

1987

# Report to the Governor and to the Legislature

Office of Administrative Hearings

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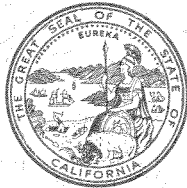
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**OFFICE OF  
ADMINISTRATIVE HEARINGS**

Report to the Governor  
and to the Legislature



**State of California  
George Deukmejian  
Governor**

**1987**

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1987

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1987

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*Governor*

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**OFFICE OF ADMINISTRATIVE HEARINGS**

**DONALD S. MITCHELL**  
*Director*

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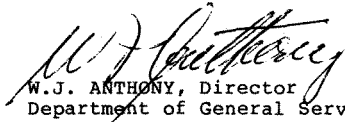
HONORABLE GEORGE DEUKMEJIAN  
Governor, State of California

and

MEMBERS OF THE LEGISLATURE

This report is mandated<sup>1</sup> to describe developments in administrative law affecting the Office of Administrative Hearings and to make recommendations which promote fairness, uniformity and expedition of government's business.

Topics discussed include automation, electronic recording of hearings, proposed legislation, pre-hearing conferences, and arbitration of construction contract disputes.

  
W.J. ANTHONY, Director  
Department of General Services

  
DONALD S. MITCHELL, Director  
Office of Administrative Hearings

1. Government Code Section 11370.5

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## I. AUTOMATION SYSTEM

### A. System Prior to Automation

The Office of Administrative Hearings (OAH) is located in three cities: Sacramento, San Francisco and Los Angeles. These three offices create and process large amounts of text information and related case tracking, time keeping and billing functions. Until recently OAH did not have any automated equipment, and all of the above work was accomplished by standard typewriters, photocopying and manually maintained logs.

Since the discussion on automation in the 1985 Report, OAH has procured and installed a system of automated equipment in each of its three offices. There are three specific elements that the equipment addresses:

#### 1. Decision Typing

A substantial portion of the clerical workload involves the preparation of written hearing decisions. Needless duplication, due to the re-typing of decisions, was required under the old system. Extensive revisions were often required, necessitating the re-typing of large portions of decisions. The word processing capability of the automated system allows professional staff to receive draft decisions for revision, eliminates extensive re-typing when revisions are made, and allows for storage and retrieval of standard formats and paragraphs, case captions, and introductory material, closings, orders and probationary terms and conditions.

#### 2. Time Keeping and Billing

The Department of General Services is required by law to recover all costs to the State of maintaining and operating OAH. OAH bills clients monthly based on the number of case filings, professional staff time, hearing reporter and electronic reporting monitor and transcript hours. In the case of public entities, other than State agencies, OAH bills for time spent by OAH staff on a case-by-case basis after the case is closed. Monthly billing information is processed by General Services' Data Processing Services Section, and monthly invoicing and mailing is performed by General Services' Accounting Section.

The new system will automate the time keeping and billing functions, expedite billing, and allow for more accurate and useful accounting records.

OAH will also store and be able to retrieve information not previously collected which will be used for office management and planning purposes.

#### 3. Case Tracking

Approximately 4,600 cases are filed annually with OAH. Of these, approximately 65% proceed to hearing, while the other 35% are settled or withdrawn prior to hearing. At any given time, over 2,200 cases are either awaiting a hearing date or are on calendar pending hearing.

All case tracking functions were performed manually. Tracking commenced when a case file was opened. A number was assigned and an



index card was prepared with case information which was stored alphabetically by case name. The same case information was then entered in two separate log books, one kept by case number and the other by agency. Updated information was posted manually to the index cards and log books. When a file was closed, a separate close-out book was kept in Sacramento which recorded the case name and disposition. Thus, needless duplication of effort resulted due to multiple record keeping.

Procedures for recording case information varied somewhat between the three OAH offices. Furthermore, records maintained in Los Angeles had to be manually transferred to centralized ledgers kept in Sacramento, leading to clerical errors and inaccurate records as a result of multiple recording of data. OAH was frequently unable to respond to requests for statistical information from client agencies or the public due to the difficulty of data retrieval. In fact, some important information was simply not compiled because OAH lacked technology to store information in a usable form.

## **B. Automated System**

The automated system is designed for site specific shared resource multi-terminal word processing, data base management and spreadsheet capability in three locations in the State. The automated system has been implemented primarily in Sacramento; however, five workstations have been placed in Los Angeles and three workstations have been placed in San Francisco.

