got a, you know, a touchy medical condition and the fact
that it did exist, and that they weren't able to do
something at a particular time is important, but that
everyone know exactly what condition they have may not
be important and may be a very sensitive issue and not
necessarily a trade secret or something a competitor
would use against them in that sense.

MS. RUWART: And that's not something easily
definable.

MR. HELLER: And so it's not to say -- I'm not
asking everyone to come up with that definition. I'm
just suggesting that's why we did it. And we definitely
will look at trade secrets as something workable.

MR. KAMP: What I would suggest is trade
secrets and the other privacy areas. You need to really
speak to somebody who is a privacy law expert. And I'm
convinced those people exist. They probably even have
Internet websites you might even find, you know.

MR. MICHAELS: Even court cases address this.

MS. RUWART: Okay. Those are all good ideas.
Okay. Subsection (b). This is what you need to do to
make a request. Any comments particularly? Okay.
Subsection (c), how you send the request in.

MR. MICHAELS: So it's mailed to the Chief of
proceedings, who in turn will pass it on to the Chair.
MS. RUWART: Well, presumably, that's contemplated. In section (d), any comments on that?

MR. MICHAELS: Well, definitely. The Chair may take whatever action it -- I guess the Chair is an object now -- deems necessary -- well, most chairs are objects -- whatever action it deems necessary to preserve the confidentiality of sensitive information.

Now, we were all at the hearing yesterday -- well, we weren't, but some of us were. We saw one example of a reaction by a Chair which was a summary reaction. The hearing's public. End of discussion. So it comes down to some individual's impulse at the moment.

MS. RUWART: I think that's a bit dramatic, especially since in this particular case the taxpayer submits it in writing. And why don't we move to consider subsection (e) at the same time.

MR. SCHUTZ: Before moving on, is there any, like, list of things that the Chair can do to preserve it? I mean, the number of different things that they could do or . . .

MS. RUWART: You know, here's the way we structure this is, everybody, whenever they see these broad general rules and provisions and authorities and discretion, says, well, tell me exactly what it is, and
then as soon as you try and define it, you find the one
ting that doesn't fall in there and the one thing you
want to do that now you have the laundry list of things
you only can do.

And I mean, you know, they were thinking of,
you know, medical condition, this and that. I was
thinking back-door conversation this morning about
innocent spouse cases. There may be things that are
just usually public information, where you work or what
you do or what your schedule is, that in a particular
instance would be very harmful.

And the way that you would preserve that might
be something like do the one spouse at 9:00 and the
other spouse at 10:00. You know, that's an innovative
way.

We want to give -- we want to have a single
person who makes a decision, a single point of contact,
and we want it to be a responsible person who is
accountable and that we give them the flexibility to
know the sensitivity when they see it and be able to do
whatever is necessary.

If you have any other ideas of how to go -- but
that was our theory and our philosophy.

MS. CROCETTE: Yeah. This is Sabina. I'm just
 chiming in. By having a Chair do it, moreover, when you
make the request, you're always free to say how you
think it should be done and they will take that into
consideration. You think they should do X, Y and Z to
protect the privacy in this manner. So it does give the
taxpayer an opportunity to have something to say.
Whether they do it is another matter, but at least they
get a chance to say how they think it should be done.

    MR. HELLER: Absolutely. I think also, in case
anybody -- I think it's the unasked question, but we did
choose the Chair because we really run into issues that
if we have the Board decide the issue, then we end up in
a meeting again, and then we end up with issues of
whether this can be discussed in what forum and whether
it should be closed or not.

    And then we felt that people wouldn't feel that
having, like, a Chief of Board Proceedings decide what
information was being disclosed would be appropriate
necessarily, so that's why we chose the Chair. But
it -- you know, we certainly didn't think that that was
necessarily the most optimal situation.

    MR. MICHAELS: Does this contemplate -- let's
hypothesize that I submit a request in writing --
probably far-fetched -- but that I submit a request in
writing specifically identifying some sensitive
information. Will there be -- does this contemplate any
kind of reply, response, answer, yeah, but?

MS. RUWART: Allow me to move to subsection (e) for comment. The taxpayer will be notified of the Chair's decision no later than five days prior to the issuance of the public agenda notice.

The rationale for that was to give both the taxpayer and the Chair the maximum amount of time beforehand to figure out what the issues were, because the other thing we realized was just because a taxpayer puts in a request, that's not necessarily all that they can do to make a decision. It may be back and forth. But we wanted to give the taxpayer enough time before the agenda notice to be able to decide whether to waive or not.

MS. MANDEL: I think Peter's question probably went to I'm a taxpayer in an FTB case or I'm a taxpayer in a -- you know, is staff or FTB going to say, no, no, we think it should be this?

MR. MICHAELS: Yeah. The Chair calls Mr. Thompson here and says, hey, I got this quash write-up from this joker. Should I grant it or not? And he says, of course not. Does this contemplate communication outside -- you know, I write something in to Debbie; right? And then what? Is there feedback?

The Chair's not going to know. The Chair's
going to have to ask somebody in one of the divisions
and get advice, and there's a whole conversation there
that I'm not part of, that I don't know what's being
said, that, you know, is in their own interest. I mean,
no offense, but it's in their interest obviously to have
a differing view.

MR. SCHUTZ: Can the Chair even prohibit other
members from bringing something up? I mean, if the
Chair says, no, we don't want to talk about this, and
another member says, well, I want to talk about this,
can he even prohibit the other member from talking about
it?

MR. KAMP: I don't think so. I don't think so.

MR. SCHUTZ: So, I mean, it seems like it's
sort of ridiculous then to ask the Chair to do this when
he can't control the other members.

MS. RUWART: Just let me answer this quickly.
Maybe this is the same thing. If other members wanted
to do that, the only way they can do that is once they
get to the meeting, and then it's an open meeting, and
at least they have a meeting that we've noticed and
there's something going on there, so it's --

MS. MANDEL: I would think that -- this is
Marcy -- I would think that if the Chair has
determined -- someone files something, says keep this
confidential; the Chair's determined, yes, I'm going to keep that confidential.

