III) are supposed to match.

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DECs – BPH Form 1073 Cont.

- ▶ Parts of the BPH Form 1073 continued:
 - **Section IV – Accommodations Planned –** At BPH headquarters, the ADA Compliance Unit completes a thorough review of DEC's, SOM's, and the electronic c-file (ERMS) and gathers source documentation of the inmate's current TABE score, mental health level of care, Developmental Disability Program status, etc. and makes an entry into Section IV documenting what accommodations are recommended for the hearing. The recommendations are sent to the institution for preparation of the hearing.
 - **Section V – Accommodations Provided –** The hearing panel documents what accommodations were provided during the hearing. This includes if the inmate brings a health care appliance to the hearing (e.g. glasses, hearing aid). If the hearing is delayed and rescheduled, there can be multiple Section Vs for each hearing event.

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Form 1073 Sections III, IV and V

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Attorney Entries in DEC's

- ▶ On the main screen after login, click on "Enter Accommodations Provided"
- ▶ Complete the Form:
 - Name, CDC#, Institution
 - "Attorney Consult" or "Other"
 - Mark the relevant checkboxes for all accommodations used (regardless of whether provided by you, CDCR, or your client).
 - Provide additional comments relevant to your client's needs.
 - *This is your opportunity to document any issues. However, if you would like to make a special request for the hearing, please contact BPH Scheduling directly to ensure timely handling.*

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DECs – Main Menu Screen



**California Department of Corrections & Rehabilitation
Attorney Web Site**

Disability and Effective Communication System

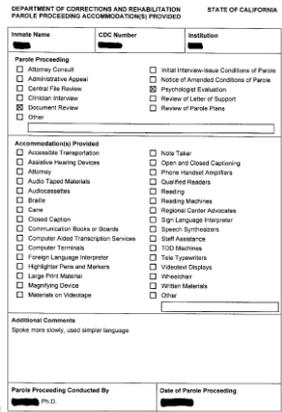
[View an Offender's ADA / EC* History](#)

[Enter Accommodations Provided](#) 

* Americans with Disabilities Act / Effective Communication

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Attorney Entries in DEC's



DEPARTMENT OF CORRECTIONS AND REHABILITATION
PAROLE PROCESSING ACCOMMODATIONS PROVIDED

STATE OF CALIFORNIA

Offense Name: [redacted] CDC Number: [redacted] Institution: [redacted]

Parole Proceeding

- Admonitory Counsel
- Administrative Appeal
- Central File Review
- Clinical Interview
- Document Review
- Other

Initial Interview/Meet Conditions of Parole

Notice of Proposed Conditions of Parole

Psychological Evaluation

Review of Letter of Support

Review of Parole Plans

Accommodations Provided

- Accessible Transportation
- Assistive Hearing Devices
- Braille
- Audio Tapes/Materials
- Audiocassettes
- Braille
- Cane
- Closed Caption
- Communication Books or Boards
- Computer Aided Transcription Services
- Computer Terminals
- Foreign Language Interpreter
- Highlighter Pens and Markers
- Large Print Material
- Magnifying Device
- Materials on Videotape
- Note Taker
- Open and Closed Captioning
- Phone Handset Amplifier
- Qualified Readers
- Reading
- Reading Machines
- Regional Center Associates
- Sign Language Interpreter
- Speech Synthesizers
- Staff Assistance
- TDD Machines
- Tele Typewriters
- Video/Video Displays
- Visuals
- Written Materials
- Other

Additional Comments
Spoke more slowly, used simpler language.

Parole Proceeding Conducted By: [redacted] Date of Parole Proceeding: [redacted]

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Client Interview – Arrangements

- ▶ **Interview Early** – If there is any indication your client may have a disability (esp. medical bed, mental health or developmental disability) interview your client far in advance of the hearing.
 - You may need to make **special arrangements**
 - e.g., bedside interviews or near housing location
 - *If you have any difficulty getting access to your client, elevate your concerns: first to Litigation Coordinator, then to Warden's Office*
 - You may need to make **multiple attempts**
 - e.g., client is unavailable, or client would be more lucid at a different time of day
 - You may need to have **multiple meetings**
 - e.g., follow-up needed on support letters and parole plans, or you need to review the c-file further and come back to discuss with your client
- ▶ **Avoid Advice via Letters** – If you have a practice of sending letters to your client prior to a meeting, know that an inmate with disabilities may not understand what you are telling him or her in the letter.