The system provides effective and acceptable backup and recovery methods and also provides high levels of availability. The successful bidder (contractor) was required to provide a phased-in installation plan to accommodate management of the system and user training. The plan had to be approved by OAH prior to the contract award date.

Generally, the office automation system implementation included:

1. Hardware, consisting of disk storage, either floppy and/or hard disk, video display terminals and keyboards, line printers, character printers, and appropriate control units designated and located for each site.
2. Software services, including software packages required to meet the Department's needs. The implementation included two specialized turn-key applications: a) Pleading (case tracking) and Calendaring System and b) Time and Billing Systems. The contractor provided the software applications utilizing standard software packages, complete with the necessary development, modifications and testing. The software runs on each system installed.
3. System installation, training, data conversion, and manual/procedural documentation.
  - a. System Implementation—The contractor provided site preparation specifications, delivery, installation, and hardware check.
  - b. Training—The contractor provided training plans and material and conducted the training.

c. Manuals and Procedure Guides—The contractor provided all necessary manuals and operator guides for the system.

The automated system was required to meet a minimum anticipated growth in the number of transactions of 10 percent annually for a period of 5 years. The equipment is configured to accommodate the upgrades necessary to support such growth. Upgrades to equipment, as they occur, will require little or no modification to existing software.

The Sacramento office is responsible for all administrative requirements of the system. Therefore, the centralized storage and office automation software have been installed in the Sacramento location. San Francisco and Los Angeles sites will access the centralized storage and office automation capabilities through dial-up facilities.

## **II. ELECTRONIC RECORDING OF HEARINGS**

In its 1985 Report, the Office of Administrative Hearings (OAH) described its prior efforts to secure legislation authorizing electronic recording of Administrative Procedure Act (APA) hearings, acknowledged the Legislature's positive response in 1983 through its enactment of AB 2034 (Ch. 635, Stats. 1983), and recounted certain preliminary results obtained after a six month voluntary program in OAH's San Francisco office. OAH has continued to employ an electronic hearing monitor on a half-time basis in its San Francisco office. During the 26 month period of September 4, 1984 through October 30, 1986, 365 cases were recorded involving a wide range of APA hearings. Over 70 percent of these cases were devoted either to the Department of Real Estate, Contractors State License Board, or Department of Motor Vehicles. The results have been both positive and consistent with those set forth in OAH's 1985 report. OAH has also attempted to expand the program to its Los Angeles office. However, there has been difficulty recruiting and retaining qualified individuals to perform the electronic hearing monitor duties.

## **III. PROPOSED LEGISLATION**

The Office of Administrative Hearings (OAH) conducts hearings under the Administrative Procedure Act (APA), Government Code Section 11500 et seq. These hearings involve revocation, suspension and denial of licenses by a variety of State agencies. The hearings are subject to the Bagley-Keene Open Meeting Act, Government Code Section 11120 et seq., with a specific exception for deliberations once testimony is concluded.

A number of licensing proceedings involve testimony from minor witnesses. Some of this testimony is highly sensitive and, if disclosed publicly, could be potentially traumatic to the witness, e.g. recounting sexual molestation episodes at day care facilities licensed by the Department of Social Services. There is no current express authority for OAH to exclude members of the public during such testimony to protect the minor witness from serious psychological harm. Similar protections have been enacted for minor witnesses testifying in certain criminal proceedings (Penal Code Section 868 et seq.).

In 1986 OAH sponsored AB 4230 (Wright). The bill would have allowed an administrative law judge (ALJ) employed by OAH to close a hearing held under the APA to the public, with stated exceptions, whenever in his or her opinion testimony before the public would likely cause serious psychological harm to a minor witness. Last minute opposition to AB 4230 prevented final passage of the bill. However, OAH is convinced there is a continuing need to address the problem of eliciting testimony from a minor witness in an APA hearing otherwise open to the public. While OAH is not proposing any other specific solution or language at this time, it believes the Legislature should examine this problem area.

#### **IV. PRE-HEARING CONFERENCES**

During the past year the Office of Administrative Hearings (OAH) has been conducting, on a strictly voluntary basis, pre-hearing conferences (PHCs). These PHCs have been held primarily in Board of Medical Quality Assurance disciplinary matters where the parties have estimated at least five days of hearing will be required. A PHC typically lasts several hours. OAH conducts these PHCs with the following goals in mind:

1. Initiate or pursue settlement possibilities.
2. Explore means to shorten actual trial time should the matter proceed to hearing, thereby effecting economies of time and money.
3. Resolve as many procedural and substantive matters as possible through stipulations and compromises.
4. Provide for full mutual discovery continuing up to the first hearing day.

