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DATE: February 11, 2022

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member
Barry Broad, Board Member

RE: *Updated* Regulatory Proposals – Procedural Provisions and Unfair Labor Practices

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Below are updated draft regulatory changes and proposals based on the Regulations Subcommittee's recommendations approved by the Board at the April 13, 2021 public meeting and following receipt and consideration of public comments at and following the Board's October 12, 2021 public meeting. Changes are reflected in underline (new language) and strikethrough (deletions) formats. Language added or changed since the October 12 meeting is indicated in bold red type.

RULES OF PRACTICE/PROCEDURE (CHAPTER 1.5)

To provide administrative law judges greater discretion to grant continuances of hearing dates:

To amend regulation 20190 to state:

§ 20190. Continuance of Hearing Dates.

(a) An initial hearing date will be scheduled as soon as a case is ready for presentation. Once that hearing date has been finalized as provided below, the case should proceed to hearing as scheduled. Hearing dates will be assigned so that all cases set for a particular date can proceed on that date. Finalized hearing dates should therefore be regarded by counsel as firm dates.

(b) When a notice of hearing issues for an unfair labor practice or representation case, the dates indicated in the notice of hearing and any scheduled prehearing conference, including any scheduled settlement conference in an unfair labor practice case, will be finalized unless the executive secretary receives a written communication within ~~ten (~~10~~)~~ days of the issuance of the notice of hearing, indicating that the parties have mutually agreed to a new hearing and/or prehearing date. It is the responsibility of the party objecting to the initial date(s) to contact the other parties and obtain their agreement for a modification. The objecting party is also responsible for communicating the new, agreed upon date(s) to the executive secretary.

(1) If a new date for the hearing and/or any scheduled settlement or prehearing conference is mutually agreed to and communicated to the executive secretary within the ten--day period, that date will be finalized by the issuance of a confirming notice of hearing.

(2) If the parties are unable to agree on a new date for the hearing and/or any scheduled settlement or prehearing conference, the objecting party may submit a written request to the executive secretary within the ten-day period, with copies to the other parties, indicating the reasons the initial date(s) are objected to and requesting date(s) which are more convenient. The request will be treated as a motion to continue, and all parties will be contacted by telephone and given an opportunity to respond. No further pleading in support of or in opposition to the continuance shall be filed unless requested by the executive secretary. In ruling on the request, the executive secretary may grant the continuance to the date(s) requested, select other date(s), or retain the initial date(s). The executive secretary's ruling will be finalized by issuance of a confirming notice of hearing.

(3) If the dates set for the hearing and/or any scheduled settlement or prehearing conference in the initial notice of hearing are not objected to within the ten-day period, they will be finalized by the issuance of a confirming notice of hearing.

(4) In unusual situations where it is urgent that the hearing be held as soon as possible, (e.g., related court proceedings involving interlocutory relief), or when the agreed to dates would create scheduling conflicts, the executive secretary may decline to accept the dates mutually agreed to by the parties and instead select other dates.

(5) In computing the ten-day period, section 20170(b) allowing ~~three~~five additional days to respond to papers served by mail, shall not apply. The date(s) mutually agreed to must be communicated to the executive secretary within the ten-day period.

(c) Once the dates for the hearing and any scheduled settlement or prehearing conference have been finalized as provided in (b) above, the scheduled dates will not be subject to change unless extraordinary circumstances are established.

(1) The party seeking a continuance for extraordinary circumstances shall do so by written motion directed to the executive secretary with proof of service on all parties.

(2) The motion shall contain: (i) the dates presently assigned for hearing and any scheduled settlement or prehearing conference and the dates to which continuance is sought; (ii) the facts on which the moving party relies, stated in sufficient detail to permit the executive secretary to determine whether the conditions set forth in the applicable guidelines have been met; and (iii) the positions of all other parties or an explanation of any unsuccessful attempt made to contact a party or the circumstances excusing such attempt.

(3) Where required by this regulation or where appropriate under the circumstances, supporting declarations shall accompany the motion.

(4) Motions for continuance shall be made as soon as possible after the moving party learns the facts necessitating the motion. Except in emergencies, motions shall be received no less than five (5) calendar days prior to the scheduled hearing.

(5) Once a motion for continuance has been ruled on by the executive secretary, a motion based on the same grounds shall not again be requested at the hearing.

