

### **§ 551.1. Challenge.**

An administrative law judge or board member shall voluntarily disqualify themselves and withdraw from any hearing or deliberation in which a fair and impartial hearing or consideration cannot be accorded. Any party may request the disqualification of any administrative law judge or board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a board member, the issue shall be determined by the other members of the board. Where the request concerns the administrative law judge, the issue shall be determined by the board if the board itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 11425.40 and 11512, Government Code.

### **§ 551.6. Testimony by Deposition.**

On verified petitions of any party, the board may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. Petition shall set forth the nature of the pending proceedings; the name and address of the witness whose testimony is desired; the showing of the materiality of the testimony; a showing that the witness shall be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the state and where the board has ordered the taking of testimony by deposition, the board shall obtain an order of court to that effect by filing a petition therefor in the Superior Court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Section 11189, Government Code.

### **§ 551.13. Intervention; Grant of Motion; Conditions.**

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a motion with the executive director of the board (or designee) requesting that the movant be allowed to intervene in a pending proceeding. The motion to intervene may be granted subject to the following:

- (a) The motion shall be submitted in writing, with copies served on all parties named in the pending proceeding.
- (b) The motion shall be filed as early as practicable in advance of the hearing.

(c) The motion shall state facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding.

(d) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.

(e) The board, its executive director, or an administrative law judge designated by the board or its executive director, may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Such conditions shall be at the sole discretion of the board, its executive director, or an administrative law judge designated by the board or its executive director, based on the knowledge and judgment at that time, so as to promote the interests of justice. Conditions include, but are not limited to, the following:

(1) Limiting the intervenor's participation to designated issues;

(2) Limiting or excluding the intervenor's participation in discovery and cross-examination; and

(3) Limiting or excluding the intervenor's participation in settlement negotiations.

(f) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall issue an order granting or denying the motion for intervention as early as practicable in advance of the hearing, specifying any conditions, and briefly stating the reasons for the order. The board, its executive director, or an administrative law judge designated by the board or its executive director, may modify the order at any time by giving notice to all parties, stating the reasons for the modification. The determination of the board, its executive director, or an administrative law judge designated by the board or its executive director, in granting or denying the motion for intervention, or the determination modifying the order previously issued, is not subject to administrative or judicial review.

The board, its executive director, or an administrative law judge designated by the board or its executive director, may, in their discretion, allow the filing of amicus curiae briefs.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11440.50, Government Code.

#### **§ 551.14. Request for Informal Mediation.**

(a) Prior to initiating a petition pursuant to section 3050(b) 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 their 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 1013a, 1013b and 2015.5, Code of Civil Procedure) thereof shall accompany the request for informal mediation filed with the executive director of the board.

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

(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, 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 executive director, or an administrative law judge designated by the board or its executive director, 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 executive director, or an administrative law judge designated by the board or its executive director, in their 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, Vehicle Code.

**§ 551.21. Sanctions.**

- (a) In any proceeding before the board or an ALJ, no party or representative of a party shall engage in or participate in any actions or tactics that are frivolous, or that are intended to cause or will result in unnecessary delay.
- (b) For purposes of this section, “party” or “representative of a party” includes, but is not limited to, a party's officer, director, managing agent, dealer principal or the equivalent, or their attorney.
  - (1) “Actions or tactics” include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the board or an ALJ, including a failure to comply timely with a pre-hearing conference order or discovery order.
  - (2) “Frivolous” includes, but is not limited to:
    - (A) Totally without merit as there is an absence of reasonable support, under the facts or law, for making or opposing the motion(s), or for the failure to comply; or
    - (B) For the purpose of harassing an opposing party or counsel.
    - (C) Actions or tactics, whether consisting of affirmative conduct or failure to act or respond, that will result or do result in unnecessary delay or costs, or are otherwise not in good faith.
- (c) A party asserting a violation of this section may, by way of written motion in compliance with Article 1, section 551.19, or oral motion made on the record during reported proceedings, request that the board or an ALJ recommend that the board impose sanctions upon a party, or party's representative, or both.
- (d) An ALJ presiding over the matter who believes there has been a violation of this section may on their own initiative recommend that the board impose sanctions upon a party, or party's representative, or both.
- (e) The board shall not order sanctions, or an ALJ shall not recommend an award of sanctions, without providing the party or party's representative against whom sanctions are sought notice and an opportunity to be heard.
- (f) The board or ALJ shall make determinations as to whether the actions or tactics were frivolous based upon the administrative record and any additional testimony or documentary evidence presented.
- (g) Any proposed order recommending sanctions by the ALJ or board order imposing sanctions shall be on the record, or in writing, setting forth the factual findings on which the recommended or board ordered sanctions are based, as well as setting forth the factual findings as to the reasonableness of the sanctions, including the reasonableness of any amount(s) to be paid.
- (h) A proposed order recommending an award of sanctions shall be considered by the board members at their next regularly scheduled meeting. A determination not to award sanctions shall not be considered by the board members and is final upon issuance by the ALJ.
- (i) The board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

