

PUBLIC NOTICE
Regular Business Meeting Agenda
Public Employment Relations Board
August 8, 2019 ~ 10:00 a.m.

LOCATION: Public Employment Relations Board *
1031 18th Street, First Floor, Room 103, Sacramento CA

1. Roll Call.
2. Adoption of Minutes. June 13, 2019 Meeting
3. Public Comment. This is an opportunity for the public to address the Board on issues not scheduled on today's agenda. The Board cannot act on those items but may refer matters to staff for review and possible Board action at a future, publicly noticed meeting.
4. Staff Reports. The following Reports will be received. Any matter requiring Board action, and not included on this agenda, will be calendared for a subsequent public Board meeting.
 - A. Executive Director
 - B. Division of Administration
 - C. Office of General Counsel
 - D. Division of Administrative Law
 - E. State Mediation and Conciliation Service
5. Old Business:
 - A. PERB Case Processing Efficiency Initiative (Update)
 - B. **Recusal Regulation:** Consideration of approval for submitting a proposed rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to amend PERB Regulation section 32155, which governs recusals of PERB personnel. If authorized by the Board, the rulemaking package, including Notice of Proposed Rulemaking, Proposed Text, and Initial Statement of Reasons, will be forwarded to the Office of Administrative Law for review and publication pursuant to the Administrative Procedures Act. In addition, the Notice of Proposed Rulemaking would be distributed by PERB to interested parties and posted on the PERB website.
 - C. **Regulations on Subpoenas, Motions, and Authority of Board Agents:** Consideration of approval for submitting a proposed rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process to amend regulations that govern subpoenas, motions, and authority of Board agents. If authorized by the Board, the rulemaking package, including Notice of Proposed Rulemaking, Proposed Text, and

**This meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Board by contacting Cheryl Shelly at (916) 322-8231 or sending a written request to Ms. Shelly at PERB, 1031 18th Street, Sacramento, California 95811. Requests for further information should also be directed via telephone or writing to Ms. Shelly. Additional information is also available on the internet at www.perb.ca.gov.*

Initial Statement of Reasons, will be forwarded to the Office of Administrative Law for review and publication pursuant to the Administrative Procedures Act. In addition, the Notice of Proposed Rulemaking would be distributed by PERB to interested parties and posted on the PERB website.

6. New Business:

A. Continuances Regulation: The Division of Administrative Law will ask the Board to authorize it to proceed with the drafting of proposed modifications to amend PERB Regulation section 32205, which governs continuances, to (1) extend the filing requirement from 5 calendar days before hearing to 7 days and (2) to move to a “good cause” and “lack of prejudice” standard for evaluating a continuance request from the “unusual circumstances” and “lack of prejudice” standard.

7. Recess to Closed Session. The Board will meet in a continuous closed session each business day beginning immediately upon recess of the open portion of this meeting through October 10, 2019.

The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Recusal

Draft

Regulations

Proposed Text:

Please note: The proposed changes to Section 32155 are extensive, making the use of underlines and ~~striketroughs~~ impracticable. Therefore, the current version of Section 32155 follows the proposed text for ease of comparison.

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 2. General Provisions

§ 32155. Recusal

(a) (1) “Recusal” means refraining from participation in a case or proceeding, including but not limited to refraining from an attempt to influence any other person with respect to the matter.

(2) “Party representative,” as used in this Section, means any person who has advised a party regarding the specific events giving rise to the case or proceeding at issue, entered an appearance in the case or proceeding, or otherwise been designated by a party as that party’s representative in the case or proceeding.

(b) A Board member, Board agent, conciliator, mediator, or other PERB officer, employee, or contractor shall recuse himself or herself from a case or proceeding if any one of the following circumstances exists:

(1) He or she has a financial interest in the outcome of the case or proceeding, or is indebted, through money borrowed as a loan, to a party, party representative, or witness in the case or proceeding.

(2) He or she is related, by consanguinity or affinity within the third degree computed according to the rules of law, to a party, party representative, or witness in the case or proceeding.

(3) He or she at any time participated in the specific events giving rise to the case or proceeding, or served as a party representative in the case or proceeding.