If it's a document of any kind, the document's going to -- when it goes to the Board members, it's going to have to be stamped "confidential" somehow, you would think. Well, if it's already gone, you know. But somebody's going to have to keep -- I mean, we have had things that were confidential and we have had to -- not on a hearing, but, you know, not on a case hearing, but in another context, where we have had to, you know, hey, hey, hey, hey, that's confidential, can't talk about that, can't talk about that. Oh, oh, oh, oh, oh. You know, they saw the big "confidential" stamp.

MR. SCHUTZ: But that's because it's confidential, not because of some decision by --

MS. MANDEL: Right, right. But it -- but it seems if this regulation went through and the Chair did that, made something confidential, agreed to keep something confidential, and a Board member wanted to speak about it, I understand it's hard to control what's going to come out of those mouths. But if they wanted to speak about it at the meeting, somebody -- and whether it's, you know, the Chair staying on top of it or the other members staying on top of it or somebody's staff staying on top of it, to cut it off and maybe
they'd be able to make a motion to overrule the Chair.
I don't know. They'd have to get three votes. But
yeah, it is hard to control what comes out of the mouths
of people when they're up there.

MS. RUWART: Jon.

MR. SPERRING: Jon Sperring. The question I
had for staff is if they gave any thought to including
the Chief Counsel, either having the Chief Counsel make
the decision, or if not make the decision, have the
Chief Counsel advise the Chair.

It just seems that that way the Chair is not
sitting there going, well, what do I do? And then, you
know, the Chair is now charged with going and talking to
maybe Ken, who I would assume would be the wrong person
just because Ken is an appraiser and is not necessarily
on the legal side, but maybe Ken would be the right
person.

So, you know, it seems like you would create a
continuum if you had one person there that would sort of
be the point person on this.

MS. RUWART: Very good. Great comments on the
mechanics of how it all needs to work if it's going to
work. Yes.

MR. NIELSEN: I guess this is fine if you know
in advance exactly what you're going to present 15 days
before the hearing and also if you know what the other
side's going to be putting in to try to address the
issue. But there's nothing in here about on the day of
the hearing, maybe the day before, you threw together a
declaration or you got something else, because, you
know, with franchise, you can, you know, quasi-judicial
where you can present evidence at the hearing, so, you
know, like, again, at the assessment appeals Board local
level, the requirement is you present something, you
know, either before the hearing begins, that day, or
even during the hearing, when the issue comes up, you've
got to have, you know, a declaration and you've got to
have some pleading, and it's sort of just like what was
stated down there, then usually the city attorney's
sitting there and advising the Chair of the assessment
appeals Board as to whether it meets all the conditions,
and then, you know, a ruling is made.

MS. RUWART: What we should probably do is look
at subsection (c) and just have a -- you know, this is
the normal way and then have a separate accounting for
things that would come in later than that for whatever
reason.

MR. NIELSEN: Then my final comment is maybe
part of the problem here is that you have "sensitive"
and I think that's being carried over from Subdivision
(3) in the prior section.

MS. RUWART: Right.

MR. NIELSEN: And then you also have "harmful."

To me those are almost redundant. I mean, if it's "sensitive," then you would think somebody is going to take the position it's harmful or vice versa.

MS. RUWART: Okay.

MR. NIELSEN: So maybe there's a little overkill here. Maybe just take out the word "sensitive," you know. And again, "harmful," I think, is kind of a vague term also, but at least, it's -- if it's -- as Mr. Kamp indicated, if it's adjusted under 1604(c), trade secrets, then expand upon that or something.

MS. RUWART: Okay. I'm sorry, yes.

MR. MICHAELS: Just procedurally, one question, and that is hypothetically, I file an appeal today, and tomorrow, and I know all of my exhibits -- actually we do know before we go to hearing what we're going to introduce -- I file under (b) here something with Debbie the following day, way before I get the agenda that comes out, way before any of this decision making takes place, and is there any timing on when --

MS. RUWART: The timing is under the current version, which I -- which we came to after great thought
is, you may hear radio silence for months and then five
days before --

    MR. MICHAELS: Until five days before, until
after I have had a chance to waive.

    MS. RUWART: No, no, no, before. Five days
before.

    MR. MICHAELS: So 15 days presumably before the
hearing?

    MS. RUWART: That's right. And just because --

    MR. MICHAELS: Even though I submit my request
four months earlier.

    MR. HELLER: The only other deadline for
submitting requests, and it is basically the deadline to
respond to the notice of hearing, and so basically we're
really thinking that the idea would be to get people
into the process and then let them go through the
process, see if the case doesn't get resolved in the
process itself, and then as it appears that it's going
to be scheduled for hearing and notices are going out,
that's the time when a practitioner who knows they
haven't resolved things and has a sensitive issue that
might still go to the Board could then file a request.
If they're all coming in really late, it won't give us a
lot of time to respond, but we're setting it up to
respond as quickly as we can.
MS. RUWART: The Chair would be free to send a
response earlier.

MS. KINDALL: You may have the opposite
situation. Ami Kindall.

You may have the opposite situation. If I were
a practitioner wearing a different hat than I have ever
worn, every single thing that I have that even remotely
could be considered sensitive or harmful, as I submitted
it to the Board, I would mark it "confidential" and I
would make this request. I wouldn't wait.

MR. MICHAELS: We do.

MS. RUWART: He's asking about the response
time.

MS. KINDALL: I know, I'm saying workload. I
keep seeing the workload concern, but that is a real
concern.

MR. MICHAELS: Yes, we do mark everything
"confidential."

MS. KINDALL: Now, you've got the Chair staff,
that's most likely who is going to be working on this,
trying to figure out what to do with all these documents
that come in and are being marked "sensitive" and marked
"confidential" and you have to make a decision on each
of those.

I missed something when I was reading this. I

112
hadn't realized that this is publicly discussed. I was thinking in terms of documents and that the document would now fall under the new rule, that it's publicly disclosable or that the document falls under the old rule and it's not.

But if you're talking about publicly discussed, you're almost getting into the issue of closed session here, so that's a whole other consideration.

