

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Wednesday, November 14, 2012**  
**CLOSED SESSION**  
*(All times are approximate and subject to change.)*

1515 K Street  
Executive Board Meeting Room  
Suite 550  
Sacramento, California 95814

NOTE START TIME: 9:00 a.m.

**DISCUSSION**

**Overview of Pending Litigation and Writs of Habeas Corpus**

Pursuant to Government Code section 11126(e)(1)

*(A board may meet in closed session to confer with or receive advice from its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.)*

Discussion

1. *Gilman v. Brown* (USDC, ED, 2:05-cv-00830-LKK-GGH (PC))
2. *In re Steven Martinez* (October 26, 2012, D061287) \_\_\_ Cal.4<sup>th</sup> \_\_\_
3. *In re Adam Sanchez* (August 31, 2012, G046186) [nonpub. opn.]

**For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.**

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
[http://www.cdcr.ca.gov/BOPH/meeting\\_agenda.html](http://www.cdcr.ca.gov/BOPH/meeting_agenda.html)  
**Wednesday, November 14, 2012**

**OPEN SESSION**  
*(All times are approximate and subject to change.)*

1515 K Street  
Executive Board Meeting Room  
Suite 550  
Sacramento, California 95814

NOTE START TIME: 10:00 a.m.

**AGENDA**

**MEETING CALLED TO ORDER**

**CONSENT CALENDAR**

1. Roll Call
2. Comments and Clarification regarding Board of Parole Hearings (BPH) Meeting Minutes: October 16, 2012
3. BPH Lifer Hearing Backlog Report
4. Public Comments on Consent Calendar– Comments are limited to five minutes. Items on the consent calendar are considered routine and non-controversial. All matters are approved by one motion unless pulled by a Board Member for discussion or separate action.

**REPORTS**

5. Report from Executive Officer
6. Report from Chief Counsel
  - *Hearing Continuances*, presented by Kara Houston, Staff Counsel

**DISCUSSION ITEMS**

7.
  - a) *Administrative Directive regarding certified law students*, presented by Katie Riley, Senior Staff Counsel
  - b) Board Questions and Comments
  - c) Public Comments
  - d) Motion and Votes
8.
  - a) *Administrative Directive regarding victims and victim's next-of-kin right to be heard*, presented by Howard Moseley, Chief Counsel
  - b) Board Questions and Comments
  - c) Public Comments
  - d) Motion and Votes

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### **OPEN COMMENTS**

9. Agenda Items for Future Meetings
10. Public Comments – Comments are limited to five minutes. The public may comment on any item related to Board business. The Board will not consider comments about future parole hearings. Those comments should be sent to the prison where the inmate is housed so that they can be considered by the panel assigned to the case.

### **EN BANC HEARINGS**

11. Recall and Referral for Resentencing: Comments regarding *Penal Code section 1170(e)* cases – Members of the audience may speak to the Board for a period not to exceed five (5) minutes.
12. Decision Review: Comments regarding *California Code of Regulations, title 15, section 2042* – Members of the audience may speak to the Board for a period not to exceed five (5) minutes.
13. Governor Referrals: Comments regarding *Penal Code section 3041.1* – Members of the audience may speak to the Board for a period not to exceed five (5) minutes.

### **CLOSED SESSION**

### **ADJOURNMENT**

(See next page for Closed Session information.)

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**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**Wednesday, November 14, 2012**  
**CLOSED SESSION**

**EN BANC CASES FOR BOARD REVIEW**

Pursuant to Government Code section 11126(c)(4)

*(...[N]or shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion nor consideration is expressly prohibited by statute.)*

**HEARINGS**

- A. **Recall and Referral for Resentencing - Penal code section 1170(e):**  
Determination of eligibility for recommendation to sentencing court for recall of sentence.

1. **AVILEZ, Louie**                      **T-03669**  
County of Commitment:  
Tulare
2. **BANKS, Jessica**                      **WA-1612**  
County of Commitment:  
Riverside
3. **GUERRA, Guadalupe**              **T-33811**  
County of Commitment:  
Sacramento

- B. **Decision Review - California Code of Regulations, title 15, section 2042:**  
Referral by the Chief Counsel to assure complete, accurate, consistent and uniform decisions and the furtherance of public safety.

