

**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**

**STAFF REPORT**

**TELEPHONIC BOARD MEETING**

**April 9, 2021**

**SUBJECT:**

Alcoholic Beverage Control Appeals Board (ABCAB) Proposed Regulations

**BACKGROUND:**

Business and Professions Code section 23077 empowers the Board to adopt regulations that establish the procedures for appeals. In accordance with section 23077, the Board adopted its original rules and procedures not long after its creation in 1955. However, it has been several decades since many of the rules and regulations have been updated or amended.

As a result, parties such as licensees, license applicants, and the Department of ABC are still relying on rules and regulations that were drafted long ago. Some of the current language in the rules can be vague or archaic.

**ANALYSIS:**

As a government entity, it is important to operate with transparency, and to minimize barriers for parties wishing to exercise their due process rights through the appeals process. Without clear and consistent procedures, appeals could vary from case to case, which could cause delays, confusion, and inconsistencies for parties to the appeal and the Board itself.

The purpose of the proposed regulations is to clarify and make specific the various procedures to be followed by license applicants, licensees, members of the public / protestants, and the Department of ABC when participating in an appeal.

Proposed rules 176-178, 181.1, 183-184, 187-190, 193-197.1, and 198-199 will clarify or make specific what the principal office of the Board and the Department of ABC refers to; that references to one gender shall apply to all genders and references to singular numbers shall apply to plural numbers; definitions of commonly used terms; how to attach a proof of service; the ways in which a party may serve documents; how to file and serve the notice of appeal; how to file and serve the administrative record; how to file briefs that argue a party's position; how to file and serve motions; the method by which dates for oral

argument may be scheduled; limits on oral arguments; the procedure by which a two-member quorum of the Board decides on appeals; how to move to remand a case due to new evidence; and the reasons for which the Board may dismiss an appeal.

**BUDGET AND FISCAL IMPACTS:**

None.

**BENEFITS AND RISKS:**

The proposed addition and amendment of Rules 176-199 will benefit alcohol license applicants, licensees, and the Department of ABC by clearly defining the process parties must follow when filing or responding to an appeal of a decision by the Department of ABC. The rules and regulations will clarify what the Board's deadlines and criteria are for hearing and deciding cases – thus fostering greater transparency in the appeals process. The adoption of a uniform appeals process helps to prevent discrimination and promote fairness for parties appealing an adverse decision. It also provides for openness in how the Board conducts its business.

The rules and regulations will further benefit the Board by defining a clear structure under which it will accept, hear, and decide appeals. This will enable the Board to handle incoming cases in a fair and consistent manner.

The staff have not currently identified any risks to the proposed regulations and anticipate they will be non-controversial.

**ATTACHMENTS:**

1. Proposed ABCAB regulations
2. Current ABCAB regulations

**RECOMMENDATION:**

Approve the proposed ABCAB regulations (Attachment 1).

**STAFF CONTACT:**

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ABCAB  
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**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**  
**ATTACHMENT 1**  
**PROPOSED REGULATIONS**  
**April 9, 2021**

4 CCR § 176

§ 176. Location of Offices.

(a) Any reference to the Board's "principal office" means the Board's physical mailing address as listed at [abcab.ca.gov](http://abcab.ca.gov).

(b) Any reference to the Department's "principal office" means the Department's headquarters and its physical mailing address as listed at [abc.ca.gov](http://abc.ca.gov).

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23050 and 23075, Business and Professions Code.

4 CCR § 177

§ 177. Tenses, Gender, and Number.

For purposes of these rules and regulations, any reference to gender shall extend to all genders and any reference to the singular number shall extend to and include the plural number also.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code.

4 CCR § 178

§ 178. Definitions.

For the purpose of these rules and regulations:

(a) "Board" means Alcoholic Beverage Control Appeals Board.

(b) "Department" means Department of Alcoholic Beverage Control.

