

STATE OF CALIFORNIA



MEMO

To : POLICY AND PROCEDURE COMMITTEE
RAMON ALVAREZ C., CHAIR
GLENN STEVENS, MEMBER

Date: December 19, 2013

From : WILLIAM BRENNAN
ROBIN PARKER

Subject: CONSIDERATION OF PROPOSED REGULATIONS

It has been several years since the Board has done rulemaking to improve and clarify case management. Therefore, the Board staff is proposing a number of regulatory amendments; some of the changes are substantive and some are not.

SUBSTANTIVE CHANGES

Proposed Stipulated Decision and Order (13 CCR § 550(u) and (z), and (13 § 551.22)

For Article 4 and most recently Article 5 protests or petitions, the parties can enter into a written settlement agreement that the parties agree to submit to the Board for it to become adopted by the Board as a “Stipulated Decision and Order of the Board.” If adopted by the Board, the “Stipulated Decision and Order” will have the same effect as if the decision and order flowed from a hearing.

Upon receipt of a proposed stipulated decision from the parties, the legal staff reviews the document and prepares a summary that is transmitted to the Public Members of the Board unless the parties stipulate to Dealer Board Member Participation.

The Proposed Stipulated Decision and Order is deemed to be adopted by the Board unless a member notifies the Executive Director of an objection within 10 days of the Board Member’s receipt of the Proposed Stipulated Decision and Order.

In practice, if a Board Member objects to the Proposed Stipulated Decision and Order, the matter is put on the agenda for consideration at the next regularly scheduled Board meeting. However, there are no definitions in the regulations pertaining to stipulated decisions and orders, nor is there a mechanism in the event that the Board objects to one. Proposed regulations have been drafted that parallel the treatment of petitions upon first consideration (13 CCR § 557).

Subpoenas - Motion to Quash (13 CCR § 551.2)

The proposed amendments also authorize an ALJ to issue subpoenas and eliminate the requirement that the original proof of service be filed with the Board following service upon the witness or deponent; a copy is sufficient.

Peremptory Challenges (13 CCR § 551.12)

It was never the Board's intention to have peremptory challenges apply to law and motion hearings but only to merits hearings so amendments are being proposed to clarify that.

Sanctions - Bad Faith Actions (13 CCR § 551.21)

The proposed amendment specifies that sanctions could also be ordered by the Board in addition to the ALJ.

NON-SUBSTANTIVE CHANGES

The non-substantive changes clean-up all references to "subchapter"; the proper reference is "chapter" (13 CCR §§ 550.10 and 598) and make changes to more accurately reflect the authority and reference (13 CCR §§ 551, 551.1, 551.6, 553.40 and 583).

If the Board adopts the proposed regulatory changes, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq. Updates concerning the status of the rulemaking process will be provided at future Board meetings during the Administrative Matters portion of the Executive Director's Report.

This matter is being agendized for consideration at the February 4, 2014, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

cc: Bismarck Obando, President