Because the PHC program has recently begun, has not been mandatory, and has been confined primarily only to medical cases, OAH has not accumulated a large volume of data. There have been just 21 PHCs in Northern California and 42 in Southern California through October, 1986. But the Northern California data, for example, indicates the value of this procedure. Thirteen of the 21 cases settled following the pre-hearing conference, with a fourteenth case taking only two of the originally scheduled five days to hear. Some 91 days of scheduled hearing time were saved as a result.

In 1986 the Legislature granted OAH mandatory authority to conduct pre-hearing conferences effective January 1, 1987 by enacting a new Government Code Section 11511.5 (see AB 2769, Sher (Ch. 597, Stats. 1986) and AB 3482, Harris (Ch. 899, Stats. 1986)). The PHC will now be able to deal with one or more of the following matters: exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas and protective orders, schedules for submission of written briefs and schedules for the commencement and conduct of the hearing, or any other matters which will promote the orderly and prompt conduct of the hearing.

OAH believes pre-hearing conferences will reduce the costs of Administrative Procedure Act hearings for both State agencies and individuals

(licensees and applicants for licenses) who appear before OAH. Settlements will be facilitated. OAH staff time will be more effectively utilized. Those cases that are heard should take less time and be conducted more efficiently.

## **V. ARBITRATION OF CONSTRUCTION CONTRACT DISPUTES**

In its 1985 Report of the Office of Administrative Hearings (OAH) issued a comprehensive review of the first five years of the Public Works Construction Contract Arbitration Program (see Public Contract Code § 10240 et seq.). OAH is charged by the Legislature with responsibility for providing administrative services, facilities, and fiscal support to implement the program. OAH's costs are recovered through filing fees imposed on the parties to each arbitration (Public Contract Code § 10245.4).

Through October 30, 1986 there have been 184 demands for arbitration. The total by calendar year is: 1979—7, 1980—10, 1981—21, 1982—24, 1983—23, 1984—26, 1985—40, and 1986—33. Of these cases 114 have been filed against the Department of Transportation (62%), 37 against the Department of General Services (20%), 6 against the Department of Water Resources (3%), 4 against the Department of Corrections (2%), and 23 against various local agencies (13%). The amounts claimed have ranged from \$1,240 to \$11.2 million. These 184 cases were resolved in the following manner: 23 dismissed for various reasons, 35 settled (31 without hearing, 4 after hearing), 74 decided after hearing, 1 decided without hearing, and 51 with no disposition (1 partially, 3 totally heard).

There have been 328 applicants to be arbitrators for the program. Of these, 137 have been certified and have indicated they are available to participate in the program at this time (additional individuals have been certified in the past but after annual inquiry have removed themselves from consideration). About 20% of the arbitrators are trained in more than one occupation. The current panel consists of 79 attorneys (58%), 29 contractors (21%), 56 engineers (41%), and 2 architects (1%). Their average hourly fee for arbitration is: attorneys—\$130.06, contractors—\$90.31, engineers—\$85.30, and architects—\$62.50. The fees range from \$30/hr. to \$215/hr.

Since May, 1984 either party to a dispute has had the opportunity to elect a simplified claims procedure for claims totaling no more than \$50,000, provided the department or agency has issued a final written decision. Approximately one-third of all claims filed since that time have been eligible for such an election; the procedure has in fact been selected in about 60 percent of those cases. The typical simplified case will be resolved within nine months. If a hearing is held, it normally will not exceed one day. Arbitration costs assessed to each side will usually not surpass \$750, excluding the filing fee (or \$1,000, including the filing fee).

During the past two years all arbitration cases have been resolved on the average (either by hearing or settlement) within 11 months. For cases which took no longer than two days of hearing, including those that did not go to hearing at all, the average cost to each side has been \$1,234, excluding the filing fee. There have been a small number of cases taking

longer than two days to hear during the past two years. They have taken about 17 months on the average to resolve, with an average cost to each side of \$3,886, excluding the filing fee.

As OAH has indicated before in its 1983 and 1985 Reports, the program continues to work successfully.