~~(c) Unless the context otherwise requires, the words "appellant" or "party," include the attorney or other authorized agent of such person.~~

~~(d) "Party" includes the department, the appellant and any person, other than an officer or an employee of the department in his official capacity, who has been allowed to appear in the proceeding before the department.~~

(c) "Appellant" means any person or entity who files an appeal with the Board.

(d) "Respondent" means any person or entity who responds to an appeal filed with the Board.

(e) "Party" includes the Department, appellant(s), and respondent(s).

(f) "Person or entity" includes the attorney or authorized agent of a party.

(g) "Day" refers to a calendar day, unless otherwise stated.

(h) "File" or "filed" refers to when a document is received by the Board, except when a document is mailed to the Board via registered or certified mail, in which case, the document is deemed "filed" on the date of registry or certification with the United States Post Office.

(i) "Section" or "subsection" refers to these rules and regulation unless otherwise specified.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077 and 23081, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 181

§ 181. ~~Administration.~~ Proof of Service.

(a) A proof of service shall be attached to any documents filed or served under sections 175 through 200.1.

(b) A proof of service shall include all of the following:

(1) The address where the document was served;

(2) the date of service;

(3) the manner of service;

(4) a statement that the person making service is over the age of 18 years, and;

(5) signature of the person making service, under penalty of perjury.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23081.5, Business and Professions Code.

4 CCR § 181.1

§ 181.1 Manner of Service.

(a) A party may serve a document to the Board using any of the following means of service:

(1) in-person service, or;

(2) service by mail (regular or certified).

(b) A party may serve a document to the Department or other party using any of the following means of service:

(1) in-person service, or;

(2) service by mail (regular or certified).

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081, 23081.5, and 23088, Business and Professions Code.

4 CCR § 183

§ 183. ~~Form~~ Notice of Appeal.

Any person or entity aggrieved by the decision of the Department as defined in Business and Professions Code section 23080 may appeal the Department's decision to the Board as follows:

(a) The appellant shall file a Notice of Appeal with the Board in accordance with Business and Professions Code section 23081.5.

(b) The appellant must file the Notice of Appeal with the Board on or before the tenth day after the last day on which reconsideration of the underlying decision of the Department can be requested pursuant to Government Code section 11521(a).

(c) An appellant shall also serve a copy of the Notice of Appeal upon all parties, including the Department at its principal office.

(d) Failure to comply with the provisions in this section shall result in dismissal of the appeal pursuant to section 199.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23084, Business and Professions Code.

4 CCR § 184

§ 184. Contents of Notice of Appeal.

~~(a)~~ The Notice of Appeal shall be signed by the appellant or his its authorized agent. ~~(b)~~ The Notice of Appeal should state the general grounds for appeal ~~(see Business and Professions Code Section 23084)~~ and the specific questions to be considered by the Board on review. The original and three copies of the Notice of Appeal shall be filed with the Board and a copy shall also be served upon all parties to the proceeding before the Department, including the Department at its principal office. ~~Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party.~~ Proof of service shall be filed with the original Notice of Appeal.

~~(c)~~ ~~The Notice of Appeal should be typewritten or printed upon paper 8 1/2 x 11 inches in size and be double spaced.~~

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23084, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 187

§ 187. Filing Record. Preparation, Payment, and Filing of the Record of Appeal.

(a) Upon the filing of the Notice of Appeal, the Department shall calculate the estimated cost of the record of appeal, notify appellant thereof, and demand payment in accordance with the fee schedule provided in Section 69950 of the Government Code.

(b) Appellant shall make payment to the Department within fifteen days after the date of the Department's demand for payment.

(c) Cost of the record of appeal shall include the preparation and filing of the record of appeal with the Board.

(d) Such statement of costs shall also include the cost of preparing and servicing a copy of the record of appeal on appellant, should it be requested.

(e) ~~Where~~ Where the Department has previously ordered an original copy of the reporter's transcript because of action taken by it pursuant to Government Code Section 11517(c), the appellant need only pay the fee for a first copy of the reporter's transcript, plus the fee for each additional copy, as provided by Section 69950, for the record on appeal furnished to the Board and appellant.

