1990

California Administrative Procedure Act. Administrative Adjudication

Office of Administrative Hearings

Copies of the administrative adjudication portion
of the California Administrative Procedure Act
(as contained in this pamphlet)
may be obtained from:

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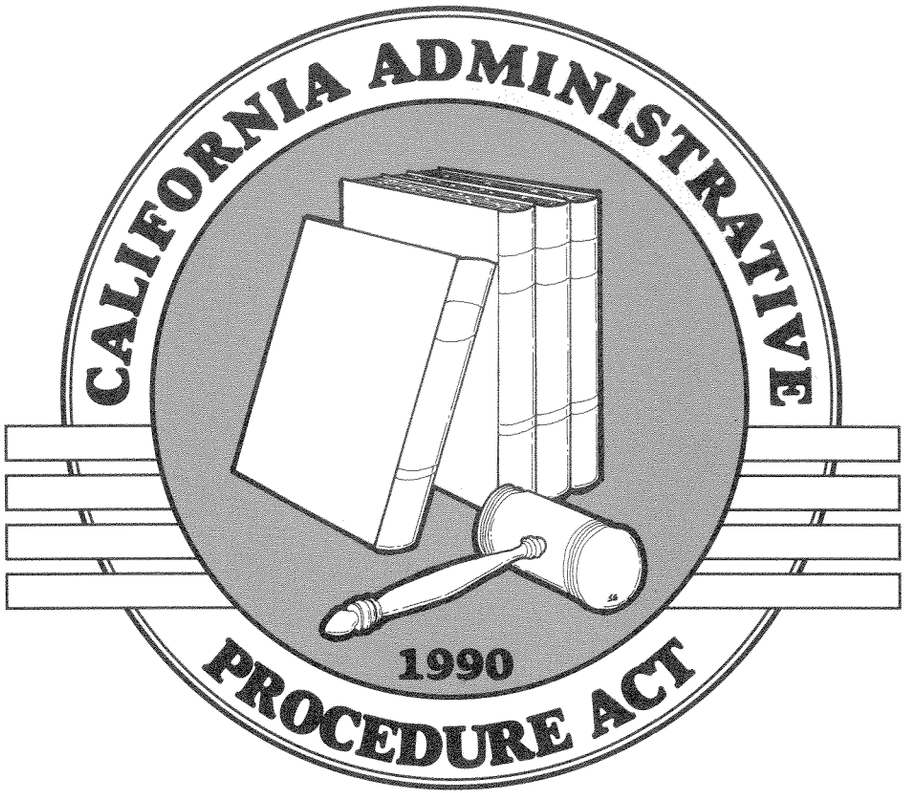

Administrative Adjudication

State of California
Pete Wilson
Governor

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TABLE OF CONTENTS

CHAPTER 4. OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 5. ADMINISTRATIVE ADJUDICATION

APPENDIX

PREFACE

The California Administrative Procedure Act is found in Government Code sections 11340 through 11528. This legislation is the result of years of effort by many individuals and groups and embodies the work of several sessions of the Legislature. The act is divided into three chapters, Chapter 3.5 dealing with rules and regulations which state agencies adopt, Chapter 4 dealing with the general organization and functions of the Office of Administrative Hearings, formerly the Office of Administrative Procedure, and Chapter 5 dealing with administrative adjudication or quasi-judicial hearings conducted by specific state agencies. Only Chapters 4 and 5 are set forth in the following pages.

Chapter 3.5 requires that agencies adopting rules and regulations give advance notice to the public; it provides specially for cases of emergency. It also provides for the central filing and publication of such rules and regulations. For further information, contact the Office of Administrative Law (see Government Code section 11340.2).

The procedure outlined for adjudicatory hearings in Chapter 5 is designed to afford a fair hearing before an impartial and qualified tribunal. While certain sections indicate the course that hearings should follow and certain guides are established to determine what may be considered by the agencies, the procedure is more liberal and less restrictive than proceedings before courts of law. Independent hearing officers, called Administrative Law Judges, are made available to state agencies. This procedure is designed to insure that the person hearing the matter is impartial. Provision is made for judicial review of the decisions rendered under the act.

As an important part of the California program of administrative procedure, the Office of Administrative Hearings is directed to study the subject of administrative law and procedure; to submit suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; to report its recommendations to the Governor and the Legislature at the commencement of each general session (Government Code section 11370.5).

ADMINISTRATIVE PROCEDURE ACT

(Gov. C., Title 2, Div. 3, Pt. 1, Ch. 3.5 [omitted], Ch. 4, and Ch. 5)

(Revised August 1, 1990)

CHAPTER 4. OFFICE OF ADMINISTRATIVE HEARINGS

Short Title

11370. Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) constitute, and may be cited as, the Administrative Procedure Act.

History—Added by Stats. 1947, Ch. 1425; amended by Stats. 1961, Ch. 2048; and by Stats. 1981, Ch. 714.

Director

11370.1. As used in the Administrative Procedure Act "director" means the executive officer of the Office of Administrative Hearings.

History—Added by Stats. 1961, Ch. 2048; amended by Stats. 1971, Ch. 1303.

Office of Administrative Hearings

11370.2. (a) There is in the Department of General Services the Office of Administrative Hearings which is under the direction and control of an executive officer who shall be known as the director.

(b) The director shall have the same qualifications as administrative law judges, and shall be appointed by the Governor subject to the confirmation of the Senate.

(c) Any and all references in any law to the Office of Administrative Procedure shall be deemed to be the Office of Administrative Hearings.

History—Added by Stats. 1961, Ch. 2048; amended by Stats. 1963, Ch. 1786; by Stats. 1971, Ch. 1303; and by Stats. 1985, Ch. 324.

Appointment of Administrative Law Judges, Hearing Officers, and Other Personnel

11370.3. The director shall appoint and maintain a staff of full-time, and may appoint pro tempore part-time, administrative law judges qualified under Section 11502 which is sufficient to fill the needs of the various state agencies. The director shall also appoint hearing officers, shorthand reporters, and such other technical and clerical personnel as may be required to perform the duties of the office. The director shall assign an administrative law judge for any proceeding arising under Chapter 5 (commencing with Section 11500) and, upon request from any agency, may assign an administrative law judge or a hearing officer to conduct other administrative proceedings not arising under that chapter and shall

assign hearing reporters as required. The director shall assign an administrative law judge for any proceeding arising pursuant to Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code upon the request of a public prosecutor. Any administrative law judge, hearing officer, or other employee so assigned shall be deemed an employee of the office and not of the agency to which he or she is assigned. When not engaged in hearing cases, administrative law judges and hearing officers may be assigned by the director to perform other duties vested in or required of the office, including those provided for in Section 11370.5.

History—Added by Stats. 1961, Ch. 2048; amended by Stats. 1971, Ch. 1303; by Stats. 1979, Ch. 199; by Stats. 1984, Ch. 1005; and by Stats. 1985, Ch. 324.

Costs of Office

11370.4. The total cost to the state of maintaining and operating the Office of Administrative Hearings shall be determined by, and collected by the Department of General Services in advance or upon such other basis as it may determine from the state or other public agencies for which services are provided by the office.