(4) (A) For personnel covered by this Section other than Board members, within one year prior to the initial filing date of the case or proceeding, or at any time thereafter, he or she:

(i) was an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;

(ii) personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or

(iii) held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(B) For Board members, if, within one year prior to the date an appeal, exceptions, motion, or request was placed on the Board’s docket, or at any time thereafter, he or she:

(i) was an officer, director, trustee, or employee of an entity that is a party in the case or proceeding;

(ii) personally served as an attorney, or as a non-attorney representative, on behalf of any person or entity that is a party or witness in the case or proceeding; or

(iii) held a paid position, including but not limited to a position as an employee, contractor, partner, or shareholder, with a law firm, legal department, or other organization representing a person or entity that is a party or witness in the case or proceeding.

(5) As a result of other circumstances, he or she cannot fairly consider the case or proceeding, or the interests of justice require recusal.

(c) If a Board member learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding before the Board itself, he or she shall recuse and notify the Board of such recusal. If the General Counsel, Chief Administrative Law Judge, or Division Chief of the State Mediation and Conciliation Service learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which he or she would otherwise be directly or indirectly involved, he or she shall recuse, notify the Board of such recusal, and designate a replacement to act in his or her place regarding such case or proceeding. If any other Board agent, conciliator, mediator, or PERB official, employee, or contractor learns of any facts which, under the provisions of this Section, warrant recusal from a case or proceeding in which he or she might otherwise be directly or indirectly involved, he or she shall notify his or her supervisor, who shall take appropriate action.

(d) Any party to a case or proceeding before the Board itself may file directly with ~~the a~~ Board member a written motion ~~for recusal to recuse any Board member under the provisions of this rule~~. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed ~~and served on all parties~~ no later than twenty (20) days after the party ~~seeking recusal~~ first knew or should have known that the Board member ~~was eligible to be~~ assigned to a panel in the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board. The Board member subject to the recusal motion shall decide the motion. If the motion is denied, then the party seeking recusal can seek reconsideration from the Board itself within ten (10) days from such denial. Any response to such a reconsideration motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs regarding such a reconsideration motion, unless requested by the Board.

(e) Any party to a case or proceeding that is not before the Board itself may file a motion ~~for recusal directly with to recuse~~ any Board agent, conciliator, or mediator to whom the matter is assigned. Such motion shall be written, or if oral, reduced to writing within 24 hours of the motion. The motion shall set forth by competent evidence all relevant facts. A motion for recusal must be filed no later than twenty (20) days after the party first knew or should have known that the Board agent, conciliator, or mediator has been assigned a formal role in the case or proceeding. Any response to such a motion by another party must be filed and served on all parties within ten (10) days after service of the motion. There shall be no reply briefs unless requested by the Board agent. The Board agent, conciliator, or mediator subject to the recusal motion shall decide the motion, unless otherwise ordered. If the motion is granted, a new

Board agent, conciliator, or mediator shall be assigned. If the motion is denied, the party seeking recusal may, within ten (10) days after its motion for recusal is denied, file with the Board itself a request for special permission to appeal such denial. If the Board does not grant special permission to appeal the denial, the party seeking recusal may file an appeal after hearing or investigation and issuance of any decision, and may choose to combine such an appeal with an appeal or exceptions as to the merits.

(f) Any party aggrieved by [the Board's](#) determination [regarding a ~~on-its~~](#) motion for recusal may include the matter in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits, or, in cases reviewed by the Board itself pursuant to Section 32635, in a writ proceeding in superior court challenging the Board's refusal to issue a complaint.

Note: Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

Current Text

§ 32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, and no mediator or conciliator employed within the State Mediation and Conciliation Service, shall decide or otherwise participate in any case or proceeding:

(1) In which he or she has a financial interest in the outcome.

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

(3) When, in the case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.

(4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

(b) Whenever such a Board agent shall have knowledge of any facts, which under the provisions of this rule disqualify him or her from presiding over any aspect of a hearing or investigation, it shall be his or her duty immediately to notify the General Counsel or the Chief Administrative Law Judge, as appropriate, setting forth all reasons for his or her belief.

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Notwithstanding his or her disqualification, a Board agent who is disqualified may request another Board agent who has been agreed upon by all parties to conduct the hearing or investigation.

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten (10) days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision,

setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall then refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

(f) Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are filed with the Board or within ten (10) days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed. The motion shall be supported by sworn affidavits stating the facts constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all parties to the case.

(g) Within ten (10) days after the filing of a motion for recusal, the Board member alleged to be disqualified shall render a decision stating the reasons therefore. If the Board member is not on the panel assigned to hear the case, he or she shall so inform the parties and indicate that he or she does not intend to participate in the case. In the event that the Board member decides to participate, he or she shall render a decision on the motion for recusal before doing so.

