1987

California Administrative Procedure Act. Procedures for Administrative Adjudication

Office of Administrative Hearings

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PREFACE

The California Administrative Procedure Act is found in Government Code Sections 11340 through 11348. 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 January 1, 1987)

CHAPTER 4. OFFICE OF ADMINISTRATIVE HEARINGS

Sec. 11370. Short Title
Sec. 11370.1. Director
Sec. 11370.2. 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 Procedure Act.

Director

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

Appointments 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 tem pro parte-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

Sec. 11370.3. Appointment of Administrative Law Judges, Hearing Officers, and Other Personnel
Sec. 11370.4. Costs of Office
Sec. 11370.5. Functions of Office

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.

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; amended by Stats. 1963, Ch. 1533; by Stats. 1965, Ch. 492; and by Stats. 1971, Ch. 1303.
CHAPTER 5. ADMINISTRATIVE ADJUDICATION

Sec. 11500. Definitions
Sec. 11501. Application of Chapter
Sec. 11501.3. Language Assistance
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Sec. 11502.1. Administrative Law Judges for Health Planning and Certificate of Need Cases
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Sec. 11523. Judicial Review
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Sec. 11525. Contempt
Sec. 11526. Order
Sec. 11527. Payment of Costs
Sec. 11528. Power to Administer Oaths

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 word “agency itself” is 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 proceedings.

(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 11504.

(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. 1943, Ch. 807; 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
Aging, State Department of
Air Resources Board, State
Alcohol and Drug Abuse, State Department of
Alcoholic Beverage Control, Department of
Architectural Examiners, California State Board of
Attorney General
Automotive Repair, Bureau of
Barber Examiners, State Board of
Behavioral Science Examiners, Board of
Cancer Advisory Council
Cemetery Board
Chiropractic Examiners, Board of
Collection 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
Developmental Services, State Department of
Education, State Board of
Electronic and Appliance Repair, Bureau of
Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

Water Resources, Department of

History—Added by Stats. 1945, Ch. 967, 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. 1032; by Stats. 1957, Ch. 1033; by Stats. 1961, Ch. 104; by Stats. 1961, Ch. 3701; by Stats. 1963, Ch. 1394; by Stats. 1965, Ch. 1456; by Stats. 1970, Ch. 346; by Stats. 1971, Ch. 715; by Stats. 1972, Ch. 749; by Stats. 1973, Ch. 142; by Stats. 1973, Ch. 1212; by Stats. 1974, Ch. 1191; by Stats. 1976, Ch. 1355; repealed and added by Stats. 1977, Ch. 132; amended by Stats. 1978, Ch. 429; by Stats. 1980, Ch. 992; by Stats. 1982, Ch. 454; and by Stats. 1985, Ch. 967.

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 the Youth Authority
- Youthful 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 subdivi-
sions (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. 360.

Appointments 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 11570.3 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 qualifications established by the State Personnel Board for the particular class of position involved.

History—Added by Stats. 1945, Ch. 867, amended by Stats. 1951, 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 427) 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 as 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. 806.

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. 1983, Ch. 856.

Service of Accusation: What Included

11505. (a) Upon the 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. 196.

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.

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; amended by Stats. 1968, Ch. 808.

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 addresses 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, 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 than 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 11813. 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. 1965, Ch. 1388.

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**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 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 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 provisions 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 part 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, or, without substantial justification, failed to comply with any order of court made 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.

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 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.

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, may be but need not be represented by counsel, 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].

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 1955, 1955.1, and 1955.2 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. 1973, Ch. 231; by Stats. 1982, Ch. 635; 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 can not 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 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) Clarification 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. 397, amended by Stats. 1990, 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 withdraw 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 phono­
graphic 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
as 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. 1982, 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 sexual 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 hearings 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 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 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. 132B.
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 accusation, with any person who has a direct or indirect interest in 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 ex parte 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.

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 wish 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).

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 noticed 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 herein, 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.

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.
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 in 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.