(f) Upon receipt of payment from appellant, the Department shall immediately arrange for the preparation of the record of appeal and file it with the Board.

~~When a Notice of Appeal has been filed with the Board, the Board shall request the Department to furnish appellant an itemized statement of the estimated cost of the record on appeal in accordance with the fee schedule provided in Section 69950 of the Government Code. Cost of the record on appeal shall include the filing of an original and three copies of the reporter's transcript and file transcript, accompanied by the original exhibits, with the Board. Such statement of costs shall also include the cost of preparing and delivering to appellant a copy of the reporter's transcript, exhibits and file transcript, should any or all be requested by appellant. In those instances, however, where the Department has previously ordered an original copy of the reporter's transcript because of action taken by it pursuant to Government Code Section 11517(c), the appellant need only pay the fee for a first copy of the reporter's transcript, plus the fee for each additional copy, as provided by Section 69950, for the record on appeal furnished to the Board and appellant. Upon receipt of payment from appellant, the Department shall forthwith arrange for the preparation and delivery of the record on appeal.~~

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Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 188

§ 188. Contents of Record.

The record on appeal filed with the Board shall consist of:

(a) The Department's file transcript, which shall include:

(1) all notices and orders issued by the administrative law judge and the Department, including any proposed decision by an administrative law judge and the final decision issued by the Department;

(2) pleadings ~~and correspondence by a~~ filed by any party;

(3) any filed notices, orders, or pleadings ~~and correspondence~~ pertaining to reconsideration;

(b) the hearing reporter's transcript of all proceedings;

(c) exhibits admitted or rejected.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 189

§ 189. Documents Filed with Board.

In addition to the Notice of Appeal and the record on appeal, other documents which may be legally filed with and received by the Board in connection with the appeal, shall also become part of the record.

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Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23083 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 190

~~§ 190. Cost of Record and Payment Therefor.~~

~~The Department shall calculate the cost of the record on appeal as provided by Section 187, shall notify appellant thereof, and demand payment. Payment shall be made by appellant to the Department within fifteen days after the date of issuance of such demand.~~

~~Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; Section 69950, Government Code; and Article XX, Section 22, California Constitution.~~

4 CCR § 193

§ 193. Filing of Briefs by Parties.

(a) Appellant may file an opening brief, respondent may file a reply brief, and appellant may thereafter file a closing brief.

(b) The opening brief shall be filed with the Board and served on all parties to the appeal within 30 days of the date the record of appeal is filed with the Board. The reply brief shall be filed with the Board and served on all parties within 20 days after the opening brief is served. Any closing brief shall be filed with the Board and served on all parties within seven days after the reply brief is served. A proof of service shall be included with each brief indicating the date it was served.

(c) A party to the appeal may request an extension of time to file a brief. Any objections to an extension request may be filed with the Board within three days of the request. The extension request will be decided by the Board, or its executive director if so authorized, without hearing and will only be granted upon a showing of good cause.

~~(a) Form and Filing of Briefs. Briefs shall be typewritten or printed upon paper 8 1/2 x 11 inches in size. Reproduction thereof may be by any process, provided all copies are clear and permanently legible. Only one side of the paper shall be used, unless printed, and the margins shall not be less than one inch on all sides of the page. The lines shall be double spaced. Headings shall be capitalized. An original and three copies of all briefs shall be filed with the Board. The original of each brief shall contain a certification that copies have been served upon or mailed to each party, his attorney or agent, as well as the Department, and the Attorney General's office.~~

~~(b) Time for Service and Filing. The opening brief shall be served and filed within fifteen days after the date on the notice issued by the Board stating that the record on appeal has been filed with the Board. The reply brief shall be served and filed within fifteen days after the filing date of the opening brief with the Board. The closing brief shall be served and filed within five days after the filing date of the reply brief with the Board. An extension of time within which to file a brief will be granted only upon a showing of good cause.~~

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Note: Authority cited: Section 23077, Business and Professions Code; and Article

XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 194

§ 194. ~~Briefs by Other Interested Persons.~~ Requirements for Briefs.