History—Added by Stats. 1961, Ch. 2048; amended by Stats. 1963, Ch. 1553; by Stats. 1965, Ch. 462; and by Stats. 1971, Ch. 1303.

Functions of Office

11370.5. The office is authorized and directed to study the subject of administrative law and procedure in all its aspects; to submit its suggestions to the various agencies in the interests of fairness, uniformity and the expedition of business; and to report its recommendations to the Governor and Legislature at the commencement of each general session. All departments, agencies, officers and employees of the State shall give the office ready access to their records and full information and reasonable assistance in any matter of research requiring recourse to them or to data within their knowledge or control.

History—Added by Stats. 1961, Ch. 2048.

Medical Board of California Cases; Administrative Law Judge List

11371. (a) The Director of the Office of Administrative Hearings shall designate a list of administrative law judges who have a demonstrated knowledge or experience in conducting hearings involving discipline actions brought against licentiates of the Medical Board of California. The director shall give preference to administrative law judges who participate in continuing education courses, as determined by the director in consultation with the Division of Medical Quality of the Medical Board of California, that furthers their knowledge of medical issues relevant to those proceedings. The judges on this list shall be given preference for cases involving medical discipline of health care professionals and shall be exclusively used for the adjudication of interim remedies as provided under Section 11529. In designating those administrative law judges who shall qualify to hear those cases, the director shall ensure the list is sufficient to provide at least one available administrative law judge for each of the Office of Administrative Hearings' hearing sites around the state.

(b) If the director finds that the administrative law judges designated in subdivision (a) are unable to hear medical quality cases in a timely manner, he or she may appoint existing administrative law judges, temporarily, to the list designated in subdivision (a).

History—Added by Stats, 1990, Ch. 1597.

Medical Board of California Cases; Hearings and Proceedings

11372. (a) Except as provided in subdivision (b), all adjudicative hearings and proceedings relating to the discipline or reinstatement of licensees of the Medical Board of California, including licensees of allied health agencies within its jurisdiction, which are heard pursuant to the Administrative Procedure Act, shall be conducted by an administrative law judge as designated in Section 11371, sitting alone if the case is so assigned by the agency filing the charging document or, except for proceedings related to interim orders, by the Division of Medical Quality, the appropriate allied health agency, a medical quality review committee or panel thereof sitting with an administrative law judge as designated in Section 11371. Where a medical quality review committee or panel thereof hears the matter, a five-member panel formed pursuant to Sections 2323 and 2324 of the Business and Professions Code may preside in any adjudicatory hearing other than a petition for reinstatement, as provided for in Section 2307 of the Business and Professions Code. An administrative law judge designated in Section 11371 may alternatively adjudicate those cases and, where a medical quality review committee panel adjudicates, render all legal rulings and conclusions of law. If an administrative law judge as designated in Section 11371 presides over the matter with a body referred to in this section, he or she shall render all legal rulings during the hearings, and may comment on the findings of fact and proposed discipline or order.

(b) Proceedings relating to interim orders shall be heard in accordance with Section 11529.

History—Added by Stats. 1990, Ch. 1597.

Medical Board of California Cases; Proposed Decisions and Action on Proposed Decisions

11373. (a) All adjudicative hearings and proceedings conducted by an administrative law judge as designated in Section 11371 or medical quality review committee for final discipline shall be conducted under the terms and conditions set forth in the Administrative Procedure Act, except as herein provided, and orders by an administrative law judge as designated in Section 11371 or medical quality review committee shall be proposed decisions to the Division of Medical Quality and to the California Board of Podiatric Medicine except as provided by subdivision (b).

(b) Except as herein provided, contested orders of the Medical Quality Review Committees and Administrative Law Judges, as designated in Section 11371, shall be governed by Section 11517. Upon receipt of the proposed decision, the Division of Medical Quality or the California Board of Podiatric Medicine shall have 90 days to review the proposed decision and may, in its discretion, upon a majority vote, except as required in

Section 2013 of the Business and Professions Code for revocations of licensure, take any action authorized in Section 11517. Where the division or the California Board of Podiatric Medicine does not act within 90 days after receipt of the proposed decision, the decision shall be final and subject to review under Section 2337 of the Business and Professions Code and Section 11523. Upon a decision by the division or the board not to adopt the proposed decision, and unless the licensee stipulates to proceed without the transcript regarding the proposed decision, the proposed decision hearing transcript and record shall be submitted to the division or the California Board of Podiatric Medicine within 30 days. However, receipt of the material after 30 days shall not preclude re view. The division or the California Board of Podiatric Medicine has 90 calendar days from the date after receipt of the transcript to render a final decision, unless the licensee stipulates to waive the transcript, then the final decision shall be rendered 90 calendar days from the receipt of the hearing record, except that it may extend the time by no more than 30 additional days.

History—Added by Stats. 1990, Ch. 1597.

Medical Board of California Cases; Costs of Office of Administrative Hearings

11373.3. The Office of Administrative Hearings shall provide facilities and support personnel for the review committee panel and shall assess the Medical Board of facilities and personnel, where used to adjudicate cases involving the Medical Board of California.

History—Added by Stats. 1990, Ch. 1597.

Chapter 5. Administrative Adjudication

Definitions

11500. In this chapter unless the context or subject matter otherwise requires:

(a) "Agency" includes the state boards, commissions, and officers enumerated in Section 11501 and those to which this chapter is made applicable by law, except that wherever the word "agency" alone is used the power to act may be delegated by the agency, and wherever the words "agency itself" are used the power to act shall not be delegated unless the statutes relating to the particular agency authorize the delegation of the agency's power to hear and decide.

(b) "Party" includes the agency, the respondent, and any person, other than an officer or an employee of the agency in his or her official capacity, who has been allowed to appear or participate in the proceeding.

(c) "Respondent" means any person against whom an accusation is filed pursuant to Section 11503 or against whom a statement of issues is filed pursuant to Section 11504.

(d) "Administrative Law Judge" means an individual qualified under Section 11502.

(e) "Agency member" means any person who is a member of any agency to which this chapter is applicable and includes any person who himself or herself constitutes an agency.

(f) "Adjudicatory hearing" means a state agency hearing which involves the personal or property rights of an individual, the granting or revocation of an individual's license, or the resolution of an issue pertaining to an individual. However, the procedures governing such a hearing shall include, but not be limited to, all of the following:

(1) Testimony under oath.

(2) The right to cross-examination and to confront adversary witnesses.

(3) The right to representation.

(4) The issuance of a formal decision.

For purposes of this subdivision, an "adjudicatory hearing" shall not be required to include any informal factfinding or informal investigatory hearing. However, nothing in this subdivision shall be construed to prohibit an agency from providing an interpreter during any such informal hearing.

(g) "Language assistance" means oral interpretation or written translation of a language other than English into English or of English into another language for a party who cannot speak or understand English or who can do so only with difficulty.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; by Stats. 1977, ch. 1057; and by Stats. 1985, ch. 324.

