

# Representing ADA Inmates

by

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## Pre-Hearing: DECS

- Review DECS prior to contact with client.
- Review other ADA related documents, such as the 128 C-2.
- Address any pre-hearing issues.
- You are required to meet with your client at least 45 days prior to the hearing; however, if your client has a disability, you may need to meet with your client early to assess the disability and make any special arrangements as needed.
- Failure to conduct ADA review described above will result in referral for removal as a panel attorney.

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## During Interview: Accommodations

### Attorneys are required to:

- Ensure clients have all necessary accommodations to participate in your meeting to the best of their abilities.
- If your client requires an accommodation that is not immediately available, contact the institution **ADA Coordinator** or the **BPH ADA Compliance Unit** for assistance in obtaining or providing the accommodation.

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## During Interview: Accommodations

- Accommodations may be provided by:
  - **Inmate**: such as bringing own glasses or hearing aids
  - **Institution**: such as a wheel chair or sign language interpreter
  - **Attorney**: such as using simple language or repeating/rephrasing
- Enter source document into DECS to document all accommodations, whether provided by the inmate, the institution, or the attorney and note any concerns.
- Failure to enter a source document will result in referral for removal as a panel attorney.

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## During Interview: Effective Communication

### GOALS:

- For your client to fully understand information and questions from the attorney to the best of his/her ability.
- For the attorney to fully understand both the content and meaning of the client's responses.

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## During Interview: Effective Communication

### **This May Require:**

- Using a telephone foreign language or in-person sign language interpreter to assist with communication
- Using simple concrete language
- Multiple attempts to repeat or rephrase questions
- Checking in with your client to assess understanding
- Taking breaks to prevent your client from becoming overwhelmed

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## Communication is Difficult or Impossible

- Try multiple forms of communication – written notes, yes/no questions
- If still having difficulty, ask the ADA Coordinator or BPH ADA Compliance Unit for assistance.
- Be prepared to speak to your client's abilities
  - Seek Authorization for Release of Medical Information if needed – CDCR Form 7385
- Go forward with preparations.

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## Pre-Hearing: Waivers or Postponements

- 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 improve in his or her ability to communicate.
- Postponement should only be requested if evidence shows the disability will be significantly different in six months (e.g. recovery from a significant surgery, stabilization following a mental health crisis).

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## Pre-Hearing: Comprehensive Risk Assessment Objections

- Help your client understand the CRA process and inform him/her of the ability to object to the CRA.
- Work with your client to ensure objections are in his/her best interest
- If possible, assist your client in preparing CRA objections to BPH as soon as possible
- In the event CRA objections are untimely filed or not lodged, be prepared to advocate at the hearing.
- Understand that inmate-filed objections may be poorly worded, confusing, or damaging to the inmate's case. Be prepared to advocate for your client if needed.

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## Pre-Hearing: Impact of Disability

During Pre-Hearing Preparation and Client Interview, gather information on how your client's disability has impacted:

- **Education/Vocation/Work** – Example: Is a verified learning disability impeding your client from completing necessary education requirements for admission to work or vocations?
- **Programming** – Example: Are there courses unavailable to inmates with hearing or vision impairments?
- **Misconduct** – Example: Is your client's recent misconduct related to his or her disability?
- **Insight/Remorse** – Example: Is your client's developmental disability or mental illness inhibiting his or her capacity to develop meaningful insight or remorse?

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## Pre-Hearing: Parole Plans

If your client is unable to develop parole plans due to a disability, you should still:

- Review the file for any indication of support letters from family, friends, or other supportive sources, or any other information relevant to your client's success in the community.
- Discuss with your client whether he or she has any family members, friends, or other resources who could provide emotional or other support in the community. Your client may need assistance to contact family or friends.

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## At Hearing: ADA Review

During hearing opening: panel will conduct ADA review to ensure all inmate's ADA needs have been accommodated:

- Panel will ask your client questions relating to each disability and note any accommodations provided for the hearing. (**Examples:** magnifying glass, additional rest breaks, attorney for assistance.)
- After review, the panel will ask both inmate and attorney whether ADA needs are appropriately accommodated.