And as Peter Michaels said, there is authority to go into closed session in other State assessees --

MR. MICHAELS: I never said that. I never said that.

MS. KINDALL: So you've got that option.

MS. RUWART: And actually we did intend to capture that, that that gives one of the -- without stating it specifically, that is one of the options, that is one of the tools, the actions that they may deem necessary to do what they need to do.

MS. KINDALL: Got it.

MS. MANDEL: Carole, Marcy.

On the five days before the public notice, which is effectively 15 days before your hearing, having probably been the last person who actually managed to get documents sealed in a State assessee case, in the next year in which the documents were not sealed by the
Board at a hearing, for which we had no notice that they were going to discuss whether they were going to seal our documents and then they sent them of course to another law firm instead of to us, and we were told by Board proceedings that if we wanted we could submit some different financial information in a different form if we could figure out a form that the client would be okay with having become public, if we had gotten -- I mean, I don't know, if we had got that five days before the hearing, which may not be five business days before the hearing, you know, that has a potential to put a taxpayer in a bind.

If they go, oh, my God, this stuff is too sensitive. That guy who is Chair or gal who is Chair didn't seal it. I don't -- I really don't want to risk this. Turn around to the client and client says, "I really don't want to risk it but I really need to fight this case," well, I guess they either punt the Board of Equalization hearing and just sue and go to court where they can get something sealed, would be someone's reaction, but if they really want a hearing before the Board of Equalization, I guess they would then presumably have to request an extension, a continuance of the hearing, to be able to put together a package that wouldn't, you know, that maybe doesn't do as good a
job as they think their sensitive package does.

MS. RUWART: If there's -- that's a good thought.

Unfortunately, we're trying to move along, but if there's a problem with the timing or that kind of issue, that's great. We'll just -- and we'll put this out there with a practical impacts and that's something to consider.

MR. HELLER: Real quick, just to wrap up, and I think we do need to move forward because we basically now have 45 minutes to go through the rest of Part 5, because so many of us want to leave at 4:30, but essentially, you know, we are aware of the Open Meeting Act, and we're definitely aware of all the concerns that were raised by Peter and Ami as well. They're definitely serious concerns of ours, and we're aware that lots of this does entail the use of the Open Meeting Act's closed session procedures, and, you know, there's different policies that really aren't on issue today dealing with how the Board implements the closed session procedures. So we're very aware of them and we're going to consider them and they're definitely not following on deaf ears.

But with that and with reminding you that we will definitely accept comments through next Friday as
well, we're going to go right to the beginning of Part 5
and see if we can't --

MR. VINATIERI: I have a comment.

MS. RUWART: Yes.

MR. VINATIERI: First of all, a question. This
is Joe.

I want to make sure I understand this. So we
have two alternatives -- 5033, and then we have the
second alternative, 5033, which includes 5033 through
5033.3, right?

MS. RUWART: Yes.

MR. VINATIERI: So it's one or the other,
correct?

MR. HELLER: Correct.

MS. RUWART: At this point in time that's how
it starts.

MR. VINATIERI: Let me point something out. We
just spent an hour and ten minutes talking about the
second alternative.

MS. RUWART: Yes.

MR. VINATIERI: And I'll point out to you that
the second alternative, based upon all of the
discussions, is going to be costly because of the
discretionary decisions that have to be made by whom,
who knows; it's unworkable from the standpoint of all
these little discretionary issues that we just got into.
So you have that as a problem.

Secondly, going to 5033, first alternative
versus second, I'll just point out from a policy
standpoint, and I haven't said anything for an hour and
15 minutes --

MS. MANDEL: Yes.

MR. VINATIERI: Exactly. Everyone else has,
Marcy.

We have a voluntary tax compliance system. And
to the extent -- to the extent that we have a system
here where people perceive that they're giving up their
rights, i.e. their ability to appeal is predicated,
their ability to have due process is predicated on
giving up their right to confidentiality, you chill
those rights and you pull the rug out from underneath
our voluntary system, to some extent.

And I just -- I would point out to everybody
that when making a determination between one and two,
first alternative, second alternative, we need to keep
in mind the policy that we have here, we need to keep in
mind the workability.

And I would just -- I would posit to you that
this, the second alternative, is nothing more than the
top of the iceberg, the tip of the iceberg, with all
kinds of other things that we haven't even talked about
and we spent an hour and 15 minutes on. I'm done.

    MS. RUWART: Thank you, Joe. Those are very
good comments.

    The last two, I'm hoping there's not
significant comments, 5033.3, Privilege, and 5034, Fees,
everybody agrees to submit any comments in writing
unless somebody has a burning issue with either on one
of them? Thank you.

    Turning to page 1, 5001. I'm just going to
skip part (a) because if there's any errors or omissions
or grammaticals, just please submit them in writing.
It's our scope of coverage. (b), same, it's just talks
about how it all works; (c), Franchise Tax Board; (d)
our standard IFTA provision. I'm hoping there were no
burning questions on 5001.

    5002, a slew of definitions. Is there anything
burning or substantive about 5002?

    MR. MICHAELS: Well, yeah. This probably
all will be just as effective in writing, and I will
write, but I did make the point earlier that "hearing"
is defined to include a writing.

    I also would make the point that I -- you know,
the definition of "department" there on page five at the
top, (j), includes the PUC, the XTB. I'm not sure how.
It becomes a bit unwieldy as you read into the rules, as you get deeper into it, there are, you know, department becomes -- it becomes confusing when it refers to the FTB or the PUC, so that might be fine-tuned perhaps.

I also have some concerns about, oh, but again, I'll put it in writing. There seems to be a blurring between the concept of a participant and a party, and I'm not sure whether a taxpayer's rep is a party or a participant under this.

MS. RUWART: Okay. Very good. Those would be great in writing. I can see that.

MR. DAVIS: Ken Davis. We've also proposed some alternative language for "extreme hardship" and for the definition of "reasonable cause," and those are already submitted in writing.

MS. RUWART: Great. Thank you. I know we're really going to seriously look at those -- rephrasing those provisions.

