

BOARD OF PAROLE HEARINGS
Best Practices Advisory Committee Meeting
Tuesday, February 19, 2013

Meeting called to order at 2:02 p.m.

CONSENT CALENDAR

Roll Call: **Present:** Ferguson, LaBahn, Peck, Zarrinnam and Fritz, Chairperson
 Absent: None

Comments and clarifications regarding meeting minutes: January 15, 2013

No comments

Public Comment on Consent Calendar

No comments

Commissioner PECK moved to approve the January 2013 minutes, which was seconded by Commissioner FERGUSON. The motion was carried unanimously.

REPORTS

Report from Executive Officer

Executive Officer, JENNIFER SHAFFER had nothing to report.

Report from Chief Counsel

Chief Counsel, HOWARD MOSELEY had nothing to report.

Report from Chairperson

Commissioner CYNTHIA FRITZ, Chairperson, reported that it was the committee's goal to have a skeleton of the Bench Guide completed by July and that the Case Compendium project is almost complete and will be presented at the March 2013 meeting.

MOSELEY indicated that the commissioners will be getting another section of the BPH Mini-Manual today or to-morrow.

FRITZ reported on a best practices survey that was completed by the commissioners. The commissioners favored dealing with preliminary and pre-commitments issues at a hearing, with the deputy commissioner addressing post-commitment issues. There was a divergence of views regarding about who should deal with the comprehensive risk assessment. FRITZ stated that it was this committee's goal to identify means of ensuring that hearings are conducted efficiently and expeditiously.

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MOSELEY stated that there is no rule of law that specified who must deal with the comprehensive risk assessment. He suggested that, to assist deputy commissioners prepare for a hearing, a list of commissioners' preferences be created.

FRITZ requested that Staff Counsel Veronica Mendoza collate the results of the survey, in order to assist the deputy commissioners.

DISCUSSION ITEMS

Administrative Directive on Oral Testimony and Statements at Hearings, presented by Howard Moseley, Chief Counsel.

MOSELEY explained that generally speaking, only inmates give sworn oral testimony at parole suitability hearings; other participants make oral statements. Title 15, section 2402(b), covers oral testimony and oral statements. Section 2030(d)(1) states that cumulative testimony may be excluded. As the presiding hearing officer, the commissioner is responsible for ensuring that the hearing is focused and that information received is not duplicative. This administrative directive addresses these issues and provides guidelines on setting time limits for closing statements made by counsel at parole hearings.

Board Questions and Comments

SHAFFER asked if any additional guidance could be found in the California Rules of Court or other administrative law agencies.

MOSELEY responded that the Legal Division would research the California Rules of Court and resubmit the administrative directive with any additional guidance found.

In response to other questions on the topic, MOSELEY stated that reasonable time limits on closing statements made by counsel are a regular practice in many courts and administrative bodies.

Public Comments

None.

Motion and Votes

None.

OPEN COMMENTS

BPH Commissioners - Agenda Items for Future Meetings

FRITZ questioned whether guidelines are necessary to ensure that questions from an attorney to the inmate are pertinent. She requested that the issue be explored.

FRITZ stated that another issue to be explored is that of attorneys not allowing the inmate to answer clarifying questions from the district attorney.

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LABAHN suggested that a standardized statement would assist commissioners to inform victims' next-of-kin of their statutory rights.

SHAFFER stated that Victims Rights Services provide helpful written materials

MOSELEY stated that the Legal Division can clarify the legal definition of victims' impact statements.

FRITZ commented that board packets are frequently late, resulting in requests for postponements and waivers. She requested the Legal Division to look into the reasons for late distribution of the packets.

FRITZ requested clarification about when it is appropriate to grant post-conviction credit above the recommended amount. She requested clarification about the date from which credit should be granted.

MOSELEY replied that, generally, the appropriate date for granting credit is the inmate's life term start date. At progress hearings, the date is usually the date of the inmate's parole grant. The Legal Division can provide clarification, where required.

