

PROTEST AND PETITION HEARINGS

An administrative law judge (“ALJ”) conducts the hearing on the merits of a protest or petition filed before the New Motor Vehicle Board (“Board”). The Board’s regulations prevent the ALJ who presided at the settlement conference from presiding at the hearing on the merits (13 CCR § 551.11(a)).

Hearings before the ALJ are conducted much like a civil trial. Documentary evidence is introduced, witnesses testify under oath, and arguments may be presented.

Most hearings are held at the Board’s offices in Sacramento. Upon a motion to change venue, perhaps based upon inconvenience of non-party witnesses, the ALJ or Executive Director may, in his or her discretion, order that all or a portion of the hearing be conducted elsewhere.

Parties to the hearing process should be aware of the following.

- A **pre-hearing conference** with the merits ALJ is held to discuss the hearing procedure, including but not limited to the following:
 - Exhibits;
 - Stipulation of facts;
 - Timing of witnesses;
 - Special equipment requests, such as easels, DVD player, LCD projector, and the like;
 - Preliminary motions;
 - Special requests for the court reporter service;
 - Pre-hearing briefing schedule; and
 - The hearing start time.

- **Pre-Hearing Briefs** are generally required and must be served on opposing counsel.

- **Opening statements** and **closing statements** may be allowed in the discretion of the ALJ.

- **Exhibits** are generally numbered by the ALJ, sometimes identifying the party by whom they are offered, i.e. P-1 for Protestant’s Exhibit 1 and R-1 for Respondent’s Exhibit 1. The use of pre-marked exhibits and exhibit binders is preferred and can be addressed at the pre-hearing conference with the ALJ. The parties are encouraged to stipulate to joint exhibits and/or a stipulation of facts. **At least five (5) copies of each exhibit should be brought to the hearing.** All documents identified and admitted into evidence are public and subject to disclosure under the California Public Records Act (Gov. Code § 6250 et seq.). On a case-by-case basis, the ALJ determines the confidentiality of any exhibits or testimony and after making appropriate findings may issue protective orders or seal portions of the record. (13 CCR § 551.20)

(Continued on reverse)

- The Board schedules and makes the necessary arrangements for the **court reporter service**. The court reporter service sells hearing transcripts directly to the parties. The normal turnaround time for transcripts is 10-15 business days. Any special arrangements for expedited transcripts, real-time transcripts, or “dirty disks” should be made in advance, and additional charges would apply.
- Once the parties are notified that the hearing transcripts are available, the **Post-hearing briefing** schedule commences. Generally, simultaneous opening post-hearing briefs are filed 30 to 45 days after the transcripts are available, and simultaneous reply briefs are filed 15 to 30 days thereafter. The briefing schedule is usually established with the ALJ at the close of the hearing. The briefs should be in the form of a proposed decision with issues, findings of fact, citations to the record, supporting points and authorities, and arguments.

The matter is deemed submitted to the ALJ upon filing of the post-hearing reply briefs. The ALJ has 30 days from that time to submit a proposed decision to the Board. The Board must act upon the proposed decision within 30 days after it is signed by the ALJ. Prior to the Board taking action, the parties are sent a copy of the proposed decision.

The **Board** meets on average six times a year, usually in Sacramento, Los Angeles, or San Francisco.

- In **Article 4** (Veh. Code §§ 3060, 3062, 3064, 3065, and 3065.1) protest proceedings, **Dealer Members may participate in the consideration of the proposed decision only by stipulation** of the parties.
- In **Article 5** (Veh. Code §§ 3070, 3072, 3074, 3075, 3076) protest proceedings, **Dealer Members will participate in the consideration of the proposed decision¹**.
- Dealer members may not participate in petition proceedings.

Questions concerning this process may be directed to the Board legal staff at (916) 445-1888 or nmvb@nmvb.ca.gov. The Board’s website (www.nmvb.ca.gov) contains detailed information on the Board and contains links to California law and the California Code of Regulations.

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¹ At the January 31, 2007, General Meeting, the members modified their policy concerning Dealer Member participation in RV protests. Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the Dealer Member will recuse himself or herself from participation in the matter, unless the parties stipulate to such participation.