# STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

# WORKERS’ COMPENSATION APPEALS BOARD

# INITIAL STATEMENT OF REASONS

## Subject Matter of Proposed Regulations:

## Rules of Practice and Procedure of the Workers’ Compensation Appeals Board

### **BACKGROUND:**

The Workers’ Compensation Appeals Board (WCAB) proposes to amend several of its Rules of Practice and Procedure (Rules) effective January 1, 2022.[[1]](#footnote-1) These proposed amendments are being initiated pursuant to the WCAB’s rulemaking power under Labor Code sections 5307(a), 133, 5309 and 5708,[[2]](#footnote-2) subject to the procedural requirements of section 5307.4. This Initial Statement of Reasons and accompanying Notice of Proposed Rulemaking have been prepared to comply with the procedural requirements of section 5307.4 and for the convenience of the regulated public to assist it in analyzing and commenting on this largely non-APA rulemaking process.[[3]](#footnote-3)

In March 2020, the WCAB transitioned to virtual operations at the beginning of the novel coronavirus pandemic, which included the adoption of electronic signatures, service, and filing of documents by the Appeals Board as well as the Division of Workers’ Compensation’s transition to remote hearings conducted via telephone and video. To facilitate these changes, the Appeals Board suspended certain Rules.[[4]](#footnote-4) Remote proceedings and the availability of electronic communication, filing, and service have increased access to the workers’ compensation system for parties, their representatives, and the public. Based on the success of some of these innovations, the Appeals Board has determined that making these changes permanent would be beneficial to the public and to the administration of the workers’ compensation adjudicatory system.

The primary purpose of this rulemaking is to formalize the processes for the remote hearings, electronic filing, and electronic service that developed during the novel coronavirus pandemic. To this end, we propose adding several new rules to create processes for noticing and objecting to remote hearings, remote appearances, and remote witness testimony. We also propose adding new definitions for “Appearance,” “Hearing,” and “Testimony,” and revising our existing rules regarding appearances, to facilitate these processes. We propose adding new definitions for “Electronic,” “Filing,” and “Service,” and revising our existing rules regarding filing and service, to provide for expanded electronic filing and service.

We also propose revisions to our rule regarding applications for benefits from the Subsequent Injuries Benefits Trust Fund to facilitate the efficient resolution of such claims.

Additionally, we propose correcting typographical errors in six rules.

Changes to each specific rule are discussed below, in the section pertaining to each rule.

In the proposed rules, changes are reflected by underlining (indicating new language) and strike-throughs (indicating deleted language).

Specific Technologies or Equipment

The proposed amendments do *not* mandate the use of specific technologies or equipment.

Consideration of Alternatives

The WCAB has identified no alternative that would be either more effective, or equally effective and less burdensome than the proposed amendments.

Effect on Small Businesses

The proposed amendments will not have a significant effect on small businesses.

Economic Impact on California Business Enterprises and Individuals

The proposed amendments will not have a significant economic impact on California business enterprises and individuals.

| **Number** | **Title** |
| --- | --- |
| 10305 | Definitions. |
| 10400 | Attorney Representatives. |
| 10401 | Non-Attorney Representatives. |
| 10404 | Suspension and Removal of a Non-Attorney Representative's Privilege to Appear Before the Workers' Compensation Appeals Board Under Labor Code Section 4907. |
| 10462 | Subsequent Injuries Benefits Trust Fund Application. |
| 10550 | Petition to Dismiss Inactive Cases. |
| 10610 | Filing and Service of Documents. |
| 10615 | Filing of Documents. |
| 10625 | Service by Parties. |
| 10628 | Service by the Workers' Compensation Appeals Board. |
| 10635 | Duty to Serve Documents. |
| 10670 | Documentary Evidence. |
| 10745 | Setting the Case. |
| 10750 | Notice of Hearing. |
| 10752 | Appearances Required. |
| 10755 | Failure to Appear at Mandatory Settlement Conference in Case in Chief. |
| 10756 | Failure to Appear at Trial in Case in Chief. |
| 10759 | Mandatory Settlement Conferences. |
| **New Rule**  10815 | Electronic Hearings Before the Workers’ Compensation Appeals Board. |
| **New Rule**  10816 | Electronic Appearances Before the Workers’ Compensation Appeals Board. |
| **New Rule**  10817 | Electronic Testimony Before the Workers’ Compensation Appeals Board. |
| 10818 | Recording of Proceedings. |
| 10832 | Notices of Intention and Orders after Notices of Intention. |
| 10862 | Filing and Service of Lien Claims and Supporting Documents. |

#### Rule Amended: 10305 “Definitions.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10305.

We propose adding new definitions of “Electronic,” “Filing,” and “Service” as part of the rules governing electronic filing and service. These definitions will provide necessary clarity and guidance to practitioners filing and serving documents electronically.