FRITZ questioned whether it is productive to schedule documentation hearings many years before the inmate's initial hearing. She asked if a change to the regulations is pending.

SHAFFER replied that there has been preliminary work on a legislative proposal to change the way in which documentation hearings are scheduled.

Open Comments

There were no public comments.

Meeting adjourned at 2:50 p.m.

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**BOARD OF PAROLE HEARINGS
Best Practices Advisory Committee Meeting
Monday, March 18, 2013**

Meeting called to order at 3:05 p.m.

Roll Call: Ferguson, Labahn, Peck, Zarrinam, Fritz (Chair)

CONSENT CALENDAR

Comments and Clarification regarding Best Practices Advisory Committee Meeting Minutes February 19, 2013

FRITZ noted the minutes omitted several items suggested for consideration at future meetings. She tabled approval of the minutes until the committee's next meeting, in order to review the record of the meeting.

Chief Counsel, HOWARD MOSELEY stated that the audio record of the February 2013 meeting would be reviewed and the minutes amended accordingly.

Public Comment: None

REPORTS AND PRESENTATIONS

Report from Executive Officer, Jennifer Shaffer: None

Report from Chief Counsel, Howard Moseley: None

Report from Chairperson, Cynthia Fritz

FRITZ gave an update on the progress of the Board's Mini Manual. She stated the case compendium has been completed and will be included in the bench guide. Changes or comments will be discussed at the committee's next meeting.

FRITZ stated that members of the committee were working on individual sections of the bench guide. She invited the committee members to report on the progress on their sections.

PECK stated that he was working on the suitability hearing section and that it would be ready by next month.

ZARRINAM stated that he was working on the role of the attorney and on rescission hearings. There is still some more research to be done and the section will probably not be ready by next month.

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FERGUSON stated that he is working on Penal Code section 3000.1 hearings and has been assisted by senior staff counsel KATIE RILEY. The section is making progress and he will e-mail the completed version to other committee members.

LABAHN stated that he is working on the Mini Manual. He is making progress with the manual.

FRITZ asked whether it would be possible to adjust the members' calendar, to allow time to work on their projects.

SHAFFER replied that there was little leeway with calendaring hearings. It might be possible to make an adjustment if the caseload lightens.

DISCUSSION ITEMS

Administrative Directive on Oral Testimony and Statements at Hearings, presented by staff counsel Jerome Hessick

HESSICK stated that the directive was intended as a guide for commissioners in regulating the length of attorneys' statements at hearings. The directive does not apply to oral testimony. He stated that the directive was intended to promote a consistent approach. It does not limit commissioners' wide discretion in individual cases.

Board Questions and Comments: None

Public Comments:

MARC NORTON, attorney expressed concern at the limitation of attorneys' statements and requested that the committee not approve the directive.

JILL KLINGE, Alameda County District Attorney's Office, also requested that the committee not approve the directive.

MOSELEY stated that he had received a letter from MICHAEL SATRIS, attorney, opposing the directive's approval.

FRITZ moved to approve the directive and refer it to the full Board tomorrow for adoption. The motion was seconded by MONTES and carried unanimously.

Administrative Directive on Discussion of Waivers, Stipulations and Postponements, presented by Senior Staff Counsel, Katie Riley

RILEY stated the directive arises from the *Rutherford* litigation and gives guidance on how to deal with requests made at the hearing for waivers, stipulations or postponements. All discussion must be on the record. The inmate should be present, if possible. The panel must determine that

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the request is made voluntarily. No ruling should be made until the panel has ensured that all Americans with Disabilities Act requirements have been met.

Board Questions and Comments: None

Public Comments: None

PECK moved to approve the directive and refer it to the full Board tomorrow for adoption. The motion was seconded by FERGUSON and passed unanimously.

OPEN COMMENTS

Agenda Items for Future Meetings: None

Public Comments:

VANESSA NELSON-SLOAN, Life Support Alliance, expressed interest in the Mini Manual.

Meeting adjourned at 3:25 p.m.

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