

**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
STAFF REPORT
TELEPHONIC BOARD MEETING
November 5, 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. The Board is in the process of amending its regulations but did not have the authority to allow electronic filing and service until AB 1589 (Chapter 306) was approved by the Governor and filed with the Secretary of State on September 24, 2021, to become effective January 1, 2022.

Thus, for more than 60 years, the Board has utilized a paper and mail-based process. Current regulations require the Board, the Department of ABC, and all other parties to deliver documents to one another by hand or mail. Electronic service of documents does not satisfy the Board's procedural requirements.

Law offices, administrative bodies, and courts are modernizing at a faster pace than the Board by enabling electronic filing of pleadings and orders. As the extent to which society keeps paper records continually declines, electronic filing will be the standard across all professions.

ANALYSIS:

As a government entity, it is important for the Board to promote efficiency, modernize the appeals process, and improve access to due process. The Board would also like to save state funds due to decreased postage, paper, and printing.

The purpose of these regulations is to support government efficiency by allowing the Board, and all parties appearing before it, the option of serving documents electronically. The regulations would also eliminate the need for appellants to serve multiple copies of a Notice of Appeal. These proposed revisions also remove superfluous language from existing regulations.

Proposed rules 178, 181, 181.1, 184, 193, and 195 will: add to the definition of "file" or "filed" to include electronic filing to the Board's e-mail address; define "serve" or "served" as in-person service, service by mail, or electronic service for

the Board, and for all parties, so long as those parties agree to electronic service, in writing; allow proof of service to be in electronic form, so long as it contains the electronic address where the document was served; allow electronic service to the Board's e-mail, and electronic service to all parties, so long as the party agrees in writing and lists any e-mail address where it is to receive service; eliminate the requirement for an appellant to file the original and three copies of the Notice of Appeal with the Board, and to serve a hard copy of the Department of ABC at its principal office, and; allow parties to accept electronic service of briefs and motions, so long as the party agrees in writing.

BUDGET AND FISCAL IMPACTS:

Depending on how many parties opt to serve the Board electronically, the proposed regulations could save the Board as much as \$2,500 per year in postage, paper, and printing costs.

BENEFITS AND RISKS:

The proposed amendment of Rules 178, 181, 181.1, 184, 193, and 195 will benefit alcohol license applicants, licensees, and the Department of ABC by making the appeals process more user-friendly and cost efficient for licensees and members of the public who want to exercise their right to appeal through electronic filing and service. Considering the COVID-19 pandemic, the option of electronic service will also help minimize any close contact that may otherwise result from filing or serving documents in person. Moreover, by being able to file and serve documents electronically, instead of through registered or certified mail, this will streamline the appeals process. This proposal would also save state funds due to decreased postage, paper, and printing and reduce waste created by paper and supplies.

The Board has not currently identified any risks to the proposed regulations. We anticipate support from stakeholders.

ATTACHMENTS:

1. Proposed ABCAB regulations
2. Current ABCAB regulations

RECOMMENDATION:

Approve the proposed ABCAB regulations (Attachment 1).

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**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
ATTACHMENT 1
PROPOSED REGULATIONS
November 5, 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) "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, by in-person service or electronic service to the Board's electronic mail address as listed at www.abcab.ca.gov. ~~except when~~ 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.
- (j) "Serve" or "served," when referencing service to the Board, includes in-person service, service by mail (regular or certified), or electronic service to the Board's electronic mail address as listed at www.abcab.ca.gov. When referencing

service to a party, "serve" or "served" includes in-person service, service by mail (regular or certified), or electronic service, subject to the following limitations:

(1) A party agreeing to receive electronic service must agree in writing and list any electronic mail address where it is to receive service.

(2) A party who wishes to modify or cancel an agreement to receive electronic service, may send notice of its modification or cancellation, in writing, to all parties and the Board.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23077, 23081 (AB-1589 [Ch. 306]), and 23081.5 (AB-1589 [Ch. 306]), Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 181

§ 181. 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 (physical or electronic) 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.

(c) Proof of electronic service may be in electronic form and signed electronically, subject to the provisions of section 181.1.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 (AB-1589 [Ch. 306]) and 23081.5 (AB-1589 [Ch. 306]), 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), or;

(3) electronic service to the Board's electronic mail address as listed at www.abcab.ca.gov.

(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), or;

(3) electronic service, so long as the agreement is in writing and lists any electronic mail address where it is to receive service.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 (AB-1589 [Ch. 306]), 23081.5 (AB-1589 [Ch. 306]), and 23088 (AB-1589 [Ch. 306]), Business and Professions Code.

4 CCR § 184

§ 184. Contents of Notice of Appeal.

The Notice of Appeal shall be signed by the appellant or its authorized agent. The Notice of Appeal should state the general grounds for appeal 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 the Department and all parties to the proceeding before the Department, including the Department at its principal office. Proof of service shall be filed with the ~~original~~ Notice of Appeal.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 (AB-1589 [Ch. 306]) and 23084, Business and Professions Code; and Article XX, Section 22, California Constitution.

4 CCR § 193

§ 193. Filing of Briefs.

(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 on 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. The parties may agree in writing to accept electronic service in accordance with section 178(j).

(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 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 (AB-1589 [Ch. 306]) 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. The parties may agree in writing to accept electronic service in accordance with section 178(j).

(b) Any party opposing a motion may file a written opposition with the Board within seven 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.

Note: Authority cited: Section 23077, Business and Professions Code; and Article XX, Section 22, California Constitution. Reference: Sections 23081 (AB-1589 [Ch. 306]) and 23083, Business and Professions Code; and Article XX, Section 22, California Constitution.

**ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD
ATTACHMENT 2
CURRENT REGULATIONS (as submitted to OAL 10/31/21)
November 5, 2021**

4 CCR § 178

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- (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.

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§ 181. Proof of Service.

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(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 § 184

§ 184. Contents of Notice of Appeal.

The Notice of Appeal shall be signed by the appellant or its authorized agent. The Notice of Appeal should state the general grounds for appeal 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. Proof of service shall be filed with the original Notice of Appeal.

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.

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(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 be granted only upon a showing of good cause.

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(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.

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