Application of Chapter

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) The enumerated agencies referred to in Section 11500 are:

Accountancy, State Board of
Air Resources Board, State
Alcohol and Drug Programs, State Department of
Alcoholic Beverage Control, Department of
Architectural Examiners, California State Board of
Attorney General
Auctioneer Commission, Board of Governors of
Automotive Repair, Bureau of
Barber Examiners, State Board of
Behavioral Science Examiners, Board of
Boating and Waterways, Department of
Cancer Advisory Council
Cemetery Board
Chiropractic Examiners, Board of
Collections and Investigative Services, Bureau of
Community Colleges, Board of Governors of the California
Conservation, Department of
Consumer Affairs, Director of
Contractors, Registrar of
Corporations, Commissioner of
Cosmetology, State Board of
Dental Examiners of California, Board of
Education, State Department of
Electronic and Appliance Repair, Bureau of
Engineers and Land Surveyors, State Board of Registration for Professional
Fair Employment and Housing Commission
Fair Political Practices Commission
Fire Marshal, State
Food and Agriculture, Director of
Forestry and Fire Protection, Department of
Funeral Directors and Embalmers, State Board of

Geologists and Geophysicists, State Board of Registration for
Guide Dogs for the Blind, State Board of
Health Services, State Department of
Highway Patrol, Department of the California
Home Furnishings and Thermal Insulation, Bureau of
Horse Racing Board, California
Housing and Community Development, Department of
Insurance Commissioner
Labor Commissioner
Landscape Architects, State Board of
Medical Board of California, Medical Quality Review Committees and Examining Committees
Motor Vehicles, Department of
Nursing, Board of Registered
Optometry, State Board of
Osteopathic Examiners of the State of California, Board of
Pharmacy, California State Board of
Public Employees' Retirement System, Board of Administration of the
Real Estate, Department of
San Francisco, San Pablo and Suisun, Board of Pilot Commissioners for the Bays of
Savings and Loan Commissioner
School Districts
Secretary of State, Office of
Shorthand Reporters Board, Certified
Social Services, State Department of
Statewide Health Planning and Development, Office of
Structural Pest Control Board
Tax Preparer Program, Administrator
Teacher Credentialing, Commission on
Teachers' Retirement System, State
Transportation, Department of, acting pursuant to the State Aeronautics Act
Veterinary Medicine, Board of Examiners in
Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; by Stats. 1949, Ch. 314; by Stats. 1951, Ch. 1215; by Stats. 1953, Ch. 961; by Stats. 1955, Ch. 453; by Stats. 1957, Ch. 1932; by Stats. 1957, Ch. 1933; by Stats. 1961, Ch. 104; by Stats. 1961, Ch. 2071; by Stats. 1963, Ch. 1394; by Stats. 1965, Ch. 1456; by Stats. 1970, Ch. 346; by Stats. 1971, Ch. 716; by Stats. 1972, Ch. 749; by Stats. 1973, Ch. 142; by Stats. 1973, Ch. 1212; by Stats. 1974, Ch. 1159; Stats. 1976, Ch. 1185; repealed and added by Stats. 1977, Ch. 122; amended by Stats. 1978, Ch. 429; by Stats. 1980, Ch. 992; by Stats. 1982, Ch. 454; by Stats. 1985, Ch. 867; by Stats. 1988, Ch. 362; and by Stats. 1989, Ch. 886.

Language Assistance

11501.5. (a) The following state agencies shall provide language assistance at adjudicatory hearings pursuant to subdivision (d) of Section 11513:

Agricultural Labor Relations Board
State Department of Alcohol and Drug Abuse

Athletic Commission
California Unemployment Insurance Appeals board
Board of Prison Terms
Board of Cosmetology
State Department of Developmental Services
Public Employment Relations Board
Franchise Tax Board
State Department of Health Services
Department of Housing and Community Development
Department of Industrial Relations
State Department of Mental Health
Department of Motor Vehicles
Notary Public Section, office of the Secretary of State
Public Utilities Commission
Office of Statewide Health Planning and Development
State Department of Social Services
Workers' Compensation Appeals Board
Department of Youth Authority
Youth Offender Parole Board
Bureau of Employment Agencies
Board of Barber Examiners
Department of Insurance
State Personnel Board

(b) Nothing in this section shall be construed to prevent any agency other than those listed in subdivision (a) from electing to adopt any of the procedures set forth in subdivision (d), (e), (f), (g), (h), or (i) of Section 11513, except that the State Personnel Board shall determine the general language proficiency of prospective interpreters as described in subdivisions (d) and (e) of Section 11513 unless otherwise provided for as described in subdivision (f) of Section 11513.

History—Added by Stats. 1977, Ch. 1057; amended by Stats. 1978, Ch. 429; by Stats. 1979, Ch. 255; and by Stats. 1979, Ch. 860.

Appointment of Administrative Law Judges

11502. All hearings of state agencies required to be conducted under this chapter shall be conducted by administrative law judges on the staff of the Office of Administrative Hearings. The Director of the Office of Administrative Hearings has power to appoint a staff of administrative law judges for the office as provided in Section 11370.3 of the Government Code. Each administrative law judge shall have been admitted to practice law in this state for at least five years immediately preceding his or her appointment and shall possess any additional qualifications established by the State Personnel Board for the particular class of position involved.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1961, Ch. 2048; by Stats 1971, Ch. 1303; and by Stats. 1985, Ch. 324.

Administrative Law Judges for Health Planning and Certificate-of-Need Cases

11502.1. There is hereby established in the Office of Administrative Hearings a unit of administrative law judges who shall preside over

hearings conducted pursuant to Part 1.5 (commencing with Section 437) of Division 1 of the Health and Safety Code. In addition to meeting the qualifications of administrative law judges as prescribed in Section 11502, the administrative law judges in this unit shall have a demonstrated knowledge of health planning and certificate-of-need matters. As many administrative law judges are necessary to handle the caseload shall be permanently assigned to this unit. In the event there are no pending certificate of need of health planning matters, administrative law judges in this unit may be assigned to other matters pending before the Office of Administrative Hearings. Health planning matters shall be given priority on the calendar of administrative law judges assigned to this unit.

History—Added by Stats. 1981, Ch. 873; amended by Stats. 1985, Ch. 324.

Accusation

11503. A hearing to determine whether a right , authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491.

Statement of Issues

11504. A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and rules with which the respondent must show compliance by producing proof at the hearing, and in addition any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought. The statement of issues shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief. The statement of issues shall be served in the same manner as an accusation; provided, that, if the hearing is held at the request of the respondent, the provisions of Sections 11505 and 11506 shall not apply and the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in Section 11509. Unless a statement to respondent is served pursuant to Section 11505, a copy of Sections 11507.5, 11507.6 and 11507.7, and the name and address of the person to whom requests permitted by Section 11505 may be made, shall be served with the statement of issues.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; and by Stats. 1968, Ch. 808.

References to Accusations Include Statements of Issues

11504.5. In the following sections of this chapter, all references to accusations shall be deemed to be applicable to statements of issues except in those cases mentioned in subdivision (a) of Section 11505 and Section 11506 where compliance is not required.

History—Added by Stats. 1963, Ch. 856.

Service of Accusation; What Included

11505. (a) Upon filing of the accusation the agency shall serve a copy thereof on the respondent as provided in subdivision (c). The agency may include with the accusation any information which it deems appropriate, but it shall include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506. The copy of the accusation shall include or be accompanied by (1) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon him of the accusation, and that failure to do so will constitute a waiver of his right to a hearing, and (2) copies of Sections 11507.5, 11507.6, and 11507.7.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled Notice of Defense, or by delivering or mailing a notice of defense as provided by Section 11506 of the Government Code to: (here insert name and address of agency). You may, but need not, be represented by counsel at any or all stages of these proceedings.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in Section 11507.6 in the possession, custody or control of the agency, you may contact: (here insert name and address of appropriate person).

