

# – NOTICE –

## JUDGMENT IN CLASS ACTION – LIFER PAROLE HEARINGS

### *In re Rutherford*, Marin County Superior Court No. SC135399A

The Marin County Superior Court has entered an Order on behalf of lifers regarding the timing of their parole consideration hearings. The judge found that the Board of Parole Hearings (formerly the Board of Prison Terms) is violating the rights of lifers under Penal Code sections 3041 and 3041.5 to have their initial and subsequent parole hearings conducted within certain specified time frames.

In a petition filed in May 2004, Jerry Rutherford challenged the Board's failure to provide his hearing on time. Mr. Rutherford later asked the court to certify the case as a class action, arguing that there were more than 1,600 lifers waiting for their overdue hearings at the time and that they could not get relief if each of them had to file their own cases. The Board responded that the language in sections 3041 and 3041.5 is not mandatory and that the court should not treat the case as a class action. On November 29, 2004, the Court certified the case as a class action.

**The class is defined as all prisoners serving indeterminate terms of life with the possibility of parole who have approached or exceeded their minimum eligible parole dates without receiving their parole hearings within the time required by Penal Code sections 3041 and 3041.5.** The Court also ordered that lifers who fall within this definition are not permitted to "opt out" of the class and litigate these issues on their own.

The Court held an evidentiary hearing on January 11, 2006, and entered its Order on February 15, 2006, finding that the CDCR is violating the law by failing to conduct hearings on time. The Court ordered the lawyers to work together on a plan to eliminate the backlog (which had reached 3,200 cases by September 2005) and make sure all future hearings are on time. After negotiations between the lawyers and another Order from the Court, a "Remedial Plan" was established. The requirements of that Remedial Plan are explained below.

Mr. Rutherford passed away in early 2006, after which the Court substituted Mr. Inez Tito Lugo as the named representative of the class. For this reason, the case may sometimes be referred to as In re Lugo.

### **Summary of the *Rutherford/Lugo* Remedial Plan**

1. By September 22, 2006, the CDCR must develop policies and procedures that will both eliminate the current backlog of overdue parole hearings and make sure that future hearings are conducted on time.
2. Lawyers for the petitioner class may comment on or object to any proposed changes in policies and procedures, and any dispute must be resolved by the Court before any such policies or procedures will be implemented.
3. The CDCR will be considered in compliance with the Remedial Plan – and the Court will dismiss the case – after a one-year period during which not more than five percent of the monthly scheduled hearings were conducted late.
4. By May 5, 2007, the CDCR must develop and implement a statewide, networked system for scheduling and tracking parole consideration hearings.
5. By September 22, 2007, the CDCR must eliminate the backlog of overdue parole hearings. Although a hearing that was waived or postponed at a prisoner's request will not count as part of the backlog of overdue hearings during the period covered by the waiver or postponement, **the CDCR may not improperly encourage prisoners to waive or postpone their hearings or to stipulate to unsuitability. All discussions about stipulations must be recorded.**
6. The CDCR must maintain sufficient staffing levels and resources to meet all of the obligations of the Order.
7. By May 5, 2007, the CDCR will make sure that Board Packets (including Life Prisoner Evaluation Reports, Psychological Evaluations, etc.) are completed and provided to prisoners and/or their attorneys at least 60 days prior to the scheduled parole hearing.
8. By May 5, 2007, the CDCR will make sure that attorney appointments are made at least 120 days prior to prisoners' parole consideration hearings.

**The following Order is being stayed (not enforced) until after the First District Court of Appeal, Division One (In re Lugo, Case Number A11411) makes a decision in the state's appeal of this Order:**

- The Board may not deny further parole consideration for more than one year in the case of prisoners who have formerly been denied for one year, absent a significant change in circumstances, which must be clearly stated on the record.

The CDCR is represented by the California Attorney General. If you have questions about the case, you should write to the Prison Law Office, General Delivery, San Quentin, CA 94964.