

## REVISED FINAL STATEMENT OF REASONS

### A. Update of Initial Statement of Reasons

The entire text of the Initial Statement of Reasons is incorporated herein by reference with the exception of the “purpose of the regulation” in Section 551.12. Public comments were received on Section 551.12 concerning the shortening of the length of time to file a peremptory challenge. After considering those comments at its February 4, 2011, General Meeting, the Board decided to make the grammatically changes as originally noticed but the days to file a peremptory challenge would remain unchanged.

Subdivision (b)(1) of Section 551.12 as noticed proposed that the peremptory challenge shall be filed with the Board within a specified time period (5 days as originally noticed; 20 days after considering the comments) from the date of the “order indentifying the administrative law judge” as opposed to the “order of time and place of hearing”. To make it clear that peremptory challenges apply to all orders of time and place of hearing in which the administrative law judge is identified, the amended language reads: “order of time and place of hearing identifying the administrative law judge”. This would clarify that the right to file a peremptory challenge would encompass an “amended order of time and place of hearing” as well as an “order changing the assigned administrative law judge”.

### B. Summary of Public Comments Received During the Initial Notice Period of October 22, 2010, through December 6, 2010

No public comments were received on the Board’s proposed regulatory action to amend Sections 550, 551.2, and 551.11 and add Sections 551.19, 551.20, 551.23, 551.24, and 551.25 of Title 13 of the California Code of Regulations during the public comment period October 22, 2010, through December 6, 2010, and no public hearing was requested.

Public comments were received from Mo Sanchez, Esq. of Baker & Hostetler LLP concerning the Board’s proposed regulatory action to amend Section 551.12. A public hearing was not requested. The following comment raised legitimate concerns:

“...in one of the regs the Board proposes to shorten the time for a peremptory challenge of an ALJ from 20 days to 5 days from the date of the order of time and place of hearing or 20 days before the hearing, "which ever is shorter." I rarely challenge an ALJ, but have done so on occasion. Does the proposed change affect only the ALJ who will conduct a hearing? Does it also affect the ALJ who will hear motions, and discovery issues? If so, what is the timing of a peremptory challenge

to a "non-hearing" ALJ. I'm also concerned that the shortening of time to challenge the ALJ could result in a challenge period shorter than 5 days, if the hearing is, say, 23 days from the issuance of the Order of Time and Place of Hearing, then you would, in theory, only get 3 days. I think 5 days is too short to begin with, and shortening it further is not acceptable. Also, the time to file a challenge runs from the date of the Order, which effectively shortens it even further, since mail can take several days. I know that typically a conference call is held with the ALJ, but I'm not sure that addresses the issue, because there is no requirement for such conference call, and I can envision a scenario where a party could be left without an effective right to challenge an ALJ...

Response: The Board agrees with the comment and eliminated all references that would have shortened the time frame to file a peremptory challenge. Only the grammatical changes are being proposed.

C. Alternatives Determination

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board has determined that no alternative would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

D. Local Mandate Determination

The proposed regulations do not impose any mandate on local agencies or school districts.