



**TEXAS BOARD
OF
PARDONS AND PAROLES**

Number: BPP-DIR. 141.310

Date: May 10, 2019

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Supersedes: April 13, 2012

BOARD DIRECTIVE

SUBJECT: GENERAL COUNSEL'S OFFICE POLICY

PURPOSE: To provide guidance and instructions to Board Members, Parole Commissioners, and staff of the Texas Board of Pardons and Paroles concerning the legal support and services provided by the General Counsel's Office.

AUTHORITY: Texas Constitution Article 4, Section 22
Texas Civil Practice and Remedies Code Section 116.002
Texas Government Code Sections 508.035(d), 508.034(d), and 508.040, and Chapters 402 and 551
Rules of Professional Conduct Rule 1.12
General Appropriations Act - Judgments
Texas Rules of Evidence Article V, Rule 503
Board Directive BPP-DIR 141.300

DISCUSSION: The General Counsel to the Texas Board of Pardons and Paroles (Board) is employed and supervised by the Presiding Officer to provide independent legal advice. The duties of the General Counsel to the Board are assigned by the Presiding Officer and include but are not limited to the following:

- A. Providing legal advice to the Board as necessary on questions of law, litigation, and policy matters in the areas of Board parole decisions, revocations of parole and mandatory supervision, clemency, ethics, rulemaking under the Administrative Procedures Act, the Open Meetings Law, the Public Information Act, the Legislature, and any other law or policy affecting the Board;
- B. Supervision of an Assistant General Counsels and administrative staff; and

- C. Notification to the Presiding Officer that a potential ground for removal of a Board Member exists and notify the Governor and Attorney General that a potential ground for removal of the Presiding Officer exists.

POLICY:

The General Counsel's Office (GCO) shall provide quality legal support and services so that the Board can lawfully fulfill its mission. The primary goals of the GCO are to provide consistent and professional services in a timely manner and thorough legal opinions; legal support to achieve the best possible litigation posture in all Board cases; provide legal resources for non-clients, consistent with GCO's responsibilities to the Board; and provide proactive legal training and education materials on operations-related issues of interest to Board employees.

PROCEDURE:

I. Attorney-Client Relationship to Client Agency and Agency Representative

- A. The GCO is the in-house legal counsel for the Board, representing the organization itself. The relationship between lawyers and a client entity is explained in the Rules of Professional Conduct for Lawyers, specifically the commentary to Rule 1.12, Organization as Client, which provides in part that:

“While the lawyer in the ordinary course of working relationships may report to, and accept direction from, an entity's duly authorized constituents... the lawyer shall proceed as reasonably necessary in the best interest of the organization without involving unreasonable risks of disrupting the organization and of revealing information relating to the representation to persons outside the organization...” In effect, the lawyer-client relationship must be maintained through a constituent who acts as an intermediary between the organizational client and the lawyer (for example, the Presiding Officer).

- B. The Presiding Officer, Board Members, Parole Commissioners, Chief of Staff, and Board Administrator utilize the GCO for privileged lawyer-client consultation. The lawyer-client privilege protects communications among lawyers and their representatives and between lawyers (and their representatives) and the client (through the client's representatives). This privilege extends to discussions between the General Counsel and the Board Members during an Executive Session of a Board meeting. Board representatives whose legal consultations are privileged are:
 - 1. A Board official or employee who has authority to obtain professional legal services, or to act on advice rendered thereby, on behalf of the Board (as listed in Section II.B. below); or

2. Any other Board employee who, for the purpose of effectuating legal representation of the client, makes or receives a confidential communication while acting in the scope of employment for the Board.

II. Opinions and Advice

- A. The GCO shall provide formal (written) and informal (oral) legal opinions and advice to Board management and staff on work-related legal matters. A written request for a legal opinion or legal advice from the officers and employees listed in Section II.B. below may be addressed to the General Counsel. This procedure should not be confused with a request for an Attorney General opinion, which is described in Government Code Section 402.042(c). Attorney General opinions are sought only on legal questions that the Board or Presiding Officer has determined require such a response.
- B. The following officers or employees are entitled to request a written legal opinion. Board employees who are not included in this listing should follow their chain of command to request a written opinion from the GCO.
 1. Presiding Officer;
 2. Board Members;
 3. Parole Commissioners;
 4. Chief of Staff and any employee who reports directly to the Chief of Staff;
 5. Board Administrator and any employee who reports directly to the Board Administrator;
 6. Designated agent of the Board authorized to conduct hearings (Texas Government Code Section 508.281); and
 7. Any other particular officers or employees authorized by the Presiding Officer and formalized in writing by the General Counsel.
- C. In addition to ad hoc requests for advice on all areas of Board operations, the GCO shall maintain routine involvement in the following areas:
 1. Labor relations and equal employment opportunity;
 2. Employee disciplinary and grievance procedures;
 3. Revocation matters including Motions to Reopen revocation hearings;
 4. Review of all Board policies, rules, and directives;
 5. Review of pending or proposed legislation;
 6. Open Government, e.g., Open Meeting and Public Information requests
 7. Confidentiality and release of information;
 8. Executive Clemency, e.g., capital and noncapital cases;
 9. Parole Guidelines;
 10. Ethics;
 11. Subpoenas of Board employees and records;
 12. Review of expunction orders; and
 13. Requests for Proposal and contracts.

