



MEMO

To : POLICY AND PROCEDURE COMMITTEE
KATHRYN ELLEN DOI, CHAIR
BISMARCK OBANDO, MEMBER

Date: July 8, 2014

From : WILLIAM BRENNAN
ROBIN PARKER

Subject: CONSIDERATION OF REVISIONS TO PROPOSED REGULATORY AMENDMENTS TO SECTION 551.21 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (SANCTIONS - BAD FAITH ACTIONS) - POLICY AND PROCEDURE COMMITTEE.

At the February 4, 2014, General Meeting, the members adopted proposed regulatory amendments to Section 551.21, which clarify that sanctions could also be ordered by the Board in addition to the ALJ (see Attachment 1).

At the April 9, 2014, Special Meeting, the Public Members considered the “Proposed Order Granting Respondent’s Motion to Dismiss for Lack of Jurisdiction” in *McConnell Chevrolet Buick, Inc. v. General Motors, LLC*, Protest Nos. PR-2382-14 and PR-2383-14. The motion to dismiss also included a motion for sanctions. This was the first time a motion for sanctions was filed pursuant to Section 551.21. As indicated in the ALJ’s Proposed Order, there were a number of ambiguities with the regulation that made it difficult to rule on General Motors’ motion without an evidentiary hearing. Therefore, the ALJ recommended that the portion of the motion seeking an award of sanctions be remanded to an ALJ for further proceedings, and the dismissal be issued once the issue of sanctions was determined by the Board. After considering the administrative record and the comments of counsel, the Board ultimately dismissed the protests with prejudice and denied the motion for sanctions (see Attachment 2).

Before proceeding with the approved regulatory amendments, the staff asked ALJ Skrocki to review the text of the regulation and make suggestions to address the ambiguities encountered in the *McConnell* motion. The proposed amendments are contained in Attachment 3 and summarized, in part, as follows:

- Eliminates a reference to bad faith because it is open to many interpretations and difficult to define;
- Defines a “party” or “representative of a party” for purposes of this regulation;
- Enhances the meaning of “actions or tactics” and “frivolous”;

- Clarifies that a motion for sanctions can be on the record or in writing;
- Authorizes an ALJ on his or her own motion to recommend that the Board impose sanctions;
- Authorizes the Board to order or an ALJ to recommend that the party or party's representative or both pay the movant's reasonable expenses and attorney's fees incurred in bringing and pursuing the motion for sanctions, if the motion is granted.
- Specifies when attorney's fees and expenses will not be ordered even if the motion for sanctions is granted.
- Authorizes the Board to order or an ALJ to recommend that the movant or movant's representative or both pay the party or party's representative who opposed the sanctions motion reasonable expenses and attorney's fees incurred in bringing and pursuing the motion for such expenses and attorney's fees, if the motion for sanctions is denied.
- Authorizes the Board to order or an ALJ to recommend that an award of reasonable expenses and attorney's fees incurred in connection with bringing or opposing the motion for sanctions be apportioned if the motion is granted in part and denied in part.

This matter is being agendaized for consideration at the July 15, 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: Glenn Stevens, President