



MEMO

To : POLICY AND PROCEDURE COMMITTEE **Date:** January 14, 2014
RAMON ALVAREZ C., CHAIR
GLENN STEVENS, MEMBER

From : WILLIAM G. BRENNAN
ROBIN PARKER

Subject: DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO
THE ASSIGNMENT OF CASES TO BOARD ADMINISTRATIVE LAW
JUDGES

The system of assigning Administrative Law Judges (“ALJs”) based upon a Merits and MSC Judge Assignment Log has been in place since 2005. It has worked well over the years with several temporary and permanent modifications to meet the existing case management needs. The following chart summarizes the ALJs and what type of matters they preside over.

| ALJ | Merits | MSC | Law & Motion | Alternative Law & Motion |
|----------------------|--------|-----|--------------|--------------------------|
| Lonnie Carlson | Yes | Yes | No | Yes |
| Diana Woodward Hagle | Yes | Yes | No | Yes |
| Kymerly Pipkin | Yes | Yes | No | Yes |
| Robin Parker | No | No | No | Yes ¹ |
| Tony Skrocki | No | No | Yes | Not Applicable |
| Vic Ryerson | Yes | Yes | No | Yes |
| Merilyn Wong | No | Yes | No | Yes |

Since 2011, the average number of days per hearing has increased. Not only are the hearings longer on average, there are dozens of witnesses, hundreds of exhibits, and multiple expert witnesses. In addition to preparing for and presiding over the hearing, it takes a tremendous amount of time for the ALJ to draft the Proposed Decision and a number of staff hours to finalize it. The chart below summarizes the average number of days per hearing:

¹ Under Section 590 of Title 13 of the California Code of Regulations, Robin Parker, Senior Staff Counsel, was appointed by the Board as a hearing officer (ALJ) for the purposes of conducting pre-hearing conferences, rulings on discovery objections, and mandatory settlement conferences. Robin was added to the “Alternate Law and Motion ALJ Assignment Log” and authorized to preside over law and motion matters in the event no other ALJ is available within a reasonable timeframe and the parties so stipulate.

| Year | No. of Hearings | No. of Days | Average No. of Days Per Hearing |
|------|-----------------|-------------|---------------------------------|
| 2003 | 3 | 17 | 5.6 |
| 2004 | 4 | 17 | 4.25 |
| 2005 | 3 | 27 | 9.0 |
| 2006 | 4 | 26 | 6.5 |
| 2007 | 4 | 16 | 4.0 |
| 2008 | 1 | 5 | 5.0 |
| 2009 | 3 | 13 | 4.3 |
| 2010 | 1 | 2 | 2.0 |
| 2011 | 4 | 49 | 12.25 |
| 2012 | 2 | 18 | 9.0 |
| 2013 | 4 | 20 | 5.0 |

These figures do not include in-person hearings on motions or Stipulated Decision and Order disputes, or remand hearings.

In light of the above, the staff is proposing the following amendments to the assignment of cases:

- ALJs are assigned to merits hearings 30 days prior thereto at the Hearing Readiness Conference. In general, matters are not assigned to an ALJ and the order of time and place of hearing is not issued if there is any indication that the matter may settle. Nevertheless, there have been instances in which the next ALJ in order on the assignment log was assigned to preside over a matter and the case settled shortly before the hearing was to commence. ALJs can sometimes wait a year to preside over a merits hearing. The staff is proposing that if an ALJ's case resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ would be inserted first in the rotation so that he or she would be the next ALJ to receive the first opportunity to preside over a merits hearing. This would ensure that ALJs are receiving a balanced number of merits hearings.
- Also, if an ALJ must decline presiding over a merits hearing because he or she was the Mandatory Settlement Conference ALJ, then the staff is proposing that the ALJ be inserted back into the rotation. Once the merits hearing in which the conflict arose is assigned; the ALJ with the conflict would be the next judge to receive the first opportunity to preside over a merits hearing.
- The staff is proposing that an Alternative Merits Judge Assignment Log be established and Marilyn Wong be added to this log. Judge Wong has a tremendous amount of experience and expertise. Even though she is retired and generally presides over settlement conferences, in 2011 she presided over the merits hearing in *Laidlaw's v. Harley Davidson* (Protest No. PR-2299-11). This allows the staff the flexibility to assign Judge Wong to a merits hearing in the event the other ALJs are unavailable.

This matter is for consideration at the February 4, 2014, General Meeting. If you have any question or require additional information, please contact me at (916) 324-6197 or Robin at (916) 323-1536.

cc: Bismarck Obando