



*Please Note: The information contained in this overview is not intended as legal advice in any individual's case. There are many exceptions and variations in the parole consideration process. If you have questions, please consult with an experienced parole attorney.*

## ***IN RE POOLE FACT SHEET***

Thank you for your interest in *In re Poole*. UnCommon Law, on behalf of our client Darryl Poole, is litigating a case aimed at improving the quality of legal representation for parole applicants appearing before the Board of Parole Hearings. The case is currently being litigated, so the information below is current as of May 11, 2022 and is subject to change.

### **I. What Is *In re Poole* About?**

By law, people sentenced to life in prison have a right to counsel in all hearings “setting, postponing, or rescinding a parole release date.” (Cal. Pen. Code, § 3041.7.) Attorneys are provided at the state’s expense if the parole applicant cannot afford to retain private counsel. (Cal. Code Regs., tit. 15, § 2256, subd. (c).) The Board hires, compensates, and appoints these attorneys. Although the expectations and compensation for appointed attorneys have changed multiple times over the past decade, these changes have failed to ensure adequate representation for parole applicants. UnCommon Law, on behalf of Mr. Poole, filed a lawsuit to remedy the issue and ensure that all parole applicants receive the adequate legal representation guaranteed by statute.

### **II. Where Was the Petition Filed?**

The petition was filed in the First District Court of Appeal. Previously, the Alameda County Superior Court denied Mr. Poole relief after an evidentiary hearing. After this evidentiary hearing, Keith Wattley from UnCommon Law was appointed on the case due to the tragic passing of Michael Sattris, the attorney who previously filed the petition. UnCommon Law’s petition challenges the Superior Court’s

denial of relief and its finding that the Board's procedures do not result in inadequate representation of parole applicants.

### **III. What Does the Petition Allege?**

The petition makes several arguments. Below is a short summary of the claims:

**Claim I** argues that the Court of Appeal can draw its own conclusions from the facts presented, rather than relying on the Superior Court's determinations.

**Claim II** argues that the evidentiary hearing was flawed because the Superior Court relied on the Board's *proposed, but yet-to-be-implemented changes* to the attorney appointment, training and compensation system to hold that it did not violate parole applicant's right to adequate representation.

**Claim III** argues that the Superior Court made the wrong decision based on the evidence presented at the evidentiary hearing. For example, paying attorneys a proposed flat fee of \$750 per case would not ensure adequate representation. National and California-specific guidelines generally disapprove of flat-fee models for criminal defense attorneys representing indigent clients.

Further, it argues that appointed attorneys are appointed to represent too many parole applicants per month, and thus cannot provide adequate representation to them all.

**Claim IV** argues that because the Board hires, trains, appoints and compensates the appointed attorneys appearing before it, there is a conflict of interest. National and California attorney guidelines discuss the importance of attorney independence from the judicial body they appear before to reduce the risk of the attorney having the attorney's best interest at odds with the best interest of their clients.

**Claim V** provides evidence that the Board's proposed changes to the attorney appointment system in 2019 failed to remedy the persistent issues with the system and provide adequate representation. UnCommon

Law obtained parole hearing outcome data from 2018-2020 and found several key takeaways. For example:

- For all hearings held between January 2018 and March 2020, parole applicants represented by appointed attorneys were granted parole just 33.5% of the time (compared to 56.9% of parole applicants represented by private attorneys). Between April 2020 and January 2021, parole applicants represented by appointed attorneys were granted parole 33% of the time (compared to 54.3% of those represented by privately retained attorneys).
- On average, people who waived their hearings while being represented by appointed attorneys averaged three months longer waiver periods than those who were represented by private attorneys. There was no statistically significant change in the gap between waiver lengths for people represented by appointed and private attorneys after the Board implemented the new attorney requirements in 2020.
- Parole applicants represented by appointed attorneys are on average denied parole for six months longer than those represented by privately retained attorneys. Of the parole applicants denied, 72% of those represented by private attorneys received the minimum three-year denial length as opposed to 60.2% of applicants represented by appointed attorneys.

We also compiled information from a randomized survey out to 800 parole applicants who had hearings between January 1, 2020 and April 16, 2021 to gain information about their experiences with appointed attorneys. From the over 200 surveys we received back, we learned that:

- Only 23.9% of participants met with their attorney for more than an hour.
- Only 23.9% of participants met with their attorney more than one time.

- Of all the participants who wrote to their attorney, only 29.7% received a response.
- Of all the participants who sent their attorney parole documents to review, only 36.4% received feedback from their attorney.
- 26.8% of participants discussed the fact that they could give a closing statement with their attorneys.
- Of the people who reported having a disability, only 20.8% said that their attorney provided reasonable accommodations in their parole preparation meetings.
- 46.5% of participants said that their attorney advised them about their right to waive their parole hearing, and only 31% said that they were advised about their right to stipulate to unsuitability.
- 55.9% of participants ranked their attorney representation as below adequate or completely inadequate.

In addition, we obtained several declarations from parole applicants who had received inadequate representation in their recent parole hearing. These declarations helped us give voice to that many individuals who did not receive the representation they were entitled to preparing for, and during, their parole hearings.

#### **IV. What Do You Hope to Achieve with This Petition?**

Ultimately, UnCommon Law hopes that this petition will result in parole applicants receiving better legal representation. We hope that the Court will find that the Board's current system for appointing and compensating attorneys violates parole applicants' right to adequate representation. As a result, we hope that it orders the Board and /or CDCR to mandate an *independent overseer* of the attorney process to resolve the conflict of interest; conduct a study on what representation-related tasks are necessary to provide adequate representation; reconfigure attorney compensation to not rely on static flat fees; limit the number of cases an individual attorney can maintain at a given time; and

ensure proper supervision and training of appointed attorneys, among other potential changes.

## **V. What Is The Status of the Case Now?**

On January 21, 2022, the First District Court of Appeal ordered the Attorney General (who represents the Board of Parole Hearings) to informally respond to our petition. On August 25, 2022 we replied and filed a supplemental petition. We are still waiting on the court to decide whether to issue an Order to Show Cause (make the Attorney General argue why the court should not grant relief). If it does issue an Order to Show Cause, there will be many months of briefing before the Court would decide whether to order a new evidentiary hearing, or grant our relief on the basis of the filings alone.

## **VI. How Can I Get Involved?**

Thank you for your interest! If you have been represented by a Board-appointed attorney between July 2021 and now and have an experience you would like to share, please consider writing to us. We have a survey that you can fill out and provide as much or as little information as you feel comfortable sharing.

If you are interested in the current requirements for appointed attorneys, and tips on how to best work with any parole attorney, please write to UnCommon Law and request our resource on “How to Work with Your Parole Attorney.”