4. **ABRAHAM, George**                      **J-78261**                      **Referred by Decision Review**  
County of Commitment:                      (parole plans viability)  
Solano
5. **BROWN, Anthony**                      **J-20572**                      **Referred by Decision Review**  
County of Commitment:                      (release date calculation)  
San Diego

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C. **Governor's Referrals - Penal Code section 3041.1:**  
Request by Governor's Office to review parole decision.

6. **BOURBEAU, Kenneth**      **B-95922**  
County of Commitment:  
Santa Clara

7. **TUZON, Gerilyn**      **W-77123**  
County of Commitment:  
Santa Clara

The decisions in the above hearings will be posted no later than 4 p.m. in the lobby on the ground floor of 1515 K Street and within 24 hours on the BPH internet page at the following address: [www.cdcr.ca.gov/BOPH/enbanc.html](http://www.cdcr.ca.gov/BOPH/enbanc.html).

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**BOARD OF PAROLE HEARINGS**  
**Training Advisory Committee Meeting**  
**Wednesday, November 14, 2012**  
**OPEN SESSION**  
*(All times are approximate and subject to change.)*

1515 K Street  
Executive Board Room  
Suite 550  
Sacramento, California 95814

NOTE START TIME:     **1:30 p.m.**

**Training Advisory Committee:** The scope of this committee is to research and make recommendations for the Board's commissioner training program, including initial and continuing education. Members of this committee are commissioners Anderson, Fritz, Garner, Roberts and Turner.

**AGENDA**

**MEETING CALLED TO ORDER**

**CONSENT CALENDAR**

1. Roll Call
2. Comments and Clarification regarding Training Advisory Committee Meeting Minutes: August 7, 2012
3. Selection of BPH Training Advisory Committee Chair (nominations, motion, and voting)
4. Public Comments - Items on the consent calendar are considered routine and non-controversial. All matters are approved by one motion unless pulled by a Board Member for discussion or separate action. At this time, any member of the public may ask the Board to be heard on any item on the consent calendar.

**REPORTS**

5. Report from Executive Officer
6. Report from Chief Counsel

**OPEN COMMENTS**

7. Discussion: *Committee Goals*
8. Agenda for Commissioner Training in December
9. Agenda Items for Future Meetings
10. Open Comment - Public comments on discussion items are limited to five minutes.

**ADJOURNMENT**

**For disability related accommodations, please contact the BPH Americans with Disabilities Act Coordinator at (916) 445-4072, at least five (5) working days prior to the scheduled meeting. All persons and property entering into this facility may be subject to search. No unauthorized weapons are allowed pursuant to Penal Code Section 171b.**

**BOARD OF PAROLE HEARINGS**  
**Executive Board Meeting**  
**October 16, 2012 9:00 a.m. to 1:55 p.m., Room 550**

Meeting called to order at 9:00 a.m.

**Roll Call**

**Present:** Anderson, Arthur Jr.; Ferguson, Jeffrey; Figueroa, Dan; Fritz, Cynthia; Garner, Jack; Labahn, Peter; Montes, Marisela; Peck, John; Singh, Amarik; Turner, Terri; and Zarrinnam, Ali

**Absent:** Roberts, Brian

**CONSENT CALENDAR**

**Minutes from September 18, 2012 Executive Board Meeting**

Meeting minutes were approved.

**Report from the Executive Officer**

Executive Officer, JENNIFER SHAFFER, reported the backlog number.

**Report from Chief Counsel**

Chief Counsel, HOWARD MOSELEY's request to table the discussion regarding the 10-day rule was granted. MOSELEY discussed setting time limits on attorneys at hearings.

**Advisory Committee Updates**

SHAFFER relayed that the Best Practices Committee meets today at 1:00.

**Regulatory Action: Announcement of codification of amended sections 2606, 2635.1, 2646.1, 2733, 2740, 2743, and 2744 of California Code of Regulations, title 15, relating to *Parole Revocation Procedures***

Senior Staff Counsel, KATIE RILEY, affirmed that the realignment regulations have been approved and set forth for publication.