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Client Interview – Arranging for Interpreters

- ▶ **Sign Language Interpreters** –
 - Many prisons have a sign language interpreter on staff. Work with the Litigation Coordinator or the Board Desk to schedule a sign language interpreter for your interview.
- ▶ **Foreign Language Interpreters** –
 - You may access telephonic interpretation services for client interactions without prior approval
 - Simply call 1-877-867-9960
 - Follow the prompts on the line, or refer to the handout for step-by-step instructions for use of telephonic interpretation services

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Client Interview – Summary of Helpful Tips for Communication

- ▶ Allow plenty of time for discussion.
- ▶ Avoid cluttered paperwork on desk.
- ▶ Minimize environmental distractions (e.g. noise, posters on walls).
- ▶ Use simple, plain language.
- ▶ Gain the person's attention with eye contact.
 - some people prefer no eye contact – respect their choice
- ▶ Explain at the outset the purpose and process of the meeting in simple terms.
- ▶ Avoid talking to an adult as if he or she were a child.

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Client Interview – Summary of Helpful Tips Cont.

- ▶ Determine how your client communicates.
 - Verbally
 - Nods and shakes head
 - Writing notes (a person's brain receives and expresses communication via different mechanisms, which is further differentiated by verbal versus written communication)
- ▶ Use concrete language. Avoid abstract language and concepts. Avoid jargon.
- ▶ Pause frequently so as not to overload your client with information. Give time between statements for comprehension.
- ▶ Rephrase and repeat questions, or write them out. Act or demonstrate.
- ▶ Check for understanding. – "Can you explain what I just said?" "Can you explain what I am going to do and why?" "Can you repeat what I said in your own words?"
- ▶ Ensure client has pen and paper to take notes, if able to.

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Client Interview – Helpful Tips Cont.

- ▶ Show interest in your client's comments and in any objects he or she is carrying (e.g. important paperwork).
- ▶ Let your client know when you understand and when you don't understand.
- ▶ Be sensitive to changes in your client's tone of voice. However, it may be difficult to read facial expressions and body language. Validate your perceptions. (e.g., "You appear to be getting upset.")
- ▶ If feasible, encourage the use of "comforters" (a preference for standing and pacing, rather than sitting, or a favorite item being carried).

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Client Interview – Summary of Topics for Review

- ▶ Review your client's programming with him
 - Are there reasons why your client has not attempted or accomplished particular types of programming, related to his or her disability?
- ▶ Review prison disciplinarys with your client for possible mitigation due to disability.
- ▶ Review the clinical risk assessment and determine your client's capacity for insight?
 - Also review the timing of the clinical risk assessment with relation to your client's current disability status, and possible impact on the clinician's assessment.
- ▶ Review your clients parole plans and support, for needed follow-up or assistance.

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I Cannot Communicate, Now What?

- ▶ Try, try again.
- ▶ Try multiple forms of communication – written notes, yes/no
- ▶ Ask staff around you for tips in communicating with your client specifically.
- ▶ If necessary, ask the Litigation Coordinator for assistance in asking housing officers or health care staff for tips on how best to communicate with your client.
- ▶ Go forward with preparations...