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the agency within 10 working days after you discover the good cause. Failure to notify the agency within 10 days will deprive you of a postponement.

(c) The accusation and all accompanying information may be sent to respondent by any means selected by the agency. But no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent shall have been served personally or by registered mail as provided herein, or shall have filed a notice of defense or otherwise appeared. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency rule requires respondent to file his address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1968, Ch. 808; by Stats. 1970, Ch. 828; and by Stats. 1979, Ch. 199.

Notice of Defense

11506. (a) Within 15 days after service upon him of the accusation the respondent may file with the agency a notice of defense in which he may:

(1) Request a hearing.

(2) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.

(3) Object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense.

(4) Admit the accusation in whole or in part.

(5) Present new matter by way of defense.

(6) Object to the accusation upon the ground that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.

Within the time specified respondent may file one or more notices of defense upon any or all of these grounds but all such notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(b) The respondent shall be entitled to a hearing on the merits if he files a notice of defense, and any such notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file such notice shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in paragraph (3) of subdivision (a), all objections to the form of the accusation shall be deemed waived.

(c) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

(d) Respondent may file a statement by way of mitigation even if he does not file a notice of defense.

(e) As used in this section, "file," "files," "filed," or "filing" means "delivered or mailed" to the agency as provided in Section 11505.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1963, Ch. 931; by Stats. 1982, Ch. 606; and by Stats. 1986, Ch. 951.

Amended or Supplemental Accusation

11507. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the agency in its discretion so orders. Any new charges shall be deemed controverted, and

any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

History—Added by Stats. 1945, Ch. 867.

Cross-reference—See Gov. C. Sec. 11516.

Discovery Limitations

11507.5. The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

History—Added by Stats. 1968, Ch. 808.

Discovery Rights and Procedures

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addressed of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person, signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other that the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to affect the methods of discovery allowed under this section.

History—Added by Stats. 1968, Ch. 808; amended by Stats. 1985, Ch. 1328.

Discovery; Judicial Remedy

11507.7. (a) Any party claiming his request for discovery pursuant to Section 11507.6 has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the administrative hearing will be held, naming as respondent the party refusing or failing to comply with Section 11507.6. The petition shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why such matter is discoverable under this section, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 15 days after the respondent party first evidenced his failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing except upon order of the court after motion and notice and for good cause shown. In acting upon such motion, the court shall consider the necessity and reasons for such discovery, the diligence or lack of diligence of the moving party, whether the granting of the motion will delay the commencement of the administrative hearing on the date set, and the possible prejudice of such action to any party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth a good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may in its discretion order the administrative proceeding stayed during the pendency of the proceeding, and if necessary for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that such matter is not a discoverable matter under the provision of Section 11507.6, or is privileged against disclosure under such provisions, the court may order lodged with it such matters as are provided in subdivision (b) of Section 915 of the Evidence Code and examine such matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order denying or granting the petition, provided, however, the court may on its own motion for good cause extend such time an additional 30 days. The order of the court shall be in writing setting forth the matters or parts thereof the petitioner is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, such order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any party thereof, may within 15 days after the service of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. Where such review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. Where such review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his attorney, without substantial justification, failed or refused to comply with Section 11507.6, or, without substantial justification, filed a petition to compel discovery pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

History—Added by Stats. 1968, Ch. 808; amended by Stats. 1971, Ch. 1303; and by Stats. 1980, Ch. 548.

Time and Place of Hearing

11508. (a) The agency shall consult the office, and subject to the availability of its staff, shall determine the time and place of hearing. The hearing shall be held in San Francisco if the transaction occurred or the respondent resides within the First or Sixth Appellate District, in the County of Los Angeles if the transaction occurred or the respondent resides within the Second or Fourth Appellate District, and in the County of Sacramento if the transaction occurred or the respondent resides within the Third or Fifth Appellate District.

(b) Notwithstanding subdivision (a):

(1) If the transaction occurred in a district other than that of respondent's residence, the agency may select the county appropriate for either district.

(2) The agency may select a different place nearer the place where the transaction occurred or the respondent resides.

(3) The parties by agreement may select any place within the state.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1963, Ch. 710; by Stats. 1967, Ch. 17; and by Stats. 1987, Ch. 50.

Cross-reference—See Gov. C. Sec. 20133, and Ed. C. Sec. 22217, as to retirement hearings. See also Gov. C. Sec. 18574. See B. & P.C. Sec. 24300 as to Alcoholic Beverage Control hearings.

Form of Notice of Hearing

11509. The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing. The hearing shall not be prior to the expiration of the time within which the respondent is entitled to file a notice of defense.

The notice of respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before [here insert name of agency] at [here insert place of hearing] on the _____ day of _____, 19___, at the hour of _____, upon the charges made in the accusation served upon you. You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. You may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to [here insert appropriate office of agency].

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1988, Ch. 362.

Subpoenas

11510. (a) Before the hearing has commenced, the agency or the assigned administrative law judge shall issue subpoenas and subpoenas duces tecum at the request of any party for attendance or production of documents at the hearing. Subpoenas and subpoenas duces tecum shall be issued in accordance with Sections 1985, 1985.1, and 1985.2 of the Code of Civil Procedure. After the hearing has commenced, the agency itself

hearing a case or an administrative law judge sitting alone may issue subpoenas and subpoenas duces tecum.

(b) The process issued pursuant to subdivision (a) shall be extended to all parts of the state and shall be served in accordance with Sections 1987 and 1988 of the Code of Civil Procedure. No witness shall be obliged to attend unless the witness is a resident of the state at the time of service.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the state or any political subdivision thereof, shall receive fees, and all witnesses appearing pursuant to subpoena, except the parties, shall receive mileage in the same amount and under the same circumstances as prescribed by law for witnesses in civil actions in a superior court. Witnesses appearing pursuant to subpoena, except the parties, who attend hearings at points so far removed from their residences as to prohibit return thereto from day to day shall be entitled in addition to fees and mileage to a per diem compensation of three dollars ($3) for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1961, Ch. 106; by Stats. 1963, Ch. 843; Stats. 1968, Ch. 808; by Stats. 1985, Ch. 324; and by Stats. 1986, Ch. 597.

Depositions

11511. On verified petition of any party, an agency may order that the testimony of any material witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of his testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the State and where the agency has ordered the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

History—Added by Stats. 1945, Ch. 867.

Prehearing Conference

11511.5. (a) On motion of a party or by order of an administrative law judge, the administrative law judge may conduct a prehearing conference. The administrative law judge shall set the time and place for the prehearing conference, and the agency shall give reasonable written notice to all parties.

(b) The prehearing conference may deal with one or more of the following matters:

(1) Exploration of settlement possibilities.
(2) Preparation of stipulations.
(3) Clarifications of issues.