Article 2, Requirements of Scheduling Board Hearings. 5003 (a), the monthly meeting requirement, any comments? 5003 (b), special meetings?

MR. MICHAELS: Oh, (a), actually -- sorry.

MS. RUWART: Yes. Go ahead.

MR. MICHAELS: In (a) -- Marcy Jo will remember this for sure -- we had state assessee hearings
conducted in Los Angeles in the past, and I don't know
that -- if that should be -- that we should be precluded
or foreclosed from that. There have been times when the
only opportunity to get the state controller in the room
was to meet at a hotel at LAX.

MS. RUWART: Okay. That's a really good point.
I think we can just agree to change that, because we
have traveling controllers these days.

UNIDENTIFIED SPEAKER: That was very diplomatic
of you.

MS. RUWART: Special meetings, (b); (c),
teleconference, allows us to hold them.

MR. MICHAELS: That would actually be a Board
meeting just like yesterday's Board meeting, but it
would be telephonic?

MS. RUWART: Yes. We've done that. It's
usually for very defined issues.

5004, the Annual Adoption of Board Meeting
Calendar. This is just helpfulness. Any subsection (a)
comments? (b)? (c)?

MS. MANDEL: Carole, I'm sorry.

MS. RUWART: That's okay.

MS. MANDEL: Going back to Peter's comment. I
think the reason why you probably had that about
hearings is because all the Board staff that would be
responsible for regular hearings being here. It's true
we did hold them and we have several in LA. I remember
one painful year in particular where the hearing kept
getting continued and continued because it was under the
old let's actually really have a full hearing on
everything, and they did hold it to get the controller
present, but that's just a . . .

MS. RUWART: I'm totally with it. There's no
intent in this regulation to unnecessarily restrict the
Board from doing what it needs to do.

MS. MANDEL: Cool.

MS. RUWART: 5005, the Right to Oral Hearing.

MR. MICHAELS: Now, this says "receipt" as
opposed to "mailing." Usually Board correspondence is
tied to the date that's -- it's fine with me. It's
actually beneficial to a taxpayer to be tied to a
receipt rather than the date on the letter, but most
sales tax notices of determination, you have 30 days to
appeal from the date on the notice.

MS. RUWART: We'll double-check the date.

Yeah. We want to make everything consistent. That's
for sure.

MR. DAKESSIAN: Question on 5005. This is
Marty Dakessian.

MS. RUWART: Yes.
MR. DAKESSIAN: In the current rules of practice, the Board has a hearing on a claim for refund is discretionary. Is that required by statute?

MS. MANDEL: The hearing, because there's no statutory right to a hearing on a refund claim, that it's only on a petition, so that's . . .

MR. DAKESSIAN: Does this affect that in any way?

MR. HELLER: It just continues to state that it's discretionary. Generally the Board has almost always provided a hearing. I'm really not familiar with a case where they didn't. To the extent that there was a reason not to, for instance, a taxpayer has already been heard on petition or an appeal from the FTB on assessment and they have not raised a single new issue and the taxpayer is more than happy to proceed to court, there would be no reason to have one and it's not required by law.

MS. RUWART: Okay. 5005.1, the acknowledgement.

MR. DAVIS: This is Ken Davis. Just throughout Part 5 -- and this is the first time it appears -- just a global change, Carole, that we're making, and that is, we're referencing or putting in language where certain sections do not apply to the Franchise Tax Board and we
refer the taxpayer back to Part 4.

    MS. RUWART: Great. Very good.

Any other comments on 5005.1? Yes.

    MS. MANDEL: When you refer to the Appeals Division decision, that's the decision and recommendation; right?

    MR. MICHAELS: Yeah. I had that highlighted, too.

    MS. MANDEL: They don't really make any -- you know, they have no independent authority to actually make a decision. It's always a recommendation.

    MR. MICHAELS: Well, what's a D & R? What's the D stand for?

    MS. MANDEL: Decision. But all this says is there's a decision.

    MR. HELLER: They're not a binding decision, and they're recommendations, essentially.


    5002.2, Consolidation.

    MR. MICHAELS: Definitely. Well, we will recall that when we talked about part three there was a discussion about consolidation which contemplated, at least in the state assessee context, if the petitioner doesn't want cases consolidated, the petitioner can veto consolidation.
MS. RUWART: Okay.

MR. MICHAELS: And so at a minimum this would have to be consistent or, you know, in harmony with part three.

But it also strikes me that consolidation -- yeah, as long as there's an out. You know, I don't have a problem with consolidation being subject to the discretion of the Chief or the Board Chair so long as the petitioner can opt out if the petitioner wants to. If we want something -- if we don't want something consolidated we can prevent that. Otherwise, fine.

MS. RUWART: Okay.

MR. DAVIS: Ken Davis. We're just suggesting that this section we think is a good section, and it does apply to the Franchise Tax Board, but because of the numbering system you've got it with, in the 5005 series, that that be just changed as its own section number. And then we're providing some additional language as to -- to provide a deadline within which to respond to any requests for consolidation and then for determination.

MS. RUWART: Very good. 5006, the Notice of Hearing and Response. (a) is the general procedures. Any comments on subsection (a)(1)? And then (a)(2)? It's just reflects the different notice of hearing
timming. That reflects current practice. 5006 (b), any comments on 1 through 5? Subsection (c), the response to the notice of hearing? I think this all exists is existing practice. Subsection (d), the waiver of the notice. Subsection (e), the failure to respond to the notice. Let's do subsection (1). Any comments?

Subsection (2)? Subsection (3)?

MR. DAKESSIAN: I have a question.

MS. RUWART: Extreme hardship is in here again.

MR. DAKESSIAN: I have a question regarding (e)(1). I'm sorry. We just went past there.

MS. RUWART: Sure.

MR. DAKESSIAN: Just a question on what the current practice is of Board Proceedings. Where it says if the taxpayer fails to return the response to notice of hearing, what is the current practice of Board Proceedings when, for instance, in a petition for redetermination the taxpayer requests a hearing but then somehow through oversight there's no response to the notice of hearing, does Board Proceedings call them to verify or --

MS. PELLEGRINI: This is Debbie Pellegrini. What we do is we submit it for the record and send a letter to tell you what we've done, and then we also give you the opportunity, if you contact us, we'll move
you back.

