

California Victim Compensation and Government Claims Board
Open Meeting Minutes
December 12, 2013, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, December 12, 2013, at 10:03 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

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

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the November 21, 2013, Board Meeting

Chairperson Batjer explained that she was not in attendance at the November 21, 2013, Board meeting; therefore, she abstained from the vote. Board members Chivaro and Ramos approved the minutes of the November 21, 2013, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. No public comment was offered.

Item 3. Executive Officer Statement

Executive Officer Nauman reported that the VCGCB was continuing its charitable activities throughout the holiday season. Ms. Nauman stated that she would present the annual Accomplishments Report at the January 16, 2014, meeting.

Item 4. Contract Report

The Board approved the following two contracts:

CompuCom Systems Inc. (2VCGC100 A1)

Amendment in the amount of \$47,310.01 to the VCGCB's existing three-year contract with CompuCom Systems, Inc. for additional Microsoft software licenses and maintenance needed to support the VCGCB's desktop and developer environments. The total amount of the contract, including Amendment 1, is \$637,001.77.

Allied Network Solutions

Three-year maintenance renewal in the amount of \$129,287 for two EMC Storage Area Networks used to store and retrieve all VCGCB data.

Item 5. Government Claims Program

Consent Agenda (Nos. 1-242)

The Board adopted the staff recommendations for item numbers 1-242, with the exception of item number 220, which was removed to allow the claimant an opportunity to address the Board.

Consent Agenda Appearance

Item 220 G613660

Claim of Justin L. Harris

Yuri Kvichko, attorney, Goyette & Associates, addressed the Board on behalf of the claimant. Karen Lockhart, attorney, addressed the Board on behalf of the California Department of Transportation.

Nicholas Wagner, Government Claims Program Manager, explained that Justin Harris, represented by an attorney, requested leave to present a late claim for compensation from the California Department of Transportation in an amount exceeding \$10,000,000.00 for personal injuries. Mr. Wagner stated that GCP staff recommended that the Board deny the late application pursuant to Government Code section 911.6.

Mr. Kvichko stated that the claim was originally filed timely; however, due to an administrative error as a result of a change in staff at his firm, the \$25 filing fee was not paid. He explained that when his office received the notification letter from the GCP explaining that the documentation submitted did not substantially comply with the filing requirements because the \$25 filing fee was not paid, the letter was inadvertently forwarded to their accounting section rather than to an attorney which caused a delay. He explained that the \$25 filing fee was ultimately sent to the GCP five days later, which would not prejudice the State in anyway. Mr. Kvichko referenced Government Code section 911.6 wherein the Board could grant an application if the failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the public entity was not prejudiced in its defense of the claim by the failure to present the claim within the time specified in Government Code section 911.2. Lastly, he stated that it was a minor error in submitting the filing fee late, it would not prejudice the State, and the claim was originally filed on time.

Ms. Lockhart stated that the \$25 filing fee is a requirement and the original claim was late. She further stated that Mr. Kvichko could bring up issues regarding lateness in Superior Court. Ms. Lockhart requested the Board deny the late application.

Mr. Wagner explained that the Government Code states that a claim is complete when the \$25 filing fee is submitted.

The Board denied the late application.

Item 6. Claim of Zapien Electric, Inc.
Claim Number G614054

Joseph Zapien appeared and addressed the board on behalf of Zapien Electric, Inc. Jeff Sly and Rusty Bechtold were in attendance on behalf of the California Prison Industry Authority.

Nicholas Wagner, Government Claims Program Manager, explained that Zapien Electric, Inc. requested compensation in the amount of \$104,340.75 from the California Prison Industry Authority for unpaid invoices and late payment penalties. He stated that Government Claims Program staff recommended that the claim be partially allowed in the amount of \$87,460.02.

Mr. Zapien stated that he would disregard the late payment penalties and settle the claim in the amount of \$87,460.02.

Mr. Sly requested that the Board approve the claim in the agreed upon amount of \$87,460.02.

Board partially allowed the claim in the amount of \$87,460.02.

Item 7. Claim of Novell, Inc.
Claim Number G614406

John McDonough was in attendance on behalf of the California Highway Patrol. The claimant was not in attendance.

Nicholas Wagner, Government Claims Program Manager, explained that Novell, Inc. requested compensation in the amount of \$141,506.25 from the California Highway Patrol for unpaid invoices. He stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$141,506.25 under authority of Government Code section 965 (agency pay).

The Board allowed the claim in the amount of \$141,506.25.

Item 8. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Item 9. Claim of Mario Rocha (Pen. Code, § 4900 et seq.)