(6) Any party opposing a motion for continuance shall notify the executive secretary as soon as possible. Depending on the proximity to the hearing, the opposing party will be allowed to respond in writing or orally as the executive secretary may determine. Written responses shall be served on the other parties.

(7) Where there is agreement on the terms of a settlement but there is insufficient time to file a written continuance motion, the moving party may present it orally by telephone to the executive secretary. The moving party shall thereafter promptly reduce the motion to writing and serve it on the executive secretary and the other parties.

(d) After the opening of hearing, continuances of up to ~~two working~~ten business days may be granted by the assigned administrative law judge or investigative hearing examiner upon oral motion for good cause. The record of the hearing shall reflect the reasons given for the request, the agreement or absence of agreement of the other parties to the hearing, the reasons given for the granting or denial of the motion, and the date, time and location to which the hearing is continued. After the opening of a hearing, ~~R~~requests for continuances for periods longer than ~~two~~ten ~~working~~business days shall be in writing directed to the executive secretary with proof of service on all parties. Such motions shall not be granted unless extraordinary circumstances are established. The executive secretary may delegate the authority to rule on such motions to the assigned administrative law judge. The procedures set forth in subsection (c) above shall be followed and the guidelines set forth in subsection (e), (f) and (g) below, shall apply.

(e) In ruling on a motion for a continuance of longer than ten working days, all matters relevant to a proper determination of the motions will be taken into consideration, including:

(1) The official case file and any supporting declaration submitted with the motion.

(2) The diligence of counsel in bringing the extraordinary circumstances to the attention of the executive secretary and opposing counsel at the first available opportunity and in attempting otherwise to meet those circumstances.

(3) The extent of and reasons for any previous continuances, extensions of time or other delay attributable to any party.

(4) The proximity of the hearing date.

(5) The condition of the hearing calendar.

(6) Whether the continuance may properly be avoided by the substitution of attorneys or witnesses, or by some other method.

(7) Whether the interests of justice are best served by a continuance, by proceeding to hearing, or by imposing conditions on the continuance.

(8) Any other facts or circumstances relevant to a fair determination of the motion.

(f) The following circumstances shall not constitute extraordinary circumstances warranting a continuance:

(1) The fact that all parties have agreed to continue a hearing which has already been set pursuant to a notice of hearing.

(2) Scheduling conflicts which could have been avoided by prompt action either during or after the ten-day period, or which can still be avoided by rescheduling.

(3) Circumstances which would normally constitute good cause, as described below, but which were known or should have been known to the requesting party prior to the expiration of the ten-day period or prior to the granting of any previous continuance.

(4) The willingness of the parties to enter into settlement negotiations. Continuances for settlement will only be granted to consummate a settlement, the basic terms of which have already been agreed to.

(g) The following circumstances will normally be considered extraordinary circumstances warranting the granting of a continuance; provided, however, that the conditions specified for each have been met:

(1) Unavailability of a witness only where: (i) the witness has been subpoenaed and will be absent due to an unavoidable emergency of which ~~that~~the witness' counsel or representative did not know, and could not reasonably have known, when the hearing date was finalized or any previous continuance was granted; (ii) the witness will present testimony essential to the case, and (iii) it is not possible to obtain a substitute witness.

(2) Illness that is supported by an appropriate declaration of a medical doctor, or by bona fide representations of parties or their counsel or representative, stating the nature of the illness and the anticipated period of any incapacity under the following circumstances: (i) the illness of a party or of a witness who will present testimony essential to the case except that, when it is anticipated that the incapacity of such party or witness will continue for an extended period, the continuance should be granted on condition of taking the deposition of the party or witness in order that the hearing may proceed on the date set; with respect to such an essential witness, it must also be established that there is insufficient time to obtain a substitute witness; (ii) the illness of the hearing attorney or representative, except that the substitution of another attorney should be considered in lieu of a continuance depending on the proximity of the illness to the date of hearing, the anticipated duration of the incapacity, the complexity of the case, and the availability of a substitute attorney.

(3) Death of the hearing attorney or representative where, because of the proximity of such death to the date of hearing, it is not feasible to substitute another attorney or representative. The death of a witness only where the witness will present testimony essential to the case and where, because of the proximity of death to the date of hearing, there has been no reasonable opportunity to obtain a substitute witness.