(a) All briefs shall be double-spaced on paper 8 1/2 x 11 inches in size. Only one side of the paper shall be used, and the margins shall be at least one inch on all sides of the page. Headings shall be capitalized, in bold, or underlined.

(b) Briefs shall comply with the following length restrictions:

(1) Opening briefs shall be no more than 20 pages in length.

(2) Reply briefs shall be no more than 15 pages in length.

(3) Closing briefs shall be no more than 10 pages in length.

(c) The page limitations set forth in subsection (b) do not include exhibits, appendices, tables of contents, or cover or title pages.

(d) Any party to the appeal may request a waiver of the page length restrictions in subsection (b). The waiver request will be decided by the Board, or its executive director if so authorized, without hearing and will only be granted upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 § CCR 195

§ 195. Motions.

(a) A party may file a motion with the Board as follows:

(1) A motion shall follow the same formatting requirements for briefs set forth in section 194(a).

(2) A motion shall be no more than 10 pages in length unless accompanied by a declaration showing good cause for additional pages, but in no case shall be more than 15 pages in length.

(3) A motion filed to the Board shall include proof of service that the motion was served on all parties to the appeal.

(b) Any party opposing a motion may file a written opposition with the Board within 7 days of service of the initial motion. The opposition shall follow the same requirements described in subsections (a)(1) through (3).

(c) The Board may place any motion on the calendar for a hearing or may otherwise elect to rule on the motion without oral argument.

~~The provisions of Section 193(a) as to form and filing of briefs shall apply to a motion filed with the Board. Any showing in opposition to the motion of a party shall be served and filed within ten days after the date on the notice by the Bboard providing therefor. The Board may place any motion on the calendar for hearing or the Bboard may otherwise dispose of the motion.~~

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 196

§ 196. Hearing.

(a) After the Record of Appeal is filed with the Board, the Board shall set a hearing date and time, and serve notice to all parties.

(b) Any party wishing to present oral argument before the Board shall notify the Board and all parties in writing at least 21 days before the scheduled hearing date. Failure to timely request oral argument may result in submission of the appeal on the pleadings.

(c) Notwithstanding subsection (b), the Board may direct for oral argument to be conducted on the appeal even if no party requests it. If oral argument is directed by the Board, a separate notice shall be set by the Board to all parties.

(d) A party seeking a continuance of the hearing shall first attempt to stipulate to an alternative hearing date with all other parties to the appeal, and then make a request to the Board to reschedule. If any other party will not stipulate to continuance, the requesting party can submit a request to the Board to continue the hearing. A party may object to the continuance request within five days of such request.

(e) Requests by any party for a continuance of oral argument may be granted by the Board, or its executive director if so authorized, without a hearing and upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 197

§ 197. Oral Argument.

(a) In the event oral argument is requested or ordered:

(1) Each side shall be allowed a maximum of 15 minutes for oral argument;

(2) not more than one person for a party may be heard;

(3) the appellant, or moving party, shall have the right to open and close; however, both statements shall count towards the 15-minute total limit;

(4) No evidence, other than what is contained in the administrative record, shall be referenced by any party.

(b) Additional time for oral argument may be granted upon a showing of good cause.

~~(a) Unless otherwise ordered by the Board: (1) A party shall be allowed a maximum of 30 minutes for oral argument; (2) not more than one person on a side need be heard; (3) the appellant, or moving party, shall have the right to open and close.~~

~~(b) Continuances. Requests for continuances of oral argument will be granted only upon a showing of good cause.~~

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 197.1

§ 197.1. Quorum.

(a) The Board may decide an appeal so long as there is a quorum of at least two members present for:

(1) oral argument and deliberation in closed session, or;

(2) deliberation in closed session where an appeal has been submitted on the pleadings.

