

# **STATE PERSONNEL BOARD EVIDENTIARY HEARING PROCESS**



## **SPB STATUTES AND REGULATIONS SUPPLEMENT (Vol. II – Regulations)**

**April 10, 2025**

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# **STATE PERSONNEL BOARD**

## **California Code of Regulations, title 2, Division 1, Chapter 1, Subchapters 1.2, Hearings and Appeals**

### **ARTICLE 1. GENERAL PROVISIONS**

#### **§ 51.1. Scope of Article**

The regulations in this article shall apply to all Appellants, Complainants, and Respondents and all hearings and investigative reviews conducted by the Board or its designees.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 51.2. Definitions**

Unless the context requires otherwise, the following definitions shall apply to regulations in this subchapter.

(a) "Administrative Law Judge" or "ALJ" means a person employed by the State Personnel Board (SPB) to conduct evidentiary hearings under this article.

(b) "Adverse action" means an action taken by an appointing power to discipline an employee and includes formal reprimand, transfers for disciplinary reasons, suspension, reduction-in-salary, demotion and dismissal.

(c) "Affirmative defense" means an assertion by one party raising facts and arguments that, if true, will defeat the other party's claim, even if all allegations in the other party's complaint or Notice of Adverse Action are true.

(d) "Agency" means any agency, department, board, commission, district, or other designated entity that employs state civil service employees.

(e) "Appeal" means any written request for relief or review filed as provided in these regulations and includes "application," "petition," "protest," "complaint" and "answer" pursuant to section 19575 of the Government Code.

(f) "Appeals division" means the Appeals Division of the State Personnel Board.

(g) "Appellant" means the person or organization filing any appeal with the SPB.

(h) "Appointing authority" or "appointing power" means the individual or entity that possesses the final authority to appoint and/or dismiss a state employee.

(i)(1)(A) "Back pay" means the compensation Appellant would have received from Respondent if Appellant had not been subject to an adverse action, a non-punitive demotion, transfer, or termination, a medical demotion, transfer, or termination, or had not been rejected during employment, less any compensation Appellant earned or might reasonably have earned in private or public employment during the period the action or rejection was improperly in effect.

(B) Back pay shall not include overtime compensation that the Appellant may have earned from Respondent during the time period that Appellant was not working for Respondent due to the adverse action.

(C) Back pay shall not be authorized or paid for any portion of time during which Appellant was not ready, able, and willing to perform the duties of his or her position, whether or not the action or rejection was properly in effect.

(2) For purposes of adverse action appeals, non-punitive demotions, transfers, and terminations, and medical demotions, transfers, and terminations, back pay includes salary adjustments, shift differentials, and other special salary compensation, if sufficiently predictable. Subject to the memorandum of understanding for Appellant's classification and the provisions of Government Code sections 19584, 19253.5, and 19585, back pay may include:

(A) Reimbursement for substitute medical and dental insurance and other out-of-pocket medical and dental expenses that an Appellant incurred during the period of time the action was improperly in effect, but would not have incurred if he or she had been working for Respondent;

(B) Retirement benefits that Appellant would have accrued if he or she had been working for Respondent for the period of time the action was improperly in effect;

(C) Seniority benefits that Appellant would have accrued if he or she had been working for Respondent for the period of time the action was improperly in effect;

(D) Merit salary adjustments that Appellant would have received if he or she had been working for Respondent for the period of time the action was improperly in effect;

(E) Bilingual pay that Appellant would have earned if he or she had been working for Respondent for the period of time the action was improperly in effect; and

(F) Physical fitness, or other incentive, pay Appellant would have earned if he or she had been working for Respondent for the period of time the action was improperly in effect.

(3) Any monthly health premium that would have been deducted from Appellant's pay at the time of the action shall be deducted from an Appellant's back pay for the period the Appellant was not working for Respondent.

(j) "Board" means the five-member State Personnel Board.

(k) "Brought to Hearing" means when the record is opened for the purposes of initiating the evidentiary hearing and receiving evidence.

(l) "Business days" means all days that all state agencies are open for business, excluding weekends, holidays, or other designated days. For purposes of these regulations, unless otherwise indicated a business day commences at 8:00 a.m. and concludes at 5:00 p.m. The term "business days" includes the term "working days."

(m) "Complainant" means the person or organization filing a complaint of discrimination, harassment, retaliation, or denial of reasonable accommodation for a known physical or mental disability.

(n) "Constructive Medical Action" means an involuntary transfer or demotion, or a refusal to permit an employee to return to work for purported medical reasons without providing the employee those due process protections set forth in Government Code section 19253.5.

(o) "Days" means calendar days, unless otherwise indicated.

(p) "Digital signature" means an electronic identifier, created by a computer, that is intended by the party using it to have the same force and effect as the use of a manual signature. The use of a digital signature is:

(1) unique to the person using it;

(2) capable of verification; and

(3) under the sole control of the person using it, or the person's designee.



(q) “Electronic signature” means an electronic sound, symbol, or process attached to, or logically associated with, an electronic record and executed or adopted by a person with the intent to sign the electronic record.

(r) “Examination appeal” means appeals concerning allegations that: an Appellant’s civil service examination was not accepted by the examining agency; civil service examination statutes, regulations or policies were violated during the examination process; and/or improprieties in the appointment or promotion process.

(s) “Evidentiary hearing” means a hearing conducted before an ALJ, during which: opening and closing arguments are permitted; direct examination and cross examination of witnesses is permitted; physical and documentary evidence may be introduced and admitted; and a proposed decision is submitted by the ALJ for review by the Board.

(t) “Executive Officer” means the Executive Officer of the State Personnel Board, as designated in Article VII, section 3, subdivision (b), of the California Constitution.

(u) “Filed” means received by the State Personnel Board after the filing party has complied with applicable statutory and regulatory filing requirements.

(v) “Good cause” means a substantial and compelling reason allowing a party to be excused from Subchapter 1.2 of these regulations. Good cause shall be evaluated using the following factors and relevant issues and events beyond the party’s control, considering the length of any delay, the diligence of the party making the request, and any potential prejudice to the other party:

(1) the unavailability of a party, a party’s attorney, a party’s representative, or an essential witness because of death, illness, or other excusable circumstances, in the discretion of the Chief ALJ or his or her designee;

(2) the discovery of new evidence previously unavailable, as long as the discovery is made within 10 days of the submission of the statement of good cause;

(3) a material change in the law, as long as that change occurred within 10 days of the submission of the statement of good cause;

(4) a party’s inability to comply with a deadline despite the diligence of the party and his or her representative in complying with the board’s regulations because of the development of matters which could not have been reasonably foreseen or anticipated;

(5) a substitution of counsel or representatives that is required in the interests of justice;

(6) the recent consolidation of the matter with another matter;

(7) a party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; and

(8) a party's mistake of law constituting excusable neglect.

(w) "Hearing officer" means a State Personnel Board employee designated by the Board, the Executive Officer, or other appropriate authority, to conduct a hearing concerning appeals from pre-employment medical or psychological disqualification, appeals from a failure of a pre-employment drug test, and other appeals as deemed appropriate, in accordance with sections 54.1 and 55.2.

(x) "Informal Hearing" means a hearing conducted pursuant to Government Code sections 11445.10 through 11445.60.

(y) "Investigative officer" means a State Personnel Board employee designated by the board, the Executive Officer, or other appropriate authority, to conduct an investigative review concerning merit issue appeals, requests-to-file-charges, appeals from withhold from certification, appeals from voided appointment, examination appeals, requests from dismissed employees to take civil service examinations, and other appeals as deemed appropriate.

(z) "Investigative Review" means an investigation conducted by an investigative officer during which the investigative officer shall have the authority to conduct the investigation in accordance with the provisions of section 55.1.

(aa) "Investigatory Hearing" means an evidentiary hearing conducted by the Chief ALJ's designee in accordance with the provisions of section 55.2.

(bb) "Medical Action" means an action to transfer, demote, dismiss, or to involuntarily apply for disability benefits on behalf of an employee for asserted medical reasons, pursuant to the provisions of Government Code section 19253.5.

(cc) "Medical condition" has the same meaning as the definition in Government Code section 19296.

(dd) "Merit issue appeal" means an appeal concerning allegations that the State Civil Service Act or State Personnel Board regulation or policy related to applications, appointments and promotions within the civil service system has been violated by an agency. Merit issue appeals include, but are not limited to: allegations of interference with promotional opportunities, disputes concerning the effective date of appointments and promotions, and the applicability of alternate salary ranges. Merit issue appeals do not include appeals of actions that are specifically provided for elsewhere in law or in board regulations.

(ee) “Non-punitive action” means an action to transfer, demote, or dismiss an employee for failure to meet one or more requirements for continuing employment pursuant to the provisions of Government Code section 19585.

(ff) “Office of the Chief Counsel” means the Office of the Chief Counsel for the board.

(gg) “Peremptory strike” means the disqualification without cause of an ALJ assigned to a hearing.

(hh) “Presiding officer” means an individual who presides over a hearing in a contested case.

(ii) “Rebuttal” is the opportunity for the presentation of additional evidence by either party after the conclusion of their cases-in-chief.

(jj) “Rebuttal evidence” means evidence intended to respond to new points or new evidence first introduced by the opposing party.

(kk) “Rejection during probationary period” or “rejection” means an action to remove an employee from a probationary appointment.

(ll) “Respondent” means the person or state agency from whose action or decision the Appellant is seeking relief.

(mm) “Surrebuttal” means the presentation of evidence in refutation of new evidence presented during rebuttal.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 12926, 18675, 19180, and 19584, Government Code; *Swepton v. State Personnel Board* (1987) 195 Cal.App.3d 92.

### **§ 51.3. Construction of Regulations**

(a) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires.

(b) Statutory references are to the Government Code unless otherwise specified.

(c) In these regulations, whenever a time is stated within which an act is to be done, the time is computed by excluding the first day, and including the last day. If the last day is any day the board is closed for business, that day is also excluded.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 51.4. Contents of the Administrative Record**

The complete administrative record of an evidentiary, informal, or investigatory hearing shall include any pleadings, motions, notices, orders, proposed decisions, final decisions, evidence marked for identification and offered for introduction into the record, whether admitted or rejected, transcriptions of all recorded proceedings, and other written communication addressing substantive issues pertinent to the case. The administrative record shall not include any evidence that a party has withdrawn.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 51.5. Right to Representation**

[Renumbered to section 52.9]

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 51.6. When Decisions become Final**

A board decision on an appeal or a complaint becomes final the day the decision rendered by the board is served by the board upon the parties to the decision. This section does not apply to whistleblower retaliation complaints.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19582, 19586, Government Code

#### **§ 51.7. Petitioning for Rehearing**

Either the appellant or the respondent may file a petition for a rehearing of an appeal decision under the provisions of sections 19586 and 19587 of the Government Code.

Action on petitions for rehearing shall be taken within 90 days of the service specified in section 19586 of the Government Code.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19586 and 19587, Government Code.

## **ARTICLE 2. FILING WITH SPB**

### **§ 52.1. Papers; type size; signatures**

(a) All papers filed with SPB must be on 8 ½ by 11 inch paper, printed or typewritten or be prepared by a photocopying or other duplication process that produce clear and permanent copies equally as legible as printing.

(b) All typewritten papers filed with SPB must have at least one-inch margins and be printed in type not smaller than 12 point.

(c) The use of an electronic or digital signature on a document filed with the board shall have the same force or effect as a manual signature on a document filed with the board. A person who signs a filed document electronically or digitally shall retain a copy of the original document with the person's manual signature.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 52.2. Changes in Mailing Address**

All parties shall inform the Appeals Division of any change in their mailing address at the time of the change but not later than 1 week after the change.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 52.3. Filing Notices of Adverse Action with SPB**

Thirty (30) days after the effective date of this section, the Appointing Authority shall file Notices of Adverse Action with the Board utilizing the Board's on-line filing system.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 52.4. Requirements and Method of Delivery for Filing Appeals and Complaints with the Board**

Appeals filed with the Board shall be subject to the following:

(a) All appeals and complaints shall be in writing.

(b) Except as otherwise provided in these Regulations, each appeal and complaint shall be filed with the Appeals Division and shall:

(1) Identify the name, address, and telephone number of the Appellant or Complainant;

(2) If different than the Appellant or Complainant, identify the name, address, and telephone number of the person filing the appeal or complaint, including the State Bar number if the person filing the appeal or complaint is an attorney;

(3) Except as provided in Government Code section 19575, state the facts that form the basis for appeal or complaint; and

(4) Identify all Respondents known to the Appellant or Complainant including, for individually-named Respondents, first and last name, job title, and business address.

(c) Unless the appeal or complaint names some other Respondent, the Appellant's or Complainant's appointing power shall be considered the only Respondent.

(d) The Appeals Division shall mail or serve a copy of the appeal or complaint to or on the Respondent(s).

(e) Time Limitations for Filing Appeals or Complaints with the Board.

Except as otherwise provided in the act or these regulations, every appeal or complaint shall:

(1) be filed with the Appeals Division within the following time limits;

(A) Appeals from disciplinary action filed pursuant to the provisions of Government Code sections 19575, shall be filed within 30 days after the effective date of the notice of adverse action;

(B) Appeals from disciplinary action filed pursuant to the provisions of Education Code section 89539, subdivision (a), or Government Code section 19590, subdivision (c), shall be within 30 days of the employee's receipt of the notice of adverse action;

(C) Appeals from rejection during probationary period filed pursuant to the provisions of Government Code section 19175 shall be filed within 15 days of the effective date of the notice of rejection during probationary period;

(D) Appeals from non-punitive transfer, demotion or termination filed pursuant to the provisions of Government Code section 19585

shall be filed within 30 days after the effective date of the notice of non-punitive action;

(E) Appeals from medical transfer, demotion or termination filed pursuant to the provisions of Government Code section 19253.5, subdivision (f), shall be filed within 15 days of service of the notice of medical action;

(F) Appeals from a CEA termination filed pursuant to the provisions of Government Code section 19889.2 shall be filed within 30 days of the employee's receipt of the notice of termination;

(G) Complaints of whistleblower retaliation filed pursuant to the provisions of Education Code section 87164 or Government Code sections 8547.8 and 19683, shall be filed within one year from the most recent act of reprisal complained about;

(H) Requests-to-File-Charges filed pursuant to the provisions of Government Code section 19583.5 shall be filed within one year of the event or events upon which the appeal is based;

(I) Appeals from constructive medical transfer, suspension, demotion, or termination shall be filed within 30 days of the employee being notified that he or she would not be permitted to resume the duties of their position;

(J) Appeals from the following types of cases shall be filed within 30 days of the effective date of the action:

(i) Termination of appointment from the Limited Examination and Appointment Program (LEAP); and

(ii) Termination or automatic resignation from a Permanent Intermittent appointment;

(K) Appeals from pre-employment medical disqualification, pre-employment psychological disqualification, and pre-employment drug test failure, shall be filed within 30 days of the date of service of the notice of disqualification;

(L) Appeals from improprieties in the civil service examination process, including the CEA examination process, shall be filed as follows:

(i) Appeals from qualification appraisal interviews shall be filed within 30 days of the date that examination results are mailed to the Appellant;

(ii) Appeals from written examinations shall be filed within 30 days of the date that examination results are mailed to the Appellant.

(iii) Appeals from online examinations shall be filed within 30 days of the date that the examination results are available to the Appellant.

(M) Petitions to Set Aside Resignations pursuant to Education Code section 89542 shall be filed within 30 days after the last date upon which services to the state university or college are rendered, or the date the resignation is tendered, whichever is later;

(N) Appeals from Automatic Resignation for Absence Without Leave pursuant to Education Code section 89541 shall be filed within 90 days of the effective date of such separation. If the appointing authority has notified the employee of the automatic resignation, any request for reinstatement must be filed within 15 days of the service of notice of separation;

(O) Appeals from disciplinary action, rejection during probationary period, medical transfer or termination, automatic resignation, layoff, refusal to hire from a re-employment list, or grievance involving discrimination or political affiliation, filed pursuant to the provisions of Government Code section 19800 - 19810, pertaining to Local Agencies, shall be filed in accordance with the provisions of Title 2, Division 5, Chapter 2, Article 8, Subarticle 1, section 17550.