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## At Hearing: ADA Review

- **This is your opportunity to raise any concerns relating to your client's disabilities and advocate for any accommodations that your client may need.**
  - **Example:** You believe the panel has overlooked a necessary accommodation (such as a staff assistant, or the need for a special hearing device, etc.)
- If your client's needs have been met, acknowledge for the record.

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## At Hearing: Objections/Points of Clarification

- During hearing opening: panel will ask whether you have **preliminary objections**.
- **This is your opportunity to raise any other objections or points of clarification to the hearing panel, including bringing to the panel's attention any ADA issues relating to evidence that the panel may consider.**
  - **Example:** Your client has decompensated since the most recent risk assessment due to disability.
- The attorney should advocate how any disabilities affect the way the panel should consider the evidence.

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## At Hearing: Considering Your Client's Needs

- Monitor your client for his/her ability to understand the proceeding.
- Routinely check with your client to ensure he/she is following the proceeding and understanding questions to the best of his/her ability.
- Advocate for routine breaks, if needed.
- Be aware of your client answering open-ended questions in a “yes/no” fashion.

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## At Hearing: Clarifying Questions

- During hearing: panel will offer opportunity to inmate counsel to ask your client clarifying questions.
- **THIS IS YOUR OPPORTUNITY to CLARIFY for the panel any remaining questions on how your client's disability impacts your client's risk of violence in the community.**
- To properly fulfill this role, the attorney must be ready to address any potential confusion or unaddressed issues from the panel's conversations with your client.

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## At Hearing: Closing Arguments

- During hearing: panel will offer opportunity to inmate counsel to provide a closing statement.
- **THIS IS YOUR OPPORTUNITY to ANALYZE for the panel the connections between your client's disability and risk of violence in the community.**
- Examples:
  - Medical Incapacity may mitigate lack of insight/remorse or recent misconduct that occurred prior to onset
  - DDP status or dementia may mitigate recent misconduct based on failure to follow direction
  - Disability that inhibits programming may mitigate lack of programming

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## At Hearing: Parole Plans

If your client is unable to develop parole plans due to a disability, educate the hearing panel on resources available to assist your client upon receiving a grant.

- **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.
- **Medically Incapacitated:** WIC 17000 – counties are responsible for medical needs of indigent residents.
- **Developmental Disabilities:** DDP Counselors have been directed to explore potential parole plans for inmates in the DDP prior to upcoming parole consideration hearings.

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## BPH Form 1074

- If there are any concerns regarding the disability-related accommodations that are planned for a BPH proceeding or were provided at a BPH proceeding, an inmate/parolee or his or her attorney is encouraged to submit a BPH Form 1074, Request for Reasonable Accommodation – Grievance Process.
  - Submit form to the Board of Parole Hearings, P.O. Box 4036, Sacramento, CA 95812-4036
- A grievance does not have to be written on a BPH 1074 form to be considered a grievance.
- In the event a BPH 1074 is not available, the board will accept any communication raising ADA concerns after a hearing and process it as a BPH 1074 grievance.

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## Advocating for an ADA Inmate

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## Adjusting Expectations

Advocate why your client's disability requires the hearing panel to adjust its expectations regarding:

- Importance of disciplinary conduct
- Capacity to understand criminal/disciplinary conduct
- Ability to engage in programming
- Capacity to understand programming
- Capacity to articulate understanding of conduct or programming
- Importance of certain suitability factors

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## Disciplinary Conduct

For institutional misconduct, advocate for the panel why your client's disability should lessen or eliminate the significance of recent disciplinary conduct

- Example: an inmate with a mental illness or developmental disability and recent 115 for inappropriate social interaction, such as overfamiliarity

NOTE: If your client has a prior RVR that is now included on the exclusion list discussed in the prior training, advocate to the panel that this is no longer considered a rules violation.

