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PUBLIC COMMENTS TO PROPOSED PAROLE REGULATIONS SUBMITTED BY THE RISE & SHINE COMMUNITY SERVICES, INC.

Submitted: October 30, 2016

To: Kathleen M. Kiley, Counsel to the Board of Parole
Department of Corrections and Community Supervision
1220 Washington Avenue, Building 2
Albany, New York 12226

RE: **I.D. No. CCS-39-16-00004-P**

Amendment of 8002.1	Title 9 NYCRR
Amendment of 8002.2	Title 9 NYCRR
Amendment of 8002.3	Title 9 NYCRR

Dear Ms. Kiley and Chairwoman Stanford:

Rise & Shine Community Services, Inc. is a community-based organization that focuses on assisting disadvantaged people with support in the process of starting-up small business enterprises, with special attention given to people transitioning from prison. We believe that this is an important feature if we are to get at the root of things that are crime generative factors in the first instance.

Please accept this as our comments pursuant to the State Administrative Procedure Act, in response to the Notice of Propose Rule Making as published in the New York State Register on September 28, 2016. As we have noted stated in many other submitted comments, we do applaud this opportunity generated by the Chairperson of the Parole Board and other supporters who would like to reverse a policy and practice that focuses principally on punishment and how much our society is ready and willing to extend in that direction before coming to the realization that other strategies are key to success.

So, Rise and Shine Community Services, Inc. would like to take a moment to mention some matters that clearly indicate misdirection by the Parole Board in its attempt to exercise proper policy in the interest of ensuring public safety,

First, we mention that some of the historical practices relevant to the *administrative appeal process,* as some of your current Board members may recollect, were originally set-up by former Chairman Edward Hammock to give the Division of Parole an opportunity to "fairly" review parole hearings that were not in accord with Executive Law 259-i, etc., and Title 9 NYCRR, and which would save the Board the time and expense of such matters being litigated by judicial forum. We might agree that this added task given to the Board commissioners simply created tasks that made the job itself quite more challenging. This may be supported by the fact that shortly thereafter, the three Commissioners responsible for the oversight of administrative decisions (obviously, no commissioner who actually decided the parole hearing itself was allowed to decide the administrative appeal), simply began a process of passing around the Appeal Decision Notice for the respective signature of the next Commissioner until all three signatures were reflected—there were no discussions amongst the commissioners regarding appealable issues and it was a foregone conclusion that the administrative appeal would be denied. The *three different dates reflected by the commissioners' signing* were proof of the process.

This became a problem when an appellant noticed the faulty administrative process and challenged it in an Article 78 court proceeding. In the local decision received by the litigant, the court held that: "According to the regulations governing administrative appeals, such appeals are to be conducted by three (3) commissioners *sitting in conference* and none of them should be of the original panel which considered and denied parole. The Parole Board then decided to actually submerge the rationality of the decision by appealing to a higher court with hopes of receiving a more politically favorable decision there. Contrariwise, the higher court, The Appellate Division Third Department, agreed with the lower court and reinstated that the three commissioners must meet collectively, and have a discussion, to render a proper decision. See, ***Harris v. N.Y.S. Division of Parole, 628 N.Y.S. 2d 416, 211 A.D.2d 205 (1995)*.** Consequently, even though this holding became the controlling law by this higher court, what happened next is very interesting.

What the Parole Board did almost immediately after the ***Harris*** decision was to simply *excise* the section of its Appeal Notice that reflected the date of the respected commissioners' signature and continue with business as usual. Every other aspect of the Appeal Notice was absolutely the same. Thus, the new process was simply not to advise the appellant when the decision of denial was made. The objective being to simply make

difficult the process of proving that the commissioners did not sit and confer as a committee as required by law.

To compound matters, some years later when parole applicants whose administrative appeals were denied submitted Freedom of Informat0in (F.O.I.L) requests to the Board seeking the dates that their decisions were made, the responses were always along the line of: ***"Please be advised that there is no document or other information indicating the actual date each of the members of the Board signed the Administrative Appeal Decision Notice."***

The fundamental question that needs answering here is: ***Whether we, the public. can realistically expect compliance by Parole Board members who have no respect for legal procedure and are willing to engage in open acts of contempt to maintain their status quo?***

Our final comment here, also based on historical but conflicting developmemts and intentions, demonstrates how well-entrenched the Parole Board and Governor which appoints them are in the punishment paradigm and will not change direction until the entire board, and perhaps Governorship, is reconstructed with people who are genuinely empathetic with the needs and desires of the people whom are most victimized by the carceral state and its apparatus.

It seems clear that the historical power of the New York State Parole Board to reflect, consider, and focus on the eight (8) "factors to be Considered" that are now being proposed in Section 8002.2 originated from the period of time when the Parole Board had the responsibility of setting Minimum Period of Incarceration (M.P.I.) dates for people confined who were serving "zip bids," i.e. sentences where these people entered the State Prison Sentence with "O" minimum years and it was up to the Board to make a determination what the minimum sentence should be after one year behind the prison walls. We believe that these various classes of cases were confounded in the state statutes by language such as: "establish mimimum periods of imprisonment in cases where the court has not done so," and elsewhere such as (b) study or cause to be studied the inmates confines in institutions or where the board has jurisdiction , so as to determine their ultimate fitness to be paroled." (The latter seems to be fulfilled by the newly=-developed evidence-based instruments such as COMPAS.)

We are suggesting that when it no longer became necessary or possible for Parole Boards to establish minimum periods of imprisonment in cases where the courts have already done so, then this extraordinary power that has been hereinafter set by courts, should have been amended or clarified so as to reflect that it was no longer the

provision and/or responsibility of Parole Boards to re-visit a function that had been comprehensively fulfilled by a court of law.

Respectfully submitted,

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