(P) Appeals from Withhold from Certification and Voided Appointment shall be filed within 30 days of the date that the Notice of Withhold from Certification or Notice of Voided Appointment is mailed to the Appellant.

(Q) Back pay claims and requests for back pay hearings, as described in section 61, shall be filed within one year of the date of the board's decision giving rise to the back pay obligation.

(2) In all other cases, the appeal or complaint shall be filed within 30 days after the event upon which the appeal or complaint is based.

(3) Any Appellant or complainant seeking to file an appeal or complaint beyond the time limits in this section, must file a petition with the Chief ALJ or his or her designee demonstrating good cause as to why the appeal or complaint should be accepted. Upon good cause being shown, the Chief ALJ or his or her designee may allow an appeal or complaint, except as



otherwise limited by statute, to be filed within 30 days after the end of the period in which the appeal or complaint should have been filed.

(f) Methods of Delivery for Filing Appeals or Complaints with the Board.

(1) Appeals or complaints delivered by electronic mail (e-mail), will be filed on the date received by the Board.

(2) Appeals or complaints delivered by the U.S. Postal Service are filed on the date received by the Board. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.

(3) Appeals or complaints hand delivered to the Board during regular business hours will be filed on the date received by the Board after the filing party has complied with applicable statutory and regulatory filing requirements.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Sections 18675 and 19889.2, Government Code.

**§ 52.5. Requirements and Method of Delivery for Filing All Other Papers with the Appeals Division**

(a) After an appeal or complaint has been filed with the Appeals Division for review, investigation or hearing, all papers thereafter shall be filed with the Appeals Division, except as provided for in subdivision (b).

(b) The first page of each paper filed shall include the following:

(1) The name, address, and telephone number of the person filing the paper, including the State Bar number if the person filing the paper is an attorney;

(2) A caption setting forth the title of the case, including the names of the Appellant(s) and the Respondent(s);

(3) The SPB case number, if assigned;

(4) A brief title describing the paper filed; and

(5) The date(s) of the hearing and any future prehearing or settlement conferences, if known.

(c) Methods of Delivery for Filing All Other Papers with the Appeals Division

(1) All other papers delivered by electronic mail (e-mail), will be filed on the date received by SPB.

(2) All other papers delivered by the U.S. Postal Service are filed on the date received by the SPB. An Appellant or Complainant may obtain proof of the filing of the appeal or complaint by submitting either an extra copy of the appeal or complaint or the first page only, with a self-addressed, return envelope, postage prepaid. The Appeals Division shall return the copy marked with the date of filing.

(3) Appeals or complaints hand-delivered to the SPB during regular business hours will be filed on the date received.

Note: Authority cited: Section 18701, Government Code. Reference: 18675, Government code.

#### **§ 52.6. Right to Respond to Proposed Personnel Action**

(a) At least five working days before the effective date of a proposed adverse action, rejection during the probationary period, or non-punitive termination, demotion, or transfer under Government Code section 19585, the appointing power, as defined in Government Code section 18524, or an authorized representative of the appointing power shall give the employee written notice of the proposed action. At least 15 calendar days before the effective date of a medical termination, demotion, or transfer under Government Code section 19253.5 or an application for disability retirement filed pursuant to Government Code section 19253.5(i)(1), the appointing power or an authorized representative of the appointing power shall give the employee written notice of the proposed action. The notice shall include:

- (1) The reasons for such action;
- (2) A copy of the charges for adverse action;
- (3) A copy of all materials upon which the action is based;
- (4) Notice of the employee's right to be represented in proceedings under this section;
- (5) Notice of the employee's right to respond to the person specified in subsection (b); and
- (6) A statement advising the employee of the time within which to file an appeal with the SPB.

(b) The person whom the employee is to respond to in subsection (a)(5) shall be above the organizational level of the employee's supervisor who initiated the action unless that person is the employee's appointing power in which case the appointing power may respond to the employee or designate another person to respond.

(c) The procedure specified in this section shall apply only to the final notice of proposed action.

Note: Authority cited: Sections 18701 and 19574, Government Code. Reference: Sections 19173, 19253.5, 19574 and 19574.1, and 19585, Government Code and *Skelly v. SPB* (1975) 15 Cal. 3d 194.

### **§ 52.7. Request to File Charges Against State Employees**

(a) Any request to file charges pursuant to Government Code section 19583.5, shall be filed by the requesting party with the Appeals Division of the SPB. The requesting party shall also serve the appropriate number of conforming copies on the appointing authority for each employee against whom disciplinary action is sought.

(b) Each request shall be in writing.

(c) Each request must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto. The accused employee has a right to provide an answer within 30 days of service of the request to file charges pursuant to Government Code section 19583.5.

(d) Each request must clearly state the legal cause(s) for discipline as set forth in Government Code section 19572.

(e) Each request shall include a sworn statement, signed under penalty of perjury, that the contents of the request are true and correct.

(f) Each request shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed upon a showing of good cause. The requesting party shall submit a separate document with the request to file charges stating the reasons for good cause for the additional pages.

(g) Where it does not appear that the material facts alleged are within the personal knowledge of the requesting party, the Appeals Division may require the requesting party to present supporting affidavits from persons having actual knowledge of the facts before acting upon the request.

(h) Only after compliance with subdivisions (a) through (g) will the Appeals Division conduct an investigative review to determine whether the Board will give its consent to file charges.

(i) If the Board approves the request after an investigative review, the parties will be notified that the request has been approved and that the matter will be scheduled for an evidentiary hearing before an ALJ. The Appeals Division will notify the parties of the time and location of the hearing.

(1) The hearing shall be conducted in accordance with those regulations related to the adverse action hearing process pursuant to Sub-Article 6, beginning with section 56.1. During the hearing, the requesting party shall bear the burden of proving the allegations contained in the request by a preponderance of the evidence.

(2) No disciplinary action shall be imposed on the employee until after the completion of the hearing, and only upon a finding by the Board that disciplinary action is warranted against the employee.

(3) In those instances where the Board finds that disciplinary action is warranted against the employee, the Board shall notify the employee's appointing authority of the disciplinary action to be imposed on the employee. The appointing authority shall thereafter cause the disciplinary action mandated by the Board to be implemented against the employee within a reasonable period of time, not to exceed two weeks. The employee shall not be entitled to a right to respond pursuant to section 52.6. Within 30 days after a copy of the Board's decision is served upon the parties, either party may petition the Board for rehearing of the decision, pursuant to Government Code section 19586.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19583.5, Government Code.

#### **§ 52.8. Pleadings; Notice of Defense; Withdrawal of Notice of Defense**

(a) A party may seek approval from the board to amend a pleading, including a Notice of Adverse Action amended in accordance with Government Code section 19575.5. When a party seeks to amend a pleading, the party shall promptly serve on all other parties and file with the Appeals Division a complete, new pleading. The party seeking to amend the pleading shall use highlighting or italics or any other effective method to identify the changes made to the pleading. The new pleading shall be titled a "First Amended" pleading, and subsequent amended pleadings shall be titled consecutively. The ALJ, or the hearing officer, may allow exceptions for minor amendments during the hearing.

(b) The Chief ALJ or his or her designee may require a showing of good cause prior to making a determination as to whether to grant the request to amend a pleading.

(c) The board prefers amended to supplemental pleadings. However, if a party issues a supplemental pleading, the party shall serve on all other parties and promptly file with the Appeals Division the supplemental pleading, which shall be titled a "First Supplemental" pleading. Subsequent supplemental pleadings shall be titled consecutively.

(d) A party who withdraws a notice of defense, a request for hearing or an asserted special defense, shall immediately notify the Appeals Division and all other parties in writing.

(e) At any time before the opening of the record in a matter, a claimant seeking back pay, a Respondent seeking a back pay hearing, or a Complainant may withdraw his or her request, claim or complaint and the request, appeal or complaint shall be deemed dismissed without prejudice.

(f) At any time after the commencement of a hearing and before a proposed decision has been submitted to the board for consideration, a claimant seeking back pay, a Respondent seeking a back pay hearing, or a Complainant may seek approval from the Chief ALJ or his or her designee to withdraw his or her a request for hearing, claim or complaint with prejudice. In making a determination about whether an individual may be permitted to withdraw his or her request, claim or complaint with prejudice, the Chief ALJ or his or her designee shall consider whether any parties object to the request. A whistleblower retaliation complaint shall not be permitted to be withdrawn following the closure of the record in the proceeding.

(g) Once a proposed decision on a request for back pay hearing, a back pay claim, or a complaint is submitted to the board for its consideration, the Respondent, claimant or Complainant shall not be permitted to withdraw his, her, or its request, claim or complaint, unless all of the parties to the proceeding have submitted a settlement agreement in the matter with the board.

(h) For purposes of this section, a proposed decision on a back pay appeal or a complaint is considered submitted to the board for its consideration once the board has issued an agenda pursuant to Government Code section 11125 indicating that the appeal or complaint will be considered at its next board meeting.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

## **§ 52.9. Right to Representation; Notice of Representation and Withdrawal of Counsel or Other Representative**

(a) Any party may be represented by counsel or any other person or organization of the party's choice in any hearing or investigation conducted pursuant to this article.

(b) Any counsel or other representative who has assumed representation of a party in any case submitted for hearing before the SPB shall give written notice to the Appeals Division if no presiding officer has been assigned, and written notice to all parties of his or her name, address, telephone number and fax number (if any) and the name of the represented party, within a reasonable time after assuming representation.

(c) Any counsel or other representative may withdraw as counsel or representative of record by giving written notice to the Appeals Division if no presiding officer has been assigned and written notice to all parties of the withdrawal. The written notice shall include the last known address of the formerly represented party.

(d) Upon withdrawal by counsel or other representative:

(1) The SPB retains jurisdiction over the case;

(2) The formerly represented party bears the burden of keeping the SPB and all parties informed of a current address for purposes of service. If written notice of change of address is not given, any party may serve the formerly represented party at the party's last known address; and

(3) The formerly represented party is responsible for preparation and representation throughout the remainder of the case, unless and until such party retains new counsel or other representative.

(e) Withdrawal or change of counsel or other representative does not alone constitute grounds for continuance of any previously scheduled proceeding in the case.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 52.10. Service; Proof of Service**

(a) Service of subpoenas and subpoena duces tecum shall be made by personal service, or by United States mail with postage fully prepaid, certified with return receipt requested.

(b) Service of prehearing/settlement conference and Trial Setting Conference statements shall be made by personal service or United States mail. Service of prehearing/settlement conference and Trial Setting Conference statements may be made by email or fax if the parties agree to such service and a written

confirmation of that agreement is made. Service of the prehearing/settlement statement and Trial Setting Conference statement is considered complete at the time the statement is: delivered personally; transmitted by facsimile; transmitted by email; or deposited in a post office, mailbox, sub post office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service.

(c) Service of all other documents shall be made pursuant to sections 1012, 1013, and 1013a of the Code of Civil Procedure.

Note: Authority cited: Sections 18211, 18214 and 18701, Government Code. Reference: Sections 415.30, 1008, 1012 and 1013, Code of Civil Procedure; Sections 89538 and 89541, Education Code; Sections 11440.20(b), 18575, 18672, 19058, 19083, 19100.5, 19173, 19243.4, 19253.5, 19574, 19585, 19590, 19803 and 19889.2, Government Code.

### **§ 52.11. Counting Days**

(a) If an act must occur or a document must be filed a certain number of days after an event, and the exact number of days after the event falls on a Saturday, Sunday, holiday, or other non-business day, then the pleading or filing is due the business day immediately following the Saturday, Sunday, holiday or other non-business day.

(b) If an act must occur or a document must be filed a certain number of days before an event, and the exact number of days before the event falls on a Saturday, Sunday, holiday, or other non-business day, then the pleading or filing is due the business day immediately preceding the Saturday, Sunday, holiday or other non-business day.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

## **ARTICLE 3. ASSIGNMENT OF APPEALS OR COMPLAINTS**

### **§ 53.1. Appeals or Complaints Assigned to Informal Hearing Process**

(a) Unless otherwise assigned, the following matters will be assigned to the informal hearing process:

(1) Appeals from psychological and medical disqualification.

(2) Appeals from voided civil service appointments.

(3) Appeals from denial to take state civil service examination or be certified to any position in state civil service, pursuant to section 211.

- (4) Whistleblower retaliation complaints not consolidated with other appeals assigned to the evidentiary hearing process.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 53.2. Appeals or Complaints Assigned to Investigative Review Process and Investigatory Hearings**

(a) Unless otherwise assigned, the following matters will be assigned to the investigative review process:

- (1) Challenges to examination results, rejection of application for state civil service employment based upon minimum qualifications, certification withholds, appeals of layoff review findings under Government Code section 19798, and merit issue complaints.

(b) Unless otherwise required by law, or otherwise assigned, appeals of rejections during probationary period and appeals of an adverse action where the penalty imposed is an official reprimand or other penalty equal to or less than a suspension without pay for five days or equal to or less than a one-step reduction in pay for four months will be assigned to the investigatory hearing process.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 53.3. Appeals or Complaints Assigned to the Evidentiary Hearing Process**

(a) Unless otherwise required by law, or otherwise assigned, the following shall be assigned to the full evidentiary hearing process:

- (1) Approved requests to file charges pursuant to Government Code section 19583.5.
- (2) Appeal of an adverse action pursuant to Government Code section 19575 or 19590 where the penalty imposed is greater than a suspension without pay for five days or a one-step reduction in pay for four months.
- (3) Complaint of discrimination, harassment, or retaliation based upon medical condition or mental or physical disability, or denial of reasonable accommodation for a physical or mental disability accepted pursuant to Section 64.6.
- (4) Any other appeal or complaint deemed appropriate by the Chief ALJ, Executive Officer, the Board, or its President.



Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675 and 19702, Government Code.

#### **§ 53.4. Reassignment of Appeals**

Except as otherwise provided by law, the Board, the Executive Officer, or the Chief ALJ may reassign an appeal to any process.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **ARTICLE 4. INFORMAL HEARING PROCESS [Selected Sections]**

#### **§ 54.1. Informal Hearing Process**

(a) For those appeals assigned to hearing before a hearing officer, the hearing officer shall have the authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers. The hearing officer shall have the sole discretion to determine whether the parties to the hearing shall have the authority to call and examine witnesses. The hearing officer shall have the authority to take official notice of those matters specified in Government Code section 11515, in accordance with the provisions of that section.

(b) Failure of any party to proceed at hearings presided over by a hearing officer shall be deemed a withdrawal of the action or appeal unless the hearing is continued for good cause.

(c) The provisions of section 59.2 and 59.3 shall apply to hearings conducted by hearing officers except that all motions or petitions filed with the Appeals Division pursuant to those regulations shall be directed to the attention of the Chief ALJ and not the hearing officer.

(d) The hearing shall be calendared for no more than 2 hours, except for Whistleblower Retaliation hearings which will be calendared for no more than 4 hours.

(e) The hearing officer may question the parties and the parties' witnesses and extend additional time to each of the parties.

(f) The hearing officer is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(g) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the hearing officer to make a finding of fact.

(h) The hearing officer shall prepare a proposed decision which will be forwarded to the board.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675 and 19570, Government Code.

## **ARTICLE 5. INVESTIGATIVE PROCESS [Selected Sections]**

### **§ 55.1. Investigative Review**

(a) For those appeals assigned to review by an Investigative Officer pursuant to section 53.2, the Investigative Officer shall have the authority to interview witnesses, administer oaths, subpoena, and require the attendance of witnesses and the production of books or papers. The Investigating Officer shall also have the authority to take official notice of those matters specified in section 11515 of the Government Code.

(b) No hearing shall be conducted concerning those appeals assigned to investigative review. No party to the appeal shall be authorized to conduct discovery concerning those issues subject to investigative review. No party to the appeal shall be authorized to call and examine witnesses as part of the investigative review. The investigative review shall be based upon any documentary or other information deemed relevant by the Investigative Officer.

(c) The Investigative Officer is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory review in such a manner as necessary to reach a just and proper decision. Relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(d) Declarations/affidavits made under penalty of perjury will be admissible even though they are technically hearsay, and may be relied upon by the Investigative Officer to make a finding of fact.

(e) Upon conclusion of the Investigatory Review, the Executive Officer, or his or her designee shall either:

(1) Present a recommended decision to the Board, or

(2) Render a decision.