(h) Any party aggrieved by a determination made pursuant to subsections (d) or (g) of this rule may include the matter of claimed disqualification in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

Note: Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563, 3603, 71639.1(b) and 71825(b), Government Code; and Sections 30751, 40122, 70122, 90300, 98162.5, 99561(f), 100301, 101344, 102403, 103401, 120505, and 125521, Appendix 1, Section 4.4, and Appendix 2, Section 13.91, Public Utilities Code. Reference: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code; and Sections 4.4, 13.91, 25052, 28851, 30751, 40122, 50121, 70122, 90300, 95651, 98162.5, 99561, 99562, 100301, 101344, 102403, 103401, 120505 and 125521, Public Utilities Code.

Regulation

Draft on

**Subpoenas, Motions, & Authority
of Board Agents**

Proposed Text:

Please note: all underlined text indicates additions to the regulatory text and all ~~strikethrough~~ text indicates deleted material.

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS

Article 2. General Provisions

32150. Subpoenas.

(a) Definitions

(1) “Testimonial subpoena” means a subpoena that solely requires a witness to appear at a Board hearing.

(2) “Records subpoena” means a subpoena that requires production of documents, electronically stored information, video records, audio records, or other records or things, either at a Board hearing or at a time and location in advance of such a hearing. A records subpoena may also require a witness to appear at a Board hearing to testify.

(3) “Declaration of materiality” means a declaration signed under penalty of perjury, submitted by the requesting party or that party’s representative, which:

(A) Describes the requested items; and

(B) Explains why the requested items are relevant to the issues involved in the case.

(4) “Consumer or employee notice” means a notice provided to a non-party consumer or employee as set forth in Code of Civil Procedure sections 1985.3 and 1985.6.

(b) Geographic Coverage of Subpoenas: Testimonial and records subpoenas issued shall extend to all parts of the State of California.

(c) Requests to Shorten or Lengthen Timelines: A Board agent has discretion to alter the timelines under subsections (d), (e), (f), (g) and (i).

(d) Procedures for Obtaining Subpoenas: After the Board notifies the parties that an evidentiary hearing has been scheduled, and before the hearing is complete, any party may obtain signed testimonial and records subpoenas from the assigned Board agent (typically an Administrative Law Judge or hearing officer) or designee by using the following procedures:

(1) Blank subpoena forms may be obtained at each of the Board’s offices as well as on the Board’s website. A party or party representative shall fill out the blank form and provide it to the Board agent for review and signature.

(2) When filling out a blank records subpoena, a requesting party shall state the records they are requesting in compliance with subsection (e) below.

(3) When submitting a records subpoena to a Board agent for signature, a party or party representative must include a declaration of materiality.

(4) The Board agent has discretion to require a requesting party to serve a consumer or employee notice if a records subpoena seeks confidential personal records of a natural person who is not a party, an agent of a party, or an employee exclusively represented by a party.

(e) Procedures for Serving Subpoenas: After obtaining a signed subpoena from a Board agent or designee, a party or party representative shall serve the subpoena by using the following procedures.

(1) Method of service: For a subpoena to be effective, it must be (a) personally served on the witness; or (b) if a subpoena is being served on a party or an agent of a party, it is permissible to serve a representative who is designated in a notice of appearance or who has signed a filing in the matter on behalf of the party, unless that representative no longer represents the party.

(2) Time of service: If a testimonial subpoena is served fewer than ten (10) days before the date on which the witness must testify, or if a records subpoena is served fewer than twenty (20) days before the records must be produced, then the person or entity subject to the subpoena may request that the subpoena be revoked or limited for insufficient notice. The Board agent shall have discretion to find that the amount of notice was sufficient under the circumstances and the subpoena is therefore effective, to declare the subpoena ineffective, or to adjust, as may be appropriate under the circumstances, the scope, timing, methods, or other details regarding the testimony or records requested.

(3) Service of the declaration of materiality: The declaration of materiality must be served together with the corresponding records subpoena.

(4) Witness fee and mileage reimbursement: A witness who is neither a party nor an agent of a party may demand, at the time of service, a witness fee of \$35.00 and a mileage reimbursement of \$0.20 per mile, round-trip, for travel required to testify. If such a demand is made, the requesting party must provide the requested fee and reimbursement at the time of service.

(5) Service of the consumer or employee notice: If the Board agent has required a consumer or employee notice, such notice must be served, together with a copy of the records subpoena and the declaration of materiality, on the non-party consumer or employee. Such service must be made at least ten (10) days prior to the production date.

