

California Victim Compensation and Government Claims Board
Open Meeting Minutes
December 11, 2014, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, California Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, December 11, 2014, at 10:07 a.m. Also present was Board member Richard Chivaro, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Executive Officer Julie Nauman and Chief Counsel Wayne Strumpfer. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the November 20, 2014, Board Meeting

The Board approved the minutes of the November 20, 2014, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. Board member Ramos provided public comment.

Board member Ramos stated that his staff informed him that a new phenomenon was occurring in the area of human trafficking wherein girls of human trafficking were being branded with tattoos, some with barcodes. He explained that two young girls requested assistance from San Bernardino County to get the tattoos removed so they could move forward with their lives. Board member Ramos stated that San Bernardino County would provide assistance from their restitution fund; however, he requested CalVCP staff look into legislation to assist future victims.

Executive Officer Nauman stated that CalVCP would be happy to see whether a regulatory or statutory change would be needed. Ms. Nauman explained that the change fit in with CalVCP's Statute Modernization Project currently underway wherein CalVCP is working to ensure that it is keeping pace with the ever-changing world of victimization.

Item 3. Executive Officer Statement

VCGCB Meeting Live Streamed

For the first time CalVCP live streamed the Board meeting via its YouTube channel <http://youtube.com/californiavcp>. Executive Officer Nauman reported that CalVCP would continue to live stream the meetings on a regular basis and encouraged the public to tune in to hear the dialogue the Board engaged in on a monthly basis.

Our Promise California State Employees Giving at Work Campaign

CalVCP held several fundraising events, including the annual cake auction and silent basket auction. Both auctions raised a total of \$2,211 for the campaign, in addition to staff's generous donations through the pledge forms.

CalVCP Celebrates 50 Years in 2015

Executive Officer Nauman reported that CalVCP would celebrate its 50th anniversary in 2015. To commemorate its 50th year of serving crime victims, CalVCP developed a new logo that will be used throughout the year. CalVCP is in the process of planning a number of events that will showcase the past and, more importantly, discuss the future of CalVCP.

Postponement of Board Agenda Item

Executive Officer Nauman reported that because of the predicted inclement weather, the scheduled agenda item "Panel Discussion of Victim Service Delivery Models" was postponed to the January 15, 2015, meeting out of concern for the panel member's safety as well as weather-related delays they may have encountered traveling to and from Sacramento.

Item 4. Government Claims Program

Consent Agenda (Nos. 1-145)

Nicholas Wagner, Manager, Government Claims Program stated that item number 13 (619030) was removed to allow sufficient time to review additional information.

The Board approved the staff recommendations for item numbers 1-145, with the exception of number 13, which was removed.

Item 5. Claim of Michael E. Dingwell

Claim Number G618771

Michael E. Dingwell, Assistant Chief Counsel, California Department of Corrections and Rehabilitation, addressed the Board. Loni Chhen was in attendance on behalf of the CalHR and the California Department of Corrections and Rehabilitation.

Nicholas Wagner, Manager, Government Claims Program, explained that Michael Dingwell requested compensation from the California Department of Corrections and Rehabilitation in the amount of \$26,175.28 for pay differentials. Mr. Wagner stated that Government Claims Program staff recommended that the claim be rejected because there appeared to be no State liability for the claimed damages.

Mr. Dingwell stated that he was appointed Assistant Chief Counsel in October 2009. Following his appointment, he became aware of the existence of PL 07-32, referred to as Pay Differential 8 (PD 8). PD 8 provided compensation at an increased rate of 9.61% to Assistant Chief Counsels under certain criteria listed in the pay differential. He stated that he tried to resolve the issue with CDCR; however, he was informed that CalHR administered the pay differential. CDCR denied his claim based upon the recommendation by CalHR. He explained that he filed a grievance, but the claim is still not resolved; consequently, he filed a government claim.

Mr. Dingwell explained that CalHR requires an Assistant Chief Counsel to directly supervise an Attorney IV in order to receive the 9.61% pay differential; however, the language does not include the words "directly supervise." He believed the clear meaning of PD 8 meant that as long as there were Attorney IVs anywhere within the legal program, Assistant Chief Counsels were entitled to the 9.61% pay differential. The most recent communication he received from CalHR was that, as administered by CalHR, Assistant Chief Counsels must directly supervise an Attorney IV in order to receive the pay differential. He explained that despite numerous requests, including a public records act request, CalHR had not provided any analysis or supporting documentation to support their position. He stated that it was discovered that the pay differential is being applied differently across the state because certain Assistant Chief Counsels receive the differential pay while others do not. He explained that CDCR attorneys perform complex and sensitive work. Some departments are following the guideline and other agencies, like CDCR, maintain that Assistant Chief Counsels must directly supervise an Attorney IV in order to receive the pay differential. He explained that an Attorney IV is subordinate to an Assistant Chief Counsel yet at CDCR there are Attorney IVs who receive a higher pay than he which did not fit the State's pay structure that the higher one goes in a classification, the pay should increase.