MR. DAKESSIAN: I noticed that there's several points in time during the whole appeals process where the taxpayer is asked as to whether they're going to show up at the hearing. And I'm just thinking about the small taxpayer who, you know, might request a hearing at one point and does not.

MS. PELLEGRINI: Our statistics on this is that it's somewhere between 40 and 50 percent of the taxpayers who have requested a hearing fail to respond to this notice and end up on the nonappearance calendar and stay there.

MS. RUWART: Any more on (1), (2) or (3)?

Moving to section 5007, Dismissal, Deferral and Postponement of Hearing.

MR. MICHAELS: Yeah. "Dismissal," is that a term of art? What is that? Where did that come from? The reason I raise it is just exhaustion-related concerns that I have, exhaustion of the administrative remedy-related concerns.

MS. MANDEL: Well, look at the three -- this is Marcy -- look at the three reasons given for dismissal. I know that the Board uses that phrase when -- you know, there's an example, we had one announced in public session yesterday. There was a case on the public
agenda for an income tax matter, and it was announced
that -- I can't remember if it was just that the
taxpayer agreed that the tax was due and had filed
something asking, you know, to dismiss the appeal, but
the appeal would only get dismissed if it's already been
accepted into the system so it's a pending appeal or
pending petitioner claim, and then under this, the
taxpayer sends it in and says, oh, never mind, you know.

MR. MICHAELS: Is it the flip side of a
withdrawal?

MS. MANDEL: Well, it could be or not. It
could be FTB or the Department withdraws or concedes
some amount or there's a stipulation to some lesser or
different amount. So yeah, if all the taxpayer does is
say, oh, never mind, that would be what you might think
of as a withdrawal.

MR. MICHAELS: So you get a letter that says
your case has been dismissed, something like that?

MS. MANDEL: (Nodding head.)

MS. PELLEGRINI: Debbie Pellegrini. You do get
a letter, but it's based on, like, Franchise Tax Board
tells us that they have withdrawn, they've settled,
they've decided to --

MR. MICHAELS: Never got the letter.

MS. PELLEGRINI: -- appeal, or, as yesterday,
there was a signed stipulation. Therefore, the taxpayer said, I withdraw my appeal, and it was dismissed in writing.

MR. MICHAELS: All right. Thank you.

MS. RUWART: So the bottom line is, we think that's the correct word.

MR. MICHAELS: I'm just asking on origin. I'm not disagreeing with it.

MS. RUWART: Subsection (b), deferral or postponement. We've got a few different circumstances. (b)(1), any comments on either the timing or the circumstances?

MR. DAVIS: This is Ken Davis. We've added three additional circumstances under (b)(1), which is really a short time with -- for a short time period deferral or postponement, and the three additional circumstances are where the Chief of Board Proceedings has been informed that the parties have requested a deferral or postponement, and that's in the current reg 5071. That's one circumstance.

Another circumstance is where the Chief has been informed by the FTB that the appeal's been reviewed -- is being reviewed for possible settlement, and that's consistent with current practice, or settlement consideration.
And then we think there ought to be a catchall just to allow some additional discretion to the Chief and the Board for any other reasonable cause or circumstances.

MS. RUWART: Very good.

MR. SCHUTZ: Isn't there a catchall in three -- I'm sorry -- (b), (c)(3)? Is that right? Or (b)(3)?

MS. RUWART: That's only for additionals. And he's talking about the first postponement. If the first postponement doesn't fall into one of the three existing categories, maybe there's a problem.

MR. SCHUTZ: (b)(3), the Chief of Board Proceedings may, with the consent of the Board Chair, grant a deferral or postponement if the circumstances set forth in paragraphs (1) or (2) of this subdivision are not met. So it's sort of a catchall.

MR. DAVIS: Thank you.

MR. MICHAELS: One other observation on (b), 5007 (b)(1). 90 days obviously isn't going to work for state assessees. I don't know if there was a carve-out here or . . .

MS. RUWART: Well, it says for up to 90 days.

MR. MICHAELS: Oh, up to. Thank you.

MS. RUWART: Yeah. And more than 90 days is with the consent.
MR. MICHAELS: Very good. Thank you.

MS. RUWART: Get it all in before December 31st.

Any more questions on 5007? I think it's pretty clear.

MR. DAVIS: Ken Davis. For deferral or postponement for formal settlement negotiations, under (2), we're going with -- or we're suggesting current practice, and that is that the Chief grant a deferral postponement for nine months, which is the current practice. And then we understand from our settlement bureau that it's nine months and thereafter for periods of time in 160-day increments. That's one suggestion for the time period.

MS. RUWART: Okay.

MR. DAVIS: The other is, we're suggesting two other -- a couple other time periods for postponement, and that is that there be a determined or a definite time period set by the Chief of Board Proceedings, or if there's a related matter that's pending in state or federal court, or if it's an unrelated matter, but a significant case that's pending in state or federal court, we think that also warrants a time for deferral or postponement. And then we've also added another clause relating to any deferral or postponement for a
pending bankruptcy until the conclusion of the
bankruptcy.

    MS. RUWART: Okay. Good.

    MS. MANDEL: Did our legal guys -- didn't we
have some conclusion on bankruptcy or was that just in
the state assessment? Or whether we could hear --

    MS. PELLEGRINI: We go through on the sales and
use tax, but we defer the Franchise Tax Board cases.

    MS. MANDEL: Okay. Thank you.

    MS. PELLEGRINI: And we defer them for as long
as it takes on all of these, the assignments, the court
cases and the bankruptcy. And that's current practice,
so this -- what is proposed would change current
practice.

    MS. RUWART: 5008, Representation at Hearings.

Any comments on Subsection (a)?

    Any comments on Subsection (b)? These are
pretty much existing from the existing rules, I believe.

    And Subsection (c)?

    MR. DAVIS: This is Ken Davis.