(e) 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 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 the reasons therefore. 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.

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.

Effective Date of Decision

11519. (a) The decision shall become effective 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.

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. 967; amended by Stats. 1945, Ch. 491; and by Stats. 1963, Ch. 961.

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 of the decision 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 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. 967; amended by Stats. 1953, Ch. 964; and by Stats. 1985, Ch. 324.

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 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 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. 967; amended by Stats. 1947, Ch. 491; by Stats. 1953, Ch. 962; by Stats. 1955, Ch. 246; by Stats. 1955, Ch. 1495; by Stats. 1971, Ch. 984; by Stats. 1985, Ch. 324; by Stats. 1985, Ch. 973; and by Stats. 1986, Ch. 397.

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 68550 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 the 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. 967; amended by Stats. 1947, Ch. 491; by Stats. 1953, Ch. 962; by Stats. 1955, Ch. 246; by Stats. 1955, Ch. 1495; by Stats. 1971, Ch. 984; by Stats. 1985, Ch. 324; by Stats. 1985, Ch. 973; and by Stats. 1986, Ch. 397.

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 lapsed 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

*The continuance policy of the Office of Administrative Hearings follows in Appendix I.
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.

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 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. The same proceedings shall be had, the same penalties may be imposed 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.

Mail Vote

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

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.

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.

APPENDIX I

Office of Administrative Hearings Continuance Policy

We respectfully suggest . . . that "continuances be granted sparingly, with reluctance, and then only on a proper and adequate showing of good cause."


Parties to administrative hearings are entitled to full and fair proceedings after reasonable notice to them. They should be secure in the knowledge they will be able to present testimony and evidence on the dates noticed. The following was adopted to achieve that purpose with efficiency and economy.

Unreasonably late requests for continuances, or requests without merit, will not be looked upon favorably. Such requests impede the orderly resolution of disputes and timely administration of justice. Continuances will be granted for good cause as set out hereafter.

I. Who May Grant a Continuance?

A. The agency may grant a continuance prior to setting the case for hearing.

B. When a case is set for hearing by the Office of Administrative Hearings, it is “assigned” pursuant to the provisions of Government Code Section 11524 and only the Office of Administrative Hearings may grant a continuance.

C. When a case is set for hearing and prior to the time the Administrative Law Judge designated to hear the case opens the record, the Administrative Law Judge in Charge of the appropriate regional office shall have the sole power to grant a continuance. The Administrative Law Judge in Charge may designate an Administrative Law Judge to rule on continuance requests in the former’s absence.

D. The Administrative Law Judge designated to hear the case may grant a continuance during any prehearing conference or hearing. In such event, all representations made in support or opposition to continuance shall be in writing, or made part of the record, and fully reported on OAH Form 7 as required by Operations Memorandum No. 200.

II. When May a Hearing Be Continued?

A hearing may be continued at any time provided good cause exists.

III. What Is “Good Cause” to Continue a Hearing?

ONLY the following events or conditions may be good cause to continue a hearing.

A. Death of a party, representative or attorney of a party, or witness to an essential fact, or the parent, child or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

B. Order of the Superior Court staying the hearing, e.g., an order to compel discovery under Government Code Section 11507.7.
C. Incapacitating illness of a party, representative or attorney of a party, or witness to an essential fact, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

D. Lack of notice of hearing as provided in Government Code Section 11509.

E. Material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings is not good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard. The probability of resolution of other litigation which may affect the outcome or duration of the hearing or the extent of the parties' participation in the hearing may constitute a material change warranting continuance.

F. Stipulation for continuance signed by all parties or their authorized representatives, including an agency representative, which is communicated with request for continuance to the Office of Administrative Hearings no later than twenty-five (25) working days before hearing. (The duration of the hearing may make order of continuance inappropriate even with stipulation.)