Note: Authority cited: 18701, Government Code. Reference: 18675, Government Code.

## **§ 55.2. Investigatory Hearings**

(a) Failure of any party to proceed at the investigatory hearing shall be deemed a withdrawal of the action or appeal, unless the investigatory hearing is continued for good cause.

(b) The investigatory hearing shall be calendared for no more than 6 hours. Each party will be allotted a total of 3 hours to be allocated at that party's discretion for presentation of its case, including examination and cross-examination of witnesses, presentation of declarations, documentary evidence, and exhibits, and presentation of arguments. While use of the time allotted is at each party's discretion, the suggested format for the hearing is as follows: 10 minutes each for opening statements, 120 minutes each to call witnesses and present declarations, documentary evidence and exhibits, 30 minutes each for cross-examination of the opposing party's witnesses, and 20 minutes each for closing arguments. The presiding officer is authorized to conduct a full evidentiary hearing in an appeal defined in this regulation upon mutual agreement of the parties or, upon motion by one of the parties, if the presiding officer finds it in the interest of justice to do so.

(c) The presiding officer has discretion to ask clarifying questions of the witnesses or the parties either during or at the conclusion of each party's case-in-chief and has sole discretion to extend additional time to each of the parties.

(d) The presiding officer is not bound by common law/statutory rules of evidence or by technical or formal rules of procedure, except as set forth herein, but shall conduct the investigatory hearing in such a manner as necessary to reach a just and proper decision. Relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(e) Declarations/affidavits made under penalty of perjury shall, at the discretion of the presiding officer, be admissible even though they are technically hearsay, and may be relied upon by the presiding officer to make a finding of fact.

(f) The presiding officer shall prepare a short-form proposed decision which would be forwarded to the board within 30 days of the investigatory hearing. The decision shall include enough information to allow the board to exercise its constitutional authority to review disciplinary actions, such as (1) introduction; (2) factual allegations sustained and not sustained, referring to the Notice of Adverse Action; (3) legal causes, sustained and not sustained, referring to the Notice of Adverse Action and any other applicable legal authority; (4) penalty including brief references to any applicable legal authority; and (5) any finding of fact that the presiding officer decides is necessary to highlight.

(g) Absent board rejection of the proposed decision, each case should be opened and closed in no more than 180 days.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19570 and 19576, Government Code.

## **ARTICLE 6. EVIDENTIARY HEARING PROCESS**

### **Subarticle 1. ADMINISTRATIVE LAW JUDGES**

#### **§ 56.1. Authority of ALJ**

When an ALJ has been assigned to evidentiary or investigatory hearing matters, an ALJ is fully authorized and empowered to control the litigation before them and may grant or refuse extensions of time, receive evidence, hold appropriate conferences before or during hearings, rule upon all objections or motions, hear argument, and fix the time for the filing of briefs. An ALJ is fully authorized and empowered to perform any and all other acts in connection with such proceedings that may be authorized by law or these regulations, including those acts necessary to ensure due process for all parties, and has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code; *Mileikowsky v Tenent Healthsystem* (2005) 128 Cal.App.4<sup>th</sup> 531, 560.

#### **§ 56.2. Peremptory Strike**

(a) A party is entitled to one peremptory strike (disqualification without cause) of an ALJ assigned to a hearing. In no event shall a peremptory strike be allowed if it is made after the hearing has commenced.

(b) A peremptory strike shall be:

(1) Filed with the Appeals Division and directed to the Chief ALJ within 20 days of the date that the Appeals Division mails a letter of acknowledgement of the filing of the matter together with a list of the available ALJ's to all the parties;

(2) Filed by a party, or a party's attorney or authorized representative; and

(3) Made in writing in substantially the following form:

"I am a party to [CASE NAME AND NUMBER] and am exercising my right to a peremptory strike regarding ALJ [NAME], pursuant to section 56.2."

(c) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under section 56.3, or any other applicable provisions of law.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 56.3. Disqualification of Presiding Officer or Board Member for Cause**

(a) A presiding officer shall perform his or her duties without bias or prejudice. A presiding officer shall dispose of all matters fairly, promptly, and efficiently.

(b) A presiding officer shall disqualify himself or herself in any proceeding in which disqualification is required by law, including those instances in which the presiding officer has a bias, prejudice, or interest in the proceeding.

(1) It is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest, that the presiding officer:

(A) is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of that group;

(B) has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the proceeding; or

(C) has as a lawyer or public official participated in the drafting of laws or regulations, the meaning, effect, or application of which is at issue in the proceeding.

(2) The parties may waive the disqualification by a writing that recites the grounds for disqualification. A waiver is effective only when signed by all parties, accepted by the presiding officer, and included in the record.

(c) A presiding officer shall disclose on the record information that is reasonably relevant to the question of disqualification, other than the information listed in subdivision (b)(1) of this section, even if the presiding officer believes there is no actual basis for disqualification.

(d) Any party may request the disqualification of any presiding officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that the presiding officer should be disqualified. The issue shall be determined by the Chief ALJ or his or her designee.

Note: Authority cited: 18701, Government Code. Reference: 18675 and 11512(c), Government Code.

#### **§ 56.4. Ex Parte Communications**

(a) While any adjudicatory proceeding is pending before the board or a presiding officer, there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from any party, party representative, or interested third party, or to any party, party representative, or interested third party, from a presiding officer, without notice and opportunity for all parties to participate in the communication.

(1) Nothing in this section precludes a communication made on the record at the hearing.

(2) For the purpose of this section, a proceeding is pending from the submission of an appeal to the Appeals Division.

(b) A communication otherwise prohibited under subdivision (a) is permissible in any of the following circumstances:

(1) The communication is required for disposition of an ex parte matter specifically authorized by statute;

(2) The communication concerns a matter of procedure or practice; or

(3) The communication is directly related to settlement negotiations between the parties and both parties are aware that the presiding officer is discussing issues related to settlement with both parties.

(c) If, while the proceeding is pending, but before serving as the presiding officer, a person receives a communication of a type that would be in violation of this section if received while serving as the presiding officer, the person promptly after starting to serve, shall disclose the content of the communication on the record and give all parties an opportunity to address it in the manner provided in subdivision (d).

(d) If a presiding officer receives a communication in violation of this section,

(1) The presiding officer shall make all of the following a part of the record in the proceedings:

(A) If the communication is written, the writing and any written response of the presiding officer to the communication; or

(B) If the communication is oral, a memorandum stating the substance of the communication, any response made by the presiding officer, and the identity of each person from whom the presiding officer received the communication.

(2) The presiding officer shall notify all parties that a communication described in this section has been made a part of the record.

(3) If a party requests an opportunity to address the communication within 10 days after receipt of notice of the communication:

(A) The party shall be allowed to comment on the communication. The presiding officer shall have the discretion to permit either written or oral comment; and

(B) The presiding officer has the discretion to allow the party to present evidence concerning the subject of the communication, including discretion to reopen a hearing that has been concluded.

(e) Receipt or initiation by the presiding officer, other than a board member, of a communication in violation of this article may be grounds for disqualification of the presiding officer. If the presiding officer is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order of the disqualified presiding officer.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 11430.10, 11430.20, 11430.30, 11430.40, 11430.50, and 11430.60, Government Code.

#### **§ 56.5. Avoiding Impropriety and the Appearance of Impropriety**

(a) A presiding officer shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the position.

(b) A presiding officer shall neither allow family, social, political, or other relationships to influence the conduct or judgment of the presiding officer nor

permit others to convey the impression that any individual is in a special position to influence the presiding officer.

(c) A presiding officer shall not lend the prestige of his or her office or use his or her title in any manner to advance the pecuniary interests of the presiding officer or family members of the presiding officer.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **Subarticle 2. Prehearing Provisions**

#### **§ 57.1. Prehearing/Settlement Conferences**

- (a) After an evidentiary matter, or any other matter deemed appropriate by the Chief ALJ or his or her designee, has been filed with the Appeals Division, the matter shall be scheduled for a prehearing/settlement conference, unless ordered otherwise.
- (b) The ALJ at the prehearing/settlement conference shall not preside as the ALJ at the evidentiary hearing unless otherwise stipulated by the parties.
- (c) Each Appellant and his or her representative, and each Respondent and Respondent's representative, shall appear in person at all prehearing/settlement conferences. Individually named Appellants and Respondents must also personally appear at all prehearing/settlement conferences.
- (d) Each party or representative who attends the prehearing/settlement conference shall be fully familiar with the facts and issues in the case. Respondents or their representatives must have full settlement authority, or be able to obtain authority immediately by telephone. If Respondent's settlement authority is made available by telephone, the ALJ may require the person providing settlement authority to participate in a teleconference at any time during the two-hour prehearing/settlement conference.
- (e) A request to continue a prehearing/settlement conference shall be addressed to the Chief ALJ pursuant to section 60.2.
- (f) Each party shall file a written prehearing/settlement conference statement, along with a proof of service, with the Appeals Division 12 calendar days prior to the hearing. The statement shall contain the following information:
- (1) The identification by SPB Case Number of all appeals or complaints pending before the Appeals Division or the board, arising out of the same transaction, occurrence, or series of transactions or occurrences.
  - (2) A brief summary of any stipulated facts.
  - (3) Identification of affirmative defenses to any claim.
  - (4) A current estimate of the time necessary to try the case.
  - (5) The identity of each witness each party may call at the hearing, the subject matter on which the witness is expected to present evidence, and a summary of each witness's expected testimony. Parties are not required to disclose any witness that will be called for rebuttal or impeachment purposes.
  - (6) The identity of any witness who may be called to testify who is an inmate of any correctional facility. In addition, at the discretion of the Chief ALJ, such individuals may be required to testify via closed circuit



television, or by other electronic means.

(7) The name and address of each expert witness each party intends to call at the hearing, together with a brief statement of the opinion each expert is expected to give, and a copy of the current resume or curriculum vitae of each expert witness.

(8) A list of documentary exhibits each party intends to present at the hearing, and a description of any physical or demonstrative evidence. Parties are not required to disclose exhibits that will be used for rebuttal or impeachment purposes.

(9) A concise statement of any significant evidentiary issues to assist the ALJ in conducting the hearing.

(10) Dates of unavailability of the parties, counsel, and witnesses.

(11) If Respondent knows or should know that a portion or all of the hearing will be held by videoconference, dates of unavailability of Respondent's videoconferencing equipment.

(g) Failure to timely file or fully disclose all required items in the prehearing/settlement conference statement without good cause may, at the discretion of the ALJ, result in the exclusion or restriction of evidence at the hearing.

(h) All prehearing/settlement conference statements shall be served on all other parties at least 12 calendar days prior to the prehearing/settlement conference in a manner consistent with Section 52.10, subdivision (b), and a copy shall be provided to the assigned ALJ at the prehearing/settlement conference.

(i) Upon a showing of good cause, a party may seek to amend his or her prehearing/settlement conference statement by a request to amend its prehearing/settlement conference statement. If the amendment is based upon the discovery of new information, the amendment shall be filed within 10 days of learning such information. When a party seeks to amend the prehearing/settlement conference statement, the party shall promptly serve on all other parties and file with the Appeals Division a complete, new prehearing/settlement conference statement incorporating the amendments, along with a declaration supporting his or her request and establishing good cause. The party seeking to amend the statement shall use highlighting or italics or any other effective method to identify the changes made. The new prehearing/settlement conference statement shall be titled a "First Amended Prehearing/Settlement Conference Statement," and subsequent amended statements shall be titled consecutively.

(j) Each party shall bring a copy of the prehearing/settlement conference statement to the prehearing/settlement conference. Each party participating in a prehearing/settlement conference shall have access to any settlement proposal in an electronic format which can be electronically mailed to the ALJ.

(k) Where a case cannot be settled at the prehearing/settlement conference, the ALJ may address such issues as:

- (1) Discovery disputes;
- (2) Preparation of stipulations;
- (3) Clarification of issues;
- (4) Rulings on identity and limitation of the number of witnesses;
- (5) Objections to proffers of evidence;
- (6) Order of presentation of evidence and cross-examination;
- (7) Rulings regarding issuance of subpoenas and protective orders; and
- (8) Any other matters that promote the orderly and prompt conduct of the hearing.

(l) Failure of any party to appear and/or proceed at a prehearing/settlement conference shall be deemed a withdrawal of the appeal or the action, unless the hearing is continued for good cause pursuant to section 58.3. Respondent's failure to be able to obtain settlement authority immediately in person or by telephone may be deemed failure of a party to appear and/or proceed.

(m) An ALJ presiding over a prehearing/settlement conference for a back pay claim or a request for back pay hearing shall instruct the parties, consistent with

section 61, which parties have the burden to prove which portions of the case at the evidentiary hearing.

Note: Authority cited: Section 18701, Government code. Reference: Sections 18675, 11511.5, and 11511.7, Government Code.

## **§ 57.2. Consolidated Proceedings; Separate Proceedings**

(a) When proceedings that involve a common question of law or fact are pending, the Chief ALJ or his designee on the judge's own motion, or on the motion of a party, may order a joint hearing of any or all matters at issue in the proceedings. The Chief ALJ or his designee may order all the proceedings consolidated and

may make orders concerning the procedure that may tend to avoid unnecessary costs or delay.

(b) A party who brings a motion for consolidated proceedings or separate proceedings shall comply with section 60.1.

(c) Where a motion for consolidated proceedings or separate proceedings is made on the day of the hearing, the moving party must demonstrate that the issues were not discoverable at an earlier time.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **Subarticle 3. Hearings**

#### **§ 58.1. Waiver of Government Code Section 18671.1**

(a) For any appeal pending before the Appeals Division, if the Appellant does not affirmatively waive the provisions of section 18671.1 of the Government Code, then the Appeals Division has the discretion to either set the matter for hearing at any location the Board determines will be able to hold the hearing in the most expeditious manner possible, or require the hearing to be held by telephonic conference call, or video conferencing pursuant to section 58.6.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18701, 18671.1 and 18675, Government Code.

#### **§ 58.2. Requests for Priority Hearing in Appeals and Complaints from Dismissal**

(a) For appeals from actions resulting in the termination of an employee, where an evidentiary hearing has not commenced within 6 months of the filing of the appeal, an Appellant may request a priority hearing with the board. Requests for priority hearing shall be in writing, and shall be filed with the Appeals Division, with copies sent to all other parties.

(b) Upon a request for a priority hearing as provided in subdivision (a), the evidentiary hearing shall be scheduled to occur within 60 days of the request at an SPB hearing location designated by the Chief ALJ or his or her designee, and may where practicable, utilize an electronic proceeding as set forth in section 58.6, for all or part of the hearing.

Note: Authority cited: Sections 18671.1 and 18701, Government Code. Reference: Sections 18671.1 and 18675, Government Code.

### **§ 58.3. Dismissal of Appeals Not Brought to Hearing and Failure to Proceed**

(a) Any appeal assigned to the ALJ, hearing officer, Chief ALJ's designee, or presiding officer, shall be dismissed unless it is brought to hearing within three years after such appeal was filed with the Board. "Brought to hearing" means when the record is opened for the purpose of initiating the evidentiary hearing pursuant to section 51.2(i).

(b) Failure of any party to proceed at a hearing or a prehearing/settlement conference, shall be deemed a withdrawal of the appeal or the action, unless the hearing is continued for good cause.

Note: Authority: Section 18701, Government Code. Reference: Section 18675(a) Government Code.

### **§ 58.4. Hearings are Public**

Every appeal hearing, including the hearing of an adverse action appeal, shall be public, unless otherwise required by law to be closed to the public.

(a) A hearing shall be open to public observation. Nothing in this subdivision limits the authority of the presiding officer to order on the record, closure of a hearing or make other protective orders to the extent necessary or proper for any of the following purposes:

(1) To satisfy the United States Constitution, the California Constitution, federal or state statute, or other law, including but not limited to laws protecting privileged, confidential, or other protected information.

(2) To ensure a fair hearing in the circumstances of the particular case.

(3) To conduct the hearing, including the manner of examining witnesses, in a way that is appropriate to protect a minor witness or a witness with a developmental disability, as defined in section 4512 of the Welfare and Institutions Code, from intimidation or other harm, taking into account the rights of all persons.