(b) In the event there are three members appointed to the Board, and a two-member quorum cannot reach a unanimous decision, oral argument and deliberation in closed session will be continued for a time when the third member can be present.

(c) In the event there are only two members appointed to the Board, and the Board cannot reach a unanimous decision, the Department's decision shall stand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152, 1176 [56 Cal.Rptr.2d 223]; *Lopez v. Imperial County Sheriff's Office* (2008) 165 Cal.App.4th 1, 4 [80 Cal.Rptr.3d 557, 559].

4 CCR § 198

§ 198. ~~Nature of New Evidence and Showing.~~

(a) When the Board is requested to remand the case to the Department for reconsideration upon the ground that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the Department, the party making such request must, in the form of a declaration or affidavit, set forth:

(1) The substance of the newly-discovered evidence;

(2) Its relevancy and that part of the record to which it pertains;

(3) Names of witnesses to be produced and their expected testimony;

(4) Nature of any exhibits to be introduced;

(5) A detailed statement of the reasons why such evidence could not, with due diligence, have been discovered and produced at the hearing before the Department.

(b) Merely cumulative evidence or exclusion of evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23084 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 199

§ 199. Dismissal of Appeal.

The Board ~~may~~ shall issue an order dismissing an appeal:

(a) Upon appellant filing a request to dismiss the appeal with the Board ~~with the Board a request to dismiss the appeal~~;

(b) Upon motion of a party, or ~~the Board itself~~ upon the Board's own notice to the parties, that appellant has failed to timely file the Notice of Appeal or pay for the record on appeal as set forth in sections 183 and 187 ~~perfect his appeal by failure to timely file same or to pay the amount specified pursuant to Sections 187 and 190 of these rules~~;

(c) Upon certification by the Department that reconsideration has been granted in the case after the Notice of Appeal has been filed, and dismissal on this ground shall be without prejudice to the submission of a subsequent appeal in the same case; ~~or, said dismissal to be without prejudice to the filing of a subsequent appeal~~

(d) Upon a motion by ~~the Department or other any~~ party, or upon the Board's own ~~motion~~ notice to the parties, where sufficient cause exists for dismissal. In such an instance, the Board's order shall set forth the sufficient cause for the dismissal.

(e) Stipulation of the parties.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081, 23083 and 23087, Business and Professions Code; Section 11521, Government Code; and Article XX, Section 22, California Constitution.

**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD**  
**ATTACHMENT 2**  
**CURRENT REGULATIONS**  
**April 9, 2021**

4 CCR § 178

§ 178. Definitions.

For the purpose of these rules and regulations:

- (a) "Board" means Alcoholic Beverage Control Appeals Board.
- (b) "Department" means Department of Alcoholic Beverage Control.
- (c) Unless the context otherwise requires, the words "appellant" or "party," include the attorney or other authorized agent of such person.
- (d) "Party" includes the Department, the appellant and any person, other than an officer or an employee of the Department in his official capacity, who has been allowed to appear in the proceeding before the Department.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077 and 23081, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 179

§ 179. Computation of Time Limitations.

The time provided in this division within which any act must be performed, shall be computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday or holiday, in which case such day shall also be excluded.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23081, Business and Professions Code; Section 12, Code of Civil Procedure; and Article XX, Section 22, California Constitution.

4 CCR § 180

§ 180. Notices to Authorized Agents.

Whenever the records of the Board indicate that a party is represented by an attorney or other authorized agent, such agent shall be entitled to a copy of all notices and decisions to which the principal would be entitled.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077 and 23081, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 184

§ 184. Contents of Notice of Appeal.

(a) The Notice of Appeal shall be signed by the appellant or his authorized agent.

(b) The Notice of Appeal should state the general grounds for appeal (see Business and Professions Code Section 23084) and the specific questions to be considered by the Board on review. The original and three copies of the Notice of Appeal shall be filed with the Board and a copy shall also be served upon all parties to the proceeding before the Department, including the Department at its principal office in Sacramento. Such service shall be made by delivering or mailing a copy of the Notice of Appeal to each party. Proof of service shall be filed with the original Notice of Appeal.