G. Substitution of the representative or attorney of a party upon showing that the substitution is required.

H. Unavailability.

1. Unavailability of a party, representative, attorney or witness to an essential fact on account of conflicting and required appearance in a judicial matter if:
   a. When the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict.
   b. The conflict with request for continuance is immediately communicated to the Office of Administrative Hearings.

2. The unavailability of a party, representative or attorney, or material witness due to an unavoidable emergency.

IV. How Is Good Cause to Continue a Hearing Established?

Evidence of the event or condition which constitutes good cause to continue the hearing shall be of the sort and to the degree that responsible persons would rely thereon in the conduct of serious affairs. In the case of illness of a party, representative, attorney or witness as set forth in III.C., the petitioner for continuance may be required to provide a written statement by an attending physician which shall recite the nature and probable duration of the illness and extent of incapacitation.

Whether a criminal defendant has affirmatively demonstrated that justice requires a continuance is a question of fact in the discretion of the trial court, even when the health of the defendant is argued as the grounds for a continuance. Medical reports are not determinative but are merely another factor which the trial court must evaluate and interpret in reaching its decision. (People v Mazoros, 76 CA 3d 32)

In the case of unavailability on account of required and conflicting appearance in a judicial matter, the petitioner for continuance shall provide the office the identity of the Court, the caption of the matter, and the action or case number.
APPENDIX II

Business and Professions Code

Conviction

7.5. A conviction within the meaning of this code means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code. However, a board may not deny a license to an applicant who is otherwise qualified pursuant to subdivision (b) of Section 480.

Nothing in this section shall apply to the licensure of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3.

History—Added by Stats. 1970, Ch. 875.

Recognition of Prison Training in Considering Qualifications for License

23.9. Notwithstanding any other provision of this code, any individual who, while imprisoned in a state prison or other correctional institution, is trained, in the course of a rehabilitation program approved by the particular licensing agency concerned and provided by the prison or other correctional institution, in a particular skill, occupation, or profession for which a state license, certificate, or other evidence of proficiency is required by this code shall not, when released from the prison or institution, be denied the right to take the next regularly scheduled state examination or any examination thereafter required to obtain the license, certificate, or other evidence of proficiency and shall not be denied such license, certificate, or other evidence of proficiency, because of his imprisonment or the conviction from which the imprisonment resulted, or because he obtained his training in prison or in the correctional institution, if the licensing agency, upon recommendation of the Adult Authority or the Department of the Youth Authority, as the case may be, finds that he is a fit person to be licensed.

History—Added by Stats. 1967, Ch. 1699; renumbered and amended by Stats. 1971, Ch. 582.

Denial of License for Lack of Good Character

116. Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480, may without a hearing deny an application upon such a ground, if within one year previously, and after proceedings conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500),

of Part 1 of Division 3 of Title 2 of the Government Code, such agency has denied an application from the same applicant upon the same ground.

History—Added by Stats. 1965, Ch. 1151; amended by Stats. 1978, Ch. 1161.

Record of Conviction of Crime Involving Moral Turpitude; Effect as Evidence

117. Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

History—Added by Stats. 1961, Ch. 934; amended by Stats. 1978, Ch. 1161.

Withdrawal of Application for License; Suspension, Expiration or Forfeiture of License; Authority of Board

118. (a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.

(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(c) As used in this section, "board" includes any individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

History—Added by Stats. 1961, Ch. 1079.

Injunction; Law Governing Restitution; Reimbursement

125.5. (a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of
a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required. As used in this section, “board” includes commission, bureau, division, agency and a medical quality review committee.

(b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.

(c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section, or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.

(d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

History—Added Stats. 1972, Ch. 1238; amended by Stats. 1973, Ch. 632; and by Stats. 1975 (2nd Ex. Sess.), Ch. 1.

Application of Division to Specific Grounds

475. (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of license on the grounds of:

1. Knowingly making a false statement of fact required to be revealed in an application for license;
2. Conviction of a crime;
3. Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; and
4. Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in subdivision (a) (1) and (2) above.

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant’s character, reputation, personality, or habits.