Ms. Chhen stated Mr. Dingwell's claim was for a certain specific time. The information he submitted to the Board did not substantiate his interpretation of his pay differential 8. Although Mr. Dingwell was entitled to his opinion and interpretation, she explained that CalHR was vested with the authority to apply the particular differential. CalHR consistently applied the specific criteria that if an Assistant Chief Counsel supervised one or more Attorney IVs, then they were provided the pay differential. She stated that there were circumstances where Mr. Dingwell did supervise an

Attorney IV and he received the pay differential. Lastly, she stated that with regard to Mr. Dingwell's other comments regarding public records act requests and independent research, she requested the Board provide CalHR an opportunity to look into those matters and consider them at a later date.

Mr. Dingwell stated that although it was CalHR's position that he was not eligible for the pay differential, it was an ongoing problem because for every month that Assistant Chief Counsels employed at CDCR do not receive the pay differential, it was an ongoing claim. He stated that the Board should consider his claim for back pay as well as for other Assistant Chief Counsels at CDCR and individuals similarly situated throughout the state now and in the future. Based on new rules of CalPERS, the payment of the pay differential could increase the retirement calculation. He stated there was a class of Assistant Chief Counsels losing retirement benefits due to the interpretation of the policy.

Chairperson Batjer asked Mr. Dingwell to explain the reason that he did not have a claim before the State Personnel Board (SPB) since he filed a grievance following the excluded employee grievance process.

Mr. Dingwell stated that the last communication he received from CalHR indicated that an Assistant Chief Counsel must directly supervise an Attorney IV in order to receive the pay differential. Based on that letter, he believed that communication represented the end of the excluded employee grievance process.

Chairperson Batjer asked Chief Counsel Wayne Strumpfer to provide the Board with clarification on the process.

Mr. Strumpfer explained that Mr. Dingwell could take the matter to SPB on appeal, then the Board would make the final decision. From that decision, Mr. Dingwell could litigate the matter.

Chairperson Batjer informed Mr. Dingwell that he had not exercised his complete administrative remedies. She further stated that Mr. Dingwell raised other matters outside his government claim. Chairperson Batjer commented that with regard to Mr. Dingwell's allegations of individuals similarly situated, that was within the purview of the SPB.

Board member Chivaro commented that without the benefit of reviewing the pay differential document referenced by Mr. Dingwell, he could not make an informed decision as to what the language said.

Mr. Dingwell informed the Board that he had a copy of the document. He explained that he was not attempting to advance claims on behalf of other Assistant Chief Counsels; instead, he was only including that information to make the Board aware of the impact.

Chairperson Batjer stated that she was not discounting Mr. Dingwell's situation; however, there were pay differential issues similar to his throughout the state. She commented that some Chief Deputies are being paid less than staff two tiers below them.

Board member Ramos stated that Mr. Dingwell's claim involved personal issues, compaction issues, and management issues that should all be addressed at a different forum.

Chairperson Batjer explained that CalHR could advise Mr. Dingwell on his rights or, if Mr. Dingwell had questions, he could discuss them with counsel at SPB.

Upon motion by Board member Ramos, and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation to reject the claim.

Item 6. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Item 7. Claim of Richard Hendrix (Pen. Code § 4900 et seq.)

Richard Hendrix appeared and addressed the Board. Larenda Delaini, Deputy Attorney General, was in attendance on behalf of the California Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that Mr. Hendrix was convicted of attempting to deter a police officer from performing his duties by means of threats and violence. On appeal, the Court reversed Mr. Hendrix's conviction because it was found that the trial court erred in allowing the jury to hear evidence of Hendrix's prior offenses. The Sacramento County District Attorney's Office decided not to re-try the case. Mr. Hendrix filed a claim and asked for \$113,600.00 as compensation for 1,136 days he served in prison. The hearing officer recommended that the Board deny the claim.