(4) Unavailability of administrative law judge or investigative hearing examiner where there is no other available administrative law judge or investigative hearing examiner or where there is insufficient time for an otherwise available administrative law judge or investigative hearing examiner to become familiar with the case in time for the hearing. The executive secretary may act sua sponte in continuing a hearing pursuant to this subparagraph.

(5) Substitution of trial counsel or representative only where there is an affirmative showing that the substitution is required in the interests of justice, and there is insufficient time for the new counsel or representative to become familiar with the case prior to the scheduled hearing date.

(6) A significant change in the status of the case where, because of the addition of a named party or the need to amend the pleadings to add a new issue or allegation, a continuance is required in the interests of justice. The executive secretary may act sua sponte in continuing a hearing pursuant to this paragraph.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1156.3~~(c)~~, 1160.2 and 1160.5, Labor Code.

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To require a party seeking an extension of time to file a document to include in its request the positions of the other parties:

To amend regulation 20192 to state:

§ 20192. Extensions of Time.

(a) Extraordinary circumstances do at times occur which prevent parties or their counsel or representative from complying with the time limits contained in the regulations or orders of the Board for the filing and service of papers. In those situations, parties, or their counsel or representatives, may apply for extensions of time by written motion directed to the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, with service on all other parties.

(b) Requests for extensions of time shall be filed or presented in the same manner as motions for continuances, except that, absent good cause shown, they are to be received at least three (3) calendar days before the due date of the papers to be filed. The request shall include the due date, the length of extension sought, and the grounds for the extension, ~~and the position of the other parties,~~ in the same manner as required for continuances in subsection 20190(c)(2) above. The request must be accompanied by a declaration stating the position of the other parties. If the other parties' positions were not obtained, the declaration must state in detail all efforts made to attempt to contact that party or the party's counsel, including the dates and times of any emails and telephone calls, including whether a message was left.

(c) Requests for extensions of time will be processed and ruled on by the executive secretary or assigned administrative law judge, as appropriate in accordance with sections 20240 and 20241, based on considerations similar to those described in subsections 20190(e), (f), and (g).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1142(b), 1151.4(a), 1156.3~~(a), (c)~~, 1156.7(c), (d), 1160.2, 1160.3 and 1160.5, Labor Code.

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To allow a regional director to propound interrogatories to a charged party during investigation of an unfair labor practice charge:

To amend regulation 20216 to state:

§ 20216. Investigation by Regional Director.

(a) The regional director shall investigate to determine whether or not there is reasonable cause to believe that an unfair labor practice has been committed.

(b) The regional director may propound written interrogatories to a charged party to be answered under oath. The regional director may propound interrogatories any time that is 10 days after service of the charge on the charged party. The scope of permissible interrogatories under this section shall be limited to threshold issues, such as the proper legal identity of the charged party; the charged party's status as a labor organization, agricultural employer, farm labor contractor, or custom harvester; whether an alleged discriminatee is an agricultural employee; and supervisory or agency status of any individual alleged to have committed an unfair labor practice. The charged party shall respond to the interrogatories within 20 days after service of the interrogatories, answering each interrogatory separately and completely, and shall sign the response under oath.

(c) If a charged party fails to respond to interrogatories propounded by the regional director**, the regional directory may apply to the chief administrative law judge, or the assigned administrative law judge, to compel responses from the charged party or for other appropriate relief as provided in section 20238(b).**

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151(a) and 1160.2, Labor Code.

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To allow the General Counsel to review a regional director's dismissal of an unfair labor practice charge:

To amend regulation 20219 to state:

§ 20219. Review of Dismissals.

(a) Within 10 days of the date of service of a dismissal, the charging party may file a request with the general counsel for review of the decision dismissing the charge. The request for review shall specifically state all reasons why the decision should be reviewed. If the charge was dismissed for lack of evidence, the charging party may provide additional evidence in support of the charge accompanied by a showing of the reasons why such evidence was not previously presented to the regional director. If the charge was dismissed for failure to legally constitute an unfair labor practice, the charging party shall provide legal authority in support of its position that the evidence constitutes an unfair labor practice. The request for review and all supporting documents shall be served upon the charged party and the regional director as provided in sections 20166 and 20169.

