



## MEMO

**To :** ADMINISTRATION COMMITTEE  
PETER HOFFMAN, CHAIR  
RYAN BROOKS, MEMBER

**Date:** January 23, 2012

**From :** WILLIAM G. BRENNAN  
DANA F. WINTERROWD

**Subject: DISCUSSION AND CONSIDERATION OF THE ALLOCATION OF COURT REPORTER FEES IN LIGHT OF SECTION 551.7 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

The New Motor Vehicle Board ("Board") recently asked the Administration Committee to evaluate whether the Board should amend its policy for allocating the cost of reporting Board hearings.

### AUTHORITY

Section 551.7 of Title 13 of the California Code of Regulations ("section 551.7"), entitled *Reporting of Proceedings*, provides:

The board may, at its discretion, assign the cost of reporting any proceedings before the board, including, but not limited to, transcript fees, reporter's per diem costs, exhibits, pleadings, and reproduction of board files as follows:

- (a) Allocated entirely to one of the parties; or apportioned among the various parties at the discretion of the board; or
- (b) Assumed by the board, in whole or in part.

### PROBLEM

Recently, the Board incurred significant reporting costs arising from merits hearings. As authorized by section 551.7, above, reporting costs can include the reporter's daily appearance (per diem) fee, transcript costs, transcript delivery fees, plus fees and costs for incidental or extraordinary reporting services.

For merits hearings and hearings where the ruling after the hearing may dispose of the protest ("dispositive motions"), the Board's policy deems reporting services indispensable.<sup>1</sup> For those hearings, the Board provides reporting services under contract with independent

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<sup>1</sup> Under the Board's current policy, where the Board does not deem reporting services necessary (e.g., discovery motions, pre-hearing conferences, etc.), the Board does not arrange or pay for reporting services. However, parties to those proceedings may separately retain and pay for reporting services, and in those instances provide the Board with a copy of the hearing transcript.

contractors. The term of the current contract, for reporting services in northern California, is from March 1, 2011, through February 28, 2013.<sup>2</sup> Under that contract, the total amount budgeted for reporting costs is \$54,374.40. The contract includes the following significant cost items: Reporter's daily appearance fee (\$175.00); the cost for both an original transcript and one copy of the original transcript (\$5.80 per page); and a transcript delivery fee (\$45.00). Parties to these hearings may separately purchase, from the reporting service, copies of the hearing transcripts. In the current fiscal year (July 1, 2011 through June 30, 2012), the allocated amount for northern California reporting costs is \$27,187.20.<sup>3</sup>

As of January 19, 2012, an ongoing merits hearing (Mega RV) in Sacramento has consumed 33 days. Through December 14, 2011, the Board incurred \$38,115.00 in reporting costs for that hearing. Also, through December 14, 2011, in the current fiscal year (July 1, 2011, through December 14, 2011), the Board incurred \$54,701.56 in total reporting costs for northern California. Thus, in the first six months of the current fiscal year, the Board incurred reporting costs in northern California (\$54,701.56) that exceed the reporting costs budgeted for northern California for the three years ending February 28, 2013 (\$54,374.40) - under the three-year contract discussed above. Yet, under the Board's current policy, the Board does not exercise its authority under section 551.7 to defray reporting costs by allocating those costs among the parties involved in hearings.

For perspective, in three previous fiscal years (July 1 to June 30, for 2008-2009, 2009-2010, and 2010-2011), the Board incurred reporting costs of \$18,866.00, \$30,030.00, and \$5,238.00, respectively.

## **RECOMMENDATION**

In order to maintain a healthy budget and enable the Board to defray reporting costs, Board staff recommends that the Board adopt the following amended policy concerning allocation of reporting costs:

For all merits hearings and dispositive motions, reporting costs will be allocated as follows:

- For the first hearing day, the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the Board's cost of the original plus one copy of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.
- For each subsequent day, the Board will arrange reporting services and will order the parties, on an equal basis, to reimburse the Board for reporter appearance fees, the delivery fee and any other costs, and the Board's cost of the original plus one copy of the hearing transcript. Counsel will remain responsible for purchasing their

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<sup>2</sup> Hearings held in southern California are subject to a similar contract with a separate contractor. However, the Board has not yet held a hearing in southern California during the term of that contract – March 15, 2011, through March 14, 2013. Also, unless the Governor rescinds the travel restrictions imposed on April 26, 2011, by the Governor's Executive Order No. B-06-11, the Board will likely be unable to hold a hearing in southern California.

<sup>3</sup> Amounts allocated for each year may not be uniform, since the amounts depend on the predicted need for reporting services during a particular year.

own transcript(s), if desired.

- In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of reporter appearance fees, the delivery fee, and any other costs. Counsel can utilize the Board's contracted court reporter service but are not required to do so. The requesting party or parties will also be responsible for providing the Board with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

The staff recommendation is summarized in the table below.

<b>Instance</b>	<b>Court Reporter Appearance Fees, Delivery Fees and Any Other Costs</b>	<b>Transcript Fees</b>
Hearings on the merits and dispositive motions – First Day	Board	Board (requesting party or parties may order and pay for copies of official transcripts)
Hearings on the merits and dispositive motions – After First Day	Participating parties	Participating parties
Other motions (Venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

**EFFECTIVE DATE**

Board staff proposes that the Board institute the foregoing amended policy for each protest that begins the first day of a merits hearing after February 29, 2012.

If you have any questions or require additional information, please contact me at (916) 324-6197 or Dana at (916) 327-3129.

cc: Ramon Alvarez C.