

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5609**

Open Session

The Appeals Board convened at 11:00 a.m., August 16, 2016, in Sacramento with Chair Robert Dresser presiding.

1. Roll Call: <u>Members</u>	<u>Present</u>	<u>Absent</u>
Robert Dresser, Chair	x	
Michael Allen, Vice Chair	x	
Ellen Corbett	x	

2. Public Comment:

Chair Dresser set forth the procedures for the public session. He indicated that on the open session agenda is an opportunity for public comments prior to the Board convening in closed session to review the results of an investigation conducted by CPS Consulting Services of employee complaints from the Oakland Office of Appeal and an evaluation of the performance of the Presiding Judge of that office and the Chief Presiding Judge/Executive Director. At the conclusion of its closed session, the Board will reconvene in open session to announce any disciplinary action that it may deem appropriate.

Chair Dresser further indicated that both the Presiding Judge of Oakland Office of Appeals (Presiding Judge Yolanda Gammill) and the Chief Judge/Executive Director (Elena Gonzales) were provided advance written notice of this meeting and an opportunity to address the Board in public pursuant to Government Code section 11126(a)(2). The Executive Director requested a public hearing, but subsequently withdrew that request. The Presiding Judge of the Oakland Office of Appeal and her representative were present and were asked to clarify whether their presentation is pursuant to the right to public hearing under Government Code Section 11126(a)(2) of the Bagley Keene Open Meeting Act. Chair Dresser indicated that regardless, public comment will be permitted from whoever wishes to provide it.

Chair Dresser further indicated that both the Presiding Judge of the Oakland Office of Appeal and the Chief Judge/Executive Director were both notified during the investigation of the complaints that had been registered against them. Both have been provided with a summary of the investigator's findings.

Chair Dresser further indicated that the Board has received confidential and privileged investigative reports of the complaints made against both the Presiding Judge of the Oakland Office of Appeal and the Chief Judge/Executive Director. The investigations were conducted by a Private Licensed Investigator, L. Katrina Meek, Senior Investigator and Human Resources Consultant with the firm of CPS HR Consulting. The investigations were conducted between March and June 2016, and included interviews with Presiding Judge Gammill and her representative, Chief Judge/Executive Director Elena Gonzales, and numerous staff in the Oakland Office of Appeals. The reports have been designated as confidential attorney work product. They will be included as part of the Board's closed session review and deliberations.

Chair Dresser further indicated that on August 11, 2016, the Board received a three page letter, dated August 2, 2016, from Mr. Waukeen McCoy, attorney for the Presiding Judge Gammill of the Oakland Office of Appeal, along, with a multi-page response to the allegations addressed by CPS investigator L. Katrina Meek, and a binder of exhibits nearing 300 pages. The Board members have received a copy of these documents and the binder of exhibits.

Mr. McCoy addressed the Board on behalf of the Presiding Judge of the Oakland Office of Appeal. Mr. McCoy indicated that he had clarified with Deputy Attorney General Karen Donald that because this is a personnel matter the Board should conduct a closed session hearing.

Deputy Attorney General Karen Donald was present and was asked by Chair Dresser to respond. Deputy Attorney General Donald commented that there was a discussion between her and Mr. McCoy wherein she indicated that he could request to make a presentation in open session. Deputy Attorney General Donald further indicated that in her last communication with Mr. McCoy she requested that he provide authority for the proposition that he and his client were entitled to attend a closed session. That is where they left it. Deputy Attorney General Donald further indicated that in her opinion, statute and the case law say that if you want to present argument before the Board, the Presiding Judge or her representative would have to do so in open session. Thereafter, the Board, on its own, can have a closed session.

Chair Dresser asked Chief Counsel Howard Schwartz for his opinion. Chief Counsel Schwartz indicated that he concurred with the comments that were made by Deputy Attorney General Donald. He indicated that Government Code section 11126(a) permits the Board to meet in closed session to evaluate an employee's performance or to consider complaints brought against an employee by another person or employee. Government Code section 11126(a)(2) provides that as condition to holding a closed session to consider complaints or charges registered against an employee, that employee should be given written notice of his or her right to have a public hearing. Government Code section 11126(a)(4) provides that following the public hearing the Board may deliberate on its decision in closed session.

Chief Counsel Schwartz stated he looked for authority as to whether or not there is a right to a closed session and consulted the California Attorney General's Office guide to the Bagley-Keene Open Meeting Act. There it indicates that an employee against whom charges or complaints are registered can insist on having the matter heard in open session. However, the opposite is not true. Under the Act an employee has no right to have the matter heard in closed session.

Mr. McCoy responded that there is no case that says you cannot have a rebuttal in closed session with the employee.

Chair Dresser indicated that he is inclined to support the interpretation to have all testimony in public.

Member Allen concurred with Chair Dresser. He added that he has reviewed every document that has been sent to him by everyone and it will be taken into consideration in closed session.

Member Corbett commented that it appears that if they went into closed session with the individuals the Board may be at risk of violating the Bagley-Keene Act, because it sounds as if this proceeding must be conducted in public session.

Mr. McCoy indicated that he is not requesting to have a public hearing.

Chair Dresser responded that they have a right of course not to participate in a public session. He stated he understands their concerns but the Board's interpretation of the law is different than theirs.

Susan Bloom, ALJ II, Oakland Office of Appeals appeared and indicated that she was speaking under the grant of absolute immunity provided by California Civil

Code section 47. She provided a statement concerning her participating in the CPS investigation and her experiences with the Chief Judge/Executive Director and the Presiding Judge of the Oakland Office of Appeal.

Deborah Schissell, ALJ II, in the Oakland Office of Appeals, appeared and indicated that she was speaking under the grant of absolute immunity provided by California Civil Code section 47. She provided a statement concerning her experiences with the Chief Judge/Executive Director and the Presiding Judge of the Oakland Office of Appeal.

Susan Lee, ALJ, appeared and provided a statement concerning her experiences with the Chief Judge/Executive Director and the Presiding Judge of the Oakland Office of Appeal.

The Board adjourned at 11:45 a.m.

Closed Session:

The Board commenced closed session at 11:50 a.m. Closed session was adjourned at approximately 3:40 p.m.

Open Session Reconvened:

The Board reconvened in open session at approximately 3:42 p.m. to announce the results of the Board's deliberations.

Chair Dresser announced that after closed session deliberation the Board has voted to demote the Presiding Judge Gammill of the Oakland Office of Appeal to the position of Administrative Law Judge II. The Board's vote on this matter was unanimous. Chair Dresser instructed the staff to prepare the appropriate documentation to support the decision of the Board. Presiding Judge Gammill of the Oakland Office of Appeal was instructed to remain on special assignment pending further notification.

Chair Dresser announced regarding Executive Director/Chief Judge Elena Gonzales that the Board concludes she acted appropriately and that the allegations against her were unfounded.

The Board adjourned at 3:43 p.m.