(b) In situations where the charging party is an agricultural employee **who is not represented by counsel or other representative with respect to the charge**, if the charging party has not timely requested review of a dismissal, the general counsel may grant review of the regional director's dismissal sua sponte within 10 days from the date a request for review would have been due. The general counsel shall provide notice to both the charging and charged parties when the general counsel has granted sua sponte review of a dismissal.

(c) Within 10 days from the filing of ~~such~~a request for review or from the date the general counsel provides notice of granting sua sponte review, the charged party may file a statement in opposition with service on the charging party as provided in ~~S~~sections 20166 and 20169.

(d) Extensions of time to file a request for review or a statement in opposition may be requested in accordance with section 20192, except that such requests shall be directed to and ruled upon by the ~~G~~general ~~C~~counsel.

(e) Where a request for review has been filed or the general counsel has granted sua sponte review, ~~T~~the general counsel may request an oral presentation from the parties. The general counsel may affirm the decision of the regional director, remand for further consideration or evidence, or issue a complaint.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1149, 1151.4(a), 1160.2 and 1160.5, Labor Code.

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To allow the General Counsel to make a request for particulars regarding a respondent's answer to an unfair labor practice complaint:

To amend regulation 20235 to state:

§ 20235. Request for Particulars.

(a) Where a complaint lacks specificity as to the time, place or nature of the alleged conduct, or the identity of the persons who engaged in it, or fails sufficiently to identify the individual or group against whom the conduct was specifically directed, a written request for particulars may be made by the respondent in accordance with section 20237 to obtain such information; provided, however, that in responding the general counsel need not disclose the identity of any potential witness whose primary source of income is non-supervisory employment in agriculture.

(b) Where an answer raises an issue or asserts a defense based on an agricultural employee's immigration status, a written request for particulars may be made by the general counsel in accordance with section 20237 to obtain further information concerning the facts upon which such issue or defense is raised.

Note: Authority cited: Section 1144, Labor Code. Reference: Section 1160.2, Labor Code.

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Subpoenas/Discovery — To make specific an investigatory subpoena may request witness testimony, to require privilege logs, to make explicit the Board may authorize the General Counsel to seek judicial enforcement of a subpoena on behalf of the Board, and clarifying the availability of evidentiary sanctions where a party fails to comply with a subpoena:

To amend regulation 20217 to state:

§ 20217. Investigative Subpoenas.

(a) For purposes of investigation, the general counsel or ~~his or her~~the general counsel's agents may issue and serve subpoenas requiring the attendance and testimony of witnesses or the production by persons at the respondent's place of business, or such other location as mutually agreed to by the respondent and the regional director, of any materials, including but not limited to books, records, correspondence or documents in their possession or under their control.

(b) The subpoena shall show on its face the name, address, and telephone number of the general counsel or ~~his or her~~the general counsel's agent who has issued the subpoena. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum, showing good cause for the production of the matters and things described in such subpoena. The declaration shall show specific facts justifying discovery and that the materials are relevant to the subject matter of the investigation or reasonably calculated to lead to the discovery of admissible evidence.

(c) Service of subpoenas shall be made pursuant to Labor Code ~~S~~section 1151.4(a) or by certified mail. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. Witnesses shall be entitled to fees in accordance with Labor Code section 1151.4(a).

(d) Any person on whom an investigative subpoena is served who does not intend to comply shall, within five days after the date of service, petition in writing to revoke the subpoena. Such petition shall explain with particularity the grounds for objecting to each item covered by the petition. The petition to

revoke shall be served upon the general counsel or ~~his or her~~the general counsel's agent who issued the subpoena. The petition to revoke shall be filed with the executive secretary. When a person under subpoena objects to any request for production of materials on the basis of a claim of privilege or that the information sought is protected work product, the petition shall state specifically the privilege asserted and shall include a privilege log providing sufficient information for the general counsel to evaluate the merits of such claims.

(e) The executive secretary shall revoke the subpoena if the materials required to be produced do not relate to any matter under investigation, or the subpoena does not describe with sufficient particularity the materials whose production is required, or the testimony or records sought are privileged or confidential or deal with a matter not subject to review, or the subpoena is otherwise invalid. A simple statement of the grounds for the ruling on the petition shall accompany the ruling. Adverse rulings may be appealed to the Board through the procedures outlined in Section 20242.

