**R671. Pardons (Board of), Administration.**

**R671-309. Impartial Hearings.**

**R671-309-1. Ex Parte Communications.**

(1) Offenders are entitled to an impartial hearing before the Board. The Board therefore discourages any ex parte contact with individual Board members or hearing officers at any time.

(2) All contacts by offenders, attorneys, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to a staff member who is not currently directly involved in hearing the case.

(a) If information provided by any person outside of a hearing is relevant to the offender's case, it shall be placed in the offender's file and disclosed to the offender.

(b) If the contact is by a victim wishing to make a statement for the Board's consideration, Rule R671-203 on Victim Input and Notification shall apply.

(c) Any inquiries or input from attorneys, public officials, or members of the public, regarding case facts or substantive matters, shall be submitted in writing.

(3)(a) A Board member or hearing officer assigned to a case may not initiate, permit, or consider ex parte communications concerning the substance of a pending matter.

(b) A Board member may not permit, consider, or be a party to any ex parte communication regarding a specific offender under Board jurisdiction if the object, intent, or substance of the communication is, or reasonably could be perceived to be, an attempt to impart information or opinion not contained in the offender's file, or to otherwise influence, change, or modify a Board decision or a Board member's deliberations, decision, or vote.

(c) In situations where such ex parte communication does occur, the Board member or hearing officer shall immediately take steps to terminate the communication, and shall thereafter reduce the substance of the communication to a written memorandum to be maintained separately from the offender's file, including copies of any writings that formed any part of the ex parte communication.

(d) Board staff will document the ex parte event and individuals involved in the ex parte communications and place the documentation in the file. This documentation shall be disclosed to the offender.

(4) This rule may not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of the Board or any Board member on any particular case or hearing.

(5) Attorneys may submit information for the Board to consider.

(6) Violations of this rule may subject violators to sanctions pursuant to Section R671-103-2 and may result in a referral to the Office of Professional Conduct.

**R671-309-2. Recusal.**

(1) A "hearing official" is a Board member, a Board member pro tempore, or a hearing officer.

(2) A hearing official may be recused in any proceeding in which the hearing official's impartiality might reasonably be questioned, including but not limited to, the following circumstances:

(a) has a personal bias or prejudice concerning a party or a party's lawyer;

(b) is or could have been a witness or victim in any matter relating to the offender;

(c) has a familial, financial, or other relationship with anyone involved in the case that might reasonably be seen as a bias.

(d) where the hearing official has information about the case that does not appear in the file; and

(e) served as a lawyer, judge, agent, or caseworker in any previous matter with the offender.

(3) In cases where a clear basis for recusal exists the hearing official will document the recusal in the file and reassign the case before the hearing is conducted.

(4) If the conflict is not recognized before the hearing or the basis for recusal is minimal, the hearing official shall disclose the basis of the potential recusal to the offender. If the offender waives the recusal and agrees that the hearing official need not be disqualified, the hearing official may conduct the proceeding. The offender's waiver shall be entered on the record and memorialized in the case file.

(5) If the offender believes the hearing official or any Board member should be recused, the offender shall raise the issue any time before or during the hearing.

(a) The offender may waive the recusal and continue with the hearing as prescribed in Subsection (2).

(b) If the offender requests the recusal of the hearing official or Board member who is conducting the hearing, the hearing official or Board member will rule on the issue. If the hearing official or Board member denies the recusal and proceeds with the hearing, the offender may appeal to the Board Chair or designee. The offender must clearly describe, in writing, the basis for recusing the hearing official and the requested remedy. If the offender does not appeal the issue within ten calendar days after the hearing official denies the recusal, the appeal is waived.

(6) The offender may request the recusal of a Board member from the voting process based on any factors in Subsection (1).

(a) If the offender requests the recusal of a Board member who is not conducting the hearing, the hearing official will document the request. The Board will make a decision about the recusal before considering the case.

(b) If the offender does not raise the issue of recusal within ten calendar days after the Board renders a decision the claim is waived.

(7) If a staff member of the Board meets the requirements of Subsection (2), that staff member shall declare the conflict, and the staff member's supervisor shall reassign the task to another staff member.

**KEY: parole, inmates**

**Date of Last Change: October 10, 2024**

**Notice of Continuation: August 7, 2024**

**Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-7; 77-27-9(4)(a)**