The claimant was not in attendance. Barton Bowers, Deputy Attorney General, appeared on behalf of the California Attorney General's Office.

Wayne Strumpfer, VCGCB Chief Counsel, explained that the Board received the hearing officer's proposed decision with a recommendation to approve the Penal Code 4900 claim of Mario Rocha in the amount of \$305,900. Mr. Strumpfer stated that the Board also received a copy of the Attorney General's response to the proposed decision. He referenced page 2 of the Attorney General's response and quoted the following: "At age 16, Rocha affiliated with gangs, violated the express terms of his probation, and sold marijuana. But he probably did not commit murder or attempted murder. In the final analysis that is the only issue that matters. Accordingly, the Attorney General does not intend to challenge the hearing officer's recommendation."

Board member Ramos asked Mr. Bowers to explain the AG's position because it appeared as though the AG's Office changed their original recommendation.

Mr. Bowers explained that in 2011 the AG's Office informed the Board that they intended to introduce evidence opposing Mr. Rocha's claim, which they did at the hearing. He further explained that in the final analysis, it appeared as though Mr. Rocha's claim prevailed.

Board member Ramos asked Mr. Bowers whether it was his understanding in reviewing the documents that the District Attorney's Office decided not to retry the case because of its age as well as problems locating witnesses.

Mr. Bowers stated that was the public statement made by the District Attorney.

Board member Ramos asked Mr. Bowers to confirm that there was no statement from the Los Angeles District Attorney's Office that the claimant was factually innocent.

Mr. Bowers stated that the Los Angeles District Attorney's Office never articulated that conclusion.

Chairperson Batjer and Board member Chivaro voted to approve the hearing officer's recommendation to approve the claim.

Board member Ramos voted not to adopt the hearing officer's recommendation and deny the claim.

The Board approved the claim 2-1.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:20 a.m.

Report Regarding Rule 649.56, Involvement in the Qualifying Crime of Prostitution

Wayne Strumpfer, VCGCB Chief Counsel, explained that at the May 16, 2013, Board meeting the Board requested staff to conduct a review of California Code of Regulations Rule 649.56, Involvement in the Qualifying Crime of Prostitution. The request was subsequent to Board action amending Rule 649.56 by excluding victims of human trafficking from "involvement." Subdivision (d) was added and read, "This section shall not be applied to cases involving human trafficking pursuant to Penal Code section 236.1."

Mr. Strumpfer stated that the general rule that an application from a victim of crime may be denied, in whole or in part, because of involvement in the events leading to the qualifying crime, was long standing with the compensation program and is codified in Rule 649.52. In December 1999, the Board promulgated specific rules regarding involvement in the events leading to the qualifying crime. These new rules included actions such as mutual combat (Rule 649.53), illegal drug-related activity (Rule 649.54), gang involvement (Rule 649.55) and prostitution (Rule 649.56). The general rule remained and these additional specific rules have been in effect for nearly 14 years. In an agenda item to the Board in October 1999, staff commented that, "the proposed regulation is consistent with the Board's current practice."

Mr. Strumpfer explained that over the years, a limited number of applications have been denied pursuant to Rule 649.56. In fiscal years 2011/12 and 2012/13, the Board denied 28 applications based on Rule 649.56 and in fiscal year 2010/11, the Board denied 23 applications based on Rule 649.56. During the summer of 2013, CalVCP staff held multiple public meetings seeking stakeholder input regarding Rule 649.56. Victim advocates, law enforcement, mental health providers, and others were invited to attend or conference call into all of the meetings. CalVCP also invited written comment from the public. Over 20 people, as individuals and representatives of groups, commented on the rule.

Chief Counsel Strumpfer explained he included the following four possible actions in his report that the Board could consider:

1. Make no change to Rule 649.56.
2. Amend Rule 649.56 so it does not prohibit compensation for victims of sexual assault who were engaged in an act of prostitution at the time of the assault. In other words, involvement in prostitution would still be a disqualifying act for a claimant unless she or he is a victim of sexual assault.
3. Amend Rule 649.56 to only refer to pimping and pandering. The rule can be re-written so that involvement in prostitution does not prohibit compensation, only involvement in the crimes of pimping and pandering would be specifically mentioned in Rule 649.56; or
4. Eliminate Rule 649.56.

Mr. Strumpfer stated that if the Board chose to amend or eliminate Rule 649.56, the Board would need to direct staff to begin the formal rulemaking process that would include a public comment period and approval from the Office of Administrative Law.