We propose adding definitions of “Appearance,” “Hearing,” and “Testimony” as part of the rules governing remote hearings. These definitions will provide necessary clarity and guidance to practitioners seeking to appear or testify remotely or take part in remote hearings.

#### Rule Amended: 10400 “Attorney Representatives.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10400.

To facilitate electronic service, we propose amending rule 10400 to require that attorney representatives include an email address in the notice of representation required by rule 10400.

#### Rule Amended: 10401 “Non-Attorney Representatives.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10401.

In the workers’ compensation system, non-attorney representatives are held to the same standards of conduct as attorneys. Accordingly, to facilitate electronic service, we propose amending rule 10401 to require that non-attorney representatives also must include an email address in the notice of representation required by rule 10401.

#### Rule Amended: 10404 “Suspension and Removal of a Non-Attorney Representative's Privilege to Appear Before the Workers' Compensation Appeals Board Under Labor Code Section 4907.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10404.

We propose amending rule 10404 to correct a typographical error, so that subdivision (b) cross-references rule 10401 instead of rule 10400.

#### Rule Amended: 10462 “Subsequent Injuries Benefits Trust Fund Application.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10462.

We propose amending rule 10462 to correct a typographical error, so that subdivision (c) cross-references rules 10625 and 10632 instead of rules 10530 and 10540. We also propose amending rule 10462 substantively to include a requirement that, after the Subsequent Injuries Benefits Trust Fund (SIBTF) is joined in a case, the parties must meet and confer in good faith as to the elements of a claim for benefits from the SIBTF. A meet and confer requirement will assist the parties and the SIBTF in properly framing the issues and investigating claims for SIBTF benefits in a timely manner, so that such claims can be efficiently and effectively adjudicated.

#### Rule Amended: 10550 “Petition to Dismiss Inactive Cases.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10550.

We propose amending rule 10550 to correct a typographical error, so that subdivisions (e)(1) and (e)(2) refer back to subdivision (b) of this rule instead of subdivision (a) of this rule.

#### Rule Amended: 10610 “Filing and Service of Documents.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10610.

We propose amending rule 10610 to remove redundant language that is already contained in rules 10615 and 10625, and replacing that language with cross-references to rules 10615 and 10625. This will make the language more clear and concise, and will provide more helpful guidance to practitioners.

#### Rule Amended: 10615 “Filing of Documents.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10615.

We propose amending rule 10615 to revise the prefatory language and reorganize it as a distinct subdivision according to style. We also propose moving former subdivision (a) of rule 10615 to rule 10670 (Documentary Evidence) because former subdivision (a) pertains to a specific type of documentary evidence, and not the general filing of documents. We propose removing superfluous language from subdivision (b) to facilitate electronic filing in the future. Additionally, to formalize the electronic filing other than in EAMS that was adopted by the Appeals Board and the District Offices during the pandemic, we propose adding new language to subdivision (d) to define receipt and confirmation of electronic filing other than in EAMS as well as confirmation of electronic filing in EAMS.

#### Rule Amended: 10625 “Service by Parties.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10625.

We propose amending the title of rule 10625 to clarify that it governs service by parties, as opposed to service by the Workers’ Compensation Appeals Board (which is governed by rule 10628). We propose non-substantive changes to the wording of subdivision (a). We also propose several revisions that will facilitate and formalize electronic service, as follows: In subdivision (b), we propose adding language to allow for electronic service, and removing language that no longer reflects current practice. We propose adding language to subdivision (c) regarding the requirements for proofs of service for documents filed electronically. In subdivision (d), we propose revisions to clarify the steps a party must take when they receive notification that service has failed.

#### Rule Amended: 10628 “Service by the Workers’ Compensation Appeals Board.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10628.

We propose non-substantive changes to rule 10628 to clarify the requirements for electronic service, either through EAMS or otherwise, by the Workers’ Compensation Appeals Board.