(b) To the extent a hearing is conducted by telephone, television, or other electronic means, and is not closed as otherwise required by law, the requirement that the meeting is open to public observation pursuant to subdivision (a) is satisfied if members of the public have an opportunity to do both of the following:

(1) At reasonable times, hear or inspect the agency's record, and inspect any transcript obtained by the agency.

(2) Be physically or virtually present at the place where the presiding officer is conducting the hearing. For purposes of this section, the term "present" can be satisfied either by providing a designated location from which members of the public can observe the meeting via a live audio or a video feed of the hearing made available to the public on the internet or by teleconference.

(c) This section does not apply to a prehearing conference or settlement conference, or proceedings for alternative dispute resolution.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 11425.20 and 18675, Government Code.

#### **§ 58.5. Exclusion of Witnesses**

Upon the motion of any party, ALJ, hearing officer, Chief ALJ's designee, or presiding officer shall have the authority to exclude from the hearing room any witnesses not at the time under examination; but a party to the proceeding, or the party's counsel or other person representing a party, shall not be excluded. When a state agency is a party it is entitled to the presence of one other officer or employee in addition to its counsel or representative.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 58.6. Electronic Proceedings**

(a) Upon a showing of good cause by a party or upon the presiding ALJ's own motion, an ALJ may conduct all or part of a hearing by telephonic conference call or video conference if each participant in the proceeding has an opportunity to participate in and hear the entire proceeding while it is taking place and to observe exhibits.

(b) If a party objects, the presiding ALJ may proceed upon a finding that no party to the proceeding will be prejudiced by all or part of the hearing being conducted by telephone or other electronic means.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 58.7. Request for Security**

(a) Any party or participant in an evidentiary hearing may request security for the hearing. The request shall be made as soon as the need for security is known.

The request shall be filed with the Appeals Division and directed to the Chief ALJ or the assigned ALJ. To ensure that appropriate safety measures are arranged, the person requesting security shall inform the Chief ALJ, or the assigned ALJ, the nature of the security risk.

(b) The Chief ALJ or his or her designee will evaluate the request for security and make the decision whether to provide security. Costs for security are reimbursed pursuant to Government Code section 18671.2.

(c) If the request for security is made without sufficient time for appropriate security personnel to be procured, the Chief ALJ, or the assigned ALJ, has the discretion to continue the proceeding.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 58.8. Accommodation for Persons with Disabilities**

In proceedings where an Applicant has a disability requiring accommodation either at the hearing or at any other stage of any administrative adjudication at the State Personnel Board (SPB), the Applicant shall be responsible for requesting accommodations.

(a) “Persons with disabilities” means individuals covered by California Civil Code section 51 et seq.; the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.); or other applicable state and federal laws. This definition includes persons who have a physical or mental impairment that limits one or more of the major life activities, have a record of such impairment, or are regarded as having such an impairment.

(b) “Applicant” means any lawyer, party, witness, or other person with an interest in attending any proceeding before the SPB.

(c) “Accommodations” means actions that result in services, programs, or activities being readily accessible to and usable by persons with disabilities. Accommodations may include making reasonable modifications in policies, practices, and procedures; furnishing, at no charge, to persons with disabilities, auxiliary aids and services, equipment devices, materials in alternative formats, readers, or certified interpreters for persons with hearing impairments; relocating services or programs to accessible facilities; or providing services at alternative sites. Although not required where other actions are effective in providing access to SPB services, programs, or activities, alteration of existing facilities by the SPB may be an accommodation.

(d) Process for Requesting Accommodations

The process for requesting accommodations is as follows:

- (1) Requests for accommodations may be presented ex parte on a form provided by SPB, in another written format, or orally. Requests must be forwarded to the SPB Appeals Division to the attention of the Presiding Administrative Law Judge.
- (2) Requests for accommodation must include the name of the Appeal and SPB's case number, along with a description of the accommodation sought, along with a statement of the impairment that necessitates the accommodation. The SPB, in its discretion, may require the applicant to provide additional information about the impairment.
- (3) Requests for accommodation must be made as far in advance as possible, and in any event must be made no fewer than 30 days before the requested implementation date. The SPB may waive this requirement for good cause.
- (4) The SPB will keep confidential all information of the Applicant concerning the request for accommodation, unless confidentiality is waived in writing by the applicant or disclosure is required by law. The Applicant's identity and confidential information will not be disclosed to the public or to persons other than those involved in the accommodation process. Confidential information includes all medical information pertaining to the Applicant, and all oral or written communication from the Applicant concerning the request for accommodation.
- (5) Permitted communication under this rule must address only the accommodation requested by the applicant and must not address, in any manner, the subject matter or merits of the proceedings before SPB.

(e) Response to Accommodation Request

The SPB will respond to a request for accommodation as follows:

- (1) The SPB will inform the Applicant in writing, as may be appropriate, and if applicable, in an alternative format, of the following:
  - (A) That the request for accommodation is granted or denied, in whole or in part, and if the request for accommodation is denied, the reason therefore; or that an alternative accommodation is granted:
  - (B) The nature of the accommodation to be provided, if any; and
  - (C) The duration of the accommodation to be provided.

(f) Denial of Accommodation Request

A request for accommodation may be denied only when the SPB determines that:

- (1) The applicant has failed to satisfy the requirements of this rule;
- (2) The requested accommodation would create an undue financial or administrative burden on the SPB; or
- (3) The requested accommodation would fundamentally alter the nature of the service, program, or activity.

(g) Review Procedure

- (1) An Applicant or any participant in the proceedings in which an accommodation request has been granted or denied may seek review of a determination made by the Presiding ALJ within 10 days of the date of the response by submitting, in writing, a request for review to the Chief Administrative Law Judge or his or her designee.

(h) Duration of Accommodations

The accommodation by the SPB must be provided for the duration indicated in the response to the request for accommodation and must remain in effect for the period specified. The SPB may provide an accommodation for an indefinite period of time for a limited period of time, or for a particular matter or appearance.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code; Section 754, Evidence Code and Judicial Rule 989.3.

**§ 58.9. Interpreters**

(a) As used in this section, “language assistance” means oral interpretation or written translation into English of a language other than English or of English into another language for a party or witness who cannot speak or understand English or who can do so only with difficulty.

(b) Nothing in this section limits the application or effect of section 754 of the Evidence Code to interpretation for a deaf or hearing- impaired party or witness in an adjudicative proceeding.

(c) All hearings shall be conducted in English. If a party or the party’s witness needs language assistance, that party or the party’s witness must notify the Chief ALJ or the assigned ALJ, no later than 15 days before the hearing, that an interpreter is going to be utilized. Such notification must identify the interpreter and provide evidence of certification.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, 11435.05, 11435.10, 11435.20, and 11435.25, Government Code.



#### **§ 58.10. Official Notice**

Official notice may be taken of those matters specified in section 11515 of the Government Code by the ALJ, Chief ALJ's designee, hearing officer, or presiding officer in any hearing or investigative review, in accordance with the provisions of that Section.

(a) Official notice may be taken of the State Controller's Office's Employment History Summary for an appellant, the Board's adopted class specification for appellant's job classification and prior Notices of Adverse Actions taken against an appellant and filed with the Board, including administrative records of SPB cases in which an appellant was a party.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675 and 11515, Government Code.

#### **§ 58.11. Notice of Settlement**

(a) The parties shall promptly notify the Appeals Division of any resolution that terminates a case assigned for hearing. The Appeals Division shall vacate all hearing dates upon receipt of a written request signed by all parties notifying the Appeals Division that the appeal or complaint, or personnel action has been withdrawn through settlement.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **§ 58.12. Documents Introduced Into Evidence in Electronic Proceedings**

This section applies to documents introduced into evidence in electronic proceedings only.

(a) Each party shall create Exhibit Packages consisting of hard copies and electronic copies (PDF format) of all documents or demonstrative materials that they intend to introduce as evidence at the hearing in their case-in-chief. It is recommended that the documents be organized in the Exhibit Package in the order anticipated for use at the hearing. The parties shall not pre-mark, tab, segregate, or staple individual exhibits within their Exhibit Package.

(b) Both the hard and electronic copies of a party's Exhibit Package shall be consecutively numbered in the lower right corner of each Exhibit Package page. The numbering for the hard and electronic copies shall be identical. Unless otherwise ordered by the presiding ALJ, or their designee, Respondent's Exhibit Package shall begin with the prefix "R" preceding the page number (e.g., R1, R2, R3, etc.), and Appellant's Exhibit Package shall use the prefix "A" preceding the page number (e.g., A1, A2, A3, etc.). Leading zeros are left to the parties' discretion.

(c) Each party shall create an index of the exhibits contained within their Exhibit Packages and submit the index to the Board in native Microsoft Word format. The indices shall include the range of numbers for a specific document, and a neutral description of the document.

(d) The parties shall serve one electronic copy and one hard copy of the Exhibit Package on the Board, and one electronic copy and one hard copy to the opposing party. The parties shall serve all hard copies of the Exhibit Package on the Board and the opposing party by regular United States mail a minimum of ten business days prior to the hearing, or by overnight delivery a minimum of five business days prior to the hearing. The parties shall serve electronic copies of their Exhibit Package by email, File Transfer Portal, or other specified method, on the Board and by email on the opposing party a minimum of five business days prior to the hearing.

(e) If the hearing has been ordered to proceed as an electronic proceeding, an order shall be issued at the time the hearing is set.

(f) Failure to comply with any part of this regulation may result in the exclusion or restriction of evidence at the hearing.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 58.13. Documents Introduced into Evidence in In-person Proceedings**

This section applies to documents introduced into evidence in in-person proceedings only.

(a) At the hearing, each party shall bring at least four exact hard copies of their Exhibit Package. Each party shall three-hole punch each hard copy of the Exhibit Package and place them in a loose-leaf binder or binders. All documents shall be printed on one side only. One copy shall be provided to the administrative law judge (ALJ Copy), one copy shall be used by the witness (Witness Copy), and one copy shall be provided to each opposing party.

(b) Failure to comply with any part of this regulation may result in the exclusion or restriction of evidence at the hearing.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 58.14. Court Reporters**

Upon a showing of good cause by a party, a hearing may be recorded by a certified court reporter approved by the Chief ALJ or their designee. The certified

court reporter shall be retained by the Board. The cost of the court reporter shall ultimately be borne by the person making the request. The Board shall receive a copy of the transcript from the court reporter at no expense to the Board.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

#### **Subarticle 4. Discovery**

##### **§ 59.1. Request for Discovery; Statements; Writings; Investigative Report; Witness List**

(a) Except as otherwise provided in subdivision (a) (1), each party to an appeal, complaint, or any other matter scheduled for an evidentiary hearing, is entitled to serve a request for discovery on any other named party to the complaint or appeal. All requests for discovery shall be served on the responding party no later than 90 days after filing the appeal or complaint with the board. The right to inspect documents and interview witnesses provided for under Government Code section 19574.1 is separate and distinct from a request for discovery expressed in this section and is not governed by the provisions of this section.

(1) For appeals from Notice of Adverse Action served pursuant to Government Code section 19574 or 19590, a request for discovery may only be served by the Appellant or the Appellant's representative upon the Respondent as provided for in subdivision (a). However, a Respondent may serve a request for discovery on Appellant in said appeal no later than 15 days after the prehearing/settlement conference solely for the purpose of obtaining information relevant to any affirmative defense alleged by Appellant in the prehearing/settlement conference statement. If Appellant amends his or her prehearing/settlement conference statement after a prehearing/settlement conference to include an affirmative defense, Respondent may serve a request for discovery on Appellant no later than 15 days after receiving the amended prehearing/settlement conference statement. If Appellant alleges an affirmative defense simultaneously with filing his or her appeal, a Respondent may serve a request for discovery on Appellant no later than 90 days after the Respondent's receipt of Appellant's defense to the notice of proposed action.

(b) Any party seeking discovery beyond the 90 days from the filing of an appeal or complaint with the board or more than 15 days after the prehearing/settlement conference or the receipt of a prehearing/settlement conference statement, may do so only upon an order issued by the Chief ALJ or his or her designee. The party seeking discovery must file a petition showing good cause why they exceeded the 90, or 15, day periods, and shall attach a copy of the proposed discovery request. The matter will be decided upon the moving papers by the assigned ALJ, in his or her discretion, that

such additional or late requests for discovery should be permitted in the furtherance of justice. No hearing on the motion will be scheduled.

(c) A request for discovery may include the following:

(1) Each party to the appeal or complaint is entitled to request and receive from any other party to the appeal or complaint the names and home or business addresses of percipient witnesses to the event(s) in question, to the extent known to the other party and of individuals who may be called as witnesses during the course of the hearing, except to the extent that disclosure of the address is prohibited by law. The responding party may, at his or her discretion, provide either the home or business address of the witness, except to the extent that disclosure of the address is prohibited by law;

(2) Statements, as defined in Evidence Code section 225, to the extent such statements exist as of the date of the request, of witnesses proposed to be called during the hearing by the party and of other persons having personal knowledge of the act, omission, event, decision, condition, or policy which are the basis for the appeal. The responding party shall, upon a showing of good cause and subject to the discretion of the administrative law judge, subsequently amend their witness list if they intend to call additional witnesses not previously disclosed;

(3) All writings, as defined in Evidence Code section 250, that the responding party proposes to enter into evidence. The responding party shall, upon a showing of good cause and subject to the discretion of the ALJ, subsequently provide the requesting party with additional writings that it proposes to enter into evidence;

(4) Any other writing or thing that is relevant to the appeal or complaint; and

(5) Investigative reports made by or on behalf of any party pertaining to the act, omission, event, decision, condition or policy which is the basis for the appeal or complaint, including all supporting materials, pertaining to the subject matter of the proceeding, to the extent that these reports: (A) contain the names and home or business addresses of witnesses or other persons having personal knowledge of the facts, omissions or events which are the basis for the proceeding, unless disclosure of the address is prohibited by law, or (B) reflect matters perceived by the investigator in the course of his or her investigation, or (C) contain or include by attachment any statement or writing described in subdivision (c)(5) (A) to (B), inclusive, or summary thereof.

(d) All parties receiving a request for discovery shall produce the information requested, or shall serve a written response on the requesting party clearly specifying which of those requested matters will not be produced and the basis

for the non-production, within 30 days of receipt of the discovery request. The parties may extend the deadline by mutual agreement, by no more than 30 days.

(1) A responding party may object to any item or category demanded in a request for discovery in whole or in part. The objection must:

(A) Identify with particularity the specific document or evidence demanded to which the objection is made; and

(B) Set forth the specific ground for objection, including claims of privilege, work product, or right of privacy protection.

(C) If an objection is based on a claim of privilege, the particular privilege invoked shall be stated.

(D) If an objection is based on a claim that the information sought is protected work product, that claim shall be expressly asserted.

(2) If a responding party fails to serve a timely response to a request for discovery:

(A) The responding party waives any objection to the request for discovery, including one based on privilege or on the protection for work product.

(B) At the discretion of the assigned ALJ, a responding party may be relieved from this waiver based upon a determination that both of the following conditions are satisfied:

(i) The responding party has subsequently served a response that is in substantial compliance with the request for discovery, and

(ii) The responding party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

(e) Failure to produce information or material responsive to a request for discovery may result in the exclusion of a witness or other evidence at the discretion of the assigned ALJ. A responding party may, at the discretion of the assigned ALJ, and upon a showing of good cause amend a response to request for discovery no later than 30 days prior to the evidentiary hearing.

Note: Authority cited: Sections 18701 and 18214, Government Code.  
Reference: Sections 225 and 250, Evidence Code; and Sections 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

### **§ 59.2. Depositions**

(a) On verified petition of any party, the Chief ALJ or the assigned ALJ may order the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed in Government Code section 18673.

(b) Any party who requests to submit a deposition in lieu of testimony at the hearing shall identify those portions of the deposition that are relevant to the issues of the case.

(c) At the discretion of the Chief ALJ or the assigned ALJ as set forth in section 56.1, in lieu of a deposition, witness testimony may be conducted by video conferencing.

Note: Authority cited: 18701, Government Code. Reference: Sections 11511, 18673, and 18675, Government Code.

### **§ 59.3. Subpoenas**

(a) Licensed members of the California State Bar in a representative capacity, may issue subpoenas and subpoenas duces tecum to compel attendance of an individual at a hearing or production of an item at any reasonable place and time, so long as the individual being served does not reside more than 100 miles from the location where the hearing or investigation is to be held, or more than 100 miles from the location where the witness testifies or is interviewed if testimony or a statement is taken electronically pursuant to section 58.6, whichever applies.