(j) If the motion for sanctions is granted, the board may order or an ALJ may 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. However, payment of attorney's fees and expenses will not be ordered if:

(1) The movant filed the motion before attempting in good faith to obtain compliance by the opposing party without board action;

(2) The opposing party's noncompliance, nondisclosure, response, or objection was substantially justified; or

(3) Other circumstances make an award unjust.

(k) If the motion for sanctions is denied, the board may order or an ALJ may recommend, after giving an opportunity to be heard, the movant or movant's representative or both to pay the party or party's representative who opposed the motion reasonable expenses and attorney's fees in opposing the motion for sanctions as well as bringing and pursuing the motion for expenses and attorney's fees. However, payment of attorney's fees and expenses will not be ordered if the motion for sanctions was substantially justified or other circumstances make an award unjust.

(l) If the motion for sanctions is granted in part and denied in part, the board may order or an ALJ may recommend that an award of reasonable expenses and attorney's fees incurred in connection with bringing or opposing the motion be apportioned.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 128.5, Code of Civil Procedure; Section 11455.30, Government Code; and Section 3050.2, Vehicle Code.

### **§ 551.23. Interpreters and Accommodation.**

(a) Each party and each party's attorney are responsible for timely communicating to the board any needs of the party, the party's agent or a witness for the following:

(1) Language assistance, including sign language.

(2) Accommodation for a disability.

(3) Electronic amplification for hearing impairment.

(4) Any other special accommodation.

(b) In accordance with Government Code section 11435.25, the board may direct that the cost of providing an interpreter shall be paid by the board or by the party at whose request the interpreter is provided. The board's decision to direct payment shall be based upon an equitable consideration of all the circumstances, such as the ability of the party in need of the interpreter to pay.

(c) An interpreter at a hearing or other proceeding shall be sworn by oath or affirmation to perform their duties truthfully. The oath or affirmation shall be in substantially the following form:

"Do you swear or affirm that, to the best of your skill and judgment, you will make a true interpretation of the questions asked and the answers given and that you will make a true translation of any documents which require translation?"

(d) Any interpreter used at the hearing must have an oath on file with the Superior Court, and be certified and registered in accordance with Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code. However, if an

interpreter certified pursuant to Government Code section 11435.30 cannot be present at the hearing, the board shall have discretionary authority to provisionally qualify and use another interpreter.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 751, Evidence Code; and Sections 11435.05, 11435.10, 11435.25, 11435.55, 11435.65 and 68560, et seq., Government Code.

### **§ 553.72. Transmittal of Fees by Mail.**

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, 2415 1<sup>st</sup> Avenue, MS L242, Sacramento, California, 95818 prior to the date the fee becomes delinquent.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b) and (d), Business and Professions Code.

