



## MEMO

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

**Date:** February 27, 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.

### **BACKGROUND FACTS**

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

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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 such instances must provide the Board with a copy of the hearing transcript.

independent contractors (vendors).

The term of the current contract, for reporting services in northern California, extends 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).<sup>3</sup> 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>4</sup>

## **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.

As of February 1, 2012, an ongoing merits hearing (Mega RV) in Sacramento has consumed 35 days. Through February 1, 2012, the Board incurred \$48,099.50 in reporting costs for that hearing. Also, through February 1, 2012, in the current fiscal year (July 1, 2011, through February 1, 2012), the Board incurred \$67,792.46 in total reporting costs for northern California. Thus, in the initial seven months of the current fiscal year, the Board incurred reporting costs in northern California (\$67,792.46), which exceed the budgeted reporting costs (\$54,374.40) for northern California for the three years ending February 28, 2013, under the three-year contract discussed above. However, due to the Board's current policy - that significantly limits the Board's exercise of the broad authority provided by section 551.7 - reporting costs incurred by the Board may not be defrayed by allocating those costs among the parties involved in hearings.

For perspective, during the three immediately 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.

## **ELECTRONIC REPORTING ALTERNATIVE**

The committee also explored the question of whether the costs involved in reporting Board hearings might be reduced if the hearings were electronically reported. The discussion in this section is provided for the Board's general information.

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<sup>2</sup> Hearings held in southern California are subject to a similar contract with a separate vendor. 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. And, due to 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> As important to the discussion below, this contract lacks any provision for electronic recording of Board hearings.

<sup>4</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.

In this connection, section 11512 of the Government Code states, in relevant part, “. . . (d) The proceedings at the hearing shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically....”

Board staff provided the following historical information. At some time in the past the Board switched from the audio recording format (electronic reporting) to the current stenography format, simply as a function of the services available from the vendors on the Master Service Agreements (MSA) negotiated with reporting services and maintained by the Department of General Services (DGS). The turn around was typically slow and didn't allow the real-time, next-day, rough draft, and live options (e.g., re-reading of testimony) that stenographic reporting typically provides.

The Board may hire reporting services in two ways: (1) according to the terms of the current MSA,<sup>5</sup> or (2) in special circumstances, by agreement (with a particular reporting service) that must be approved by DGS. The table below summarizes the essential terms from the current MSA that relate to potential electronic reporting of Board hearings by the only two vendors that have agreed to provide that service.

Services ↓	Vendor 1 - testimony recorded electronically by CSR <sup>6</sup>	Vendor 1 - testimony recorded electronically by CERT <sup>7</sup>	Vendor 2 - testimony recorded electronically by CSR	Vendor 2 - stenographic recording of testimony by CSR
Transcript (Orig. + 1) available ≥ 10 days	\$7.00/p	\$5.95/p	\$1.00/p <sup>8</sup>	\$6.20/p
Exhibit copies	\$0.50/p	not stated	\$0.40/p	\$0.40/p
Reporter's Appearance Fee – full day	\$120	\$120	\$500	\$500
Appearance Fee - ½ day	\$80	\$100	\$250	\$250

Also relative to this issue, Board staff contacted the vendor that currently provides northern California reporting services for the Board. The vendor's principal stated that, (1) transcripts produced from electronic recordings do not reduce the costs because reporters charge additional fees to transcribe from tapes, (2) the additional fees are largely due to the poor quality of the tape recordings (i.e., background noise, soft speakers, papers rustling), thus (3) reporters spend extensive time attempting to get verbatim translations

<sup>5</sup> The current MSA may be accessed through the following link:

<http://www.documents.dgs.ca.gov/pd/masters/shorthand/UserInstructions2011-1-18-11.pdf>

<sup>6</sup> CSR means Certified Shorthand Reporter - a person who has met the requirements of and passed the California Shorthand Reporters Board examination.

<sup>7</sup> CERT means Certified Electronic Court Reporter and Transcriber – a person who has met the requirements of and passed the American Association of Electronic Reporters and Transcribers examination.

<sup>8</sup> The cost for this service appeared abnormally low, thus the vendor was contacted for clarification. The vendor acknowledged in email that, “The price of \$1.00 per pg. does not sound correct . . .,” and the vendor stated that it would review the MSA and further respond. The vendor did not further respond. The vendor was again contacted by telephone to determine whether the vendor could provide any further clarification. The vendor again agreed to respond further after review the MSA – which was provided to the vendor in a follow-up email message. The vendor has not yet further responded.

from many inaudible and ambiguous sounds.

## **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 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 reporting 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 on the following page.

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<b>Circumstances</b>	<b>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 March 31, 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.