#### Rule Amended: 10635 “Duty to Serve Documents.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10635.

We propose non-substantive rewording and reorganizing of subdivision (c) into three separate subdivisions to clarify who must be served with which documents and to assist practitioners in complying with the rule’s requirements. We also propose correcting a typographical error in former subdivision (c)(2), new subdivision (d), so that new subdivision (d) cross-references Labor Code section 4903.05(d)(7) instead of Labor Code section 4903.05(c)(7).

#### Rule Amended: 10670 “Documentary Evidence.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10670.

We propose moving language from former subdivision (a) of rule 10615 to create a new subdivision (c) or rule 10670, for the reasons discussed above. We propose removing subdivision (d) as it is superfluous.

#### Rule Amended: 10745 “Setting the Case.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10745.

We propose non-substantive revisions to rule 10745 to reflect current practice as well as revisions to facilitate remote hearings in the future.

#### Rule Amended: 10750 “Notice of Hearing.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10750.

We propose revising rule 10750 to facilitate electronic service of notices of hearings. We also propose correcting a typographical error, so that new subdivision (a) cross-references rule 10625 and not rule 10610.

#### Rule Amended: 10752 “Appearances Required.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10752.

We propose revising rule 10752 to facilitate remote hearings and appearances. We propose repealing subdivision (c) and combining current subdivisions (b) and (d) to clarify the requirements for appearances by party representatives with settlement authority. We also propose removing language regarding the possibility of monetary sanctions for failure to comply and replacing it with new subdivision (e), which allows the workers’ compensation judge more discretion in responding to a failure to comply with the rule.

#### Rule Amended: 10755 “Failure to Appear at Mandatory Settlement Conference in Case in Chief.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10755.

We propose simplifying the language of rule 10755 to provide additional clarity for practitioners, and to provide greater flexibility to workers’ compensation judges in adjudicating failure to appear at mandatory settlement conferences.

#### Rule Amended: 10756 “Failure to Appear at Trial in Case in Chief.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10756.

We propose simplifying the language of rule 10756 to provide additional clarity for practitioners, and to provide greater flexibility to workers’ compensation judges in adjudicating failure to appear at trials. In new subdivision (b), we propose correcting a typographical error, so that subdivision (b) cross-references rule 10880 and not rule 10876.

#### Rule Amended: 10759 “Mandatory Settlement Conferences.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10759.

We propose amending rule 10759 to require the parties to meet and confer before a mandatory settlement conference so that they can complete a joint Pre-Trial Conference Statement by the close of the mandatory settlement conference. This requirement will provide workers’ compensation judges with more flexibility in managing their courtrooms, and will assist the parties in properly framing the issues so that trials can be conducted more efficiently.

#### Rule Adopted: 10815 “Electronic Hearings Before the Workers’ Compensation Appeals Board.”

##### Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10815.

In March 2020, the WCAB transitioned to virtual operations at the beginning of the novel coronavirus pandemic, which included the adoption of electronic signatures, service, and filing of documents by the Appeals Board as well as the Division of Workers’ Compensation’s transition to remote hearings conducted via telephone and video. To facilitate these changes, the Appeals Board suspended certain Rules. Remote proceedings and the availability of electronic communication, filing, and service have increased access to the workers’ compensation system for parties, their representatives, and the public. Based on the success of some of these innovations, the Appeals Board has determined that making these changes permanent would be beneficial to the public and to the administration of the workers’ compensation adjudicatory system. To that end, we propose adding new rules 10815, 10816, and 10817 to create processes and structures for holding remote hearings, appearing remotely, and testifying remotely.

With rule 10815, we have created a framework for setting a matter for a remote hearing and for objecting to a hearing being conducted remotely. Subdivision (a) provides that any matter may be set for a remote hearing, following the same procedures set forth in rule 10745 for in-person hearings. Subdivision (b) gives any party the right to object to a hearing being conducted remotely. Subdivisions (c) and (d) govern the resolution, by the presiding workers’ compensation judge for the district office having venue, of any objection to a hearing being conducted remotely. Finally, subdivision (e) ensures that members of the public will be able to access workers’ compensation remotely, with the Division of Workers’ Compensation providing information regarding access to hearings.

#### Rule Adopted: 10816 “Electronic Appearances Before the Workers’ Compensation Appeals Board.”

##### Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10816.