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## Using 115MH-A to Advocate for MHSDS and DPP

Review the MH-A, which provides information on the connection between the inmate's disability and the 115.

- Use this to:
  - Demonstrate to the panel that the 115 was already mitigated and, thus, the panel should give it little/no weight.
  - Advocate to the panel that the 115 should have been mitigated and, thus, the panel should mitigate.
- Even if the MH-A clinician ultimately found no connection between your client's disability and the misconduct, you should still determine whether your client is able to discuss or recall the misconduct and be prepared to make any relevant arguments to the hearing panel.

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RULES VIOLATION REPORT: MENTAL HEALTH ASSESSMENT REQUEST	
REVIEWING CUSTODY SUPERVISOR	
A CDC 115 Rules Violation Report (RVR), has been written on the following inmate, who requires a mental health assessment.	
Inmate Name: [REDACTED]	CDC Number: [REDACTED]
RVR Log Number: 14 C1# 09-007	Date of Violation: 9/27/14 <small>C1# 21 Room 152 602</small>
Specific Act Charged: [REDACTED]	
The inmate's current Mental Health Level of Care is: (check one)	
<input type="checkbox"/> NOT IN MHSDS PROGRAM* <input type="checkbox"/> CCCMS* <input type="checkbox"/> EOP <input checked="" type="checkbox"/> MHCB <input type="checkbox"/> DMH <small>*CCCMS AND NON-MHSDS PROGRAM PARTICIPANTS WILL BE REFERRED FOR A MENTAL HEALTH ASSESSMENT FOR BEHAVIOR THAT IS BIZARRE OR UNUSUAL FOR ANY INMATE, OR THAT IS UNCHARACTERISTIC FOR THIS INMATE.</small>	
Sent to Mental Health: 10/1/14	By: [REDACTED] <small>Signature</small>
Return this form to: [REDACTED] <small>Print Name</small>	By: ASAP <small>Date</small>
<small>*CCCMS and non-MHSDS, 3 working days. EOP/MHCB/DHML, 15 calendar days)</small>	
MENTAL HEALTH CLINICIAN	
Conducted non-confidential interview: 9/30/2014 <small>(inmate informed of non-confidentiality)</small>	
1. CCCMS/NON-MHSDS only. Are there any mental health factors that would cause the inmate to experience difficulty in understanding the disciplinary process and representing his/her interests in the hearing that would indicate the need for the assignment of a Staff Assistant? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>Explain "yes" response:</small> Patient is deemed to meet criteria for PC2684, Mentally Disordered CDCR Inmate. He would need assistance understanding the disciplinary process.	
2. In your opinion, did the inmate's mental disorder appear to contribute to the behavior that led to the RVR? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>Explain "yes" response:</small> Patient is diagnosed with Schizophrenia, continuous. He has a long-standing history of psychosis that inhibit his ability to fully understand the consequences of his behaviors.	
3. If the inmate is found guilty of the offense, are there any mental health factors that the hearing officer should consider in assessing the penalty? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>Explain "yes" response:</small> Any extended loss of privileges (ie visiting, yard) or extended time may contribute to increased symptom and destabilization.	
Institution: [REDACTED]	Staff Name: [REDACTED]
Received by: [REDACTED]	Date: [REDACTED]
<small>DISTRIBUTION:                  Original - Central File With Adjudicated CDCR                  Blue - 115 Unit Health Record                  Pink - Inmate</small>	
RULES VIOLATION REPORT: MENTAL HEALTH ASSESSMENT REQUEST <small>CDCR 115-MH (Rev. 06/06)                  STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION</small>	

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## Capacity to Understand Criminal/Disciplinary Conduct

For institutional misconduct, be prepared to:

- Assist your client to understand the importance of insight and remorse in parole proceedings and to articulate their insight and remorse to the greatest extent possible given their abilities.
- Advocate when your client's disability impacts his or her capacity to develop an understanding of the factors that led to the controlling crime or disciplinary conduct while in prison.