    On the overall section, one thing we're
recommending is that this section, 5008, that staff look
at this to conform to AB139, and there's a new section,
the rev and tax code, 19523.5, which talks about
suspension or actions to suspend or disbar a person from
practice before the FTB.

MS. RUWART: Okay. All righty. We'll do that.

MR. SMITH: Carole?

MS. RUWART: Yes.

MR. SMITH: Chris Smith.

Just a question. If a taxpayer who did have a language barrier brings a child who is a minor, would that fall under this category to translate for them? I think we have had that in one case.

MS. RUWART: I'm sure we have, or if we haven't, we will.

That's a -- it's -- we wouldn't consider them a representative, but an interpreter. And we would, you know, obviously we want to accommodate that situation to the maximum, so we don't -- I don't think we would see that that would prevent that.

MR. SMITH: Great, thank you.

MS. RUWART: If there's no other on Section 2, we can move to Section 3, Prehearing Documents and Preparation, Section 5009, Power of Attorney, Subsection (a), any comments?

Subsection (b), the form has to contain the proper information. I believe this is all consistent with the existing requirements.

Moving on to Section 5010, Contribution
Disclosure Forms.

MS. MANDEL: Is this our existing regulation?

MS. RUWART: Brad, is this our existing?

MR. HELLER: It's our current policies on the return of the documents and it doesn't change any of the current regulations that we have. I think they're actually in the 7000 sections.

MS. MANDEL: They're in the 7000 sections so here in (a) when it refers to "adjudicatory proceeding," that refers to the Kopp Act itself, which is in the 7000 series, and would it be advisable -- or you have it down here, (d), that 7000, okay.

MR. HELLER: Right. It's specifically referenced. And our biggest concern really was to just to make sure that people would know they were out there.

MS. MANDEL: Right.

MR. HELLER: Instead of looking for all the procedural rules in this group of regulations, we want them to know where to go to find out all of that.

MS. RUWART: Any comments on (b), (c), or (d)? Moving on to Section 5011, the Hearing Summary.

Yes.

MR. MICHAELS: Yes. (b) appears later to constitute a definition. Let me bump you forward to 5012(b)(3) where it says, "A brief shall be considered
filed on the date of mailing as defined" -- oh, is that just defining date of mailing? Okay. I take it back.

MS. RUWART: Okay.

(a) or (b), any comments? Okay.

Section 5012, Additional Briefing, is there any comments on Subsection (a)?

MR. VINATIERI: This is Joe. I had a question on it.

MS. RUWART: Sure.

MR. VINATIERI: I put on the comments that I sent in about the current 5075, which gives a taxpayer a right to file a brief.

Does this do anything to take away from that right? I mean, 5075 is the current reg, and I know we're doing new regs here. I want to make sure that if a taxpayer chooses to file a brief, that they continue to have that right to do so.

MS. MANDEL: That's what 45 days is for.

MR. VINATIERI: Right, it's -- right now it's --

MR. HELLER: As far as filing.

MR. VINATIERI: -- 45 days.

MR. HELLER: As far as filing a brief to a business tax appeals is that what your concern is?

MR. VINATIERI: Correct.
MR. HELLER: Actually we did as part of that packet that we were looking at this morning that contained the new regulations or amendments to regulations that we posted on Friday, I did post briefing schedules for business tax appeals, which I personally omitted from Part 2 in the first draft, and, so I did receive comments indicating that I omitted it, and it is now there. So there is grounds for that. You can take a look at. It does give the taxpayer an absolute right. There's no requesting permission.

And it also gives me a right to file a reply brief as well as long as it's only on issues that are just being raised in the other side's reply and the department's reply. So they are allowed to file briefs, and this does not change the general briefing schedule. It's just essentially for those situations where additional briefing is needed. And I thought that I had a briefing schedule in when we wrote this.

MS. MANDEL: Are you talking about 5011(a), Joe, that a hearing summary is --

MR. VINATIERI: No, no, no.

MS. MANDEL: -- going to come out at the same time as your brief?

MR. VINATIERI: No. This is 5012. When I read this, I didn't see the right to file a brief like we
have today.

MR. HELLER: Correct.

MR. VINATIERI: And so I thought, what's happened here?

MS. RUWART: Oh, because each briefing schedule is in each specific part, that's why. So what we've done is we've kind of skipped from a hearing summary, and then, I guess, you have to go outside to get your particular briefing schedule, come back, and then decide, okay, is there additional briefing? That's a common procedure to all programs. I think that's what's happening here.

MR. VINATIERI: It's in the new.

MR. HELLER: The new stuff that came out on Friday that we handed out this morning --

MR. VINATIERI: Okay.

MR. HELLER: -- does have that as amendments in Part 2, and there's really -- that's really the only major substantive amendment to Part 2, was the inserting of the briefing schedule.

It actually contains two proposals. Marty basically made some suggestions that essentially that our briefing schedule really didn't provide people enough time to do their briefing properly. It's a much shorter period of time than, for instance, appeals from
a Franchise Tax Board briefing schedule.

So we do have actually two proposals in here -- one that just barely tinkers with our current schedule, and one that's brand-new that changes things so that we can provide more time.

MR. MICHAELS: Could I ask one question about (a)? And that is -- I don't want to interrupt you. Were you done?

MR. HELLER: No, go ahead.

MR. MICHAELS: It says in (a), "If the Board or Board staff determines that insufficient briefing or evidence has been provided after reviewing the hearing summary," in some instances Board staff is really a party, isn't it? So if they wanted to pad their own case by concluding there's not enough support for their position, they could suggest that there's insufficient briefing, so they themselves --

MR. VINATIERI: Peter.

MR. HELLER: Yes, in our -- we did not envision that the department, which is Board staff, or that an auditor would request that a particular party do additional briefing.

It was really intended that the appeals division basically, who is trying to write a hearing summary, would take part in the process of helping the
Board determine when additional briefing was necessary, and that hearing summaries or decisions and recommendations might recommend additional briefing in some cases, especially if there's, you know, no appeals --

MR. MICHAELS: I mean, the sort of plain, plain meaning of it would be that.

MR. HELLER: It is very broad as it's currently written, and it was because we really didn't have every nut and bolt of who would be doing what at which stage.