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Communication is not Possible

- ▶ Be prepared to speak to client's abilities
 - Contact your client's family for information
 - Seek a waiver for access to medical/mental health files
 - Ask staff – CDCR staff will not give you medical information without a waiver, but they may answer simple questions about your client's limitations:
 - Does he speak? When he speaks, is he coherent? Is there a time of day when he is more lucid? Does he appear to understand when spoken to?
 - Does he get out of bed?
 - Can he walk with or without assistance?
 - Can he feed himself?
 - Can he use the restroom without assistance?
 - Can he bathe himself?
 - Can he move his arms and legs/range of movement?
 - Is he cooperative with nursing staff? Does he involuntarily flinch?
 - Is he cooperative in taking medications?
- ▶ Know the File – Review the record thoroughly

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More Pre-Hearing Preparations

- ▶ Address any pre-hearing requests for waivers, stipulations, and postponements
 - BPH requires both the inmate's and attorney's signatures for approval of a pre-hearing request for a waiver, stipulation, or postponement.
 - Your client may not understand his or her options. It is your duty to explain what a waiver, stipulation, or postponement entails and its impact. Meet with your client to discuss.
- ▶ Address any scheduling issues by contacting BPH scheduling (e.g. bedside hearings, shifting the hearing to a different time of day "sundowning")
- ▶ Follow-Up on Parole Plans

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Pre-Hearing – Parole Plans

- ▶ *What can I do to help?*
 - Contact your client's family.
 - Contact community resources.
 - Identify whether your client may be eligible for government assistance or benefits:
 - Social Security Retirement Benefits
 - Social Security Disability Insurance (SSDI) – pays benefits for a disabled adult who paid Social Security taxes
 - Supplemental Security Income (SSI) – pays benefits to disabled adults with limited income and resources
 - Veteran's Benefits
 - Identify whether your client has another source of income.

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Pre-Hearing – Parole Plans

- ▶ What are CDCR's Resources?
 - **DAPO Parole Planning and Placement** obtains information about offenders to develop and implement reentry plans.
 - **Transitional Case Management Program (TCMP)** connects inmates with benefits prior to their release dates.
 - E.g. Low Income Health Program, Medi-Cal, Social Security Disability, Supplemental Security Income, VA, etc.
- ▶ These CDCR units coordinate with counties and community programs to assist inmates with significant medical or mental health housing needs.
- ▶ Because of the volume of inmates, CDCR focuses first on those inmates with a known release date (determinate terms).

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Pre-Hearing – Parole Plans

- Medically Incapacitated
 - CDCR sends notice to County of Last Legal Residence
 - WIC 17000 – counties are responsible for medical needs of indigent residents.
 - Hospitals seek reimbursement for non-recuperated expenditures from the state's Medi-Cal system.
- Immigration and Customs Enforcement (ICE) holds
 - Sometimes, ICE decides not to pick up an inmate from prison.
 - Even when ICE does pick up an inmate, sometimes the inmate is not deported; and instead, remains in California.
 - The hearing panel will inquire of parole plans in the location the inmate is likely to reside.

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Pre-Hearing – Parole Plans

- Developmental Disabilities
 - Some inmates may be eligible for services from the Department of Developmental Services upon release to parole.
 - DDP Counselors have been directed to explore potential parole plans for inmates in the DDP prior to upcoming parole consideration hearings.
 - CDCR and BPH are working together to identify additional options for housing inmates with developmental disabilities upon parole.

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Hearing Day – Summary of what to do the day of the hearing

- ▶ Check-in with your client prior to the hearing
 - How are you doing today? Did you take your medications?
 - Do you have your glasses or hearing aides?
 - If not, ask the officer if arrangements can be made to get your client's healthcare appliance before the hearing.
 - If your client has difficulty understanding what is happening, take extra time to meet the day of the hearing.
- ▶ Ensure all of your client's needed accommodations are met.
 - Interpreters are present; Staff Assistant is present; Hearing aides; Glasses; Mobility (e.g. wheelchair, reclining wheelchair or gurney)

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Hearing Day – Summary of what to do at the hearing

- ▶ Ensure the hearing panel addresses each of your client's disabilities. If your client's needed accommodations are not being met, inform the hearing panel.
- ▶ To the greatest extent possible, ensure your client understands what is going on, and what is being discussed.
 - Use the Staff Assistant and/or Interpreter as tools for effective communication.
 - Take breaks, as needed, to explain matters to your client.
 - Check in frequently with your client to ensure ongoing understanding.
- ▶ Assist the hearing panel in maintaining effective communication throughout the hearing.
 - If you believe something being discussed is not being understood by your client, interject and offer to rephrase the question or ask for the Staff Assistant's assistance.