RILEY responded to a question from Commissioner JOHN PECK by explaining that being mentally ill is not a reason to revoke parole. With regard to participating in Parole Outpatient Clinic (POC), Commissioner CYNTHIA FRITZ asked whether POC was a general condition of parole or if it needed to be made a special condition. RILEY stated she was unaware.

**DISCUSSION ITEMS**

**Regulatory Action: Preliminary review of draft amendments to sections 2510, 2511, 2512, and 2513 of California Code of Regulations, title 15, relating to *Conditions of Parole***

RILEY presented a set of proposed regulations regarding conditions of parole. RILEY summarized the general authority to issue conditions of parole. Revisions were also made to the notice form given parolees, making the language easier to understand. RILEY defined a "mandatory statutory condition of parole," offering 290 registration as an example. She then defined "discretionary conditions of parole" as those not tied to a statute and reiterated that conditions of parole must relate to the commitment offense. RILEY asked for authority from the Board to discuss the proposed regulatory package with other state agencies.

Commissioner ANDERSON asked that all reports be voted on as one. Commissioner TERRI TURNER made a motion to approve, which Commissioner PETE LABAHN seconded.

The Board unanimously approved the regulatory package allowing BPH to discuss the package with other state agencies.

### **Agenda Items for Future Meetings**

Commissioner AMARIK SINGH requested clarification on handling continuances. MOSELEY indicated that he would prepare something for next month's meeting.

### **Public Comment**

VANESSA NELSON of Life Alliance commended the positive change and improvement of lifers being released, but stated it is not where it should be. If the panel members are following the law, then the number will take care of themselves. NELSON articulated that the psychological evaluations used by the Board are not valid and unreliable. Additionally, confidential files are also not reliable and tread on individual rights for an inmate to face their accused. The inmate's attorney should be made aware of general content and that confidential information exists. The actual information is not discussed and the information may be no more than hearsay, and should not be part of a fair hearing. NELSON requested that confidential information be made more transparent and fair.

## **HEARINGS**

### **Penal code section 1170(e)**

#### ***Brian Brewer***

Brian Brewer's father, DON BREWER requested a compassionate release.

KATHLEEN BREWER, the wife of Brian Brewer, asked the Board to consider releasing Brian.

JAKE BREWER, Brian's son, supported release.

DAVID DAHLE, from the Los Angeles District Attorney, Lifer Hearings Division, opposed release.

### **Penal code section 1170(e)**



***Bernice Cubie***

JONATHAN HELFGOTT, Cubie's attorney, supported release.

AVANTE MAYA, Cubie's niece, supported release.

**Governor Referrals**

***Maria Diaz***

No speakers were present on this case.

***Clistie Ferrell***

CHERYL MONTGOMERY, Ferrell's attorney, asked the Board to grant parole.

***John Joseph***

EVA JOSEPH, wife of John Joseph, supported release.

CHERYL MONTGOMERY, Joseph's attorney, stated that Joseph is entitled to a new hearing. She stated that without the confidential information erroneously used against him, he would have been paroled.

***Thieu Le***

MARCIA RANDLE, Le's attorney, advocated that Le be released to the federal program.

***Henry Wu***

RITA AGGAWAL read a letter on behalf of Wu's older sister, Mayhe, supporting parole and requested on behalf of his sister that the Board release him.

KEITH WATTLEY, Wu's attorney, supported parole and stated there is no reason for the Governor to send the case back for review.

JONATHAN BARRON, the victim of the crime, opposed the Board's grant of parole.

DAVID DAHLE, from the Los Angeles District Attorney, Lifer Hearings Division, spoke in opposition to parole and asked the Board consider a rescission hearing.

**Adjournment**



# BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2012-01

**SUBJECT: CRITERIA FOR LAW STUDENTS REPRESENTING LIFE INMATES AT PAROLE SUITABILITY HEARINGS**

## INTRODUCTION

Penal Code section 3041.7 establishes that all life inmates are entitled to representation by legal counsel at parole suitability hearings. All legal counsel shall be authorized to represent clients as prescribed by the rules of the State Bar of California. This Administrative Directive establishes criteria for law students representing life inmates in parole suitability hearings.