(f) When a person under subpoena refuses to testify or produce the requested information on the basis of ~~his or her~~the person's privilege against self-incrimination, the general counsel or ~~his or her~~the general counsel's agents may file a written request that the Board grant immunity and compel that person to testify or produce the requested materials. Said request shall otherwise conform and be processed according to ~~S~~section 20251; however, the Board shall rule directly on said request.

(g) Upon any other failure of any person to comply with an investigative subpoena, the general counsel may request that the Board apply to an appropriate superior court for an order requiring compliance in accordance with ~~S~~section 20250(k) or authorize the general counsel to make such application. The subpoenaed party shall have five (5) days after an application pursuant to this subdivision is filed with the Board to file a response to the application.

(h) In addition to, or in lieu of, seeking enforcement pursuant to section 20250(k), the general counsel may apply to the chief administrative law judge**, or the assigned administrative law judge,** for appropriate sanctions to be imposed against a charged party based on the charged party's failure to comply with an investigative subpoena in the event the general counsel subsequently issues a complaint pursuant to section 20220, or at any time following issuance of a complaint and before hearing, including any evidentiary sanctions specified in section 20238(b).

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151(a) and 1160.2, Labor Code.

To amend regulation 20236 to state:

§ 20236. Matters Discoverable.

(a) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the names, addresses and any statements (as defined in section 20274(b)) of all witnesses, other than those whose primary source of income is non-supervisory employment in agriculture; provided, however, that any portion of a statement likely to identify a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised.

(b) Upon written request, a party to a hearing is entitled to obtain from any other party to the hearing the name, address, field of expertise, qualifications, and a brief description of expected testimony of any expert whom it intends to call as a witness. The responding party shall also make available any report prepared for it by such expert concerning the subject matter of the testimony to be given. The failure, without good cause, to comply with the requirements of this subsection shall be grounds for excluding such expert testimony.

(c) Upon written request, a party to a hearing shall be afforded a reasonable opportunity to examine, inspect and copy, and, where appropriate, to photograph and/or test, any writing or physical evidence in the possession or control of the party to the hearing to whom the request is directed which that party intends to introduce into evidence at hearing; provided, however, that any portion of a writing which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture shall be excised, except that this proviso shall not apply to otherwise unprotected or unprivileged business records. Where the writing or physical evidence to be introduced is not yet in the possession or control of the responding party, it shall be identified with reasonable specificity. A party that objects to a request under this subdivision on the basis of a claim of privilege or that the information sought is protected work product shall state specifically the privilege asserted and shall include a privilege log providing sufficient information for other parties to evaluate the merits of such claims.

(d) Upon written request, general counsel shall disclose to respondent any evidence which is purely and clearly exculpatory.

(e) In compliance proceedings, the general counsel shall, upon written request, make available to the requesting party to the hearing all information in its files, which tends to verify, clarify or contradict the items and amounts alleged in the backpay or bargaining makewhole specification unless the information is absolutely privileged, e.g., income tax returns, form W-2 (wage and tax statement), . . . etc.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

To amend regulation 20238 to state:

§ 20238. Orders Compelling Discovery; Sanctions.

(a) A requesting party who believes that the responding party has failed, in whole or part, to comply with a proper request pursuant to sections 20235, 20236, or 20237 may apply in writing to the chief administrative law judge for an order requiring compliance. No application will be entertained unless the applying party establishes that it first made a reasonable effort to resolve the matter by contacting or attempting to contact the responding party. The application shall include copies of the request and any response received, and shall be served on the responding party. ~~If the responding party desires to oppose the application, he or she~~The responding party shall immediately notify the office of the chief administrative law judge if the party desires to oppose the application. Depending on the proximity to hearing, the chief administrative law judge shall determine whether the opposition will be written or oral, when it will be due, and whether to assign the matter to an administrative law judge. When the dispute concerns the propriety of excising or failing to turn over a statement containing the name of a potential witness whose primary income is from non-supervisory agricultural employment, the privilege created by Evidence Code section 1040(b)(2) is waived to the extent of allowing the chief administrative law judge or the assigned administrative law judge to examine the entire unexcised document in camera to determine what, if any, portions should be disclosed.