So we did want to make it broad enough to encompass that, but we really only intend the appeals division -- I don't think staff would have any problem narrowing it down.

MR. MICHAELS: Well, this certainly is an invitation for self-serving advocacy.

MR. HELLER: Absolutely. You know, and I think also staff certainly --

MR. VINATIERI: This is totally insensitive, Peter, appearing very insensitive.

MR. HELLER: We'll definitely take that into consideration.

MS. RUWART: We could think about changing that.

MS. PELLEGRINI: In response to what Joe was
saying, maybe there could be some reference to the other
briefing schedules so there isn't confusion.

MR. VINATIERI: Right, that's a good idea.

MS. PELLEGRINI: Because some people do go to
this Section 5 first.

MR. VINATIERI: That's -- that's what I do
under the current rules. So now because we're
elongating it, we have to make sure we get the right
part, so I think that's a good idea to do the reference.

MS. RUWART: Good. All right. Any more on
Subsection (a) -- of Subsection (b), the Briefing
Schedule and the Response to Hearing Summary?

Any on (1), (2), or (3)? Okay.

Subsection (c), the General Requirements of a
brief. These are -- these are taken from existing
requirements.

Comments on 5013, Preparation for Presentation
of Hearing, subsection (a), the scope of the hearing.

MS. MANDEL: Yeah. Not every oral hearing is a
quasi-judicial proceeding.

MR. VINATIERI: Just delete that sentence.

MR. MICHAELS: On that same subparagraph or
subdivision here, the last sentence, "or may inquire
into relevant new matters," is this from something that
is already in existence or . . .
MS. RUWART: I believe that's an existing regulation, isn't it?

MR. VINATIERI: It is.

MS. RUWART: Yeah. And the key word is "relevant."

MS. MANDEL: Well, and set forth in the petition, Peter, with respect to business tax matters, you are not limited to things that you raise in your petition. You may raise anything at any time up to the time that the Board actually makes its decision. So there's a specific statute.

MR. VINATIERI: You can amend it.

MS. RUWART: Subsection (b), the time allocation, the default time allocation; and then we have subsection (c), the request for additional time; and (d) is modification. Let's just take all those together.

MR. DAVIS: Carole -- this is Ken. We're thinking of a section between those two, to add back in two current regulations. One is subpoenas and the other is burden of proof, because we're in a section dealing with preparation for presentation of hearing. We think that's a good place to maybe add those back in.

Section 5014, Presentation of Evidence --

MR. VINATIERI: I'm sorry, Carole. Item (d), section (d), I had added the language here about the Board Chair granting further time for parties' presentation if circumstances during the hearing so require. I think that's already the discretion, but I think we ought to put it in there and make it clear.

MS. RUWART: Okay. You wrote that comment somewhere; right?

MR. VINATIERI: It's in my . . .

MS. RUWART: Okay. Good. Thanks. That's a good comment.

5014, Presentation of Evidence or Exhibits.

Anything on subsection (a), subdivision (a)?

Subdivision (b)? This is our current written policy.

MS. MANDEL: Is there somewhere else in here where it says that the Board may consider -- what's that magic phrase? -- any evidence?

MR. VINATIERI: "Relevant evidence."

MS. RUWART: Yeah. Goes towards the weighing of the evidence.

MS. MANDEL: A reasonable man, blah, blah, blah, or whatever it says, is that -- did we drop that out?

MR. DAVIS: Ken Davis. We're suggesting that
the bottom of -- after (c) three additional regs go back
in, and one is liberal presentation of evidence, which I
think that's the one you're talking about. It's the
ability to weigh the evidence. Another is stipulation
of facts. And the third is official notice, that if the
Board wants to take official notice of certain things
they can.

Also, while the heading's marked "Presentation
of Evidence and Exhibits," exhibits is also a section
dropped that's -- that needs to be back in. It's the
section dealing with marking of exhibits.

MR. DAKESSIAN: Can I ask a question here?

MS. RUWART: Sure.

MR. DAKESSIAN: Marty Dakessian. Why was
the -- the previous language used to read "any evidence
that responsible persons are accustomed to rely upon in
the conduct of serious affairs," why was that removed?
Why do you go "relevant"? Just curious.

MR. HELLER: I don't know. In looking at it, I
could not see -- I don't know. It really seemed to me
that as an attorney "relevant" seemed to pick up that
long phrase of information. So I could probably include
it again, but it's . . .

MS. MANDEL: It's a long-standing standard in
both . . .
MR. VINATIERI: This is Joe. That's the standard at local property tax appeals cases in front of AABs. It's been the basic watch word here for years. And there's a lot of us who get warm and fuzzy feelings when we hear that language. And not just at Christmas or holiday time.

MS. RUWART: Whenever you're feeling blue, Joe?

MR. VINATIERI: I'm sorry. Never mind.

MS. RUWART: Never mind.

MR. VINATIERI: We're punchy. This has been a brain drain.

MS. RUWART: All right. Any other questions or comments on 5014? Those are all good comments.

5015, Witnesses, (a), (b), (c), (d).

MR. SCHUTZ: I have one quick comment or question. With witnesses -- somebody had once asked if the witness -- you had extra time given to cross-examine the witness, if both parties can; and also, can you take your witness and just have them sign up as a public speaker or does it make it a public comment so you get extra, additional time besides the ten minutes? So you just bring your witness and say, hey, sign up to make public comment and then you have an extra three minutes to give your presentation? You kind of get around your ten-minute burden.
MR. VINATIERI: I like that.

MS. RUWART: I think we keep telling people that --

MR. VINATIERI: Thank you.

MS. RUWART: -- any member of the public can comment on any matter.

MR. SCHUTZ: Right. So you just have your witnesses sign up as public comments and you'd have extra time.

MS. RUWART: What it goes to is the Board is entitled to give things the weight that it deems it deserves, so . . .

MR. SCHUTZ: So I just wasn't sure if there was any extra provision to give extra time to the witness or not.

