

**State of California
Office of Administrative Law**

In re:
State Personnel Board

Regulatory Action:

Title 02, California Code of Regulations

Adopt section: 58.12
Amend sections: 58.12 [renumbered to
58.13], 58.13 [renumbered
to 58.14], 59.3, 60.1, and
60.2

NOTICE OF APPROVAL OF REGULATORY
ACTION

Government Code Section 11349.3

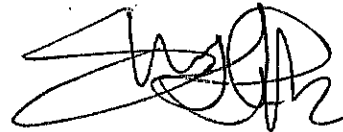
OAL Matter Number: 2024-1028-01

OAL Matter Type: Regular (S)

In this regular rulemaking the State Personnel Board (the "Board") is adopting and amending regulations pertaining to proceedings conducted by the Board and its designees. Specifically, these regulations concern (1) documents introduced into evidence in electronic and in-person proceedings, (2) subpoenas for hearings conducted by electronic means, and (3) law and motion hearings.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 12/12/2024.

Date: December 12, 2024



Steven J. Escobar
Senior Attorney

Original: Suzanne Ambrose, Executive
Officer

For: Kenneth J. Pogue
Director

Copy: Michelle La Grandeur

NOTICE PUBLICATION/REGULATIONS SUBMISSION

REGULAR

For use by Secretary of State only

STD. 400 (REV. 10/2019)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2024-0528-06	REGULATORY ACTION NUMBER 2024-1028-015	EMERGENCY NUMBER
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

DEC 12 2024
1:44 PM AB

For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW
2024 OCT 28 AM 10:58

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY
California State Personnel Board

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Hearings and Appeals	TITLE(S) 2	FIRST SECTION AFFECTED 58.12	2. REQUESTED PUBLICATION DATE June 7, 2024
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Michelle La Grandeur	TELEPHONE NUMBER 916-651-2740	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2024,23-2	PUBLICATION DATE 6/7/24	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Hearings and Appeals	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 58.12
	AMEND 58.12 [renumbered to 58.13], 58.13 [renumbered to 58.14], 59.3, 60.1, 60.2
TITLE(S) 2	REPEAL

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
8/7/24-8/23/24

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Michelle La Grandeur	TELEPHONE NUMBER 916-651-2740	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) michelle.lagrandeur@pspb.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Suzanne M. Ambrose	DATE 10/25/2024
TYPED NAME AND TITLE OF SIGNATORY Suzanne M. Ambrose, Executive Officer	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 12 2024

Office of Administrative Law

Per agency request - SE, 11/21/2024, 12/11/2024

FINAL TEXT

CALIFORNIA CODE OF REGULATIONS
TITLE 2 (Administration)
DIVISION 1 (Administrative Personnel)
CHAPTER 1 (State Personnel Board)
SUBCHAPTER 1.2 (Hearings and Appeals)
ARTICLE 6 (Evidentiary Hearing Process)
SUBARTICLE 3 (Hearings)

§ 58.123. Documents Introduced Into Evidence in In-person Proceedings.

~~Each party shall bring to the hearing at least four exact copies of any document that the party intends to mark as an exhibit during the course of the hearing. Failure of a party to possess at least four copies of any document that the party proposes to introduce into evidence may prohibit its use at hearing.~~

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.

§ 58.12. 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 number range 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.

§ 58.143. 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 ~~his or her~~ their designee. The certified court reporter shall be retained by the ~~the~~ Board. The cost of the court reporter shall ultimately be borne by the person making the request. The ~~the~~ Board shall receive a copy of the transcript from the court reporter at no expense to the ~~the~~ Board.

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

CALIFORNIA CODE OF REGULATIONS
TITLE 2 (Administration)
DIVISION 1 (Administrative Personnel)
CHAPTER 1 (State Personnel Board)
SUBCHAPTER 1.2 (Hearings and Appeals)
ARTICLE 6 (Evidentiary Hearing Process)
SUBARTICLE 4 (Discovery)

§ 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 ~~his or her~~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 ~~his or her~~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.

(ed) 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.

(de) 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.

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

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

CALIFORNIA CODE OF REGULATIONS
TITLE 2 (Administration)
DIVISION 1 (Administrative Personnel)
CHAPTER 1 (State Personnel Board)
SUBCHAPTER 1.2 (Hearings and Appeals)
ARTICLE 6 (Evidentiary Hearing Process)
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)(40).

(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 ~~him or herself~~themselves. A party representing ~~him or herself~~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 ~~his or her~~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 ~~his or her~~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 ~~his or her~~their designee.

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

(h) Oppositions to Motions must be filed with the Chief ALJ or ~~his or her~~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 ~~his or her~~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.

(l) 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~~their designee, result in the supporting documentation not being considered.

(m) 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 ~~his or her~~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.