(b) If a party or its representative fails to comply with an order requiring compliance or otherwise fails to comply with the requirements of sections **20216,** 20217, 20235, 20236, ~~or~~ 20237, or 20250, appropriate sanctions may be imposed either by the chief administrative law judge or, if the matter has been assigned for hearing, by the assigned administrative law judge. Sanctions may include refusing to receive testimony or exhibits, striking evidence received, dismissing claims or defenses, or such other action as may be appropriate, but shall not include imposition of financial penalties.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

To amend regulation 20250 to state:

§ 20250. Issuance of Subpoenas and Notices to Appear or Produce; Petitions to Revoke; Right to Inspect or Copy Data.

(a) Any member of the Board, or the executive secretary, regional director, or any person authorized by the Board, executive secretary or regional director shall upon the ex parte request of any party, prior to hearing, issue subpoenas as provided for in this section requiring the attendance and testimony of witnesses and/or the production of any materials including, but not limited to, books, records, correspondence or documents in their possession or under their control. Requests for subpoenas during the hearing shall be made to the administrative law judge.

(b) The subpoena shall show on its face the name, address, and telephone number of the party at whose request the subpoena was issued. A copy of a declaration under penalty of perjury shall be served with a subpoena duces tecum issued before hearing, showing good cause for the production of the matters and things described in such subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the ~~witness or party has the~~ desired matters or things are in ~~his or her~~the possession or under ~~his or her~~the control of the witness or party.

(c) Service of subpoenas shall be made pursuant to sections 20164, 20166, and ~~20168~~20169. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

(d) In order to obtain the attendance of a party to the matter, or of anyone who is an officer, director, supervisor, or managing agent of any such party, the service of a subpoena upon any such witness is not required following issuance of a complaint if written notice requesting such witness to attend the hearing of the matter, with the time and place thereof, is served upon the attorney for such party. Such notice shall be served at least 10 days before the time required for attendance unless the Board prescribes a shorter time. The giving of such notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the Board may make and seek such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the Board. The witness shall be entitled to fees ~~as if served pursuant to~~in accordance with Labor Code ~~S~~section 1151.4(a).

(e) If the notice specified in subdivision (d) is served at least 10 days before the time required for attendance, or within such shorter time as the Board may order, it may include a request that such party or person bring books, documents or other things. The notice shall be accompanied by a copy of a declaration under penalty of perjury showing good cause for the production of the matters and things described in such notice, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the ~~witness or party has the~~ desired matters or things are in ~~his or her~~the possession or under ~~his or her~~the control of the witness or party.

(f) Any person on whom a subpoena or a notice to appear (described in sub~~sections~~divisions (d) and (e)) is served who does not intend to comply shall, within five days after the date of service, petition in writing to revoke the subpoena or notice. Such petition shall explain with particularity the grounds for objecting to each item covered by the petition and shall have attached a copy of the subpoena or notice. If a party objects to a request in a subpoena duces tecum and refuses to produce any material

responsive to the request on the basis of a claim of privilege or that the information is protected work product, the petition shall state specifically the privilege asserted and shall include a privilege log providing sufficient information for other parties to evaluate the merits of such claims. The petition to revoke shall be served as provided in sections 20160~~, 20164, and 20166~~through 20169 by or on behalf of the person seeking revocation upon the party at whose request the subpoena was issued or who issued the notice. If the petition to revoke is filed after the issuance of a complaint but prior to the prehearing conference, the petition shall be filed with the executive secretary. A copy shall be served on the party issuing the subpoena or notice in compliance with sections 20160~~, 20164, and 20166~~through 20169. A petition to revoke filed at or after the prehearing conference or during the hearing shall be filed with the administrative law judge who may rule on the matter. If the subpoena has been served less than five days before the hearing, the petition to revoke is due on the first day of the hearing except that the administrative law judge, upon a showing of good cause, may grant up to five days for filing a petition to revoke. For a subpoena issued during the hearing, any petition to revoke shall be due at the time specified in the subpoena for compliance unless further time, up to five days, is granted by the administrative law judge. Responses to petitions to revoke shall be allowed only upon leave of the ~~E~~executive ~~S~~secretary or assigned administrative law judge, and on such terms as he or she deems appropriate.

(g) When a party serves a subpoena for the production of records of the Board or for the testimony of a Board agent, the general counsel may represent the Board or the Board agent and may, if appropriate, move to revoke the subpoena on the grounds stated in sub~~section~~division (h) below.