## VI. Filings For Fiscal Year 1984/85

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
ACCOUNTANCY .....	10	8	18
AUCTIONEERING BOARD .....	2	1	3
ALCOHOLIC BEVERAGE CONTROL .....	313	633	946
ARCHITECTURAL EXAMINERS .....	1	2	3
AUTOMOTIVE REPAIR .....	17	12	29
BARBER EXAMINERS .....	11	54	65
BEHAVIORAL SCIENCE .....	3	3	6
CHIROPRACTIC EXAMINERS .....	13	16	29
CALIFORNIA HIGHWAY PATROL .....	1	0	1
CONTRACTORS STATE LICENSE BOARD .....	459	486	945
CONSERVATION (FORESTRY) .....	1	0	1
CORPORATIONS .....	3	18	21
COSMETOLOGY .....	5	20	25
DENTAL EXAMINERS .....	14	11	25
EDUCATION (CHILD DEVELOPMENT) .....	5	0	5
ELECTRONIC & APPLIANCE REPAIR .....	4	2	6
EMPLOYMENT AGENCIES .....	5	7	12
ENGINEERS .....	4	9	13
FAIR EMPLOYMENT & HOUSING .....	34	69	103
FAIR POLITICAL PRACTICES COMMISSION .....	1	0	1
FOOD & AGRICULTURE .....	3	0	3
FUNERAL DIRECTORS .....	2	3	5
HEALTH SERVICES .....	2	11	13
HOUSING & COMMUNITY DEVELOPMENT .....	7	10	17
INSURANCE .....	44	97	141
INVESTIGATIVE SERVICES .....	6	23	29
MEDICAL QUALITY ASSURANCE .....	74	112	186
MOTOR VEHICLES .....	135	225	360
NURSES (REGISTERED) .....	76	124	200
NURSING HOME ADMINISTRATORS .....	1	8	9
OFFICE OF STATEWIDE HEALTH PLANNING .....	3	6	9
OPTOMETRY BOARD .....	1	1	2
PHARMACY .....	29	50	79
PODIATRY .....	3	5	8
PSYCHIATRIC TECHNICIANS .....	18	27	45
PSYCHOLOGY EXAMINERS .....	1	9	10
REAL ESTATE .....	155	133	288
RETIREMENT—PERS .....	36	44	80
RETIREMENT—TEACHERS .....	17	32	49
RETIREMENT—UNIVERSITY OF CALIFORNIA .....	6	1	7
SECRETARY OF STATE .....	50	14	64
SOCIAL SERVICES .....	84	65	149
STRUCTURAL PEST CONTROL .....	17	37	54
TEACHER PREPARATION & LICENSING .....	8	14	22
VETERINARY MEDICINE .....	4	7	11
VOCATIONAL NURSE EXAMINERS .....	33	75	108
DEPARTMENT OF AGING .....	0	1	1
OSTEOPATHIC EXAMINERS .....	0	2	2
FABRIC CARE .....	0	3	3
GAMING .....	0	2	2
GEOLOGIST .....	0	1	1
ALCOHOL/DRUG .....	0	1	1
BOARD OF GOVERNORS .....	0	1	1
GUIDE DOGS .....	0	1	1

## VI. Filings For Fiscal Year 1984/85—Continued

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
LABOR STANDARDS.....	0	1	1
DISPENSING OPTICIANS .....	0	1	1
HEARING AID DISPENSERS .....	1	1	2
TRANSPORTATION .....	8	0	8
JUSTICE .....	1	0	1
FIRE MARSHAL'S OFFICE .....	7	3	10
BANKING.....	6	8	14
SHORTHAND REPORTERS .....	4	3	7
ALLIED HEALTH .....	1	0	1
INDUSTRIAL RELATIONS .....	1	0	1
PHYSICIAN'S ASSISTANTS .....	1	0	1
LANDSCAPE ARCHITECT .....	2	0	2
REHABILITATION .....	1	0	1
DEVELOPMENTAL SERVICES .....	5	0	5
TOTAL STATE AGENCIES .....	1,759	2,513	4,272
<b>SCHOOLS</b>			
CLASSIFIED EMPLOYEES .....	13	1	14
COMMUNITY COLLEGE (FACULTY) (for cause) .....	2	6	8
PROBATIONARY TEACHERS .....	45	27	72
STUDENTS (discipline/grievance) .....	1	0	1
TENURED TEACHERS.....	24	32	56
TOTAL SCHOOLS .....	85	66	151
CITY & COUNTY .....	190	4	194
TOTAL LOCAL GOVERNMENT .....	190	4	194
TOTAL ALL AGENCIES .....	2,034	2,583	4,617

