



**TEXAS BOARD
OF
PARDONS AND PAROLES**

Number: BPP-DIR. 141.310

Date: April 13, 2012

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Supersedes: January 31, 2010

BOARD DIRECTIVE

SUBJECT: GENERAL COUNSEL'S OFFICE POLICY

PURPOSE: To provide guidance and instructions to board members, parole commissioners and agency staff concerning the legal support and services provided by the General Counsel's Office.

AUTHORITY: Texas Constitution, Article 4, Section 22 (Attorney General); Texas Government Code Chapter 402 (Attorney General), Sections 508.034(d) and 508.040; Texas Government Code Chapter 551 (Open Meetings Act); Title 2, Subtitle G, Appendix A, Article X (the Texas Disciplinary Rules of Professional Conduct [for Lawyers]); General Appropriations Act - Judgments; Sec. 109.0015 Texas Civil Practice and Remedies Code (Notice of Certain Lawsuits); Texas Rules of Evidence Article V, Rule 503; and Board Directive BPP-DIR 141.300

DISCUSSION: The General Counsel to the Board is employed and supervised by the presiding officer to provide independent legal advice. The duties of the general counsel to the agency 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, and 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 to the governor and the 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 of Pardons and Paroles (BPP) 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 BPP cases; legal resources for non-clients, consistent with GCO's responsibilities to the BPP; and proactive legal training and education materials on operations-related issues of interest to the BPP employees.

PROCEDURES:

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

- A. The GCO is the in-house legal counsel for the BPP, 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:

“Notwithstanding that a lawyer reports to and takes direction from an organization's duly authorized constituents, a lawyer employed or retained to provide legal services for an organization represents the organization and shall proceed as reasonably necessary in the best legal interest of the organization all times,…” 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 (Chair).]

- B. BPP Chair, board members, parole commissioners 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. BPP representatives whose legal consultations are privileged are:
1. A BPP official or employee who has authority to obtain professional legal services, or to act on advice rendered thereby, on behalf of the BPP (as listed in Section II.B., below); or
 2. Any other BPP 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 BPP.

II. Opinions and Advice

- A. The GCO shall provide formal (written) and informal (oral) legal opinions and advice to Agency management and staff on work-related legal matters. A written request for a legal opinion or legal advice from the officers and employees listed 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 BP-02.06 "Request for Attorney General Opinions." Attorney General opinions are sought only on legal questions that the Board or Chair has determined require such a response.

- B. The following officers or employees are entitled to request a written legal opinion. BPP employees who are not included in this listing should follow their chain of command to request a written opinion from the GCO.
 - 1. Chair;
 - 2. Board Members;
 - 3. Parole Commissioners;
 - 4. Board Administrator and any officer or employee who reports directly to the Board Administrator;
 - 5. Designated agent of the board authorized to conduct hearings (Texas Government Code Section 508.281); and
 - 6. Any other particular officers or employees authorized by the Chair and formalized in writing by the General Counsel.

- C. In addition to ad hoc requests for advice on all areas of Agency 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 Hearing;
 - 4. Review of all Agency 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 non-capital cases;
 - 9. Parole Guidelines;
 - 10. Ethics;
 - 11. Subpoenas of Agency employees and records;
 - 12. Review of expunction orders; and
 - 13. Request for Proposals and contracts.

III. Litigation

- A. The Office of the Attorney General (OAG) represents the BPP and its employees in court, specifically in litigation against the Agency or its employees.

1. When the summons or citation is issued in name of the 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 BPP, the summons or citation may be accepted by the BPP Chair, board administrator or general counsel. And in those cases where the summons or citation is issued to the BPP Chair, 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 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, BPP 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 BPP employees involved in litigation is absolutely essential. The interests of both the Agency 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 BPP and the OAG. The main litigation functions provided by the GCO are: advising the OAG on BPP policy; advising BPP employees who are involved in litigation; helping the employees respond to discovery requests (admissions, interrogatories and requests for production); preparing employees to serve as witnesses; attending (along with an OAG attorney) depositions, hearings, mediations, and trials with employees; monitoring the progress of all litigation and the performance of the OAG attorneys; reporting on litigation to the BPP; 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 Agency. The Assistant Attorney General 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 Chair before permitting settlement discussions by the Assistant Attorney General.

In the event a tentative settlement is reached between the Assistant Attorney General and the plaintiff, and with which the General Counsel concurs, the General Counsel shall obtain the Chair's final position on the proposal. When practical, the General Counsel will also discuss the tentative settlement and details and 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 BPP Chair, board administrator or general counsel.
- C. Upon receipt of the subpoena, the board member or employee shall immediately 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 his 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 public, family members, judges, district attorneys, and defense lawyers. GCO will also respond to legislative requests, provide necessary information to attorneys seeking to file a Motion to Reopen Hearing, and interact with the courts and other agencies.
- B. The GCO shall provide Texas Register posting and technical writing assistance for a board member, Parole Commissioner, Board Administrator and designated central office staff.

V. 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 Agency newsletter or dissemination to interested staff.
- B. In addition, the GCO shall assist the Director of Hearing Operations with the Agency’s Annual Board Designee training and updating the Agency’s Biennial Board Designee manual; and the Director of IPO Operations with updating the

Agency's Institutional Parole Operations Manual to ensure that legal content in the training curricula and manual are accurate and updated to reflect developments in the law.

SIGNED THIS, THE 13th DAY OF APRIL, 2012.

RISSIE OWENS, PRESIDING OFFICER (CHAIR)

** Signature on file.*