(1) If a witness resides more than 100 miles from the hearing location, the party intending to serve the subpoena must submit an affidavit or a declaration attesting to the materiality of the witness to the Chief ALJ or their designee.

(b) Subpoenas and subpoenas duces tecum issued pursuant to (a)(1), or at the request of a person not licensed as a member of the State Bar, shall be issued by the Chief ALJ or their designee.

(c) For hearings being conducted by electronic means, the hearing location is the place designated for taking witness testimony during the proceeding, unless a different location is authorized by the Chief ALJ or their designee.

(d) Subpoenas and subpoenas duces tecum issued under this section shall be on a form provided by the board, (SPB-76, Revised 12/09), attached as Appendix "A" to these regulations.

(e) A person served with a subpoena or subpoena duces tecum may object to its terms by a motion for a protective order and/or for a motion to quash. The motion shall be made within 15 days after receipt of the subpoena.

(f) Witness fees are to be remitted pursuant to Government Code section 18674. Credits

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18672 through 18675, Government Code.

#### **§ 59.4. Abuse of the Discovery Process; Sanctions**

(a) Abuse of the discovery process includes, but is not limited to, the following:

- (1) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.
- (2) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.
- (3) Failing to respond or to submit to an authorized method of discovery.
- (4) Making, without substantial justification, an unmeritorious objection to discovery.
- (5) Making an evasive response to discovery.
- (6) Disobeying an order to provide discovery.
- (7) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.
- (8) Failure to meet and confer for an informal resolution of a discovery dispute.

(b) At the discretion of the Chief ALJ or the assigned ALJ, any party who is found to have abused the discovery process as set forth in subdivision (a) shall be subject to sanctions as ordered by the Chief ALJ or the assigned ALJ. Such sanctions may include:

- (1) An order prohibiting the introduction of designated matters into evidence by the abusing party;

(2) An order establishing designated facts, claims, or defenses against the abusing party; and/or

(3) Any other order as the Chief ALJ or assigned ALJ may deem appropriate under the circumstances.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

## **Subarticle 5. Law and Motion**

### **§ 60.1. Law and Motion; Procedures; Motions**

(a) Unless otherwise ordered by the Chief ALJ, a motion described in this section shall only be scheduled for a law and motion hearing if the motion is filed in an evidentiary hearing matter, or if the motion is a motion to dismiss a Notice of Rejection During Probation.

(b) The following motions shall be filed with the Appeals Division no later than 90 days from the date the appeal or complaint was filed with the SPB:

(1) Failure to State a Cause of Action: Will only be heard where it pertains to Discrimination, Harassment, Retaliation, and Whistleblower Retaliation Cases.

(2) Motion to Dismiss; and

(3) Motion to Strike.

(c) The following motions shall be filed with the Appeals Division within 15 days subsequent to learning of the basis for the motion:

(1) Motions to compel deposition of an unavailable witness pursuant to section 60.3;

(2) Motion for Change of Venue;

(3) Consolidation or severance of matters for hearing pursuant to section 57.2; and

(4) Motion to suppress evidence based upon a party's failure to timely file or fully disclose all required items in the prehearing/settlement conference statement pursuant to section 57.1, subdivision (f).

(d) Other motions shall be filed with the Appeals Division no later than 15 days after learning of the basis for the motion.



(e) The board shall provide a motion form for use by a party who is representing themselves. A party representing themselves is not required to use the motion form to file a motion. If such a party does not use the motion form to file a motion, and does not otherwise comply with this section, the Chief ALJ or their designee may reject the motion.

(f) Prior to the filing and service of any law and motion matter under subdivision (b), the moving party must secure a date and time for the hearing on the motion from the Appeals Division Calendar Clerk, and this information shall be included on all copies of the motion filed with the SPB and served on all parties. The moving party shall file their motion with the Chief ALJ or their designee, and serve all parties no later than 30 days prior to the hearing date scheduled with the Appeals Division Calendar Clerk. No hearing shall be held on any motion filed pursuant to subdivisions (c) and (d), unless determined necessary by the Chief ALJ or their designee.

(g) Motions, Oppositions to Motions, and Replies to Oppositions must be filed with the Chief ALJ or their designee, and served on all parties pursuant to section 52.10.

(h) Oppositions to Motions must be filed with the Chief ALJ or their designee, and served on all parties no later than 15 days after service of the motion.

(i) Replies to Oppositions must be filed with the Chief ALJ or their designee, and served on all parties no later than 8 days after service of the Opposition.

(j) If the motion is to be heard via a telephonic conference call, the party requesting the telephonic conference call is responsible for making arrangements with a telephone service provider, such that the assigned ALJ shall be provided the opportunity to call into the conference call at the designated date and time of the hearing. Calling instructions shall be provided to the Appeals Division within 5 days prior to the hearing.

(k) Motions and Oppositions shall be limited to 15 pages. In addition, the motion may be supported by such documentation as affidavits, declarations, depositions, and matters of which official notice shall or may be taken. Replies to Oppositions shall be limited to 5 pages.

(1) Where a motion or opposition is supported by additional documentation, the motion must specifically identify the relevant portions of each piece of documentation. Failure to identify the relevant portions may, at the discretion of the Chief ALJ or their designee, result in the supporting documentation not being considered.

(l) Failure to comply with the requirements of subdivisions (b) through (j) may, in the discretion of the assigned ALJ, constitute sufficient ground for denial of the motion.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

## **§ 60.2. Motions for Hearing Continuances**

(a) Motions for continuance of a hearing shall be considered only upon the moving papers. No hearing on the motion will be scheduled.

(b) Grounds for continuance

(1) Motions for continuances based upon good cause shall be considered only if filed no later than 10 days subsequent to learning of the basis for a continuance. Circumstances that may indicate good cause include:

(A) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;

(B) The unavailability of a party or counsel because of death, illness, or other excusable circumstances;

(C) The substitution of counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;

(D) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts.

(2) Motions for continuances by mutual agreement of the parties shall be considered only if filed no later than 90 days prior to the hearing. The motion must be signed by all parties or their representatives.

(3) When the acts or omissions that lead to an adverse action or rejection also lead to criminal charges being filed against the Appellant, continuances shall be granted when the parties mutually concur to allow for completion of the criminal proceedings, subject to the three year limitation in section 58.3.

(c) Requirements for filing a motion for continuance

(1) The moving party must meet and confer with all other parties on the motion prior to filing the motion with the Appeals Division, directed to the Chief ALJ or their designee pursuant to section 52.5.

(2) The motion shall include all facts which support the request to continue the hearing, as well as the following information:

- (A) The case name and SPB case number;
- (B) The date, time and place, and type of hearing to be continued;
- (C) The address and daytime telephone number of the moving party and all other parties;
- (D) A list of all previous motions to continue the hearing and the dispositions;
- (E) The positions of all nonmoving parties to the motion;
- (F) Any future dates when the parties and witnesses are unavailable for hearing over the next three months and any preferred future hearing dates;
- (G) If Appellant is the moving party, whether Appellant waives the provisions of section 18671.1 of the Government Code; and
- (H) All factual assertions must be accompanied by a declaration under penalty of perjury, that the facts are true and correct.

(d) In ruling on a motion for continuance, the ALJ shall consider all the facts and circumstances that are relevant to the determination. These may include:

- (1) The proximity of the hearing date;
- (2) Whether there was any previous continuance, extension of time, or delay of a hearing due to any party;
- (3) The length of the continuance requested;
- (4) The prejudice that parties or witnesses will suffer as a result of the continuance;
- (5) The hearing calendar and the impact of granting a continuance on other pending cases;
- (6) Whether counsel is engaged in another hearing;
- (7) Whether all parties have stipulated to a continuance;
- (8) Whether the interests of justice are best served by a continuance, by the hearing of the matter, or by imposing conditions on the continuance; and

(9) Any other fact or circumstance relevant to the fair determination of the motion.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

### **§ 60.3. Motion to Compel Discovery**

(a) A petition or motion to compel a request to inspect documents under Government Code section 19574.1 is governed by the procedures provided in Government Code section 19574.2. Motions to compel a request for discovery issued pursuant to section 59.1 are governed by the procedures stated in subdivisions (b) through (e).

(b) Any party seeking further responses to a request for discovery shall meet and confer with the responding party.

(c) After complying with subdivision (b), a party may serve and file with the Appeals Division a motion to compel discovery, naming as responding party any party who has refused or failed to provide discovery as required by section 59.1. A copy of the motion shall be served on the responding party on the same date the motion is filed with the Appeals Division. The motion shall be served upon the responding party and filed with the Appeals Division within 14 days after the responding party first evidenced his or her failure or refusal to comply with section 59.1.

(d) The matter will be decided upon the moving papers, as well as any responses and replies unless ordered otherwise.

(e) The motion shall state facts showing the responding party failed or refused to comply with section 59.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the responding party for an informal resolution of the issue has been made, and the grounds of the responding party's refusal.

(f) Motions, responses and replies shall be limited to 15 pages. In addition, the motion may be supported by such documentation as affidavits, declarations, depositions, and matters of which judicial notice shall or may be taken.

(1) Where a motion or opposition is supported by additional documentation, the motion must specifically identify the relevant portions of each piece of documentation. Failure to identify the relevant portions may, at the discretion of the Chief ALJ or his or her designee, result in the supporting documentation not being considered.

(2) The responding party shall have a right to file an opposition to the motion within 15 days of service of the motion. Any reply to the opposition shall be filed with the Chief ALJ or his or her designee and served on the moving party within 10 days of service of the opposition motion.

Note: Authority cited: Section 18701, Government Code. Reference: Section 915, Evidence Code; and Sections 18670, 18671, 18672, 18672.1, 18673, 18675, 19683 and 19700-19706, Government Code.

## **Subarticle 6.**

### **§ 61. Claims for Back Pay and Requests for Back Pay Hearings**

(a) This section applies to Appellants:

(1) who are entitled to salary pursuant to Government Code sections 19584, 19180, 19253.5, and 19585; and

(2) whose appeals with the board resulted in a final board decision:

(A) revoking or modifying Appellant's adverse action;

(B) restoring a rejected probationer to his or her position;

(C) revoking or modifying a medical demotion, transfer, or termination; or

(D) revoking or modifying a non-punitive termination, demotion, or transfer.

(b)(1) Any Appellant described in subdivision (a) may file a claim with the board for back pay, if Respondent has not restored the Appellant's salary, with appropriate interest, and, if appropriate, the reinstatement of all relevant benefits. Appellant shall, consistent with section 52.4, serve Respondent with a copy of a back pay claim.

(2) Any Respondent that is a party to a proceeding in which the board has directed the payment of appropriate salary, benefits, and interest to an Appellant described in subdivision (a) may file a request for a back pay hearing, in the event that the Respondent and the Appellant are unable to agree to the salary, benefits, and interest, if any, due to Appellant. Respondent shall, consistent with section 52.4, serve Appellant with a copy of the request for back pay hearing.

(c) A claim for back pay or a request for back pay hearing shall include:

(1) A description of any salary for which Respondent has reimbursed Appellant, including the total dollar amount of salary and the time period for which the salary is being reimbursed;

(2) A description of any benefits for which Respondent has reimbursed Appellant, including the total dollar amount of benefits and the time period for which the benefits are being reimbursed;

(3) A description of any interest for which Respondent has reimbursed Appellant, including the rate, the total dollar amount of interest, and the time period for which the interest is being reimbursed;

(4) A description of any salary which remains unpaid by Respondent, including the total dollar amount of unpaid salary and the time period that corresponds to the unpaid salary;

(5) A description of any benefits which remain unpaid by Respondent, including the total dollar amount of unpaid benefits and the time period that corresponds to the unpaid benefits;

(6) A description of any interest payments which remain unpaid by Respondent, including the total amount of unpaid interest, the rate that Respondent should have paid, and the time period that corresponds to the unpaid interest payments;

(7) A description of what, if any, other out of pocket expenses remain unpaid by Respondent, including the total dollar amount of unpaid expenses and the time period that corresponds to the unpaid expenses; and

(8) A statement of any other issues that remain unresolved between Appellant and Respondent.

(d) Within 45 days of receipt of a back pay claim, Respondent or Appellant shall file an answer to the back pay claim or request for back pay hearing filed by the opposing party. The answer shall include:

(1) A description of any salary for which Respondent has reimbursed Appellant, including the total dollar amount of salary and the time period for which the salary is being reimbursed;

(2) A description of any benefits for which Respondent has reimbursed Appellant, including the total dollar amount of benefits and the time period for which the benefits are being reimbursed;

(3) A description of any interest for which Respondent has reimbursed Appellant, including the rate, the total dollar amount of interest, and the time period for which the interest is being reimbursed;

(4) An explanation for why Respondent has not paid Appellant additional salary which Appellant claims he or she is owed, if applicable;

(5) An explanation of why Respondent has not paid Appellant additional benefits which Appellant claims he or she is owed, if applicable;

(6) A description of why Respondent has not paid Appellant additional interest payments which Appellant claims he or she is owed, if applicable;

(7) A description of why Respondent has not paid Appellant the other out of pocket expenses which Appellant claims he or she is owed, if applicable; and

(8) A statement of any other issues which remain unresolved between Appellant and Respondent.

(e) A claim for back pay or request for back pay hearing which meets all of the requirements of this section shall be scheduled for an evidentiary hearing, as described in Article 6.

(f) Prior to the parties' prehearing/settlement conference, as described in section 57.1, the Appellant and Respondent shall meet and confer to determine the issues which remain unresolved between the parties and the facts to which the parties can stipulate.

(g) Consistent with section 57.1, the ALJ conducting a prehearing/settlement conference for a back pay claim or request for back pay hearing shall instruct the parties who shall have the burden of proof for contested issues. Instructions shall include the following:

(1) Appellant shall have the burden to prove that he or she is entitled to the reimbursement of any salary and benefit described in section 51.2, subdivision (i);

(2) Respondent shall have the burden to prove that the back pay for an Appellant entitled to salary pursuant to Government Code sections 19584, 19253.5, or 19585 should be offset because Appellant earned, or might reasonably have earned, salary during any period commencing more than six months after the initial date of the suspension, demotion, transfer, or termination;

(3) Respondent shall have the burden to prove that the back pay for an Appellant entitled to salary pursuant to Government Code section 19180

should be offset because Appellant earned, or might reasonably have earned, salary in private or public employment during the period the rejection was improperly in effect; and

(4) Respondent shall have the burden to prove that Appellant was not ready, able, and willing to perform the duties of his or her position for any period of time that the Appellant was subject to the improper action or rejection.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19584, 19180, 19253.5, and 19585, Government Code.

## **ARTICLE 7. NAME CLEARING HEARINGS**

### **§ 63.1. Name Clearing Hearing Procedures**

(a) In those situations where an employee's Limited Term (LT), Seasonal, or Temporary Authorization (TAU) appointment is terminated for fault, based on charges of misconduct which might stigmatize his or her reputation, or seriously impair his or her opportunity to earn a living, or which might seriously damage his or her standing or association in his community, the employee shall be entitled to file a request for a "Name Clearing" Hearing to be conducted by the appointing authority.

(b) Any Name Clearing Hearing conducted by an appointing authority should, at a minimum, conform to the following requirements:

(1) The employee should file his or her request with the appointing authority within five business days of the effective date of the notice of termination;

(2) The appointing authority should conduct the hearing and issue its decision within 21 days of the effective date of the notice of termination, unless the employee agrees to a hearing to be conducted at a later date;

(3) The employee should be entitled to be represented by a representative of his or her choosing;

(4) The appointing authority's representative should be a neutral, impartial decision-maker, who has the authority to sustain the termination, or revoke the "for fault" designation concerning the appellant's termination;

(c) Upon conclusion of the hearing, the appointing authority's representative shall determine whether the allegations contained in the notice of termination are supported. If the allegations are not supported, a decision shall be issued to reflect that the employee's termination was without fault. Such a decision will not, however, require that the appellant be reinstated to his or her position, except as otherwise required by law.



(d) The Board does not conduct Name Clearing Hearings, nor is there any right of appeal to the Board from a decision by an appointing authority, except as otherwise required by law.