(c) The Notice of Appeal should be typewritten or printed upon paper 8 1/2 x 11 inches in size and be double spaced.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23084, Business and Professions Code; and Article XX, Section 22, California Constitution.

## 4 CCR § 187

## § 187. Filing Record.

When a Notice of Appeal has been filed with the Board, the Board shall request the Department to furnish appellant an itemized statement of the estimated cost of the record on appeal in accordance with the fee schedule provided in Section 69950 of the Government Code. Cost of the record on appeal shall include the filing of an original and three copies of the reporter's transcript and file transcript, accompanied by the original exhibits, with the Board. Such statement of costs shall also include the cost of preparing and delivering to appellant a copy of the reporter's transcript, exhibits and file transcript, should any or all be requested by appellant. In those instances, however, where the Department has previously ordered an original copy of the reporter's transcript because of action taken by it pursuant to Government Code Section 11517(c), the appellant need only pay the fee for a first copy of the reporter's transcript, plus the fee for each additional copy, as provided by Section 69950, for the record on appeal furnished to the Board and appellant. Upon receipt of payment from appellant, the Department shall forthwith arrange for the preparation and delivery of the record on appeal.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 188

§ 188. Contents of Record.

The record on appeal filed with the Board shall consist of:

- (1) The file transcript, which shall include all notices and orders issued by the administrative law judge and the Department, including any proposed decision by an administrative law judge and the final decision issued by the Department; pleadings and correspondence by a party; notices, orders, pleadings and correspondence pertaining to reconsideration;
- (2) the hearing reporter's transcript of all proceedings;
- (3) exhibits admitted or rejected.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 189

§ 189. Documents Filed with Board.

In addition to the Notice of Appeal and the record on appeal, other documents which may be legally filed with and received by the Board in connection with the appeal, shall also become part of the record.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23083 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 190

§ 190. Cost of Record and Payment Therefor.

The Department shall calculate the cost of the record on appeal as provided by Section 187, shall notify appellant thereof, and demand payment. Payment shall be made by appellant to the Department within fifteen days after the date of issuance of such demand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; Section 69950, Government Code; and Article XX, Section 22, California Constitution.

4 CCR § 193

§ 193. Filing of Briefs by Parties.

Appellant may file an opening brief, respondent may file a reply brief, and appellant may thereafter file a closing brief.

(a) Form and Filing of Briefs. Briefs shall be typewritten or printed upon paper 8 1/2 x 11 inches in size. Reproduction thereof may be by any process, provided all copies are clear and permanently legible. Only one side of the paper shall be used, unless printed, and the margins shall not be less than one inch on all sides of the page. The lines shall be double spaced. Headings shall be capitalized. An original and three copies of all briefs shall be filed with the Board. The original of each brief shall contain a certification that copies have been served upon or mailed to each party, his attorney or agent, as well as the Department, and the Attorney General's office.

(b) Time for Service and Filing. The opening brief shall be served and filed within fifteen days after the date on the notice issued by the Board stating that the record on appeal has been filed with the Board. The reply brief shall be served and filed within fifteen days after the filing date of the opening brief with the Board. The closing brief shall be served and filed within five days after the filing date of the reply brief with the Board. An extension of time within which to file a brief will be granted only upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 195

§ 195. Motions.

The provisions of Section 193(a) as to form and filing of briefs shall apply to a motion filed with the Board. Any showing in opposition to the motion of a party shall be served and filed within ten days after the date on the notice by the Board providing therefor. The Board may place any motion on the calendar for hearing or the Board may otherwise dispose of the motion.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 197

§ 197. Oral Argument.

(a) Unless otherwise ordered by the Board: (1) A party shall be allowed a maximum of 30 minutes for oral argument; (2) not more than one person on a side need be heard; (3) the appellant, or moving party, shall have the right to open and close.