(4) Rulings on identity and limitation of the number of witnesses.
(5) Objections to proffers of evidence.
(6) Order of presentation of evidence and cross-examination.
(7) Rulings regarding issuance of subpoenas and protective orders.
(8) Schedules for the submission of written briefs and schedules for the commencement and conduct of the hearing.
(9) Any other matters as shall promote the orderly and prompt conduct of the hearing.

(c) The administrative law judge shall issue a prehearing order incorporating the matters determined at the prehearing conference. The administrative law judge may direct one or more of the parties to prepare a prehearing order.

History—Added by Stats. 1986, Ch. 899.

Conduct of Hearing

11512. (a) Every hearing in a contested case shall be presided over by an administrative law judge. The agency itself shall determine whether the administrative law judge is to hear the case alone or whether the agency itself is to hear the case with the administrative law judge.

(b) When the agency itself hears the case, the administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the administrative law judge alone hears a case, he or she shall exercise all powers relating to the conduct of the hearing.

(c) An administrative law judge or agency member shall voluntarily disqualify himself or herself and with draw from any case in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any administrative law judge or agency member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns an agency member, the issue shall be determined by the other members of the agency. Where the request concerns the administrative law judge, the issue shall be determined by the agency itself if the agency itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge. No agency member shall withdraw voluntarily or be subject to disqualification if his or her disqualification would prevent the existence of a quorum qualified to act in the particular case.

(d) The proceedings at the hearing shall be reported by a phonographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically.

(e) Whenever, after the agency itself has commenced to hear the case with an administrative law judge presiding, a quorum no longer exists, the administrative law judge who is presiding shall complete the hearing is if

sitting alone and shall render a proposed decision in accordance with subdivision (b) of Section 11517 of the Government Code.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1973, Ch. 231; by Stats. 1983, Ch. 635; and by Stats. 1985, Ch. 324.

Evidence Rules

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If respondent does not testify in his or her own behalf he or she may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses, except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's conduct with individuals other than the alleged perpetrator is not admissible at hearing unless offered to attack the credibility of the complainant, as provided for under subdivision (j). Reputation or opinion evidence regarding the sexual behavior of the complainant is not admissible for any purpose.

(d) The hearing shall be conducted in the English language, except that a party who does not proficiently speak or understand the English language and who requests language assistance shall be provided an interpreter approved by the administrative law judge or hearing officer conducting the proceedings. The cost of providing the interpreter shall be paid by the agency having jurisdiction over the matter if the administrative law judge or hearing officer so directs, otherwise the party for whom the interpreter is provided.

The administrative law judge's or hearing officer's decision to direct payment shall be based upon an equitable consideration of all the circumstances in each case, such as the ability of the party in need of the interpreter to pay, except with respect to hearing before the Workers' Compensation Appeals Board or the Division of Industrial Accidents relating to worker's compensation claims. With respect to such hearings, the payment of the costs of providing an interpreter shall be governed by

the rules and regulations promulgated by the Workers' Compensation Appeals Board or the Administrative Director of the Division of Industrial Accidents, as appropriate. Such an interpreter shall be selected pursuant to regulations issued by both of the following:

(1) The State Personnel Board which shall establish criteria for an interpreter's proficiency in both English and the language in which the person will testify.

(2) The employing agency which shall establish materials and examinations for an interpreter's understanding of its technical program terminology and procedures.

(e) The State Personnel Board shall compile and publish a list of interpreters it has determined to be proficient in various languages and any interpreter so listed shall be eligible to be examined by each employing agency relating to its technical program terminology and procedures. Any interpreter whose language proficiency and knowledge of the terminology and procedures has been satisfactorily determined by the employing agency shall be deemed to be approved by an administrative law judge or a hearing officer of such agency.

(f) In the event that interpreters on the approved list cannot be present at the hearing, or if there is no interpreter on the approved list for a particular language, the hearing agency shall have discretionary authority to provisionally qualify and utilize other interpreters.

(g) Every state agency affected by this section shall advise each party of their right to an interpreter at the same time that each party is advised of the hearing date. Each party in need of an interpreter shall also be encouraged to give timely notice to the agency conducting the hearing so that appropriate arrangements can be made.

(h) The rules of confidentiality of the agency, if any, which may apply in an adjudicatory hearing, shall apply to any interpreter in such hearing, whether or not such rules so state.

(i) The interpreter shall not have had any involvement in the issues of the case prior to the hearing.

As used in subdivisions (d) and (e), the terms "administrative law judge" and "hearing officer" shall not be construed to require the use of an Office of Administrative Hearings' administrative law judge or hearing officer.

(j) Evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is presumed inadmissible absent an offer of proof establishing its relevance and reliability and that its probative value is not substantially outweighed by the probability that its admission will create substantial danger of undue prejudice or confuse the issue.

(k) For the purposes of this section "complainant" means any person claiming to have been subjected to conduct which constitutes sexual harassment, sexual assault, or sexual battery.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1965, Ch. 299; by Stats. 1972, Ch. 1390; by Stats. 1977, Ch. 1057; by Stats. 1985, Ch. 324; and by Stats. 1985, Ch. 1328.

Ex Parte Communication

11513.5. (a) Except as required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in an adjudicative proceeding may not communicate, directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any party, including employees of the agency that filed the outcome of the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.

(b) Unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, including employees of the agency that filed the accusation, and no person who has a direct or indirect interest in the outcome of the proceeding or who presided at a previous stage of the proceeding, may communicate directly or indirectly, upon the merits of a contested matter while the proceeding is pending, with any person serving as administrative law judge, without notice and opportunity for all parties to participate in the communication.

(c) If, before serving as administrative law judge in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while serving, the person, promptly after starting to serve, shall disclose the communication in the manner prescribed in subdivision (d).

(d) An administrative law judge who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the presiding officer received an ex parte communication, and shall advise all parties that these matters have been placed on the record. Any person desiring to rebut the exparte communication shall be allowed to do so, upon requesting the opportunity for rebuttal within 10 days after notice of the communication.

(e) The receipt by an administrative law judge of an ex parte communication in violation of this section may provide the basis for disqualification of that administrative law judge pursuant to subdivision (c) of Section 11512. If the administrative law judge is disqualified, the portion of the record pertaining to the ex parte communication may be sealed by protective order by the disqualified administrative law judge.

History—Added by Stats. 1986, Ch. 899.

Evidence by Affidavit

11514. (a) At any time 10 or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in subdivision (b). Unless the opposing party, within seven days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence, shall be

given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subdivision (a) shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you with to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven days after the date of mailing or delivering the affidavit to the opposing party).

History—Added by Stats. 1945, Ch. 867; repealed and added by Stats. 1947, Ch. 491.

Official Notice

11515. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially notice by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the agency.

History—Added by Stats. 1945, Ch. 867.

Cross-reference—Evid. C. Secs. 451, 452.

Amendment of Accusation after Submission

11516. The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

History—Added by Stats. 1945, Ch. 867.

Decision; Action on Proposed Decision

11517. (a) If a contested case is heard before an agency itself, the administrative law judge who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency. Where a contested case is heard before an agency itself, no member thereof who did not hear the evidence shall vote on the decision.