History—Added Stats. 1972, Ch. 963; amended by Stats. 1974, Ch. 1321.

Inapplicability of Division to Attorneys and Persons Subject to Alcoholic Beverage Control Act

476. Nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

History—Added Stats. 1972, Ch. 965; amended by Stats. 1985, Ch. 721.

Board and License Defined

477. As used in this division: (a) “board” includes “bureau,” “commission,” “committee,” “department,” “division,” “examining committee,” and “agency.”

(b) “License” includes certificate, registration or other means to engage in a business or profession regulated by this code.

History—Added Stats. 1972, Ch. 965; amended by Stats. 1974, Ch. 1321; and by Stats. 1980, Ch. 85.

Grounds of Denial

480. (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

1. Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

2. Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

3. Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.
(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

History—Added by Stats. 1972, Ch. 903; repealed and added by Stats. 1974, Ch. 1321; amended by Stats. 1976, Ch. 947; and by Stats. 1979, Ch. 878.

Criteria to Determine Crime Related to Business or Profession

481. Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

History—Added by Stats. 1972, Ch. 903; repealed and added by Stats. 1974, Ch. 1321.

Criteria to Evaluate Rehabilitation

482. Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

History—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

Attestation by Other Persons to Good Moral Character

484. No person applying for licensure under this code shall be required to submit to any licensing board any attestation by other persons to his good moral character.

History—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

Procedure by Board upon Denial of Application for License

485. Upon denial of an application for a license, under this chapter the board shall:

(a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code; or, in the alternative,

(b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant’s right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with

the board in his application or otherwise. Service by mail is complete on the date of mailing.

History—Added by Stats. 1972, Ch. 903.

Reapplication; Informing Applicant of Requirements

486. Where the board has denied an application for a license under this chapter it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

(a) The earliest date on which the applicant may reapply for a license.

(b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

History—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321.

Time of Hearing

487. If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

History—Added by Stats. 1972, Ch. 903; amended by Stats. 1974, Ch. 1321; and by Stats. 1996, Ch. 220.

Conviction of a Crime

490. A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued, or the ground of knowingly making a false statement of fact required to be revealed in an application for such license. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

History—Added by Stats. 1972, Ch. 903; repealed and added by Stats. 1974, Ch. 1321; amended by Stats. 1979, Ch. 976; and by Stats. 1980, Ch. 548.

Information to ex-Licensee

491. Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:
(a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.

(b) Send a copy of the criteria relating to rehabilitation formulated under Section 492 to the ex-licensee.

History—Added by Stats. 1972, Ch. 960; amended by Stats. 1974, Ch. 1321; and by Stats. 1975, Ch. 678.

Public Reprovals

495. Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act which would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproval and suspension, or public reproval and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

History—Added by Stats. 1977, Ch. 886.

Code of Civil Procedure

Review of Administrative Orders or 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 part 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 findings, 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 proceed­
ings 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 in which proceedings under this section are insti­
tuted 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 Chiropractic 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 of the administrative
law judge in its entirety or 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. 1948, Ch. 866, amended by Stats. 1949, Ch. 358; by Stats. 1974, Ch. 218; by Stats. 1976, Ch. 1349; by Stats. 1978, Ch. 1068; by Stats. 1982, Ch. 812; and by Stats. 1985, Ch. 324.
### Education Code

**Elementary and Secondary Schools**

**Grounds for Dismissal or Suspension of Employee**

44932. (a) No permanent employee shall be dismissed except for one or more of the following causes:

1. Immoral or unprofessional conduct.
2. Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
3. Dishonesty.
4. Incompetency.
5. Evident unfitness for service.
6. Physical or mental condition unfitness him to instruct or associate with children.
7. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.
8. Conviction of a felony or of any crime involving moral turpitude.
9. Violation of Section 51530 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.
10. Violation of any provision in Sections 7001 to 7007, inclusive, of this code.
11. Knowing membership by the employee in the Communist Party.
12. Alcoholism or drug abuse which makes the employee unfit to instruct or associate with children.

