

551.14 Request for Informal Mediation.

(a) Prior to initiating a petition pursuant to section 3050(c) of the Vehicle Code, either party may request that the board mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(b) Participation in informal mediation is voluntary, informal, and nonadversarial.

(c) The request for informal mediation shall set forth the nature of the matter which the board is requested to mediate. The request for informal mediation shall comply substantially with the following requirements:

(1) Include the name, mailing address and telephone number of the person requesting informal mediation; the name, mailing address and telephone number of his or her attorney or authorized agent if any, and the name and address of the licensee or applicant for license whose activities or practices are in question.

(2) Insofar as is known to the person requesting informal mediation, include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.

(3) Describe the relief or disposition of the matter which the person requesting informal mediation would consider acceptable.

(d) A copy of the request for informal mediation shall be served on the licensee or applicant for license whose activities or practices are in question and proof of service (in compliance with Sections 1013(a) and 2015.5, Code of Civil Procedure) thereof shall accompany the request for informal mediation filed with the secretary of the board.

(e) The form of the request for informal mediation shall substantially conform with the provisions of Article 6 hereof.

(f) Article 1, section 553.40 shall apply to all requests for informal mediation.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

551.15 Request for Discovery; Informal Mediation.

For purposes of discovery, the board or its secretary, or a hearing officer designated by the board or its secretary may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in such discovery procedures as are provided for in civil actions in Article 3 (commencing with Section 2016) and Article 4 (commencing with Section 2037) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2030 of that code.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

551.16 Informal Mediation Process.

(a) Upon receipt of the request for informal mediation, the Board staff will initiate a conference call with the parties to ascertain whether the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation.

(b) If the licensee or applicant for license whose activities or practices are in question is not agreeable to participating in informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17.

(c) If the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation, a mutually agreeable date for informal mediation will be calendared.

(1) Upon order of the board, and at least five business days prior to participating in informal mediation, the parties shall file and serve a premediation statement which includes a detailed statement of facts, statement of issues, and a realistic proposal for resolving the dispute.

(2) The board, its secretary, or a hearing officer designated by the board or its secretary, shall preside over the informal mediation.

(3) Evidence set forth in declarations of expert or percipient witnesses made under penalty of perjury may be considered by the board, its secretary, or a hearing officer designated by the board or its secretary, in his or her discretion.

(4) At any time during informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17

(5) All communications, negotiations, or settlement discussions by and between participants in the course of informal mediation shall remain confidential.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code

551.17 Conversion of Informal Mediation to Petition.

(a) The board or its secretary, upon the request of either party, or upon its own motion, may convert an informal mediation to a petition under section 3050(c) of the Vehicle Code. The respondent shall be an applicant for or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor, or representative.

(b) Within 10 days of approval to convert the proceeding, the petitioner shall file and serve a petition with the board which substantially complies with Article 2, section 555 *et seq.*

(c) Upon receipt of the petition, a copy shall be transmitted by the secretary of the board to each member of the board for consideration in accordance with Section 557 hereof.

(d) If the filing fee was paid by both parties in the informal mediation proceeding, no additional filing fee is required for conversion to a petition.

(e) In accordance with Section 558 hereof, the respondent shall file with the

secretary of the board a written answer to the petition.

(f) Chapter 6 (commencing with Section 3000) of Division 2 of the Vehicle Code, and Chapter 2 (commencing with Section 550) of Division 1 of Title 13 of the California Code of Regulations shall apply.

(g) Notwithstanding any other provision of law, a communication made in informal mediation is protected to the following extent:

(1) Anything said, any admission made, and any document prepared in the course of, or pursuant to, informal mediation is a confidential communication, and a party to the informal mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding. This subsection does not limit the admissibility of evidence if all parties to the proceeding consent.

(2) No reference to the informal mediation proceedings, the evidence produced, or any other aspect of the informal mediation may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(3) No informal mediation hearing officer is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the informal mediation.

(4) Evidence otherwise admissible outside of informal mediation is not inadmissible or protected from disclosure solely by reason of its introduction or use in informal mediation.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code, and Sections 11470.50 and 11420.30, Government Code.

553.40. Filing Fees.

A party filing a request for informal mediation, petition, appeal, or protest pursuant to the provisions of this subchapter shall simultaneously deliver to the board a filing fee of \$200, which is to be in the form of a check or money order payable directly to the board. The initial pleading filed in response to such request for informal mediation, petition, appeal, or protest shall also be accompanied by a \$200 filing fee. The board, in the discretion of the Secretary, may refuse to accept for filing any pleading subject to this section that is not accompanied by the requisite fee. The Secretary may, upon showing of good cause, waive any such fee.

Note: Authority cited: Section 3016, 3050(a) and 3050.5, Vehicle Code. Reference: Sections 3060 and 3062, Vehicle Code.

595. Format of First Page.

The first page of all papers shall be in the following form: Commencing in the upper left hand corner and to the left of the center of the page, the name, office address (or if none, the residence address), mailing address (if different from the office or residence address), and the telephone number of the attorney or agent for the party in whose behalf the paper is presented, or of the party if he is appearing in person. If the party is represented by an attorney, provide the state bar number of the attorney beside the name of the attorney. Below the name, address and telephone number, and centered on the page, the title of the board. Below the title of the board, in the space to the left of the center of the page, the title of the proceeding, e.g., John Doe, petitioner (or protestant, or appellant) vs. Richard Roe (or Department of Motor Vehicles), respondent, as the case may be. To the right of and opposite the title, the number of the proceeding, which shall be assigned consecutively by the secretary in the order of filing in petition, appeal, and protest proceedings. No number shall be assigned to more than one proceeding. Immediately below the number of the proceeding, the nature of the paper, e.g., "Request for Informal Mediation," "Petition," "Protest," "Answer," "Appeal," "Request for Hearing," "Petitioner's Opening Brief," etc. The first allegation of the petition shall state the name and address of the respondent and whether the respondent is the holder of or an applicant for an occupational license of the type issued by the Department of Motor Vehicles such that the respondent is subject to the jurisdiction of the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(c) and 3051, Vehicle Code.