## LEGAL AUTHORITY

**California Rules of Court, Rule 9.42** sets forth the following criteria for law students to represent clients, including life inmates at parole suitability hearings. A law student must possess "a currently effective certificate of registration as a certified law student from the State Bar." (Rule 9.42, subdivision (a)(1).) Furthermore, a certified law student may "appear on behalf of [a] client in any . . . hearing . . . before any . . . commissioner . . . provided that the certified law student: [o]btains the approval of the supervising attorney to engage in the activity; [p]erforms the activity under the direct and immediate supervision and in the personal presence of the supervising attorney . . . ; [o]btains a signed consent form from the client on whose behalf the certified law student acts; and [a]s a condition to such appearance . . . presents a copy of the consent form to the . . . commissioner." (Rule 9.42, subdivision (d)(3).)

## DIRECTIVE

At the beginning of the parole suitability hearing, the presiding commissioner shall ensure that the law student possesses a currently effective certificate of registration as a certified law student from the State Bar and shall obtain a copy of the signed consent form allowing the law student to appear on behalf of the life inmate during the parole

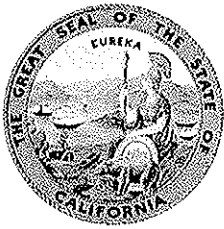
suitability hearing. The presiding commissioner shall also ensure that the supervising attorney is personally present at all times during the hearing. The certified law student and supervising attorney shall state their appearance on the record as such and a copy of the signed consent form shall be included in the official record of the hearing.

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

**APPROVED BY:** \_\_\_\_\_

**JENNIFER P. SHAFFER**  
**Executive Officer, BPH**

**DATE:** \_\_\_\_\_



# BOARD OF PAROLE HEARINGS



ADMINISTRATIVE DIRECTIVE NO: 2012-02

**SUBJECT: VICTIMS' RIGHT TO BE HEARD PRIOR TO BOARD'S DECISION ON LIFE INMATE'S OFFER TO STIPULATE TO UNSUITABILITY**

## INTRODUCTION

California Code of Regulations (CCR), Title 15, section 2253, subdivision (c), permits all life inmates to offer to stipulate to their unsuitability any time prior to a life parole consideration hearing. Prior to the board's decision on a life inmate's offer to stipulate, the board shall consider the victims' views and interests on the matter. This Administrative Directive clarifies the victim's right to be heard prior to the decision on a life inmate's offer to stipulate to unsuitability.

## LEGAL AUTHORITY

**Section 28, subdivision (b)(8), of Article 1 of the California Constitution** vests victims of crimes with a number of rights, including the right "*to be heard*, upon request, at any proceeding, including any . . . post-conviction release decision, or any proceeding in which a right of the victim is at issue." More specifically, **Penal Code section 3043, subdivision (b)**, provides that "[t]he victim, next of kin, members of the victim's family, and two representatives . . . have the right to appear, personally or by counsel, at the hearing and *to adequately and reasonably express his, her, or their views concerning . . . the suitability of the prisoner for parole.*" Furthermore, **Penal Code section 3041.5, subdivision (b)(3)**, states, "The board shall schedule the next hearing, *after considering the views and interests of the victim*, as follows: (A) Fifteen years after any hearing at which parole is denied . . . (B) Ten years after any hearing at which parole is denied . . . (C) Three years, five years, or seven years after any hearing at which parole is denied . . ." In addition, **CCR, Title 15, section 2253, subdivision (c)(1)**, states that "[when] considering an offer to stipulate to unsuitability *the board shall review* any written statements received from . . . the victim, victim's next of kin, members of the victim's immediate family and two victim's representatives." (Emphasis added.)

**DIRECTIVE**

Prior to pronouncement of the board's decision on a life inmate's offer to stipulate to unsuitability, the presiding commissioner shall ensure the victims' right to be heard is honored by (1) providing the victim, next of kin, members of the victim's family, and two representatives with the opportunity to express their views concerning the suitability of the prisoner for parole, (2) reviewing any written statements received on the matter from the victim, next of kin, members of the victim's family, and two representatives, and (3) considering the views and interests of the victim when determining when to schedule the next hearing.

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

<b>APPROVED BY:</b> _____ <b>JENNIFER P. SHAFFER</b> Executive Officer, BPH	<b>DATE:</b> _____
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