Note: Authority cited: Section 18701, Government Code. Reference: Section 18675, Government Code.

## **ARTICLE 8. DISCRIMINATION COMPLAINT PROCESS**

### **§ 64.1. Discrimination; Harassment; Retaliation; Denial of Reasonable Accommodation**

Any state civil service employee, or applicant for state civil service employment, who reasonably believes that he or she has been subjected to discrimination, harassment, or retaliation based on his or her medical condition or mental or physical disability, or denied reasonable accommodation for a known physical or mental disability in state employment may file a complaint by complying with the provisions of Sections 64.2 through 64.6.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

### **§ 64.2. Prerequisites for Filing a Discrimination Complaint with the Board**

Any state civil service employee or applicant for state civil service employment who reasonably believes that he or she has been subjected to discrimination, harassment, or retaliation based on his or her medical condition or mental or physical disability, or denied reasonable accommodation for a known physical or mental disability in employment shall first file a written complaint with the appointing power's Equal Employment Opportunity Office, or other office or individual designated by the appointing power to investigate such complaints, prior to filing a discrimination complaint with the SPB.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702.1, Government Code.

### **§ 64.3. Appointing Power Discrimination Complaint Process**

(a) Each appointing power shall establish in writing its own internal discrimination complaint process through which a complainant may obtain review of, and a written response to, an allegation of discrimination, harassment, or retaliation based on a medical condition or mental or physical disability, or denial of reasonable accommodation for a known physical or mental disability.

(b) Each complaint filed with the appointing power shall be in writing and shall state the facts upon which the complaint is based, and the relief requested, in sufficient detail for the appointing power to understand the nature of the

complaint and to determine the individuals involved. The complained of act, omission, event, decision, condition, or policy must have occurred no more than one year prior to the date that the complaint is filed with the appointing power. This period may be extended by not more than 90 days in those cases where the complainant first obtained knowledge of the facts of the alleged discrimination more than one year from the date of its occurrence.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

#### **§ 64.4. Response of Appointing Power to Discrimination Complaint**

(a) The appointing power shall provide the complainant a written decision within 90 days of the complaint being filed. If the appointing power has not completed its review and/or is unable to provide a written decision within the 90 day time period, the appointing power shall, within that same time period, inform the complainant in writing as to the reason(s) it is unable to issue its decision within the required time period.

(b) Upon the expiration of the 90 day time period stated in this section, Complainant may thereafter file a discrimination complaint with the SPB as provided in section 64.5. However, a discrimination complaint may not be filed with the SPB more than 150 days after the complainant filed his or her complaint of discrimination with the appointing power.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

#### **§ 64.5. Requirements for Filing Discrimination Complaint with the SPB**

Any complaint to the SPB alleging discrimination, harassment, retaliation, or denial of reasonable accommodation for a physical or mental disability shall be subject to the following filing requirements:

(a) The complaint shall be filed with the Appeals Division within 30 days of the date the appointing power served its decision concerning the complaint of discrimination on the Complainant. If the appointing power has failed to provide a decision to the Complainant within 90 days of the complaint being filed, the Complainant may file a complaint with the Appeals Division within 150 days of the date the Complainant filed his or her complaint of discrimination with the appointing power.

(b) The Complainant shall submit to the Appeals Division a complaint and any attachments.

(c) The complaint shall be in writing, and shall:

(1) identify the facts that form the basis for the complaint, including, but not limited to the specific protected classification or activity as set forth in sections 19701 or 19702 of the Government Code; all discriminatory acts experienced by the Complainant, including the date that each act occurred; the name and job title of each person who allegedly subjected Complainant to each discriminatory act; and all information that the Complainant possesses that shows that the complained of employment action(s) were the result of discriminatory conduct;

(2) identify all Respondents known to the complainant (i.e. the appointing power as well as all state employees alleged to have discriminated against the complainant), and identify the business address of each Respondent named as a party to the complaint. Unless the complainant names some other known Respondent, the Complainant's appointing power shall be considered the sole Respondent;

(3) attach a copy of the Complainant's complaint of discrimination filed with the appointing power, together with a copy of the decision or other response of the appointing power to the complaint. If the appointing power failed to provide the Complainant with a written decision or other response to the discrimination complaint within the time period set forth in section 64.4, the Complainant shall so state in the complaint;

(4) specify the relief and/or remedies sought by the Complainant; and

(5) be limited to a maximum of 15 pages of double-spaced typed or printed text. Additional pages may be allowed upon a showing of good cause. The Complainant shall submit a separate document with the complaint stating the reasons for good cause. The 15 page limit does not apply to any documents attached to the complaint pursuant to the requirements of subdivisions (3) of this section, or any other exhibits.

(d) The above procedures do not apply in those cases where an appellant raises discrimination as an affirmative defense to any case scheduled for hearing. A party who raises discrimination solely as an affirmative defense shall not be entitled to the relief specified in section 19702 of the Government Code, unless that party has also complied with all filing requirements set forth in sections 64.2 through 64.6.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 19701 and 19702, Government Code.

#### **§ 64.6. Acceptance of Complaint; Notice**

(a) If, after review of the complaint, the Appeals Division determines that the complaint does not meet all filing requirements, the Appeals Division shall notify the Complainant in writing of the reasons for its determination. The Complainant

may file an amended complaint within 20 days of receipt of the notice of rejection of the complaint.

(b) Upon acceptance of the complaint or amended complaint, the Appeals Division shall serve the operative complaint on the named Respondents by mailing a copy of the complaint to the legal office, or other designated office, of the appointing power, and to the business address of any individually named respondent.

(c) The provisions of Article 6 of these regulations apply to discrimination complaints accepted by the Appeals Division.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18675, 1970 and 19702, Government Code.

## **ARTICLE 9. MERIT ISSUE COMPLAINTS**

### **§ 66.1. Merit Issue Complaints**

(a) Merit issue complaints are complaints that the State Civil Service Act or Board regulation or policy has been violated by a state agency. These complaints include but are not limited to, interference with promotional opportunities, interference with a person's access to any SPB appeals process, and the designation of managerial positions pursuant to Government Code section 3513. Merit issue complaints do not include appeals of actions that are specifically provided for elsewhere in law or in Board regulations.

(b) Each state agency shall establish and publicize to its employees the process for addressing merit issue complaints. That process shall include provisions for informing employees in writing of the state agency's decision and of the employee's right to appeal the state agency's decision on the merit issue complaint to the Appeals Division.

(c)(1) Prior to filing with the Appeals Division, merit issue complaints shall first be filed with the state agency's human resources office, personnel officer or any unit/person designated to address merit issue complaints within three years of the alleged violation of Board regulation or policy.

(2) Persons may file a merit issue complaint themselves or designate an attorney or other authorized representative to represent them. No person(s) may file a merit issue complaint on behalf of another person(s) without their authorization.

(d) Each state agency shall inform employees or applicants at the time the complaint is received of their right to challenge the state agency's decision, denial of the complaint or failure to respond by filing a complaint with the Appeals Division and the timelines for filing according to section 66.1, subdivision (e).

(e) A merit issue complaint shall be filed with the Appeals Division within 30 days of the state agency's decision or denial of the complaint. Failure of a state agency to respond to a merit issue complaint within 90 days of receipt of the complaint shall be deemed a denial of the complaint's allegations and shall release the appellant to file a merit issue complaint directly with the Appeals Division within 30 days of the 90<sup>th</sup> day.

(1) An appeal of a merit issue complaint filed with the Appeals Division shall:

(A) Include evidence of having filed a formal written complaint with the state agency's human resources office, personnel officer or any unit/person designated to address merit issue complaints.

(B) Include the original complaint submitted to the state agency.

(C) Identify any wrongdoing by the state agency supported by factual evidence and documentation.

(f) Merit Issue Complaints are assigned to investigative review by an Investigative Officer pursuant to section 53.2.

(g) Persons not having competed in an examination or selection process who wish to file a complaint that the State Civil Service Act or Board regulation or policy has been violated by a state agency, may submit requests for review to the Board's Compliance Review Division.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 12940, 18675, 18952, 19701, 19702, 19230 and 19231, Government Code.

## **ARTICLE 10. WHISTLEBLOWER RETALIATION COMPLAINT PROCESS**

### **§ 67.1. Whistleblower Retaliation Complaints**

Any state employee or applicant for state employment, or any employee or applicant for employment with a California Community College, who believes that he or she has been retaliated against in employment for having reported improper governmental activity, as that phrase is defined in Government Code section 8547.2(b), or Education Code section 87162(c), or for having refused to obey an illegal order or directive, as defined in Government Code section 8547.2(e), or Education Code section 87162(b), may file a complaint and/or appeal with the State Personnel Board in accordance with the provisions set forth in sections 67.2 through 67.8. For purposes of complaints filed by community college employees or applicants for community college employment, the local community college district shall be deemed the "appointing power."

Note: Authority cited: Section 18701, Government Code. Reference: Sections 87162, 87164, Education Code; and Sections 8547.2, 8547.8, and 19683, Government Code.

## **§ 67.2. Requirements for Filing Whistleblower Retaliation Complaint with The State Personnel Board**

An individual desiring to file a complaint of retaliation with the SPB must adhere to the following requirements:

(a) The complaint shall be filed with and received by the Appeals Division within one year of the most recent alleged act of reprisal. The complaining party shall submit an original complaint and copy of all attachments, and enough copies of the complaint and attachments for the Appeals Division to serve each entity and person alleged to have engaged in retaliatory conduct and against whom damages and/or disciplinary action is sought.

(b) All complaints shall be in writing and shall identify and include the following:

(1) Clearly identify the protected activity that the Complainant engaged in, the date(s) the Complainant reported the improper governmental activity, and the person(s) to whom the Complainant reported the improper governmental activity;

(2) Clearly identify the specific act(s) of reprisal or retaliation alleged to have occurred, and the entity and/or person(s) responsible for the reprisal or retaliation;

(3) A sworn statement, under penalty of perjury, that the contents of the complaint are true and correct;

(4) The name and business address of each individual and entity alleged to have committed reprisal or retaliatory acts; and

(5) Specify what relief and/or damages Complainant is seeking against any Respondent(s) as a result of the alleged reprisal or retaliation, and include an extra copy of the complaint and all accompanying documents for the SPB to serve on each of the Respondents.

(c) If adverse action is sought against any individually named Respondent, pursuant to the provisions of Government Code section 19574, the complaint must clearly state the facts constituting the cause or causes for adverse action in such detail as is reasonably necessary to enable the accused employee to prepare a defense thereto.

(d) Each complaint shall be limited to a maximum of 15 pages of double-spaced typed or printed text, not including exhibits. Additional pages may be allowed

upon a showing of good cause. The Complainant shall submit a separate document with the complaint stating the reasons for good cause.

(e) The above procedures do not apply in those cases where an Appellant raises retaliation as an affirmative defense when appealing a notice of adverse action, pursuant to Government Code sections 19575 or 19590, when appealing a notice of rejection during probation, pursuant to Government Code section 19175, when appealing a notice of medical action, pursuant to Government Code section 19253.5, when appealing a notice of non-punitive action, pursuant to Government Code Section 19585, or when appealing a notice of career executive assignment termination pursuant to Government Code section 19889.2. Neither the remedies nor the relief available to a complaining party pursuant to the provisions of Government Code sections 8547.8 or 19683, shall, however, be available to a party who raises whistleblower retaliation as either an affirmative defense or as a separate cause of action in any other SPB hearing, unless that party has first complied with all filing requirements set forth in this section.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 19175, 19253.5, 19572, 19583.5, 19585, 19683 and 19889.2, Government Code; and Section 6129, Penal Code.

### **§ 67.3. Acceptance of Whistleblower Complaint**

(a) Within 10 business days of receipt of the complaint, the Appeals Division shall determine whether it has jurisdiction over the complaint and whether the Complainant meets the filing requirements set forth in Section 67.2. The Appeals Division shall also determine whether the complainant has complied with all other requirements for filing a retaliation complaint, as set forth in Government Code sections 8547-8547.12 and 19683 and/or Education Code sections 87160-87164.

(b) If the Appeals Division determines that the complaint does not meet all filing requirements, it shall notify the complaining party in writing that the complaint has not been accepted and the reason(s) for that determination. The complaining party may thereafter be permitted to file an amended complaint within 10 business days of service of the notice of non-acceptance of the complaint.

(c) Unless time is extended by the complaining party in writing, the Executive Officer shall, within 10 business days of receipt of the complaint or amended complaint, notify the complaining party of a decision to either:

- (1) dismiss the complaint for failure to meet jurisdictional or filing requirements; or

(2) refer the case for investigation in accordance with the provisions of section 67.4; or

(3) schedule the case for an informal hearing before a hearing officer in accordance with the provisions of section 67.5.

(d) Except for those complaints amended pursuant to subsection (b), any amendment for a whistleblower retaliation complaint may only be accepted upon a showing of good cause.

(e) In accordance with the provisions of Penal Code section 6129, the SPB shall be entitled to defer review of a complaint filed by an employee of the Department of Corrections and Rehabilitation in those cases where the employee has filed a similar complaint with the Office of the Inspector General.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 87160-87164, Education Code; Sections 8547-8547.2, 8547.8, 18670, 18671, 18675, 19572, 19574, 19575, 19683 and 19590, Government Code; and Section 6129, Penal Code.

#### **§ 67.4. Cases Referred to Investigation**

(a) If the Executive Officer assigns a complaint for investigation, the Executive Officer or the assigned investigator(s) shall conduct the investigation in the manner and to the degree they deem appropriate, and shall have full authority to question witnesses, inspect documents, and visit state facilities in furtherance of their investigations. All state agencies and employees shall cooperate fully with the investigators, or be subject to disciplinary action for impeding the investigation. The investigators, pursuant to the provisions of Government Code section 18671, shall have authority to administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under Article 3 (commencing with section 2016) of Chapter 3 of Title 4 of Part 4 of the Code of Civil Procedure, in order to ensure a fair and expeditious investigation.

(b) The Executive Officer shall issue findings regarding the allegations contained in the complaint and a recommended remedy, if any, based on the investigation, in accordance with the provisions of section 67.6.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671, 18675, 19582, 19583.5 and 19683, Government Code; Section 6129, Penal Code, and Section 2016 *et seq.*, Civil Procedure Code.



## **§ 67.5. Cases Referred to Informal Hearing**

(a) For those complaints assigned to an informal hearing before a Hearing Officer the Appeals Division shall serve notice of the informal hearing on all parties to the complaint a minimum of 30 days prior to the scheduled hearing date. Service on each respondent shall be made at the respondent's business address. The notice shall:

(1) include a complete copy of the complaint with all attachments, and a copy of the statutes and rules governing the informal hearing; and

(2) require each named Respondent to serve on the Complainant and file with the Appeals Division, at least 10 days prior to the informal hearing, a written response to the complaint, signed under penalty of perjury, specifically addressing the allegations contained in the complaint.

(b) The informal hearing shall be conducted in conformance with those procedures set forth in Government Code section 11445.10 *et seq.*, and may in the discretion of the Hearing Officer, include such supplemental proceedings as ordered by the Hearing Officer, and as permitted by section 11445.10 *et seq.* of the Government Code, to ensure that the case is heard in a fair and expeditious manner. The Hearing Officer shall have full authority to question witnesses, inspect documents, visit state facilities in furtherance of the hearing, and otherwise conduct the hearing in the manner and to the degree he or she deems appropriate. The informal hearing and any supplemental proceedings shall be recorded by the Hearing Officer. All parties shall, upon request and payment of applicable reproduction costs, be provided with a transcript or a copy of the recording of the informal hearing.

(c) Following the informal hearing and any supplemental proceedings, the Hearing Officer shall issue findings for consideration by the Executive Officer regarding the allegations contained in the complaint, together with all recommended relief, if any, proposed to remedy any retaliatory conduct.

(d) The Executive Officer shall have the discretion to adopt the Hearing Officer's findings and recommended remedies in their entirety; modify the Hearing Officer's findings and recommended remedies; or reject the Hearing Officer's findings and recommended remedies, and:

(1) issue independent findings after reviewing the complete record; or

(2) remand the case back to the Hearing Officer, or refer the matter to an ALJ for further proceedings.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 11445.10 *et seq.*, 11513, 18670,

18671, 18672, 18675, 19572, 19574, 19575, 19582, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

#### **§ 67.6. Findings of the Executive Officer**

(a) The Executive Officer shall issue a Notice of Findings within 60 business days of the date the Executive Officer accepts the complaint pursuant to Section 67.3, unless the complaining party agrees, in writing, to extend the period for issuing the findings, or unless the time period is otherwise tolled.