(f) Production Schedule for Records Subpoenas

(1) The requesting party shall specify in the records subpoena the date, time, and location for production of requested items. The requested production date may be a hearing date. If the responding witness, entity, or party has at least twenty (20) days to respond following service of the records subpoena, then the requested production date may be a non-hearing date. The requested production date may not be later than the last scheduled day of hearing, unless otherwise ordered by the Board agent.

(2) The responding person or entity shall produce the requested items as specified in the records subpoena unless agreed otherwise or the Board orders otherwise. The responding person or entity need not produce items covered by a motion to revoke or limit a subpoena filed pursuant to subsection (h), pending resolution of the motion.

(3) If a records subpoena specifies a requested production date that is not a hearing date, and requires both records production and witness testimony, then the subpoena shall be deemed to require such testimony at the next scheduled hearing date, unless agreed otherwise or the Board orders otherwise.

(g) Motion to Extend Records Production Date: If a scheduled records production date is prior to the next scheduled hearing date, the responding person or entity with good cause may file a written motion to extend the requested production date by up to an additional ten (10) days or to the date of the scheduled formal hearing, if less than ten (10) days. The motion must be filed and served at least seven (7) days before the scheduled records production date.

(h) Motion to Revoke or Limit a Testimonial Subpoena: A motion to revoke a testimonial subpoena may be filed and served on the requesting party in writing or made orally at the scheduled formal hearing. The Board Agent may grant or deny the motion, limit a witness's testimony, or grant a protective order in light of the arguments presented by the parties.

(i) Motion to Revoke or Limit a Records Subpoena: A responding person or entity may file a written motion to revoke or limit a records subpoena pursuant to the following procedures:

(1) The motion must be filed and served no later than twelve (12) days following service of the subpoena. The requesting party must submit any opposition no later than six (6) days after the responding person or entity serves such a motion. There shall be no reply briefs, unless the Board agent directs otherwise.

(2) In resolving any dispute regarding a records subpoena, the Board agent may exercise discretion to set prehearing conferences, other formal hearings, or otherwise order other production dates. The Board agent may revoke or limit a records subpoena to the extent items requested to be produced are not relevant to any matter under consideration in the proceeding or are protected by an applicable privilege, or the subpoena is otherwise invalid. When the Board agent resolves such a dispute at a prehearing conference and orders production of certain items covered by the motion, the Board agent shall direct the date, format, and means of producing such items. When the Board agent resolves such a dispute on or after the first day of hearing and orders production of certain items covered by the motion, all such items shall be produced within 24 hours of the Board agent's ruling. The Board agent is also empowered to resolve any objections filed by a consumer or employee resulting from a consumer or employee notice regarding subpoenaed records.

(j) Motion to Enforce Testimonial or Records Subpoena in Superior Court: The Board itself may direct the General Counsel to apply to an appropriate superior court for an order requiring compliance with a subpoena. The following procedures shall apply.

- (1) A party may make request to initiate enforcement proceedings to the Board agent assigned.
 - (2) At any stage in the proceeding, a Board agent may request, through the General Counsel, that the Board itself authorize the General Counsel to apply for an order of enforcement.
 - (3) The Board itself shall authorize the General Counsel to seek enforcement on the recommendation of the Board agent or General Counsel, unless, in the judgment of the Board itself, the enforcement of such testimonial or records subpoena would be inconsistent with the law or policies of the applicable Act.
 - (4) If the Board itself directs the General Counsel to seek enforcement, the evidentiary record will remain open until the Board agent determines that the court order will not be forthcoming or that further delay would frustrate the policies of the applicable Act, or until the responding party produces the testimony or records sought
 - (5) At any time, the Board itself may direct the General Counsel to withdraw an enforcement action based upon voluntary compliance or otherwise as the interests of fairness may require.
- (k) Inferences and Sanctions for Failure to Comply with Subpoenas: As an alternative to seeking Superior Court enforcement as set forth in subdivision (i), the Board agent may draw adverse inferences from a party's failure to comply with a valid subpoena, and may prohibit such a party from presenting evidence or arguments, as the interests of fairness may require.
- (l) Board Agent as Witness at a Hearing: The Board itself may order that a subpoenaed Board agent be produced at a formal hearing, only if that Board agent is deemed essential to the resolution of the case and no rational decision can be reached without such agent being produced.

SUBCHAPTER 3. HEARINGS

32170. ~~Powers and Duties~~Authority of Board Agent Conducting a Hearing.