III. Litigation

- A. The Office of the Attorney General (OAG) represents the Board and its employees in court, specifically in litigation against the Board, its officers, or employees.
1. When the summons or citation is issued in name of a Board Member or employee, the Board Member or employee is authorized to accept service of a lawsuit by a process server or certified mail. If the summons or citation is issued to the Board, the summons or citation may be accepted by the Presiding Officer, Chief of Staff, Board Administrator, or General Counsel. And in those cases where the summons or citation is issued to the Presiding Officer, the Chief of Staff, Board Administrator, or General Counsel may accept service on behalf of the Presiding Officer.
 2. Upon receipt of the summons or citation, the Board Member or employee shall immediately scan and email or fax all documents to the General Counsel and send the original, along with the envelope if the lawsuit was received by certified mail, in overnight mail. When the lawsuit is received from a Board Member or employee, the GCO shall request representation from the OAG.
 3. Generally, Board cases involving offenders and employment are referred to the Law Enforcement Defense Division of the OAG. Occasionally, representation of individual employees will be assigned to a different OAG division in order to prevent a conflict of interest for a lawyer representing both the entity and an individual. Cooperation with the OAG by Board employees involved in litigation is absolutely essential. The interests of both the Board and the individual cannot be adequately protected without complete trust, communication, and cooperation.
- B. The GCO shall provide litigation support to the OAG and coordinate activity between the Board and the OAG. The main litigation functions provided by the GCO are: advising the OAG on Board policy; advising Board officers or employees who are involved in litigation; helping the officers and employees respond to discovery requests (admissions, interrogatories, and requests for production); preparing officers and employees to serve as witnesses; attending (along with an OAG attorney) depositions, hearings, mediations, and trials with officers and employees; monitoring the progress of all litigation and the performance of the OAG attorneys; reporting on litigation to the Board; and managing the settlement of cases and the payment of judgments and settlements.
- C. Lawsuit settlements often involve payment to the Plaintiff and, in offender or employee lawsuits, may involve other accommodations by the Board. The Assistant Attorney General (AAG) handling a case shall consult with the General Counsel and receive approval before initiating or responding to settlement

overtures. The General Counsel shall consult with the Presiding Officer before permitting settlement discussions by the AAG.

In the event a tentative settlement is reached between the AAG and the Plaintiff, and the General Counsel concurs, the General Counsel shall obtain the Presiding Officer's final position on the proposal. When practical, the General Counsel will also discuss the tentative settlement and details of the litigation with Board Members in an Executive Session of a Board meeting prior to approving the settlement. Regardless, in all situations, Board Members will be apprised of all settlement matters.

IV. Subpoenas

- A. A subpoena may be issued to command a person to appear, give testimony, or produce or permit inspection and copy of documents. A subpoena issued in a criminal case may be delivered in person, electronically (to include telefax), or certified mail. A subpoena issued in a civil case may be served in person by the Sheriff, Constable, or any other person who is not a participant to the proceeding and is at least 18 years old.
- B. A subpoena that is issued to a Board Member or employee may only be accepted by the named Board Member or employee. A subpoena issued to the "Custodian of the Record" or to a similar title may be accepted by the Presiding Officer, Chief of Staff, Board Administrator, or General Counsel.
- C. Upon receipt of the subpoena, the Board Member or employee shall immediately scan and email or fax the subpoena to the General Counsel. The OAG is not authorized to represent the Board Member or employee in these types of matters. The General Counsel or Assistant General Counsel will provide the Board Member or employee instructions and legal advice. In some cases, the General Counsel or their designee will file a Motion to Quash the subpoena if the subpoena requests parole records for which the Texas Department of Criminal Justice Parole Division is the custodian.

V. Legal Resources to Non-Clients

- A. The GCO shall provide legal resources to non-clients in the form of information to the public, family members, judges, district attorneys, and defense lawyers. The GCO will also respond to legislative requests, provide necessary information to attorneys seeking to file a Motion to Reopen, and interact with the courts and other agencies.
- B. The GCO shall provide technical assistance for Texas Register postings to staff designated to post open meeting notices.

VI. Legal Education

- A. In addition to responding to ad hoc requests for advice and counsel, the GCO shall provide informational emails, monthly publications, and occasional articles of a legal nature for publication in the Board newsletter or dissemination to interested staff.
- B. The GCO shall provide legal presentations and information during regularly scheduled training sessions and review and update directives and manuals to ensure that the legal content in the training curricula and manuals are accurate and updated to reflect developments in the law.

SIGNED THIS, THE 10TH DAY OF MAY, 2019.

DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)

**Signature on file.*