



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legislation Details (With Board Report)

File #: 18-701 **Name:** Capacity Hearing Officer Panel Appointment
Type: General Agenda Item **Status:** Consent Agenda
File created: 6/29/2018 **In control:** Board of Supervisors
On agenda: 7/17/2018 **Final action:**
Title: Appoint the County Counsel, or their designee, to a panel pursuant to Welfare & Institutions Code section 5334, to review and approve attorneys for inclusion on a list from which the Superior Court may appoint hearing officers to conduct medical capacity hearings relating to involuntarily detained individuals.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment, 3. 23. Completed Board Order

Date	Ver.	Action By	Action	Result
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Appoint the County Counsel, or their designee, to a panel pursuant to Welfare & Institutions Code section 5334, to review and approve attorneys for inclusion on a list from which the Superior Court may appoint hearing officers to conduct medical capacity hearings relating to involuntarily detained individuals.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Appoint the County Counsel, or their designee, to a panel pursuant to Welfare & Institutions Code section 5334, to review and approve attorneys for inclusion on a list from which the Superior Court may appoint hearing officers to conduct medical capacity hearings relating to involuntarily detained individuals.

SUMMARY/DISCUSSION:

California Welfare & Institutions Code sections 5332 and 5334 provide a mechanism by which hearings are to be conducted to determine whether certain involuntarily detained patients possess sufficient capacity to refuse the administration of antipsychotic medication. Pursuant to section 5334, such hearings are to be conducted by either a Superior Court judge, or by a “court-appointed commissioner or referee, or a court-appointed hearing officer.” If the hearing is to be conducted by anyone other than a Superior Court judge, the hearing officer/commissioner/referee is to be selected from a pre-approved attorney list. To be included on the pre-approved attorney list, an individual must first be unanimously approved by a panel consisting of: (i) the local mental health director; (ii) the Public Defender; and, (iii) either the County Counsel or District Attorney (to be selected by the Board of Supervisors). The purpose of this Board Report is to seek the appointment of either the County Counsel or District Attorney to this panel. Panel activity is rarely required and is typically conducted via email. The time commitment is anticipated to be minimal.

After consultation between the County Counsel and the District Attorney, the Office of the County Counsel has agreed to be appointed to the third spot on the capacity hearing officer panel. Both departments concur in this recommendation, in part because the Office of the County Counsel is regularly involved with the relevant

capacity issues and may possess greater familiarity with the potential candidates.

Alternatively, the Board of Supervisor may elect to instead appoint the District Attorney or their designee to fill the third spot on the panel.

Alternatively, the Board of Supervisors may refuse to appoint someone to this panel, thereby requiring a Superior Court judge to conduct all capacity hearings. This option would be substantially disruptive to court operations. It would also require the transport of (potentially) psychotic individuals to court (in contrast - hearing officers travel to the individual's location for conduct of the hearing, thereby minimizing disruption to the patient and their treatment).

OTHER AGENCY INVOLVEMENT:

County Counsel, District Attorney, and Behavioral Health have reviewed and approved this request.

FINANCING:

There is no financial impact anticipated from this appointment.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Appointment to this panel will minimize disruption to patient treatment, as set forth above, thus furthering the Board's goal of improving health services.

Mark a check to the related Board of Supervisors Strategic Initiatives

☐ Economic Development
☐ Administration
☒ Health & Human Services
☐ Infrastructure
☐ Public Safety

Prepared by:

Approved by:

Elias E. Salameh, Deputy County Counsel, x3558

Charles J. McKee, County Counsel

Attachment:

California Welfare & Institutions Code section 5334