(b) Continuances. Requests for continuances of oral argument will be granted only upon a showing of good cause.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 198

§ 198. Nature of Evidence and Showing.

(a) When the Board is requested to remand the case to the Department for reconsideration upon the ground that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the hearing before the Department, the party making such request must, in the form of a declaration or affidavit, set forth:

- (1) The substance of the newly-discovered evidence;
- (2) Its relevancy and that part of the record to which it pertains;
- (3) Names of witnesses to be produced and their expected testimony;
- (4) Nature of any exhibits to be introduced;
- (5) A detailed statement of the reasons why such evidence could not, with due diligence, have been discovered and produced at the hearing before the Department.

(b) Merely cumulative evidence shall not constitute a valid ground for remand.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23084 and 23085, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 199

§ 199. Dismissal of Appeal.

The Board may issue an order dismissing an appeal:

- (a) Upon appellant filing with the Board a request to dismiss the appeal;
- (b) Upon motion of a party, or the Board itself, that appellant has failed to perfect his appeal by failure to timely file same or to pay the amount specified pursuant to Sections 187 and 190 of these rules;
- (c) Upon certification by the Department that reconsideration has been granted in the case, said dismissal to be without prejudice to the filing of a subsequent appeal; or
- (d) Upon a motion by the Department or other party, or upon the Board's own motion, where sufficient cause exists for dismissal.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081, 23083 and 23087, Business and Professions Code; Section 11521, Government Code; and Article XX, Section 22, California Constitution.

4 CCR § 200

§ 200. Disqualification of Board Members.

A Board member shall voluntarily disqualify himself/herself and withdraw from any case in which such person cannot accord a fair and impartial hearing. Any party may request the disqualification of any member by filing an affidavit before the submission of the case stating with particularity the grounds upon which it is claimed that a fair and impartial appeal cannot be accorded by a Board member. The issue raised by the request shall be determined by the other members of the Board. No member of the Board shall withdraw voluntarily, or be subject to disqualification, if this would prevent the Board from acting in the particular case. The affidavit shall become a part of the record.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Section 23075, Business and Professions Code; Article XX, Section 22, California Constitution; and Fed. Construction Co. v. Curd, 179 C. 489, 177 P. 469.

## 4 CCR § 200.1

## § 200.1. General Provisions.

The Political Reform Act (Government Code Section 81000, et seq.) requires state and local government agencies to adopt and promulgate Conflict of Interest Codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regulations Section 18730) which contains the terms of a standard Conflict of Interest Code, which can be incorporated by reference, and which may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act after public notice and hearings. Therefore, the terms of 2 Cal. Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission, along with the attached Appendix in which officials and employees are designated and disclosure categories are set forth, are hereby incorporated by reference and constitute the Conflict of Interest Code of the ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD.

Designated employees shall file statements of economic interests with the ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD which will make the statements available for public inspection and reproduction, (Gov. Code Section 81008). Upon receipt of the statements of the Board members, the agency shall make and retain a copy and forward the original to the Fair Political Practices Commission. Statements for all other designated employees will be retained by the agency.

Note: Authority cited: Sections 87300 and 87304, Government Code. Reference: Section 87300, et seq., Government Code.

4 CCR Appendix.

Appendix.

Designated Employees.

Persons holding the following positions are designated employees:

Board Members

Chief Counsel/Executive Director

Staff Counsel

[FNa1]Consultants

Disclosure Category.

Designated employees shall report investments and business positions in any business entity, interests in real property, and sources of income, which are any of the following:

- (1) An applicant for, or the current holder of, an alcoholic beverage license,
- (2) Any premises proposed to be or currently licensed for the sale of alcoholic beverages,
- (3) The holder of an alcoholic beverage license at any time within four years preceding the date the designated employee assumed office, or
- (4) A premises licensed for the sale of alcoholic beverages at any time within four years preceding the date the designated employee assumed office.

[FNa1]

The executive officer may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to fully comply with the disclosure requirements described in this section. Such written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The executive officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code.