In March 2020, the WCAB transitioned to virtual operations at the beginning of the novel coronavirus pandemic, which included the adoption of electronic signatures, service, and filing of documents by the Appeals Board as well as the Division of Workers’ Compensation’s transition to remote hearings conducted via telephone and video. To facilitate these changes, the Appeals Board suspended certain Rules. Remote proceedings and the availability of electronic communication, filing, and service have increased access to the workers’ compensation system for parties, their representatives, and the public. Based on the success of some of these innovations, the Appeals Board has determined that making these changes permanent would be beneficial to the public and to the administration of the workers’ compensation adjudicatory system. To that end, we propose adding new rules 10815, 10816, and 10817 to create processes and structures for holding remote hearings, appearing remotely, and testifying remotely.

Rule 10816 sets forth the procedure for appearing electronically at workers’ compensation proceedings. Subdivision (a) requires that a party who intends to appear electronically must file a petition showing good cause to do so, and subdivision (b) creates a rebuttable presumption that all appearances at a hearing conducted electronically pursuant to rule 10815 will also be electronic.

#### Rule Adopted: 10817 “Electronic Testimony Before the Workers’ Compensation Appeals Board.”

##### Statement of Specific Purpose and Reasons for Proposed Adoption of rule 10817.

In March 2020, the WCAB transitioned to virtual operations at the beginning of the novel coronavirus pandemic, which included the adoption of electronic signatures, service, and filing of documents by the Appeals Board as well as the Division of Workers’ Compensation’s transition to remote hearings conducted via telephone and video. To facilitate these changes, the Appeals Board suspended certain Rules. Remote proceedings and the availability of electronic communication, filing, and service have increased access to the workers’ compensation system for parties, their representatives, and the public. Based on the success of some of these innovations, the Appeals Board has determined that making these changes permanent would be beneficial to the public and to the administration of the workers’ compensation adjudicatory system. To that end, we propose adding new rules 10815, 10816, and 10817 to create processes and structures for holding remote hearings, appearing remotely, and testifying remotely.

Rule 10817 governs witness testimony given electronically. Subdivision (a) requires that either the witness seeking to testify electronically, or the party offering that witness’s testimony, file a petition showing good cause for the testimony to be given electronically, and identifying the witness’s full legal name and contact information. Like subdivision (b) of rule 10817, subdivision (b) of rule 10817 creates a rebuttable presumption that all testimony given at a hearing conducted electronically pursuant to rule 10815 will also be electronic.

#### Rule Amended: 10818 “Recording of Proceedings.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10818.

Currently, rule 10818 is nearly identical to California Rule of Court 1.150, with specific changes to make it more applicable to the workers’ compensation context. We propose amending rule 10818 to simplify the process for recording proceedings, which in turn will facilitate remote hearings. These amendments involve removing superfluous language; removing sections that are more properly the subject of the Policy and Procedural Manual; clarifying when a recording may be made for personal use; and making explicit that a violation of the rule may be the basis for sanctions or a citation for contempt.

#### Rule Amended: 10832 “Notices of Intention and Orders after Notices of Intention.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10832.

We propose amending rule 10832 to remove language from subdivision (a)(4) to give workers’ compensation judges more flexibility in when they may issue a notice of intention submitting a matter on the record. We also propose rewording subdivisions (a)(1) and (a)(2) to increase precision and accuracy of language.

#### Rule Amended: 10862 “Filing and Service of Lien Claims and Supporting Documents.”

##### Statement of Specific Purpose and Reasons for Proposed Amendments of rule 10862.

We propose amending rule 10862 to correct the numbering within subdivision (e).

1. The WCAB rules are found in Cal. Code Regs., Title 8, Chapter 4.5, Subchapter 2, section 10300 et seq. [Return.](#ReturnInst1) [↑](#footnote-ref-1)
2. All further statutory references are to the Labor Code unless otherwise specified. [Return.](#ReturnInst2) [↑](#footnote-ref-2)
3. Under Government Code section 11351, the WCAB is not subject to Article 5 (Gov. Code, § 11346 et seq.), Article 6 (*id*. § 11349 et seq.), Article 7 (*id*. § 11349.7 et seq.), or Article 8 (*id*. § 11350 et seq.) of the rulemaking provisions of the Administrative Procedures Act (APA), with the sole exception that section 11346.4(a)(5) [publication in the California Regulatory Notice Register] does apply to the WCAB. [Return.](#ReturnInst3) [↑](#footnote-ref-3)
4. See COVID-19 State of Emergency Miscellaneous En Banc Orders nos. 260-266. [Return.](#ReturnInst4) [↑](#footnote-ref-4)