(h) The Board or administrative law judge, as the case may be, shall revoke the subpoena or notice in whole or in part if the evidence required to be produced does not relate to any matter in question in the proceedings, or the subpoena or notice does not describe with sufficient particularity the evidence whose production is required, or the testimony or records sought are privileged or otherwise protected or deal with a matter not subject to review, or the subpoena is otherwise invalid. The scope of a subpoena or notice may be limited if the Board or administrative law judge determines that the material sought is: (i) unreasonably cumulative or duplicative, or (ii) obtainable from some other source that is more convenient, less burdensome, or less expensive; or (iii) unduly burdensome or expensive to provide, taking into account the needs of the case, the limitation of the resources of the parties, and the importance of the issues upon which it bears. A simple statement of the grounds for the ruling on the petition shall accompany the ruling. The petition to revoke, any answer filed thereto, and any ruling thereon shall become part of the official record upon the request of the party aggrieved by the ruling.

(i) Subpoenas duces tecum (as described in sub~~sections~~divisions (a) and (b), above) and notices to produce (as described in sub~~section~~division (d), above) may be served by all parties with return dates for prehearing conferences. Witnesses may be examined orally under oath at such prehearing conferences, subject to the discretion of the administrative law judge, for the limited purpose of identifying and/or authenticating the matters and things produced pursuant to the subpoenas or notices. Such oral examination shall not be for the purpose of generally deposing the witnesses unless the same has previously been ordered by the executive secretary pursuant to the procedures in ~~S~~section 20246.

(j) Nothing in section 20250 shall compel the disclosure of information which identifies a potential witness whose primary source of income is non-supervisory employment in agriculture unless that individual is a charging party; provided, however, that when a dispute arises concerning the propriety of turning over a writing which would make such identification likely, the privilege created by Evidence Code section 1040(b)(2) is waived to the extent of allowing the administrative law judge to examine the entire document in camera to determine which, if any, portions should be disclosed and which portions should be excised before being turned over; provided further, that this subsection shall not apply to otherwise unprotected or unprivileged business records.

(k) Upon any other failure of any person to comply with a subpoena or notice, the Board may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question. A request that the Board apply for an order may be made by the general counsel during investigatory stages of the proceedings or by any party following issuance of a complaint. The administrative law judge will review any requests made in the course of a hearing~~.~~, and, ~~I~~if the administrative law judge deems the request appropriate, ~~he or she~~administrative law judge shall promptly recommend that the Board seek enforcement of the subpoena or notice. The subpoenaed party shall have five (5) days after an application pursuant to this subdivision is filed with the Board to file a response to the application. The Board shall seek enforcement on relation of the general counsel, or may delegate authority to the general counsel to seek enforcement on behalf of the Board, or a party unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the Act. If the request is granted, the record will remain open in the matter until the Board determines that the court order will not be forthcoming, or that further delay would frustrate the policies of the Act, or until the testimony sought is included in the record.

(l) In addition to, or in lieu of, superior court enforcement proceedings as provided in subdivision (k), a party may apply to the chief administrative law judge or the assigned administrative law judge, if the matter has been assigned for hearing, for appropriate sanctions as provided for in section 20238(b) based on a person's failure to comply with a subpoena or notice.

(~~l~~m) By causing the issuance of a subpoena or a notice, the attorney or representative or the party, if not represented, certifies that to ~~his or her~~their knowledge, information and belief, and after reasonable inquiry: (i) the testimony or material sought is relevant and material to the issues in the proceeding; (ii) the subpoena or notice is not interposed for any improper purpose, such as to harass or to cause unnecessary delay, or to needlessly increase the cost of litigation; and (iii) the subpoena or notice is not unreasonably or unduly burdensome or expensive, given the needs of the case, given the materials already in the hands of the party seeking the testimony or material, and given the importance of the issues upon which it bears.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151, 1160.2 and 1160.3, Labor Code.

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To state in regulation the standard adopted by the Board in case precedent for determining whether to grant an application for special permission to appeal an interim ruling by an administrative law judge or executive secretary:

To amend regulation 20242 to state:

§ 20242. Appeals of Executive Secretary and Administrative Law Judge Rulings.

(a) All rulings and orders of every kind, by the executive secretary or by an administrative law judge, shall be a part of the record without the necessity of their being introduced into evidence, except that rulings on motions to revoke subpoenas shall become a part of the record only upon the request of the party aggrieved thereby, as provided in section 20250.