(b) If a contested case is heard by an administrative law judge alone, he or she shall prepare within 30 days after the case is submitted a proposed decision is such form that it may be adopted as the decision in the case. The

agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

Thirty days after receipt of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

(c) If the proposed decision is not adopted as provided in subdivision (b), the agency itself may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same administrative law judge to take additional evidence. By stipulation of the parties, the agency may decide the case upon the record without including the transcript. If the case is assigned to an administrative law judge he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party and his or her attorney as prescribed in subdivision (b). The agency itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present either oral or written argument before the agency itself. If additional oral evidence is introduced before the agency itself, no agency member may vote unless the member heard the additional oral evidence.

(d) The proposed decision shall be deemed adopted by the agency 100 days after delivery to the agency by the Office of Administrative Hearings, unless within that time the agency commences proceedings to decide the case upon the record, including the transcript, or without the transcript where the parties where the parties have so stipulated, or the agency refers the case to the administrative law judge to take additional evidence. In a case where the agency itself hears the case, the agency shall issue its decision within 100 days of submission of the case. In a case where the agency has ordered a transcript of the proceedings, the 100-day period shall begin upon delivery of the transcript. If the agency finds that a further delay is required by special circumstances, it shall issue an order delaying the decision for no more than 30 days and specifying reasons therefor. The order shall be subject to judicial review pursuant to Section 11523.

(e) The decision of the agency shall be filed immediately by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney.

History—Added by Stats. 1945, Ch. 867;amended by Stats. 1955, Ch. 1661; by Stats. 1971, Ch. 653; by Stats. 1979, Ch. 199; by Stats. 1983, Ch. 548; and by Stats. 1985, Ch. 324.

Form of Decision

11518. The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491.

Effective Date of Decision

11519. (a) The decision shall become affective 30 days after it is delivered or mailed to respondent unless; a reconsideration is ordered within that time, or the agency itself orders that the decision shall become effective sooner, or a stay of execution is granted.

(b) A stay of execution may be included in the decision or if not included therein may be granted by the agency at any time before the decision becomes effective. The stay of execution provided herein may be accompanied by an express condition that respondent comply with specified terms of probation; provided, however, that the terms of probation shall be just and reasonable in the light of the findings and decision.

(c) If respondent was required to register with any public officer, a notification of any suspension or revocation shall be sent to such officer after the decision has become effective.

(d) As used in subdivision (b), specified terms of probation may include an order of restitution which requires the party or parties to a contract against whom the decision is rendered to compensate the other party or parties to a contract damaged as a result of a breach of contract by the party against whom the decision is rendered. In such case, the decision shall include findings that a breach of contract has occurred and shall specify the amount of actual damages sustained as a result of such breach. Where restitution is ordered and paid pursuant to the provisions of this subdivision, such amount paid shall be credited to any subsequent judgment in a civil action based on the same breach of contract.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1949, Ch. 314; by Stats. 1976, Ch. 476; and by Stats. 1977, Ch. 680.

Defaults

11520. (a) If the respondent fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that he is entitled to the agency action sought, the agency may act without taking evidence.

(b) Nothing herein shall be construed to deprive the respondent of the right to make any showing by way of mitigation.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; and by Stats. 1963, Ch. 931.

Reconsideration

11521. (a) The agency itself may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire 30 days after the delivery or mailing of a decision to respondent, or on the date set by the agency itself as the effective date of the decision if that date occurs prior to the expiration of the 30-day period or at the termination of a stay of not to exceed 30 days which the agency may grant for the purpose of filing an application for reconsideration. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of any of the applicable

periods, an agency may grant a stay of that expiration for no more than 10 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

(b) The case may be reconsidered by the agency itself on all the pertinent parts of the record and such additional evidence and argument as may be permitted, or may be assigned to an administrative law judge. A reconsideration assigned to an administrative law judge shall be subject to the procedure provided in Section 11517. If oral evidence is introduced before the agency itself, no agency member may vote unless he or she heard the evidence.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1953, Ch. 964; by Stats. 1985, Ch. 324; and by Stats. 1987, Ch. 305.

Petition for Reinstatement or Reduction of Penalty

11522. A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1985, Ch. 587.

Judicial Review

11523. Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however to the statutes relating to the particular agency. Except as otherwise provided in this section, any such petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. The complete record of the proceedings, or such parts thereof as are designated by the petitioner, shall be prepared by the agency and shall be delivered to petitioner, within 30 days after a request therefor by him or her, upon the payment of the fee specified in Section 69950 as now or hereinafter amended for the transcript, the cost of preparation of other portions of the record and for certification thereof. Thereafter, the remaining balance of any costs or charges for the preparation of the record shall be assessed against the petitioner whenever the agency prevails on judicial review following trial of the cause. These costs or charges constitute a debt of the petitioner which is collectible by the agency in the same manner as in the case of an obligation under a contract, and no license shall be renewed or reinstated where the petitioner has failed to pay all of these costs or charges. The complete record includes the pleadings, all notices and orders issued by the agency,

any proposed decision by an administrative law judge, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him or her. The agency may file with the court the original of any document in the record in lieu of a copy thereof. In the event that the petitioner prevails in overturning the administrative decision following judicial review, the agency shall reimburse the petitioner for all costs of transcript preparation, compilation of the record, and certification.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1947, Ch. 491; by Stats. 1953, Ch. 962; by Stats. 1955, Ch. 246; by Stats. 1965, Ch. 1458; by Stats. 1971, Ch. 984; by Stats. 1985, ch. 324; by Stats. 1986, Ch. 597.

Continuance

11524. (a) The agency may grant continuances. When an administrative law judge of the Office of Administrative Hearings has been assigned to the hearing, no continuance may be granted except by him or her or by the administrative law judge in charge of the appropriate regional office of the Office of Administrative Hearings, for good cause shown.

(b) When seeking a continuance, a party shall apply for the continuance within 10 working days following the time the party discovered or reasonably should have discovered the event or occurrence which establishes the good cause for the continuance. A continuance may be granted for good cause after the 10 working days have elapsed if the party seeking the continuance is not responsible for and has made a good faith effort to prevent the condition or event establishing the good cause.

(c) In the event that an application for a continuance by a party is denied by an administrative law judge of the Office of Administrative Hearings, and the party seeks judicial review thereof, the party shall within 10 working days of the denial, make application for appropriate judicial relief in the superior court or be barred from judicial review thereof as a matter of jurisdiction. A party applying for judicial relief from the denial shall give notice to the agency and other parties. Notwithstanding Section 1010 of the Code of Civil Procedure, the notice may be either oral at the time of the denial of application for a continuance or written at the same time application is made in court for judicial relief. This subdivision does not apply to the Department of Alcoholic Beverage Control.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1953, Ch. 962; by Stats. 1963, Ch. 842; by Stats. 1971, Ch. 1303; by Stats. 1979, Ch. 199; and by Stats. 1985, Ch. 324.

Contempt

11525. If any person in proceedings before an agency disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceeding, the agency shall certify the facts to the superior court in and for the county where the proceedings are held. The court shall thereupon issue an order directing the person to appear before the court and show good cause why he should not be punished as for contempt. The

order and a copy of the certified statement shall be served on the person. Thereafter the court shall have jurisdiction of the matter and the person charged may purge himself of the contempt in the same way, as in the case of a person who has committed a contempt in the trial of a civil action before a superior court.