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Hearing Day – Summary Cont.

- ▶ Ensure the hearing panel is fully informed regarding your client's physical and mental limitations, and any language barriers, and whether your client's programming accomplishments have been impacted by his or her limitations.
- ▶ Ensure the hearing panel considers your client's disabilities as a possible mitigating factor for his or her prison disciplinarys, when relevant.
- ▶ Address your client's capacity for insight, when his or her mental limitations, may impact his or her level of insight.

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Hearing Day – Summary Cont.

- ▶ Taking into account your client’s disabilities and limitations, address your client’s risk of current dangerousness.
 - For example, does your client’s status in a medical bed make him or her less of a public safety risk?
 - For example, even if your client doesn’t have the mental capacity to develop insight into the causes and conditions of his or her life crime, is there reason to believe he or she will pose a threat to others upon release?

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Post-Hearing – Grievances

- ▶ The Board of Parole Hearings will research and respond to any allegations of failure to provide for an inmate with disabilities in the hearing process.
 - Inmates can complete a BPH Form 1074, Request for Reasonable Accommodation – Grievance Process
- ▶ Additionally, BPH will review any letters regarding the hearing received during the 120-day decision review period.
- ▶ For all ADA concerns not related to the BPH hearing process:
 - An inmate file an appeal – CDCR Form 602
 - An attorney can write a letter to the Chief Executive Officer (medical, mental health, or DDP) or to the attention of the Warden.

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Requests for Waivers, Stipulations, and Postponements



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Requests for Waivers, Stipulations, & Postponements

- ▶ **Pre-Hearing** – BPH will not act on a pre-hearing request for a waiver, stipulation or postponement without both the inmate’s and attorney’s signatures on the Form 1001(a).
- ▶ **Avoid Multiple Delays**
 - Life inmates have a right to a timely hearing.
 - CDCR has an aging lifer population, and you will encounter clients who are difficult to represent due to their disability.
 - **Difficulty representing a client is not a reason to delay a hearing.**
 - CDCR is not a board and care facility for the elderly and disabled.
- ▶ Class Action counsel express concern when an inmate with a disability inmate has gone beyond the timeframe for his next scheduled hearing due to multiple waivers, stipulations, or postponements.

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Requests for WSPers – Common Concerns

- ▶ Concern #1 – *I don’t feel I can represent my client’s interests because I cannot communicate with my client due to her or her disabilities. Therefore, going forward with this hearing would violate my client’s due process rights.*
- ▶ Inmates have a right to a timely hearing. This is the inmate’s opportunity to be considered for parole.
- ▶ Difficulty in representation is not reason to delay a hearing. The inmate may never have improvement in his or her ability to communicate.
- ▶ Only if the hearing panel is convinced that the situation will be significantly different in six months (e.g. recovery from a significant surgery, stabilization following a mental health crisis), will the hearing panel contemplate finding good cause for delay.

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Requests for WSPers – Due Process

- ▶ **Parole Suitability Hearings are not like Criminal Trials.**
- ▶ **In criminal trials**, the defendant needs to be able to assist in his or her own defense. This is why there are special procedures in those settings to wait for the defendant to become competent to participate.
- ▶ **In parole suitability hearings**, the hearing panel is not assessing the truth of the life crime. This was already done by a criminal court. Instead, the hearing panel is assessing the inmate’s current risk of dangerousness based on the entire record before it.

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Requests for WSPers – Common Concerns

- ▶ Concern #2 – *My client's medical or mental health status may improve in six months. Or my client is about to be transferred to a state hospital or other level of care, where it is presumed he or she will receive more care. Or I believe my client should be referred to a higher level of care or for inclusion in a disability program (e.g. Developmental Disability Program).*
- ▶ CDCR has medical and mental health treatment in all prisons. Inmates are moved between levels of care as clinically indicated. Most of the time, an inmate's level of care has little or no bearing on his or her suitability for parole.
- ▶ Most likely, the panel will note the concern and proceed with the hearing to see how the concern plays out. If, as the hearing proceeds, the panel becomes convinced that the inmate's situation will be significantly different in six months, and that such potential difference is relevant to the panel's assessment of the inmate's current risk of dangerousness, the hearing panel may contemplate continuing the hearing.