## VII. Filings For Fiscal Year 1985/86

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
ACCOUNTANCY .....	10	6	16
AERONAUTICS .....	1	1	2
ALCOHOLIC BEVERAGE CONTROL .....	345	679	1,024
ARCHITECTURAL EXAMINERS .....	1	0	1
AUTOMOTIVE REPAIR .....	40	25	65
AUCTIONEERING BOARD .....	4	2	6
BANKING .....	1	2	3
BARBER EXAMINERS .....	4	41	45
BEHAVIORAL SCIENCE .....	2	17	19
CHIROPRACTIC EXAMINERS .....	6	24	30
COLLECTIONS AGENCY .....	0	2	2
CONTRACTORS STATE LICENSE BOARD .....	376	541	917
CONSERVATION (FORESTRY) .....	2	0	2
CORPORATIONS .....	3	17	20
COSMETOLOGY .....	3	8	11
DENTAL EXAMINERS .....	11	12	23
EDUCATION (CHILD DEVELOPMENT) .....	1	0	1
ELECTRONIC & APPLIANCE REPAIR .....	5	4	9
EMPLOYMENT AGENCIES .....	0	5	5
ENGINEERS .....	5	2	7
FAIR EMPLOYMENT & HOUSING .....	26	34	60
FAIR POLITICAL PRACTICES COMMISSION .....	6	2	8
FIRE MARSHAL'S OFFICE .....	4	8	12
FOOD & AGRICULTURE .....	2	1	3
HEALTH SERVICES .....	11	14	25
HORSE RACING BOARD .....	6	4	10
HOUSING & COMMUNITY DEVELOPMENT .....	6	15	21
INSURANCE .....	55	74	129
INVESTIGATIVE SERVICES .....	4	13	17
MEDICAL QUALITY ASSURANCE .....	53	104	157
MOTOR VEHICLES .....	207	212	419
NURSES (REGISTERED) .....	84	62	146
NURSING HOME ADMINISTRATORS .....	7	11	18
OFFICE OF STATEWIDE HEALTH PLANNING .....	2	5	7
OPTOMETRY BOARD .....	2	2	4
PHARMACY .....	24	42	66
PODIATRY .....	3	2	5
PSYCHIATRIC TECHNICIANS .....	32	30	62
PSYCHOLOGY EXAMINERS .....	1	3	4
REAL ESTATE .....	159	219	378
RETIREMENT—PERS .....	60	48	108
RETIREMENT—TEACHERS .....	18	30	48
RETIREMENT—UNIVERSITY OF CALIFORNIA .....	9	4	13
SECRETARY OF STATE .....	41	40	81
SOCIAL SERVICES .....	86	68	154
STRUCTURAL PEST CONTROL .....	16	30	46
TEACHER PREPARATION & LICENSING .....	14	9	23
VETERINARY MEDICINE .....	2	3	5
VOCATIONAL NURSE EXAMINERS .....	35	46	81
OSTEOPATHIC EXAMINERS .....	1	6	7
COMMISSION ON STATE MANDATES .....	6	0	6
TRANSPORTATION .....	13	0	13



## VII. Filings For Fiscal Year 1985/86—Continued

<i>Agency</i>	<i>North</i>	<i>South</i>	<i>State</i>
MIGRANT EDUCATION.....	1	0	1
FABRIC CARE .....	1	0	1
JUSTICE .....	2	0	2
PARKS & RECREATION .....	1	0	1
PRIVATE INVESTIGATORS .....	2	0	2
BOARD OF GOVERNORS .....	3	0	3
HIGHWAY PATROL .....	1	0	1
GEOLOGIST .....	0	5	5
GAMING.....	0	5	5
LANDSCAPE ARCHITECT .....	0	1	1
PHYSICAL THERAPIST .....	0	3	3
ACUPUNCTURE .....	0	1	1
RESPIRATORY .....	0	1	1
BOATING AND WATERWAYS.....	0	1	1
HEARING AID DISPENSERS .....	0	1	1
TOTAL STATE AGENCIES .....	1,826	2,547	4,373
 SCHOOLS			
CLASSIFIED EMPLOYEES .....	8	1	9
COMMUNITY COLLEGE (FACULTY) (for cause) .....	3	2	5
PROBATIONARY TEACHERS .....	58	23	81
STUDENTS (discipline/grievance) .....	2	8	10
TENURED TEACHERS.....	21	31	52
COLLEGE FACULTY MISCELLANEOUS .....	0	1	1
TOTAL SCHOOLS .....	92	66	158
CITY & COUNTY .....	129	12	141
TOTAL LOCAL GOVERNMENT.....	129	12	141
TOTAL ALL AGENCIES .....	2,047	2,625	4,672

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