History—Added by Stats. 1945, Ch. 867.

Mail Vote

11526. The members of an agency qualified to vote on any question may vote by mail.

History—Added by Stats. 1945, Ch. 867.

Payment of Costs

11527. Any sums authorized to be expended under this chapter by any agency shall be a legal charge against the funds of the agency.

History—Added by Stats. 1945, Ch. 867.

Power to Administer Oaths

11528. In any proceedings under this chapter any agency, agency member, secretary of an agency, hearing reporter, or administrative law judge has power to administer oaths and affirmations and to certify to official acts.

History—Added by Stats. 1945, Ch. 867; amended by Stats. 1969, Ch. 191; and by Stats. 1985, Ch. 324.

Medical Board of California Cases; Interim Orders

11529. (a) The Division of Medical Quality and the California Board of Podiatric Medicine, and the administrative law judge as designated in subdivision (a) of Section 11371, sitting alone, may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(b) All orders authorized by this section shall be issued only after a hearing conducted pursuant to subdivision (d), unless it appears from the facts shown by affidavit that serious injury would result to the public before the matter can be heard on notice. Except as provided in subdivision (c) the licensee shall receive at least 15 days' prior notice of the hearing, which notice shall include affidavits and all other information in support of the order.

(c) If an interim order is issued without notice, the same body or administrative law judge, as designated in subdivision (a) of Section 11371, who issued the order without notice shall cause the licensee to be notified of the order, including affidavits and all other information in support of the order by a 24-hour delivery service. That notice shall also include the date of the hearing on the order, which shall be conducted in accordance with

the requirement of subdivision (d), not later than 20 days from the date of issuance. The order shall be dissolved unless the requirements of subdivision (a) are satisfied.

(d) For the purposes of the hearing conducted pursuant to this section, the licentiate shall, at a minimum, have the following rights:

(1) To be represented by counsel.

(2) To have a record made of the proceedings, copies of which may be obtained by the licentiate upon payment of any reasonable charges associated with the record.

(3) To call, examine, and cross-examine witnesses.

(4) To present and rebut evidence determined to be relevant.

(5) To present oral argument.

(e) The Division of Medical Quality shall hear any petition requesting an interim order and conduct the hearing pursuant to subdivision (d), or may, in its sole discretion, delegate any such matter to be heard by an administrative law judge as designated in subdivision (a) of Section 11371.

(f) In all cases where an interim order is issued, and an accusation is not filed and served pursuant to Sections 11503 and 11505 within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter, the order shall be dissolved.

Upon service of the accusation the licensee shall have, in addition to the rights granted by this section, all of the rights and privileges available as specified in this chapter. If the licensee requests a hearing on the accusation, the board shall provide the licensee with a hearing within 30 days of the request, unless the licensee stipulates to a later hearing, and a decision within 15 days of the date that matter is submitted, or the board shall nullify the interim order previously issued, unless good cause can be shown by the division for a delay.

(g) Where an interim order is issued, a written decision shall be prepared within 15 days of the hearing, by the division or the administrative law judge as designated in subdivision (a) of Section 11371, or by the California Board of Podiatric Medicine including findings of fact and a conclusion articulating the connection between the evidence produced at the hearing and the decision reached.

(h) Notwithstanding the fact that interim orders issued pursuant to this section are not issued after a hearing as otherwise required by this chapter, interim orders so issued shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure. The relief which may be ordered shall be limited to a stay of the interim order. Interim orders issued pursuant to this section are final interim orders and, if not dissolved pursuant to subdivision (c) or (f), may only be challenged administratively at the hearing on the accusation.

(i) The interim order provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided for in the Business and Professions Code.

History—Added by Stats. 1990, Ch. 1597.

APPENDIX

Code of Civil Procedure

Review of Administrative Orders of Decisions; Filing Record; Extent of Inquiry; Abuse of Discretion; Relevant Evidence; Judgment; Stay

1094.5. (a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board, or officer may be filed with the petition, may be filed with respondent's points and authorities, or may be ordered to be filed by the court. Except when otherwise prescribed by statute, the cost of preparing the record shall be borne by the petitioner. Where the petitioner has proceeded pursuant to Section 68511.3 of the Government Code and the Rules of Court implementing that section and where the transcript is necessary to a proper review of the administrative proceedings, the cost of preparing the transcript shall be borne by the respondent. Where the party seeking the writ has proceeded pursuant to Section 1088.5, the administrative record shall be filed as expeditiously as possible, and may be filed with the petition, or by the respondent after payment of the costs by the petitioner, where required, or as otherwise directed by the court. If the expense of preparing all or any party of the record has been borne by the prevailing party, the expense shall be taxable as costs.

(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the finding, or the findings are not supported by the evidence.

(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.

(d) Notwithstanding subdivision (c), in cases arising from private hospital boards or boards of directors of districts organized pursuant to The Local Hospital District Law, Division 23 (commencing with Section 32000) of the Health and Safety Code, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. However, in all cases in which the petition alleges discriminatory actions prohibited by Section 1316 of the Health and Safety Code, and the plaintiff makes a preliminary showing of substantial evidence in support of that allegation, the court shall exercise its independent judgment on the evidence and abuse of discretion shall be established if the court determines that the findings are not supported by the weight of the evidence.

(e) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (f) remanding the case to be reconsidered in the light of that evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit the evidence at the hearing on the writ without remanding the case.

(f) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law, but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

(g) Except as provided in subdivision (h), the court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, no such stay shall be imposed or continued if the court is satisfied that it is against the public interest; provided that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of Part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

(h) (1) The court which proceedings under this section are instituted may stay the operation of the administrative order or decision of any licensed hospital or any state agency made after a hearing required by statute to be conducted under the provisions of the Administrative

Procedure Act, as set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, conducted by the agency itself or an administrative law judge on the staff of the Office of Administrative Hearings pending the judgment of the court, or until the filing of a notice of appeal from the judgment or until the expiration of the time for filing the notice, whichever occurs first. However, the stay shall not be imposed or continued unless the court is satisfied that the public interest will not suffer and that the licensed hospital or agency is unlikely to prevail ultimately on the merits; and provided further that the application for the stay shall be accompanied by proof of service of a copy of the application on the respondent. Service shall be made in the manner provided by Title 5 (commencing with Section 405) of part 2 or Chapter 5 (commencing with Section 1010) of Title 14 of Part 2.

(2) The standard set forth in this subdivision for obtaining a stay shall apply to any administrative order or decision of an agency which issues licenses pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act. With respect to orders or decisions of other state agencies, the standard in this subdivision shall apply only when the agency has adopted the proposed decision but reduced the proposed penalty pursuant to subdivision (b) of Section 11517 of the Government Code; otherwise the standard in subdivision (g) shall apply.

(3) If an appeal is taken from a denial of the writ, the order or decision of the hospital or agency shall not be stayed except upon the order of the court to which the appeal is taken. However, in cases where a stay is in effect at the time of filing the notice of appeal, the stay shall be continued by operation of law for a period of 20 days from the filing of the notice. If an appeal is taken from the granting of the writ, the order or decision of the hospital or agency is stayed pending the determination of the appeal unless the court to which the appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect, the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of the proceedings.