### **§ 555. Contents.**

The petition shall set forth in clear and concise language the nature of the matter which the petitioner wishes the board to consider. The petition shall comply substantially with the following requirements:

- (a) Include the name, mailing address and telephone number of the petitioner; the name, mailing address and telephone number of petitioner's attorney or authorized agent if any, and the name and address of the licensee or applicant for license (hereinafter referred to as "respondent") whose activities or practices are in question. All correspondence with petitioner and notices to petitioner shall be addressed to petitioner's said address, if appearing in person, or to the address of petitioner's attorney or agent, if represented by an attorney or agent. Petitioner shall promptly give the executive director and respondent written notice by mail of all subsequent changes of address or telephone number.
- (b) Insofar as is known to petitioner, include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.
- (c) If the actions or practices described in the petition are believed to be in violation of law, a concise recitation of applicable law and citation to the applicable statutes or other authorities.
- (d) If the petitioner desires that the board mediate, arbitrate or resolve a difference between the petitioner and respondent, recite that fact and describe the relief or disposition of the matter which petitioner would consider acceptable.
- (e) The petitioner may submit, as exhibits to the petition, photographic, documentary or similar physical evidence relevant to the matter referred to in the petition, in which event

an appropriate description of the exhibits shall be set forth in the petition sufficient to identify them and to explain their relevancy.

(f) The petitioner shall set forth in the petition an estimate of the number of days required to complete the hearing.

(g) The petitioner shall set forth in the petition a request for a prehearing conference if one is desired.

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

### **§ 580. Procedure at Hearings.**

(a) Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Evidence that is irrelevant or unduly repetitious shall be excluded.

(b) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the board of any generally accepted technical or scientific matter within the board's special area of competence or of such facts as may be judicially noticed by the courts of this state.

(c) Examination of Witnesses. Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; to rebut the evidence against the witness; and to call and examine an adverse party or adverse witness as if under cross-examination without being bound by their testimony. Board members and, at the direction of the chairman of the board presiding at the hearing or of any member of the board, representatives of the staff of the board, may participate as appropriate, using their knowledge and experience for the primary purpose of developing a full, fair and accurate record. Questioning of witnesses will be controlled by the board and will generally be permitted only by the attorneys or agents of parties so represented, or by the parties who appear on their own behalf, members of the board and its staff. The board may in its discretion, during the examination of a witness, exclude from the hearing, any or all other witnesses in the same matter.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 11512 and 11513, Government Code; and Section 3050, Vehicle Code.

### **§ 595. Format of First Page; Format and Filing of Papers.**

(a) The first page of all papers shall be in the following form:

(1) 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), electronic-mail address (if available), and the

telephone number and facsimile number (if available) of the attorney or agent for the party in whose behalf the paper is presented, or of the party appearing in person. If the party is represented by an attorney, the state bar number of the attorney shall be beside the name of the attorney.

(2) 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) v. Richard Roe, respondent, as the case may be.

(3) To the right of and opposite the title, the number of the proceeding which shall be assigned consecutively by the executive director in the order of filing in petition and protest proceedings. The same number shall not be assigned to more than one petition or protest.

(4) Immediately below the number of the proceeding, the nature of the paper, e.g., "Request for Informal Mediation," "Petition," "Protest," "Answer," "Request for Hearing," "Petitioner's Opening Brief," etc. If the paper is a "Petition", 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 such that the respondent is subject to the jurisdiction of the board.

(5) The dates of the hearing and any future pre-hearing or settlement conferences, if known.

(b) In addition to a paper copy, the board may direct a party to submit pleadings or other papers by electronic means if the party is able to do so.

(c) A party may obtain proof of the filing of a paper by submitting either an extra copy of the paper or a copy of the first page only, with a self-addressed, return envelope, postage prepaid. The copy will be returned to the party with the date of filing indicated.

(d) Papers may be filed with the board by facsimile or electronic-mail transmission. Unless required by the ALJ or by order of the board, the original paper need not be filed with the board if the party obtains telephonic or other confirmation from the board that a complete and legible copy of the papers was received.

(e) Notwithstanding Code of Civil Procedure Section 1013(a), papers delivered to the board by the U.S. Postal Service or other means are deemed filed on the date actually received by the board. Papers hand delivered to the board and complete papers received by facsimile or electronic-mail transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the date received. Papers received after regular business hours are deemed filed on the next regular business day.

(f) Protests sent by U.S. Postal Service certified or registered mail are deemed received by the board on the date of certified or registered mailing and will be filed as of the date of the certified or registered mailing.

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