MS. RUWART: I think the extra time all goes into the -- just the general timing of it. If you think that we need to provide a special extra time provision in the witnesses provision, that would be a comment we would consider, but I think we put all the time constraint issues into one section and one discretion.

Is there anything, (a), (b), (c), (d)?

MR. DAVIS: Just quickly on (b), there's a suggestion or there's language about encouragement of the parties to provide the names of witnesses, but it
doesn't say when. We think the trigger point ought to be, as current practice is, as part of the response to a hearing notice, because that includes -- it's an entire form that says please list the names of your witnesses and their address. And so that's -- we've just included that.

MS. RUWART: Okay. That's great. Thank you.

Moving on to Section 50 -- oh, no. We're not going to talk about that one. Sorry. Somebody almost got me. Skipping 5015.1 and going to Article 3, 5016, Hearing Agendas, is there any comment on (a) or (b) or (c)? This is more internal Board process, but it's explained in our regulation.

MS. MANDEL: Well, I just kind of have a question -- and, of course, Ami's not here, right? -- which is, are those -- those draft agendas, are they public documents now? And if they're not public documents now, are you somehow making them public documents so that 30 days before any Board meeting somebody can make a Public Records Act request, get a copy of that agenda and then go solicit business, which was a problem we had some time ago when somebody was potentially maybe just, you know, somehow finding out what things were coming up on agendas in some way?

MR. VINATIERI: Who did that?
MS. MANDEL: I don't know, but I heard.

MS. PELLEGRINI: I can answer that. Yes, anybody could make a public records request of that document --

MS. MANDEL: For the draft?

MS. PELLEGRINI: -- and it would be a disclosable document.

MR. MICHAELS: What draft are you talking about, Marcy?

MS. RUWART: What we're talking about is subsection (a), subdivision (a).

MR. SCHUTZ: How much time do you have to respond to a public records request?

MS. PELLEGRINI: We have ten days to tell them how long we can get it.

MR. SCHUTZ: It may be a moot point. Yeah, we'll tell you in ten days and then --

MS. PELLEGRINI: Or ten days to answer and --

MR. SCHUTZ: -- and in ten days it's over.

MR. HELLER: I don't think it's this regulation that makes it disclosable. Currently, basically a record that's maintained on a regular basis by the Board, that's what makes this disclosable.

MS. MANDEL: Just remember, taxpayers complain.

MS. RUWART: Subsection (b) or (c), any
comments? Great. Section 5017, the Public Agenda Notice, I think that's a document everybody here is familiar with. Are there any comments in subsection (a)?

MR. VINATIERI: I'm sorry. This is Joe. I had put in there, instead of ten days, making it 15 days. I know that causes problems potentially. I'm not wedded to that, but I do think it's important that that agenda -- the calendar get out there as quick as possible.

For those of us who rely on that agenda and we go through and look for things that are of interest, the closer you get to the day of the hearing, the more difficult it is for calendars and people to do things.

So as a matter just of a policy -- and I'll do away with my 15 calendar day -- but I would appreciate it if the Board and the Board Proceedings Division could get it out as quickly as possible, because people do look at it.

MS. MANDEL: This is the Bagley-Keene ten days. That's why it says that.

MR. VINATIERI: Well, it has to be ten days, but there's nothing to keep it from being prior to the ten days.

MS. ARMENTA-ROBERTS: You get better flights on
Southwest.

MR. VINATIERI: Yeah.

MS. RUWART: Okay. We'll take that into consideration.

Subdivision (b), the contents of the public agenda notice.

MS. PELLEGRINI: This is Debbie Pellegrini. All this is doing is really repeating what's in the Bagley-Keene, because I think many of us were needing to inform others why we were doing things the way we were doing them. It puts it in our regulation.

MS. RUWART: Okay. So on (b), (c), or (d), anything?

MR. VINATIERI: No.

MS. RUWART: Okay. On to Article 4 and Section 5018, this is the day of the hearing. As you can see, our procedure is to tell a story here, so now we're at the day of the hearing.

Any comments?

MR. VINATIERI: This is exciting, you know.

MS. RUWART: Arrival Time.

Can you feel the tension?

MR. VINATIERI: I just --

MS. RUWART: Yeah.

MR. VINATIERI: Right out here in the hall.
MS. RUWART: Any questions, comments on Subdivision (a)?

MR. MICHAELS: This can come up and the word "agents" and "representatives" seem to be interchangeably used, and for these purposes, it might be preferable to use "agents" since that's what the Kopp Act refers to, or "participants" and "agents" rather than "representatives."

MS. RUWART: Yes. Very good.

Any comments on Subdivision (b), the 30-minute prior arrival time?

Any comments on 5019, the sign-in?

Subsection (a) has several parts.

MR. MICHAELS: Could I -- could I go into reverse quickly here?

(3)(B) spooked me a little bit. It says, "Appeals staff shall review evidence and exhibits submitted at the sign-in desk."

I suppose that's at the last minute.

MS. RUWART: We aren't there yet.

MR. MICHAELS: Oh.

MS. RUWART: That's okay. I was just going to do (a)(1) first.

MR. MICHAELS: Sorry.

MS. RUWART: That's all right.
The appearance sheet, we have an appearance sheet. Any questions or issues about that?

MR. VINATIERI: No.

MS. RUWART: No. 2, Contribution Disclosure Forms, just reciting the requirements.

Now, we get to (3) (A) and (B).

MS. MANDEL: On (2), when you are saying, "In general the Board will not hear a matter unless contribution disclosure forms have been completed."

MS. RUWART: It picks up the same word "completed." Do you want a different word?

MS. MANDEL: No, I'm -- no.

MS. RUWART: Okay.

Moving to (3).

MR. MICHAELS: (3)?

MS. RUWART: Yes, here we go, Peter, (A), (B), (C), and (D).

MR. MICHAELS: Bingo. I looked at the definition of "brief," which is on page 4(g), as in goodness, and then we come back here to page 19 to the section we're talking about, it says, "Appeals staff shall review" -- I'm not in the practice of bringing things on the day of the hearing, but nonetheless, "Appeals staff shall review evidence and exhibits submitted at the sign-in desk and if any part the