(b) In those cases where the Executive Officer concludes that the allegations of retaliation were not proven by a preponderance of the evidence, the Executive Officer shall issue a Notice of Findings dismissing the complaint and that decision shall be deemed the final decision of the Board. The Notice of Findings shall notify the Complainant that his or her administrative remedies have been exhausted and that the Complainant may pursue whatever judicial remedies are available to him or her.

(c) In those cases where the Executive Officer concludes that the Complainant proved one or more of the allegations of retaliation by a preponderance of the evidence, the Notice of Findings shall identify the allegations deemed substantiated, and the named Respondents deemed to have engaged in retaliatory acts. If the Notice of Findings concludes that any individual manager, supervisor, or other employee engaged in improper retaliatory acts, the Notice of Findings shall identify the legal causes for discipline under section 19572 of the Government Code.

(d) The Notice of Findings shall inform any Respondent found to have engaged in retaliatory acts of his or her right to request a hearing regarding the Notice of Findings. Any such request shall be filed with the Appeals Division, and served on all other parties within 30 days of the issuance of the Notice of Findings. If a timely request for hearing is not filed with the SPB, the Board may order any appropriate relief, including, but not limited to, reinstatement, back pay, restoration of lost service credit, if appropriate, compensatory damages, and the expungement of any adverse records of the state employee or applicant for state employment who was the subject of the alleged acts of misconduct prohibited by section 8547.3 of the Government Code.

(e) Upon receipt of a timely request for hearing, the Appeals Division shall schedule the matter for a Trial Setting Conference. At least 12 calendar days prior to the Trial Setting Conference, each party shall file with the Appeals Division, and serve on the opposing party, a Trial Setting Conference statement setting forth the party's estimated time for hearing; a list of all witnesses that the party intends to call; and, the dates the party, the party's representative, and the party's witnesses are unavailable for hearing.

(f) Failure of Complainant or any of Respondents to appear and/or proceed at a Trial Setting Conference, unless the hearing is continued for good cause pursuant to Section 58.3, shall result in evidentiary sanctions.

(g) At the Trial Setting Conference, the ALJ shall schedule the matter for an evidentiary hearing. The hearing shall be conducted in accordance with Article 6, beginning with section 56.1.

Note: Authority cited: Section 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.8, 18670, 18671.1, 18675, 19572, 19574, 19575, 19582, 19590 and 19683, Government Code; and Section 6129, Penal Code.

#### **§ 67.7. Disciplinary Action for Proven Retaliatory Acts**

(a) In those cases where the Board issues a final decision that finds that a manager, supervisor, or other state civil service employee has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and to also, within that same time period, notify the Office of the State Controller of the disciplinary action taken against the individual. The appointing authority shall also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(1) In accordance with the provisions of Penal Code section 6129, subdivision (c)(3), any employee of the Department of Corrections and Rehabilitation found to have engaged in retaliatory acts shall be disciplined by, at a minimum, a suspension without pay for 30 days, unless the Board determines that a lesser penalty is warranted. In those instances where the Board determines that a lesser penalty is warranted, the decision shall specify the reasons for that determination.

(b) In those cases where the Board issues a final decision that finds that any community college administrator, supervisor, or public school employer, has engaged in improper retaliatory acts, the Board shall order the appointing authority to place a copy of the Board's decision in that individual's Official Personnel File within 30 days of the issuance of the Board's order and also, within 40 days of the issuance of the Board's order, notify the Board that it has complied with the provisions of this subdivision.

(c) Any decision, as described in subdivision (a) or (b), shall be deemed a final decision of the Board and the individual against whom the disciplinary action was taken shall not have any further right of appeal to the Board concerning that action, with the exception of a Petition for Rehearing.

(d) In those cases where the Board issues a final decision that finds that a non-party manager, supervisor, or employee may have engaged in improper retaliatory acts, the Board shall notify the manager's, supervisor's, or employee's appointing power of that fact in writing and provide the appointing power with a copy of the Board's final decision

(1) Within 60 calendar days after receiving the notification, the appointing power shall either serve a notice of adverse action on the manager, supervisor, or employee, or set forth in writing its reasons for not taking adverse action against the manager, supervisor, or employee and submit the reasons for not doing so to the Board.

(e) For purposes of this Section, the Board's decision is deemed to be final after:

(1) 30 days has elapsed from the date the Executive Officer issued their Notice of Findings dismissing the complaint; or

(2) a request for hearing pursuant to section 67.6, subdivision (d), has not been timely filed with the Board; or

(3) 30 days has elapsed from the date that the Board has issued a decision adopting or modifying the proposed decision submitted by an administrative law judge after an evidentiary hearing and a Petition for Rehearing concerning that decision has not been filed with the Board; or

(4) a decision has been issued by the Board after a hearing before that body and no Petition for Rehearing concerning that decision has been filed with the Board.

Note: Authority cited: Sections 18215 and 18701, Government Code. Reference: Section 87164, Education Code; Sections 8547.3, 8547.8, 18670, 18671, 18675, 18710, 19572, 19574, 19582, 19583.5, 19590, 19592 and 19683, Government Code; and Section 6129, Penal Code.

#### **§ 67.8. Consolidation with Other Hearings**

(a) The Executive Officer or the assigned ALJ shall possess the requisite discretion to direct that separate, reasonably related cases be consolidated into a single hearing. Whenever two or more cases are consolidated, the assigned administrative law judge shall permit the parties a reasonable opportunity to conduct discovery prior to the first scheduled hearing date, if the discovery provisions set forth in sections 59.1 through 59.4 are negatively impacted by the consolidation.

(b) In those cases where one or more individually named Respondents have been joined in the consolidated hearing, the administrative law judge may, in his

or her discretion, make such orders as may appear just in order to prevent any named Respondent from being embarrassed, delayed, or put to undue expense, and may order separate hearings or make such other order as the interests of justice may require.

(c) In those cases where an appeal from adverse action, rejection during probationary period, medical action, or non-punitive action is consolidated with a whistleblower retaliation complaint, and the whistleblower retaliation complaint identifies specifically named individuals against whom damages or adverse action is sought pursuant to the provisions of section 67.2(c) each individually named Respondent shall have the right to participate in the consolidated hearing in such a manner as to reasonably defend him or herself against the allegations contained in the whistleblower retaliation complaint. These rights shall include, but not be limited to:

- (1) to be represented by a representative of his or her own choosing during the consolidated hearing;
- (2) to present a defense on his or her own behalf concerning the allegations and issues raised in the whistleblower retaliation complaint, separate and apart from any defense presented by the appointing power or any other named Respondent;
- (3) to conduct pre-hearing discovery concerning allegations and issues raised in the whistleblower retaliation complaint;
- (4) to examine and cross examine witnesses concerning allegations and issues raised in the whistleblower retaliation complaint;
- (5) to introduce and challenge the introduction of evidence concerning allegations and issues raised in the whistleblower retaliation complaint; and
- (6) to present oral and/or written argument to the decision-maker concerning allegations and issues raised in the whistleblower retaliation complaint.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 8547.8, 11513, 18670, 18671, 18672, 18675, 19175, 19253.5, 19575, 19582, 19585, 19590 and 19683, Government Code.

## **CHAPTER 1, SUBCHAPTER 1.3**

### **ARTICLE 8. EXAMINATIONS [Selected Sections]**

## **§ 211. Petitions to Participate in Examinations**

(a) Except as otherwise provided in section 211.2, if an employee is dismissed from state employment by adverse action or as a result of disciplinary proceedings, he or she shall not thereafter be permitted to take any state civil service examination or be certified from an eligible list to any position in state civil service without the prior consent of the Department as set forth herein.

(b) Petitions to participate in state civil service examinations by dismissed employees shall be subject to all of the following:

(1) The petition must be in writing and filed with the Department, with a copy of the petition served on the agency that initially served the adverse action of dismissal. Where that agency no longer exists or has undergone significant organizational and administrative changes, the Department shall determine whether a different or new agency should be notified of the petition, and, if so, the Department shall serve the agency with a copy of the petition.

(2) A completed state examination application must be submitted along with the petition.

(3) At a minimum, the petition shall include the following information:

(A) The effective date of the dismissal.

(B) The reason(s) for the dismissal.

(C) An explanation setting forth the reason(s) why the petition should be granted. The explanation must clearly identify the facts and circumstances supporting the stated reason(s).

(D) Proof of service that a copy of the petition was submitted to the agency that initially served the adverse action of dismissal, unless that agency no longer exists or has undergone significant organizational and administrative changes.

(c) Substantiation of corrected behavior, including, but not limited to, letters of recommendation, employment evaluations, or declarations of corrected behavior may be submitted along with the petition.

(d) Within the time as specified by the Department, the agency that initially served the adverse action of dismissal may submit to the Department a response to the petition that shall include only information that is relevant to one or more of the factors set forth in subdivision (e)(2) through (6) and (8).

(e) Petitions shall be reviewed on a case-by-case basis based upon consideration of the following factors:

1. The type of examination(s) the dismissed employee seeks to take and the classification(s) of the examination(s).
2. The circumstances and causes surrounding the dismissal and any restrictions placed on the dismissed employee as a result of the adverse action that may impact the petition.
3. Any pattern of successful employment after the dismissal.
4. Evidence of corrected and sustained improved behavior.
5. Acceptance of responsibility for past wrongful actions.
6. Demonstration of readiness to re-enter state service.
7. Any written response to the petition or relevant information submitted by the agency that initially served the dismissal.
8. Any other factor deemed relevant to the request, including those factors set forth in Government Code section 18935.

(f) No later than 30 days after receipt of the petition, the Department shall determine whether to deny or grant the dismissed employee permission to participate in the requested examination(s). If the Department determines that additional time is necessary to make a thorough and thoughtful determination and/or to acquire additional information from the dismissed employee and/or agency that initially served the adverse action of dismissal, the Department may extend the time for determination and notify the dismissed employee of the extension and the reasons therefor. If the Department determines that the information submitted by the dismissed employee so warrants, the Department may grant the dismissed employee a blanket waiver to apply for any examination for which the dismissed employee meets the minimum qualifications. The Department shall set forth its decision in writing.

(g) If the Department denies the petition in part or in its entirety, the dismissed employee may appeal to the Board within 30 days after receipt of the written determination.

Note: Authority cited: Sections 18502 and 18701, Government Code Reference: Sections 18935 and 18941, Government Code.

## **§ 211.2. Petitions to Participate in Examinations After a Board Decision**

(a) Where the Board issues a decision or resolution concerning an adverse action dismissing an employee from state civil service and the Board sustains the dismissal, the employee shall not thereafter be permitted to take any state civil service examination or be certified from an eligible list to any position in the state civil service absent the approval of the Executive Officer.

(b) Petitions by dismissed employees to participate in state civil service examinations under this section shall be subject to all of the following:

(1) The petition must be in writing and filed with the Executive Officer, with a copy of the petition served on the Department and agency that initially served the notice of adverse action of dismissal. Where that agency no longer exists or has undergone significant organizational and administrative changes, the Executive Officer shall determine whether a different or new agency should be notified of the petition, and, if so, the Executive Officer shall serve the agency with a copy of the petition.

(2) A completed state examination application must be submitted along with the petition.

(3) At a minimum, the petition shall include the following information:

(A) The effective date of the dismissal.

(B) The reason(s) for the dismissal.

(C) The case number of the appeal filed with the Board.

(D) An explanation setting forth the reason(s) why the petition should be granted. The explanation must clearly identify the facts and circumstances supporting the stated reason(s).

(E) Proof of service that a copy of the petition was timely submitted to the Department and the agency that initially served the notice of adverse action of dismissal, unless that agency no longer exists or has undergone significant organizational and administrative changes.

(c) Substantiation of corrected behavior, including, but not limited to, letters of recommendation, employment evaluations, or declarations of corrected behavior may be submitted along with the petition.

(d) Within the period of time specified by the Executive Officer, the Department and the agency that initially served the notice of adverse action of dismissal may submit to the Executive Officer responses to the petition that shall include only information that is relevant to one or more of the factors set forth in section 211, subdivision (e) (2) through (6) and (8).



(e) Petitions shall be reviewed on a case-by-case basis based upon consideration of the factors set forth in section 211, subdivision (e) and upon any responses and relevant information submitted by the Department and agency that initially served the notice of adverse action of dismissal.

(f) No later than 30 days after receipt of the petition, the Executive Officer shall determine whether to deny or grant the dismissed employee permission to apply for the requested examination(s). If the Executive Officer determines that additional time is necessary to make a thorough and thoughtful determination and/or to acquire additional information from the dismissed employee and/or agency that initially served the adverse action of dismissal, he or she may extend the time for determination and notify the dismissed employee of the extension and the reasons therefore. If the Executive Officer determines that the information submitted by the dismissed employee so warrants, the Executive Officer may grant the dismissed employee a blanket waiver to apply for any examination for which the dismissed employee meets the minimum qualifications. The Executive Officer shall set forth the decision in writing.

(g) If the Executive Officer denies the petition in part or in its entirety, the dismissed employee may appeal to the Board within 30 days after receipt of the written decision.

Note: Authority cited: Cal. Const., art. VII, § 3; Sections 18502 and 18701, Government Code. Reference: Cal. Const., art. VII, § 1; Sections 18900 and 18931, Government Code.

## **ARTICLE 14. PROBATIONARY PERIOD**

### **§ 321. Extension of Probationary Periods**

(a) In the event a probationer has not worked the hours set forth below during the prescribed calendar length of the probationary period, the probationary period will be automatically extended until the probationer has worked the required number of hours specified below:

(1) 840 if serving a six-month probationary period; or

(2) 1260 if serving a nine-month probationary period; or

(3) 1680 if serving a one-year probationary period.

(b) Vacation, sick leave, military leave or other leaves of absence, compensating time off, suspension or other separations, including separations subsequently voided or otherwise set aside, shall not be considered working time.

(c) Where a probationary period is automatically extended pursuant to subdivision (a), the probationer shall be notified in writing of the extension, and shall also be notified of the date the extended probationary period will end.

(d) Where a probationer is absent from work for a period of time that is one-third or more of the length of the probationary period as specified in subdivision (a) and the appointing power finds that the automatic extension of the probationary period provides insufficient time to properly evaluate the probationer's job performance, the appointing power may extend the probationary period beyond the time periods specified in subdivision (a), not to exceed the length of time, calculated in hours, that the probationer was absent. For purposes of this subdivision, the following calculations apply:

(1) One-third of the six-month probationary period equals 280 hours.

(2) One-third of the nine-month probationary period equals 420 hours.

(3) One-third of the one-year probationary period equals 560 hours.

(e) Where a probationary period is extended pursuant to subdivision (d), the probationer shall be notified in writing of the reasons for the extension, and shall also be notified of the date the extended probationary period will end.

(f) The written notification for extension of the probationary period under subdivision (a) and/or (d) shall be served on the probationer at least 10 calendar days prior to the expiration of the probationary period.

(1) A probationer served with written notification may submit a written response to the Executive Officer within five calendar days after service of the request.

(2) The Executive Officer may approve, modify, or deny the extension, or request further information before making a decision.

(3) If the probationary period will end during the Executive Officer's review, the probationary period shall be automatically extended according to the appointing power's extension until the Executive Officer's decision is issued. If the extension is approved or otherwise modified, this period of time shall count toward the extended probationary period. If the Executive Officer denies the appointing power's extension of the probationary period, the probationary period shall be automatically extended by an additional ten working days from the date of service of the Executive Officer's decision to allow the appointing power sufficient time to proceed with a rejection during probation.

(g) A probationary period may be extended for a maximum of five working days in order to comply with notice requirements as set forth in section 52.6, concerning rejections during probation.

(h) Where an appointing power and a probationer with a disability, as defined in Government Code section 12926, have entered into a proposed written agreement to extend the probationary period in order to provide the probationer with reasonable accommodation, all of the following shall apply:

(1) The period of the extension shall not exceed six months.