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## Capacity to Understand Criminal/Disciplinary Conduct

EXAMPLE:

- Inmates with significant developmental disabilities, learning disabilities, mental illnesses, dementia, or other similar disabilities may, as a result of the disability, lack capacity to develop a significant understanding of the events of prior criminal/disciplinary conduct or the reasons for engaging in that conduct.

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## Ability to Engage in Programming

For identified disabilities:

- Educate the panel when the disability impacts your client's ability to engage in programming available in the institution.
- If so, advocate for the panel to take the disability into consideration when explaining the impact of your client's programming (or lack thereof) on his/her suitability for parole.

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## Ability to Engage in Programming

EXAMPLES:

- Some programming may be unavailable to an inmate as a result of his/her disability
  - Institution may not have sign language or foreign language interpreters available for certain programs.
  - Medical impairment may prevent an inmate from attending certain programming.
  - Learning disorder may prevent an inmate from achieving necessary education levels to be eligible for certain job or vocation assignments.

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## Ability to Engage in Programming

### EXAMPLES:

- Inmates receiving higher levels of mental health treatment in CDCR's mental health services delivery system may be unable to participate in institutional programs because they conflict with mental health programming.
  - Mental health programming documentation is contained in the eUHR, not the central file.
  - Mental health programming may sometimes be referenced in the CRA.

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## Ability to Understand Programming

- Advocate when the disability impacts your client's capacity to understand the programming he or she has completed.
- If so, argue that the panel should take the disability into consideration when explaining the impact of your client's understanding of programming (or lack thereof) on his/her suitability for parole.

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## Ability to Understand Programming

### EXAMPLE:

- Inmates with significant developmental disabilities, learning disabilities, mental illnesses, dementia, or other similar disabilities may, as a result of the disability, lack capacity to develop a significant understanding of information and skills they learn in their programming.

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## Importance of Suitability Factors

For every identified disability:

- Advocate when the disability impacts the importance of any factors of suitability or unsuitability.
  - Certain disabilities may lessen the importance of factors that might otherwise demonstrate unsuitability
  - Certain disabilities may increase the importance of factors that demonstrate suitability

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## Importance of Suitability Factors

### EXAMPLES of Mitigating Unsuitability Factors:

- If an inmate is significantly medically disabled or learning disabled, advocate for the panel to consider this disability and mitigate the importance of a lack of programming.
- If an inmate has a developmental disability, learning impairment, mental health impairment, dementia, or other similar disability, advocate for the panel to consider these disabilities and mitigate a lack of insight, inability to express remorse, or inability to retain/understand programming.

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## Importance of Suitability Factors

### EXAMPLES of Enhancing Suitability Factors:

- If an inmate has a mental health impairment and insignificant programming, but has maintained steady employment with positive work evaluations, advocate for the panel to consider this disability and place higher weight on the positive work history because it demonstrates stability as well as the inmate's ability to appropriately manage his or her mental illness.
- If an inmate with a verified learning disability is unable to complete a GED but was able to successfully complete a vocation, advocate for the panel to consider this disability and place higher weight on the vocational achievement because it demonstrates the inmate's significant attempts to enhance his or her ability to function within the law, despite the disability.

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## Questions?

### Related to Accommodations - Contact:

- BPH ADA Compliance Unit, [BPH.ADAUnit@cdcr.ca.gov](mailto:BPH.ADAUnit@cdcr.ca.gov)

### Legal Questions - Contact:

- Heather McCray, [Heather.mccray@cdcr.ca.gov](mailto:Heather.mccray@cdcr.ca.gov)
- Norma Loza, [Norma.Loza@cdcr.ca.gov](mailto:Norma.Loza@cdcr.ca.gov)
- Marcus Bole, [Marcus.Bole@cdcr.ca.gov](mailto:Marcus.Bole@cdcr.ca.gov)
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