History—Added by Stats. 1945, Ch. 868; amended by Stats. 1949, Ch. 358; by Stats. 1974, Ch. 668; by Stats. 1975 (2nd Ex.Sess.), Ch. 1; by Stats. 1978, Ch. 1348; by Stats. 1979, Ch. 199; by Stats. 1982, Ch. 193; by Stats. 1982, Ch. 812; and by Stats. 1985, Ch. 324.

Subpoena Defined; Affidavit for Subpoena Duces Tecum

1985. (a) The process by which the attendance of a witness is required is the subpoena. It is a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, or other things under the witness's control which the witness is bound by law to produce in evidence. When a county recorder is using the microfilm system for

recording, and a witness is subpoenaed to present a record, the witness shall be deemed to have complied with the subpoena if the witness produces a certified copy thereof.

(b) A copy of an affidavit shall be served with a subpoena duces tecum issued before trial, showing good cause for the production of the matters and things described in such subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

(c) The clerk, or a judge, shall issue a subpoena or subpoena duces tecum signed and sealed but otherwise in blank to a party requesting it, who shall fill it in before service. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena to require attendance before the court in which the action or proceeding is pending or at the trial of an issue therein, or upon the taking of a deposition in an action or proceeding pending therein; the subpoena in such a case need not be sealed. An attorney at law who is the attorney of record in an action or proceeding, may sign and issue a subpoena duces tecum to require production of the matters or things described in the subpoena.

History—Enacted 1872; amended by Stats. 1933, Ch. 567; by Stats. 1961, Ch. 496; by Stats. 1967, Ch. 431; by Stats. 1968, Ch. 95; by Stats. 1979, Ch. 458; by Stats. 1982, Ch. 452; by Stats. 1986, Ch. 603; and by Stats. 1990, Ch. 511.

Agreement to Appear at Time Other Than Specified in Subpoena

1985.1. Any person who is subpoenaed to appear at a session of court, or at the trial of an issue therein, may, in lieu of appearance at the time specified in the subpoena, agree with the party at whose request the subpoena was issued to appear at another time or upon such notice as may be agreed upon. Any failure to appear pursuant to such agreement may be punished as a contempt by the court issuing the subpoena. The facts establishing or disproving such agreement and the failure to appear may be proved by an affidavit of any person having personal knowledge of the facts.

History—Added by Stats. 1969, Ch. 140.

Subpoenas; Mandatory Notice for Attendance of Witnesses

1985.2. Any subpoena which requires the attendance of a witness at any civil trial shall contain the following notice in a type face designed to call attention to the notice:

Contact the attorney requesting this subpoena, listed above, before the date on which you are required to be in court, if you have any question about the time or date for you to appear, or if you want to be certain that your presence in court is required.

History—Added by Stats. 1978, Ch. 431.

Subpoena; Notice to Produce Party or Agent; Method of Service; Production of Books and Documents

1987. (a) Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering

a copy, or a ticket containing its substance, to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled for travel to and from the place designated, and one day's attendance there. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. The service may be made by any person. When service is to be made on a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is 12 years of age or older.

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to testify. The giving of the notice shall have the same effect as service of a subpoena on the witness, and the parties shall have such rights and the court may make such orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(c) If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within such shorter time as the court may order, it may include a request that the party or person bring with him or her books, documents or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control. Within five days thereafter, or such other period as the court may allow, the party or person of whom the request is made may serve written objections to the request or any part thereof, with a statement of grounds. Thereafter, upon noticed motion of the requesting party, accompanied by a showing of good cause and of materiality of the items to the issues, the court may order production of items to which objection was made, unless the objecting party or person establishes good cause for nonproduction or production under limitations or conditions. The procedure of this subdivision is alternative to the procedure provided by Sections 1985 and 1987.5 in the cases herein provided for, and no subpoena duces tecum shall be required.

History—Enacted 1872; amended by Stats. 1963, Ch. 1485; by Stats. 1968, Ch. 933; by Stats. 1969, Ch. 311; by Stats. 1969, Ch. 1034; by Stats. 1981, Ch. 184; by Stats. 1986, Ch. 605; and by Stats. 1989, Ch. 1416.

Subpoena; Service upon Concealed Witnesses

1988. If a witness is concealed in a building or vessel, so as to prevent the service of a subpoena upon him, any Court or Judge, or any officer

issuing the subpoena, may, upon proof by affidavit of the concealment, and of the materiality of the witness, make an order that the sheriff of the county serve the subpoena; and the sheriff must serve it accordingly, and for that purpose may break into the building or vessel where the witness is concealed.

History—Enacted 1872.

Evidence Code

Matters Which Must Be Judicially Noticed

451. Judicial notice shall be taken of the following:

(a) The decisional, constitutional, and public statutory law of this state and of the United States and the provisions of any charter described in Section 3, 4, or 5 of Article XI of the California Constitution.

(b) Any matter made a subject of judicial notice by Section 11343.6, 11344.6, or 18576 of the Government Code or by Section 1507 of Title 44 of the United States Code (44 U.S.C.A. § 1507).

(c) Rules of professional conduct for members of the bar adopted pursuant to Section 6076 of the Business and Professions Code and rules of practice and procedure for the courts of this state adopted by the Judicial Council.

(d) Rules of pleading, practice, and procedure prescribed by the United States Supreme Court, such as the rules of the United States Supreme Court, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Admiralty Rules, the Rules of the Court of Claims, the Rules of the Customs Court, and the General Orders and Forms in Bankruptcy.

(e) The true signification of all English words and phrases and of all legal expressions.

(f) Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.

History—Added by Stats. 1965, Ch. 299; amended by Stats. 1971, Ch. 438; Stats. 1972, Ch. 764; by Stats. 1982, Ch. 454; by Stats. 1985, Ch. 106; and by Stats. 1986, Ch. 248.

Matters Which May Be Judicially Noticed

452. Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

(a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.

(b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.

(c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(e) Rules of court of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

(f) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(g) Facts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute.

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

History—Added by Stats. 1965, Ch. 299.

Compulsory Judicial Notice upon Request

453. The trial court shall take judicial notice of any matter specified in Section 452 if a party requests it and:

(a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and

(b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter.

History—Added by Stats. 1965, Ch. 299.

Information That May Be Used in Taking Judicial Notice

454. (a) In determining the propriety of taking judicial notice of a matter, or the tenor thereof:

(1) Any source of pertinent information, including the advice of persons learned in the subject matter, may be consulted or used, whether or not furnished by a party.

(2) Exclusionary rules of evidence do not apply except for Section 352 and the rules of privilege.

(b) Where the subject of judicial notice is the law of an organization of nations, a foreign nation, or a public entity in a foreign nation and the court resorts to the advice of persons learned in the subject matter, such advice, if not received in open court, shall be in writing.

History—Added by Stats. 1965, Ch. 299.

Government Code

Contracts with Office of Administrative Hearings

27727. Any county or other local public entity may contract with the Office of Administrative Hearings of the State of California, and the office is hereby authorized to contract for services for an administrative law judge or a hearing officer to conduct proceedings pursuant to this chapter.

History—Added by Stats. 1965, Ch. 480; amended by Stats. 1971, Ch. 1303; and by Stats. 1985, Ch. 324.