(2) The written agreement shall set forth the beginning and ending dates of the extension of probation and describe how the extension will allow the probationer to demonstrate the ability to satisfactorily perform the essential functions of the position with reasonable accommodation before the extended probationary period ends.

(3) The appointing power shall submit the written agreement to the Board for review prior to the end of the probationary period. The Board may approve, disapprove, or modify the written agreement, or require additional information. The Board shall notify the appointing power and probationer in writing of its decision.

(4) If the probationary period will end during the Board's review, the probationary period shall be automatically extended within the terms of the written agreement until the Board's decision is issued. If the written agreement is approved or otherwise modified, this period of time shall count toward the extension of time specified in the written agreement. If the Board declines to approve the written agreement, the probationary period shall be automatically extended by an additional ten working days from the date of service of the Board's decision to allow the appointing power sufficient time to proceed with a rejection during probation. This ten working day extension is in addition to that provided under subdivision (g) above.

Note: Authority cited: Cal. Const., art. VII, Section 3; and Sections 18502 and 18701, Government Code. Reference: Cal. Const., art. VII, Section 3; and Sections 19170 and 19173, Government Code.

### **§ 322. Probationary Period Requirements**

Probationary period requirements for permanent appointments from an employment list; or by reinstatement, or by transfer, or by demotion are:

(a) A new probationary period shall be required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service

resulting from a permanent separation; or by reinstatement or appointment from a reemployment list, pursuant to Section 548.152 or 548.153, to a classification with a promotional relationship to the classification of the employee's former position.

(b) An employee who has not attained permanent status when accepting another appointment shall serve the remainder of that probationary period unless required to serve a new probationary period.

(c) A new probationary period shall be required unless waived by the appointing power when an employee is being appointed:

(1) Without a break in service in the same class in which the employee has completed the probationary period but under a different appointing power.

(2) Without a break in service to a class with substantially the same or lower level of duties and responsibilities and salary range as a class in which the employee has completed the probationary period.

(3) From a general reemployment list to the same class in which the employee has completed the probationary period but under a different appointing power.

(4) By reinstatement or appointment from a reemployment list, pursuant to Section 548.152 or 548.153, to a classification to which the employee could have transferred from his or her former position.

(d) A new probationary period shall not be required when an employee is being appointed:

(1) From any reemployment list under the same appointing power, except as otherwise provided in this section;

(2) By reinstatement with a right of return, except as otherwise provided in this section;

(3) Without a break in service under the same appointing power and to the same class in which the employee had completed the probationary period; or

(4) By demotion under Government Code Section 19997.8.

"Without a break in service" as used in this section is continuous service as defined in Section 6.4.

Note: Authority cited: Section 19170, Government Code. Reference: Sections 18527 and 19171, Government Code.

### **§ 323. Performance Appraisal of Probationers [Repealed]**

Note: Authority cited: Section 19170, Government Code. Reference: Section 19302, Government Code.

### **§ 324. Duty to Reject Probationer**

If the conduct, capacity, moral responsibility, or integrity of the probationer is found to be unsatisfactory, it shall be the duty of the appointing power to reject that probationer from the position.

### **§ 325. Duty to Report Delinquencies**

If, during the probationary period of any state employee, there is presented to the executive officer convincing evidence that the moral conduct, character, or integrity of the employee is unsatisfactory, the executive officer shall present such evidence to the appointing power.

### **§ 326. Restoration to Eligible List**

If after investigation the board or the executive officer determines that the probationer's name should be restored to the eligible list under Section 19175(b) of the act, the name shall be restored to the eligible list from which the probationer was certified if such list is still in existence. If the probationer's name is restored to the eligible list, it shall be placed thereon in accordance with the probationer's score in the examination from which such list resulted.

### **§ 327. Cancellation or Withdrawal of Notice of Rejection**

The appointing power may cancel or withdraw a notice of rejection during probation by filing with the Board a written notice of cancellation or withdrawal setting forth the reasons therefore. The written notice of cancellation or withdrawal shall be filed with the Board no later than 45 days after the effective date of the rejection on probation.

An employee whose probationary rejection is canceled or withdrawn shall be entitled to payment of salary less legal offsets, if any, and credit for seniority, sick leave, vacation, and merit salary adjustment that he or she would have otherwise received but for the initial rejection on probation.

A cancellation or withdrawal of rejection shall be without prejudice to further rejection, punitive action, or disciplinary proceedings for the same or other reasons.

Note: Authority cited: Sections 18502 and 18701, Government Code. Reference: Section 19175.5, Government Code.

## **ARTICLE 20. SEPARATIONS FROM SERVICE**

### **§ 446. Temporary and Permanent Separations**

Temporary separations from state service shall include all types of leave of absence including leave under Section 599.785, military leave, suspension, termination for medical reasons, termination of permanent or probationary employee by layoff, termination by displacement, and disability retirement. Permanent separations from state service shall include dismissal; resignation; automatic resignation (AWOL); rejection during probationary period; termination for failure to meet conditions of employment; termination of limited-term, temporary authorization, emergency, Career Executive Assignment, or exempt appointment; and service retirement.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19996, Government Code.

### **§ 447. Continuity of Intermittent Employment. [Repealed]**

Note: Reference: Section 19100, Government Code.

### **§ 448. Automatic Resignation of Intermittent Employees**

(a) An intermittent employee whose continuity of employment in a position is interrupted by a nonwork period that extends longer than one year may be considered to have automatically resigned from the position without fault as of one year from the last day the employee was on pay status subject to the restrictions in subsection (b).

(b) separations are restricted to:

- (1) nonwork periods not covered by a paid leave, a formal leave of absence without pay or other temporary separation and,
- (2) those circumstances which create a presumption that the employee has abandoned his or her position.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19100.5, Government Code. Note: Authority cited: Section 18701, Government Code. Reference: Section 19100.5, Government Code.

## **CHAPTER 1, SUBCHAPTER 2.**

## **CAREER EXECUTIVE ASSIGNMENT [Selected Sections]**

### **§ 548. Scope**

This chapter shall have special reference to the category of civil service appointment called "career executive assignments." Except as may be included in these regulations by specific reference, Chapters 3 through 8 of Part 2 of the Civil Service Act and the regulations stemming from this authority do not apply to this category. Regulations adopted by the State Personnel Board under the provisions of the Government Code applicable to career executive assignments shall apply to such assignments.

Note: Authority cited: Section 19889, Government Code. Reference: Sections 18546, 18547, 19889, 19889.2 and 19889.3, Government Code.

### **§ 548.1. Purpose**

It is the purpose of these regulations to establish a system of merit personnel administration which will further the development, selection, and effective use of career executives in the California state civil service. They are general in nature and are intended to facilitate the multi-departmental and service wide procedures which recognize and afford opportunity to the most competent. Responsibility rests upon appointing powers, competitors and the Personnel Board alike to be sure that all actions under these regulations conform to the intent and goals of this program.

Note: Authority cited: Section 19889, Government Code. Reference: Section 19889, Government Code.

### **§ 548.30. Career Executive Assignment Examinations**

The appointing power may conduct competitive examinations subject to these regulations and the approval of the executive officer. The results of an examination may be used to make additional appointments to Career Executive Assignment positions that are substantially the same as the one for which the original examination was announced. However, the eligibility of persons for appointment to such positions shall be subject to either,

- (a) The appointing power specifying in the announcement for the original examination the additional positions for which the competition shall be used to make appointments, the methods and standards of evaluation to be used in the examination, and the time for which the results of the original competition shall be used; or
- (b) The appointing power subsequently announcing that applications will be accepted as a supplement to the original announcement and that all otherwise qualified persons who apply will be considered with those who applied under the

original announcement.

Lists of persons who apply for announced examinations shall be maintained by the appointing power as long as the results of the competition are to be used. These lists shall be kept for the purpose of facilitating future competition by reducing the need for repetitive evaluation and for the purpose of providing a record of the results of competitive examinations. Such lists of persons who apply and are evaluated for consideration for appointment shall not confer eligibility for appointment to other positions in the Career Executive Assignment category which are not among those provided for in this section.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 18546, 19889, 19889.2 and 19889.3, Government Code.

#### **§ 548.49. Appeals from CEA Examinations**

(a) Appeals from CEA examinations shall be filed in accordance with subchapter 1.2, article 2, section 52.4, subdivision (e)(1)(L). The appeal may be based upon allegations of improprieties in the examination process, including but not limited to, fraud, discrimination, erroneous interpretation of minimum qualifications or significant irregularities.

(1) In order to establish a cause of action for fraud, the competitor shall provide evidence demonstrating the following:

- (A) a misrepresentation or a material omission of fact;
- (B) which was false and known to be false by the appointing power;
- (C) made for the purpose of inducing the competitor to rely upon the misrepresentation or material omission;
- (D) justifiable reliance of the competitor on the misrepresentation or material omission; and
- (E) resulting injury.

(2) Appeals alleging discrimination in the examination process require evidence that demonstrates illegal discrimination on a basis prohibited under California's Fair Employment and Housing Act. (Gov. Code, §§ 12900 et seq.) The appeal must establish a connection between the complained of activity and the individual's status as a member of a protected class.

(3) For purposes of this section, "an erroneous interpretation of minimum qualifications" is considered to have occurred when there is an inaccurate analysis of the applicant's qualifications to compete in the examination



and, as a result, an otherwise qualified applicant is not permitted to compete.

(4) A significant irregularity occurs when the examination is not administered as outlined in the bulletin, the examination method was not applied fairly to all competitors, or the examination does not test and determine the qualifications, fitness, and ability of the competitors to perform the duties of the CEA position.

Note: Authority cited: Section 18701, Government Code. Reference: Sections 19889, 19889.2 and 19889.3, Government Code.

#### **§ 548.136. Appeal from Termination (C.E.A)**

Appeals from the termination of a career executive assignment pursuant to Government Code section 19889.2 shall be filed in accordance with subchapter 1.2, article 2, section 52.4, subdivision (e)(1)(F) of these regulations. The affected employee may appeal to the Board upon the grounds that the termination was based on illegal discrimination or retaliation, as prohibited in Government Code section 12940, subdivisions (a) and (h), or for reasons prohibited in Chapter 10, Part 2 (commencing with section 19680) of the Government Code. After hearing the appeal, the Board may affirm the action of the appointing power, or restore the affected employee to the career executive assignment.

Note: Authority: Sections 18701 and 19889.2, Government Code. Reference: Section 19889.2, Government Code

#### **§ 548.145. Separation of Employee (C.E.A.)**

A person serving in a career executive assignment may be separated from state service through resignation, automatic resignation, dismissal, retirement, or for medical reasons under the provisions of Government Code Section 19253.5 in the same manner as is provided for other civil service employees. The career executive assignment of a person so separated shall be deemed to have been terminated, and the separation to have been from a position in the class in the general civil service in which the employee had permanent status.

#### **§ 548.150. Definition**

"Former position," for the purposes of this article, means the last position an employee held as a probationer or permanent employee or a position that is at least at the same salary level and to which the appointing power could have transferred the employee.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19889.3, Government Code.

#### **§ 548.151. Reinstatement to Former Position Following Termination**

An employee terminated from a Career Executive Assignment shall be reinstated to his or her former position unless the employee elects to be appointed to another position, offered by the appointing power, for which he or she is eligible.

Note: Authority cited: Section 18701 and 19889.3, Government Code. Reference: Section 19889.3, Government Code.

#### **§ 548.152. Permissive Reinstatement**

An employee terminated from a Career Executive Assignment on or after January 1, 1981, after completing at least five years of state service may on or after the effective date of this rule be reinstated to a vacant position at the discretion of any appointing power within four years of such termination as follows:

1. Such employees who have completed at least one year but less than three years of career executive service may be reinstated to a position in a class that is not more than two steps higher in salary than the class in which the employee last served as a probationer or permanent employee, provided that such class is at least two steps lower in salary than the career executive level from which the employee is being terminated.
2. Such employees who have completed three or more years of career executive service may be reinstated to a position in any class that is at least two steps lower in salary than the career executive level from which the employee is being terminated.

For employees who are separated from state service, reinstatement eligibility under this rule shall not extend beyond the employee's reinstatement eligibility under Government Code Section 19140.

Note: Authority cited: Sections 18701 and 19889.3, Government Code. Reference: Section 19889.3, Government Code.

#### **§ 548.153. Mandatory Reinstatement**

(a) The reinstatement rights provided under this section apply only to employees who are terminated from a Career Executive Assignment on or after April 3, 1981, after completing at least ten years of state service, including at least three consecutive years of career executive service under a single appointing power as specified in part (b) of this section, and who request reinstatement pursuant to this section, in writing, within ten days of receiving notice of the termination of their Career Executive Assignment.

(b) The three consecutive years of career executive service specified under part (a) must

(1) have occurred entirely within six years of the effective date of the employee's termination from a career Executive Assignment, and

(2) must terminate on or after January 1, 1981.

For the purposes of meeting this service requirement, exempt service shall not affect otherwise qualifying career executive service.

(c) Reinstatements under this section shall be to the last appointing power under which the employee completed three consecutive years of career executive service, as specified above.

(d) An eligible employee may request reinstatement to any general civil service level that is:

(1) At least two steps lower in salary than the lowest Career Executive Assignment level at which the employee served during his/her qualifying period of career executive service under this section, provided that the requested level is at least two steps lower than the level from which the employee is being terminated; and

(2) Above the level of the employee's former position.

An employee may limit his/her reinstatement request under this section to positions that the employee could reasonably be expected to accept without a change in his/her place of residence.

(e) Upon receipt of such a request, the appointing power shall reinstate the employee to a position at the requested level and, if applicable, location that is:

(1) Vacant; and

(2) In the same occupational area(s) as the Career Executive Assignment(s) that the employee held under the appointing power, provided such employee possesses any license, certificate, or registration required for the class in which the employee is being reinstated and performance in the Career Executive Assignment(s) combined with the employee's prior employment history would reasonably predict successful performance in the lower level position.

An employee's refusal to accept a position offered pursuant to these provisions shall constitute a waiver of the employee's rights under this section to be reinstated to or to receive reemployment list eligibility for

other positions at the same level, but shall not otherwise impact the rights and eligibilities provided by this article.

(f) If the appointing power does not have a vacant position that can satisfy the employee's reinstatement requested under this section, the following actions shall occur:

(1) If the employee's reinstatement request is not limited to his/her current location, the employee's name shall be placed on the appointing power's departmental and local subdivisional reemployment list for any classes containing positions which, if vacant, would satisfy the employee's reinstatement request pursuant to this section. If the employee's reinstatement request is limited to his/her current location, the employee's name shall be placed on a subdivisional reemployment list covering that location for the classes indicated above. Departmental or subdivisional reemployment list eligibility granted under this section shall not result in the employee's name being placed on any general reemployment list. Subdivisional eligibilities may be changed with the concurrence of the employee and the appointing power.

(2) The reinstatement and reemployment provision outlined in parts (e) and (f)(1) of this section shall be applied in descending order to any lower general civil service levels under the appointing power that contain positions which meet the criteria outlined in parts (d) and (e)(2) of this section.

(g) If an employee cannot be placed in a vacant position pursuant to this section, the employee shall be reinstated to his or her former position.

Note: Authority cited: Section 18701 and 19889.3, Government Code. Reference: Section 19889.3, Government Code.

#### **§ 548.154. Sequence of Reinstatement**

When two or more employees are simultaneously seeking reinstatement or reemployment to the same class pursuant to the rights provided under this article, the appointing power shall act in the following sequence:

(a) All employees exercising a mandatory return right to their former position shall be reinstated.

(b) Employees seeking mandatory reinstatement or reemployment pursuant to Section 548.153 to a position other than their former position shall be appointed in seniority order to any remaining positions, provided that persons on reemployment lists shall be appointed only as allowed by Government Code Section 19056.

(c) Employees seeking permissive reinstatement pursuant to Section 548.152 may be reinstated to any remaining vacant positions.

Note: Authority cited: Section 18701, Government Code. Reference: Section 19889.3, Government Code.

**§ 548.155. Probationary Period**

An employee who is reinstated pursuant to Rules 548.152 or 548.153 shall be subject to the probationary period requirements specified in Section 322.

Note: Authority cited: Section 19889.3, Government Code. Reference: Sections 19170, 19171 and 19889.3, Government Code.