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Requests for WSPers – Common Concerns

- ▶ Concern #3 – *Another attorney might be better equipped to deal with my client's disabilities. Or I don't know enough about my client's disabilities or how to provide accommodation.*
- ▶ By participating in this ADA orientation, you are sufficiently equipped to represent an inmate with disabilities at a BPH hearing. In this orientation, you have been informed of the many ways you can seek more information or request assistance when preparing for a hearing.
- ▶ You are the most knowledgeable advocate for your client's disabilities. You have spent more time preparing your client's case and becoming familiar with your client's disability status than anyone else in the hearing room.

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Requests for WSPers – Common Concerns

- ▶ Concern #4 – *I was unable to meet with my client due to his or her disability. Institution staff wouldn't escort me to the special housing unit. Or I tried to meet with my client, but he or she was unavailable at the time due to his or her disability.*
- ▶ Make all efforts to meet with your client. Elevate any problems or concerns regarding access to the Litigation Coordinator, Warden's Office, or Department of State Hospitals. Allow yourself plenty of time to make a second attempt to meet with your client if he or she is unavailable at the time of your first attempt. Be flexible.

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Requests for WSPers – Common Concerns

- ▶ Concern #5 – *My client needs more time to develop parole plans. I will take this case pro bono and assist my client prior to his next hearing.*
- ▶ In all likelihood, there have been previous attempts to help your client develop parole plans. It is probably not reasonable to think that you, acting alone, will find a suitable specialized housing plan in the next six months.
- ▶ Don't discount the possibility of a parole grant absent parole plans.
- ▶ Don't make promises that may prove too challenging to keep.

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Ethical Concerns

- ▶ "When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client."
- ▶ American Bar Association Model Rules of Professional Conduct, Rule 1.14

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Requests for WSPers – Plaintiffs' Perspective

- ▶ Prison Law Office – Counsel in the *Armstrong* and *Clark* Class Action Lawsuits



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Hypotheticals



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Hypothetical #1

- ▶ You represent an elderly man who has had previous parole suitability hearings at which he minimized responsibility. (The life crime was that he murdered his wife, but denied any history of domestic violence; and has had no programming relevant to domestic violence.) He had a stroke since his last hearing and is now housed in a medical bed. He has limited mobility, meaning he can get out of bed into a wheelchair with assistance. He has limited speech (can say one to two-words, and nod/shake head), but it is unclear if he can comprehend speech.
- ▶ *How do you handle an interview?*
- ▶ Your client refuses to come into the hearing room on the day of the hearing. *How do you handle the hearing?*

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Hypothetical #2

- ▶ You represent a middle-aged man with severe mental health issues who is being treated in a DSH unit at a CDCR facility. He is not oriented to time and place and claims he is a reincarnation of George Washington and believes that space aliens are beaming thoughts into his head. Because he does not acknowledge his own identity, he does not speak to the life crime.
- ▶ *How do you handle the interview?*
- ▶ Your client does not understand the purpose of the hearing and why it applies to him. *How do you handle the hearing?*

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Final Thoughts

- ▶ You will encounter difficult cases.
- ▶ Give yourself plenty of time to prepare for the cases.
- ▶ Don't be hesitant to ask questions or interject.
- ▶ Do the best you can with difficult situations.
- ▶ Contact BPH with your concerns.
- ▶ BPH places great importance on giving all inmates timely hearings.
- ▶ BPH places great importance on accommodating the inmate's participation in a hearing, and establishing effective communication to the best of inmate's abilities.

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Remember - The Attorney is the Best Accommodation

- ▶ **Remember - You are in the driver's seat for ensuring your client's disability is adequately addressed throughout the hearing process**
 - 1) You need to provide accommodations
 - 2) You need to ensure BPH provides accommodations
 - 3) You need to be accommodating (flexible)
- ▶ Keep in mind how your client's limitations may impact his or her suitability for parole, and the ultimate question of whether he or she is a current unreasonable risk of dangerousness.

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