Board member Ramos thanked Mr. Strumpfer for his report. He stated that he read the transcripts of the public hearings and had respect for everyone who participated in those hearings. He commented that Alameda County District Attorney Nancy O'Malley and Santa Clara County District Attorney Jeff Rosen both felt very strongly regarding human trafficking. Board member Ramos explained that by amending Rule 649.56, he was trying to assist individuals who were being trafficked; however, later bigger issues were brought up. Board member Ramos explained that he was appointed to the Board in 2004, but was unsure of the Board's reasoning for including Rule 649.56 in 1999. Lastly, he stated that his tentative position was to eliminate Rule 649.56 and go back to the general standard.

Chairperson Batjer thanked staff for their thorough work regarding Rule 649.56. She commented that she did not understand the history of the Board's 1999 decision.

The following individuals provided comment regarding Rule 649.56:

- Rachel West, United States Prostitutes Collective, recommended that the Board eliminate Rule 649.56.

- Kate Holton read a statement on behalf of Rebecca Rosenberg and recommended that the Board eliminate Rule 649.56.
- Ellen Yin-Wycoff, California Coalition Against Sexual Assault, recommended that the Board eliminate Rule 649.56.
- Kim Horiuchi, ACLU of Northern California, recommended that the Board repeal Regulation 649.56.
- Carol Leigh, Bay Area Sex Worker Advocacy Network, recommended that the Board eliminate Rule 649.56.
- Maxine Doogan, Erotic Service Providers Legal Education and Research Project, recommended that the Board repeal Rule 649.56. Ms. Doogan stated that over 3,458 signatures were collected as a result of an online petition urging the Board to remove the regulation.
- Pearl Callaghan read a statement from a victim and former prostitute and recommended that the Board eliminate Rule 649.56.
- Ayla recommended that the Board remove Rule 649.56.
- Kristen DiAngelo, sex worker, recommended that the Board repeal Regulation 649.56.
- Kerry Martin, Victim/Witness Program Director, Sacramento County District Attorney's Office, recommended that the Board amend Rule 649.56 to only refer to pimping and pandering.
- Jane Doe, rape victim, recommended that the Board eliminate Rule 649.56.

Board member Ramos thanked the individuals for their testimony. He explained that district attorneys across the state are trying to expose human trafficking. He stated that over 1,000 San Bernardino County law enforcement officers have been trained on how to handle individuals in those situations as victims, which has been a dynamic that has taken several years to change, but it is changing. He stated that AG Harris felt the same way as he regarding the issue of human trafficking and has been proactive in changing how human trafficking is viewed. With the passage of Proposition 35, the ban on human trafficking and sex slavery, district attorneys are prosecuting individuals who are committing those crimes. Lastly, he stated that he would vote to eliminate the Rule and, with regard to pandering and pimping, the general rule could be used to make determinations on a case-by case basis.

Chairperson Batjer thanked the public for their testimony. She stated that she appreciated the work of the organizations that informed the Board of the implications of Rule 649.56. Chairperson Batjer stated that she found Rule 649.56 repugnant and she did not understand the reasoning behind the Board's passage of the regulation in 1999, but it was time to do something about it.

The Board voted to eliminate Rule 649.56.

Proposal to Approve Trauma Recovery Center Grant Awards

Mindy Fox, Deputy Executive Officer, CalVCP and Government Claims Program, explained that on July 1, 2013, Government Code section 13963.1 became law stipulating that the Victim Compensation and Government Claims Board (Board) administer a program to evaluate applications and award grants to trauma recovery centers (TRC) in California. The TRCs shall provide a variety of services to underserved victims of crime. Upon appropriation by the Legislature, the Board shall award grants totaling up to two million dollars (\$2,000,000) per year. As a result, the Board drafted a Notice of Funds Available that was released on August 19, 2013. While the applicants were completing their applications, staff developed the scoring criteria for TRC Grant Applications consistent with the legislative intent. The grant application period ended on October 17, 2013 and the Board received 22 applications that were all reviewed and scored according to the scoring criteria. Upon completion of the scoring process, the three highest scoring applicants were recommended to receive a grant.

Ms. Fox stated that based on the results of the scoring process, staff requested that the Board approve the following three TRC grant awards:

1. Special Service for Groups in the amount of \$611,392.07
2. California State University at Long Beach in the amount of \$534,579.35
3. University of California at San Francisco Trauma Recovery Center in the amount \$854,028.57

The Board approved the staff recommendation.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel at 10:59 a.m. to deliberate on proposed decision numbers 1-88C.

Open Session

The Board reconvened into open session at 11:15 a.m. The Board adopted the proposed decisions for numbers 1-88C.

The Board meeting adjourned at 11:16 a.m.