(a) Definitions:

- (1) “Prehearing conference” means a proceeding conducted by the Board agent with the parties, either before a formal hearing or between scheduled formal hearing days in order to resolve procedural issues; coordinate and organize the hearing; rule on preliminary and jurisdictional matters; take limited sworn witness testimony, admit documentary or other evidence, take official notice of facts, and approve stipulated facts; and consider any other matters.
- (2) “Formal Hearing” means an adjudicative proceeding conducted by the Board agent with the parties, which may include taking sworn witness testimony, admitting documentary or other evidence, taking official notice of facts, and approving stipulated facts.

(3) "Hearing" means those prehearing conference(s) and/or formal hearing day(s) conducted for an individual case or consolidated cases.

(b) The Board agent conducting a hearing shall have ~~authority~~the powers and duties to:

~~(1)(a)~~ Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;

~~(2)(b)~~ Authorize the taking of depositions;

~~(3)(e)~~ Issue appropriate subpoenas and rule upon motions related to subpoenas, set dates, formats, and means for production in response to a records subpoena, and limit the parties' use of produced records;

~~(4)(d)~~ Regulate the course and conduct of the hearing, including, but not limited to, the power to exclude a witness from the hearing room;

~~(5)(e)~~ ~~Hold~~ Order the parties to participate in (A) in-person, video, or telephonic settlement conferences with a designated Board agent; and/or (B) in-person, video, or telephonic prehearing conferences to clarify and resolve issues raised by the parties or by the Board agent, including but not limited to for the settlement simplification of issues scheduling issues, subpoena disputes, motions, requests to consolidate proceedings, requests to bifurcate proceedings, requests to stay, abate, or continue proceedings, and other substantive or procedural matters;

~~(6)(f)~~ Rule on objections, motions and questions of procedure;

~~(7)(g)~~ Administer oaths and affirmations;

~~(8)(h)~~ Take evidence and rule on the admissibility of evidence, and rule on offers of proof;

~~(9)(i)~~ Examine witnesses for the purpose of clarifying the facts and issues;

~~(10)~~ Approve or reject proposed stipulations, including stipulations of fact, or requests for administrative notice;

~~(11)~~ Issue any needed protective orders limiting use of, or access to, records produced pursuant to a subpoena, exhibits, transcripts, and any other parts of the hearing file;

~~(12)~~ Conduct an in camera review of records;

~~(13)(j)~~ Authorize the submission of briefs and set the time for the filing thereof;

~~(14)(k)~~ Hear oral argument;

~~(15)(4)~~ Render and serve the proposed decision on each party;

~~(16)(m)~~ Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

Note: Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3541.3(k), 3563(g), 3563(j), 71639.1 and 71825, Government Code; and Sections 99561(g) and 99561(j), Public Utilities Code.

32190. Motions.

(a) After a complaint has been issued, written motions made before, during or after a formal hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(1) Motions to strike an allegation, to defer a case to arbitration, or to dismiss or partially dismiss a complaint, including motions styled as motions for summary judgment or for judgment on the pleadings, must be filed with the Board agent assigned to the proceeding no later than forty-five (45) days prior to the first day of the scheduled formal hearing, unless otherwise ordered by the Board. Service and proof of service pursuant to Section 32140 are required.

(2) A response to a motion filed pursuant to subsection (a)(1) shall be filed with the Board agent within twenty (20) days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required. There shall be no reply briefs unless requested by the Board agent.

(3) The above filing deadlines shall not apply in any proceeding designated for expedited treatment pursuant to Section 32147. In expedited hearings, the Board agent shall have the authority and discretion to set timelines for the filing of motions and responses.

(4) Once the scheduled formal hearing has commenced, no motion specified in subsection (a)(1) above may be filed or orally presented until the charging party has fully presented evidence in its case, exclusive of rebuttal evidence.

(b) Except as specified in subsection (a)(2) above, Responses to all other motions shall be filed with the Board agent within fourteen (14) days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required. There shall be no reply briefs unless requested by the Board agent.

~~(c) During the hearing, a motion or the response thereto may be made orally on the record,~~
Except as specified in subsections (a)(1) and (a)(4), during the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board agent may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

(g) This Section shall not apply to motions pertaining to subpoenas under Section 32150, nor to motions to amend a complaint.

Note: Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code; and Section 99561(f), Public Utilities Code. Reference: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1 and 71825, Government Code; and Section 99561(g), Public Utilities Code.