(b) No ruling or order shall be appealable, except upon special permission from the Board; except that a ruling which dismisses a complaint in its entirety shall be reviewable as a matter of right. The Board will consider an application for special permission to appeal only where the challenged ruling or order cannot be addressed effectively through exceptions filed pursuant to

sections 20282 or 20370(j). A party applying for special permission for an interim appeal from any ruling by the executive secretary or an administrative law judge shall, within five (5) days from the ruling, file with the executive secretary, to be forwarded to the Board for review, its application for permission to appeal, setting forth its position on the necessity for interim relief and on the merits of the appeal. The application shall be supported by declarations if the facts are in dispute and by such authorities as the party deems appropriate. Applications and supporting papers shall be filed and served in accordance with sections 20160~~, 20166 and~~through 20169. Any party may file a ~~statement opposing~~ response or opposition to such application, with proof of service on the other parties as provided in sections 20160~~, 20166 and~~through 20169, within ~~such time as the executive secretary may direct~~five (5) days after the application is filed. No further pleadings shall be filed in support of or in opposition to the appeal unless requested by the Board ~~through the executive secretary~~.

(c) Parties intending to apply for special permission to appeal an oral ruling by an administrative law judge shall immediately notify the administrative law judge and arrange with the reporter for an expedited copy of the relevant portion of the hearing transcript which shall be lodged with the Board at the moving party's expense.

(d) Unless the executive secretary so directs, no hearing shall be delayed because an application was filed; nor shall the appeal or attempt to appeal a ruling or order delay the hearing unless the Board so directs.

(e) This section does not apply to decisions of administrative law judges as defined in sections 20279-20286.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

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To require case management conferences to be held following the filing of an answer to a complaint:

To add new regulation 20247.1 to state:

§ 20247.1. Case Management Conference

(a) Within **20** days after the respondent files an answer to the complaint or timely could have filed an answer to the complaint, a mandatory telephonic case management conference shall be scheduled by the chief administrative law judge or executive secretary. The assigned administrative law judge may continue the date of the case management conference. At this case management conference, parties shall be expected to address the following issues:

(1) Whether the parties intend to conduct discovery, and, if so, when discovery will be completed and any anticipated discovery issues or disputes.

(2) Any facts or issues that are undisputed and may be subject to stipulation.

(3) Whether the case is expected to present any novel or complex legal issues.

(4) Any anticipated motions before hearing that may narrow the issues in the case or that may eliminate any claims or defenses.

(4) The appropriate timing for assignment of a settlement judge to the matter.

(5) The parties' availability for hearing.

(b) The parties shall meet and confer regarding the matters to be addressed at the case management conference and shall file, jointly or separately, a case management conference statement no later than 5 days before the scheduled date of the conference. The assigned administrative law judge may take the case management conference off calendar if the administrative law judge finds the parties' case management conference statement or statements sufficiently address the matters to be addressed at the conference. The administrative law judge shall issue an order summarizing the results of the case management conference as soon as practicable after the conference is held or, if taken off calendar, was scheduled to be held.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.

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To require settlement conferences be held in unfair labor practice proceedings:

To amend regulation 20248 to state:

§ 20248. Settlement Conference.

(a) ~~At any time after a complaint has issued, either on his or her own motion or upon written request by any party~~Within 30 days after issuance of the administrative law judge's case management conference order, the chief administrative law judge ~~may~~shall schedule a settlement conference to be held before an administrative law judge other than the one assigned to hear the matter and shall notify the parties, including the charging party, of its time and place. Each party attending ~~such a~~the settlement conference shall be represented by a person fully authorized to engage in negotiations for settlement. Clients or principals shall either attend or be available by telephone.

(b) ~~After assignment of a case to an administrative law judge, he/she may direct that a settlement conference be held in conjunction with any prehearing conference or independently thereof. Upon request by any party, the executive secretary shall assign another administrative law judge to conduct the settlement discussions.~~

~~(c) Independently of (a) and (b) above, a~~At any stage of a proceeding prior to hearing, if time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit for consideration by the regional director with whom the charge was filed, facts, arguments, offers of settlement, or proposals of adjustment.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1160.2 and 1160.3, Labor Code.