Mr. Hendrix stated that he represented himself. He explained that shortly before the Board meeting began, he spoke with Mr. Strumpfer and informed him that he was trying to subpoena sheriff reports dating back to approximately 2009. The reports would prove that Justin had criminal intent to attack him. He explained that in the transcript, Officer Lambert said that at the time Justin was yelling louder than he was. He explained that he could prove that Justin had criminal intent which could have led to Mr. Hendrix's death.

Chairperson Batjer asked Mr. Hendrix whether he ever saw the police report to be certain that it even existed.

Mr. Hendrix stated that the sheriff made an incident report, which he was trying to obtain to prove that he was set up.

Chairperson Batjer explained that the Board continued Mr. Hendrix's claim from October 2014 to December 2014 to give him an opportunity to be represented by counsel. She asked Mr. Hendrix whether he was able to get in contact with his attorney.

Mr. Hendrix stated that his attorney was sick and was in the Philippines so he could not represent him. He stated that he sent text messages to his attorney frequently regarding the importance of subpoenaing the court records, but he never responded.

Ms. Delaini explained that Mr. Hendrix's case was not about security officer Justin McCall. In fact, Mr. Hendrix's statement that he knew Mr. McCall, that they had a prior history, and that he was even familiar with his voice further demonstrated that he had not met his burden in establishing that he was not aware that Officer Mosely was a police officer when he assaulted him or resisted arrest on that night. She explained that the facts in the proposed decision were supported by the evidence presented at the contested hearing and the analysis contained an accurate statement of the law that had been appropriately applied. Claimant failed to demonstrate by a preponderance of the evidence that he was innocent of the resisting arrest offense by means of threat or violence for which he was convicted. Ms. Delaini stated that Mr. Hendrix's conviction was overturned for reasons completely unrelated to innocence. There was no evidence that claimant was unaware that Officer Mosely was a police officer acting in the performance of his duties at the time he grabbed the officer by the throat and clamped down on his windpipe. Because Mr. Hendrix had not satisfied his burden, the Attorney General's Office requested the Board adopt the proposed decision.

Chairperson Batjer asked Ms. Delaini whether she saw the report that Mr. Hendrix referenced.

Ms. Delaini stated that she did not see a sheriff's report; however, she saw the report from the Sacramento police department. In any event, the report would not be relevant for Mr. Hendrix's claim. Instead, it would only bolster the Attorney General's position that Mr. Hendrix had not demonstrated his innocence. She stated that the case came down to whether Mr. Hendrix knew at the time that he grabbed Officer Mosely by the throat that Officer Mosely was a police officer. The Attorney General's Office's position is that Mr. Hendrix knew the difference between a uniform worn by security officer Justin McCall compared to a uniform worn by a Sacramento police officer.

Mr. Hendrix stated that he received a full reversal not a partial reversal.

Chairperson Batjer asked Mr. Strumpfer to restate the finding of the court.

Mr. Strumpfer stated that on appeal, the court found that the trial court allowed in improper evidence. It was not a finding of factual innocence; it was a reversal because the trial court made a mistake by allowing in certain evidence.

Board member Ramos commented that the evidence that was let in were prior assaults on peace officers to show a common act. He explained that it was a procedural reversal because they should not have allowed it due to prejudice.

Mr. Hendrix stated that neither police announced themselves as police officers. He stated that Officer Lambert's testimony was that he told Justin to stay back. Justin was yelling above the police officer. Mr. Hendrix stated that he was pepper sprayed and still feels the effects of the spraying. He stated that when he heard Justin's voice, he had his arms in the air. He explained that he was asking for help and he could not see Justin. He requested the Board allow him more time to prove everything he claimed.

Chairperson Batjer expressed sorrow for Mr. Hendrix's situation and the fact that he had not been able to connect with his attorney; however, she explained that the Board gave him additional time to do so.

Upon a motion by Board member Ramos and seconded by Board member Chivaro, the Board unanimously adopted the staff recommendation to deny the claim.

Mr. Hendrix asked the Board his next recourse.

Mr. Strumpfer stated that CalVCP attorney Dorothy Le, who was in the audience at the Board meeting, would be able to advise Mr. Hendrix on his next steps which would be to file a writ in the Superior Court.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:47 a.m.

Panel Discussion on Victim Service Delivery Models

Due to inclement weather, the item was postponed to the January 15, 2015 meeting.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer and Chief Counsel at 10:48 a.m. to deliberate on proposed decision numbers 1-101.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 10:53 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-101.

Adjournment

The Board meeting adjourned at 10:54 a.m.