(b) The governing board of a school district may suspend without pay for a specific period of time on grounds of unprofessional conduct a permanent certificated employee or, in a school district with an average daily attendance of less than 250 pupils, a probationary employee, pursuant to the procedures specified in Sections 44933, 44934, 44935, 44936, 44937, 44943, and 44944. This authorization shall not apply to any school district which has adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code. **History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1983, Ch. 498.**

**Other Grounds for Dismissal or Suspension**

44933. A permanent employee may be dismissed or suspended on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 44932, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct. This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils. **History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1983, Ch. 498.**

**Charges and Notice of Intention to Discharge or Suspend Employee**

44934. Upon the filing of written charges, duly signed and verified by the person filing them, with the governing board of the school district, or upon a written statement of charges formulated by the governing board, charging that there exists cause, as specified in Section 44932 or 44933, for the dismissal or suspension of a permanent employee of the district, the governing board may, upon majority vote, except as provided in this article if it deems the action necessary, give notice to the permanent employee of its intention to dismiss or suspend him or her at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing as provided in this article. Suspension proceedings may be initiated pursuant to this section only if the governing board has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3543.2 of the Government Code.

Any written statement of charges of unprofessional conduct or incompetency shall specify instances of behavior and the acts or omissions constituting the charge so that the teacher will be able to prepare his defense. It shall, where applicable, state the statutes and rules which the teacher is alleged to have violated, but it shall also set forth the facts relevant to each occasion of alleged unprofessional conduct or incompetency.

This section shall also apply to the suspension of probationary employees in a school district with an average daily attendance of less than 250 pupils which has not adopted a collective bargaining agreement pursuant to subdivision (b) of Section 3542.2 of the Government Code. **History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1983, Ch. 498.**

**Service of Notice and Attachments**

44936. The notice of dismissal or suspension in a proceeding initiated pursuant to Section 44934 shall not be given between May 15th and September 15th in any year. It shall be in writing and be served upon the employee personally or by United States registered mail addressed to him at his last known address. A copy of the charges filed, containing the information required by Section 11503 of the Government Code, together with a copy of the provisions of this article, shall be attached to the notice. **History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1983, Ch. 498.**

**Unprofessional Conduct or Incompetency; Notice of Charges**

44938. (a) The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with...
such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44960) of Chapter 3 of this part, if applicable to the employee.

(b) The governing board of any school district shall not act upon any charges of incompetency unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44960) of Chapter 3, if applicable to the employee.

(2) The governing board may act during the time period composed of the last one-fourth of the school days it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44960) of Chapter 3, if applicable to the employee.

c) “Incompetency” as used in this section means, and refers only to, the incompetency particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

“Unprofessional conduct” as used in this section means, and refers to, the unprofessional conduct particularly specified as a cause for dismissal or suspension in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932.

History—Added as part of reclassification by Stats. 1978, Ch. 1010; amended by Stats. 1983, Ch. 496.

Conduct of Hearing; Decision

44944. (a) In a dismissal or suspension proceeding initiated pursuant to Section 44934, if a hearing is requested by the employee, the hearing shall be commenced within 60 days from the date of the employee’s demand for a hearing. The hearing shall be initiated, conducted, and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. However, the hearing date shall be established after consultation with the employee and the governing board, or their representatives, and the Commission on Professional Competence shall have all the power granted to an agency in that chapter, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. Notwithstanding any provision to the contrary, and except for the taking of oral depositions, no discovery shall occur later than 30 calendar days after the employee is served with a copy of the accusation pursuant to Section 11505 of the Government Code. In all cases, discovery shall be completed prior to seven calendar days before the date upon which the hearing commences. If any continuance is granted pursuant to Section 11524 of the Government Code, the time limitation for commencement of the hearing as provided in this subdivision shall be extended for a period of time equal to such continuance. However, the extension shall not include that period of time attributable to an unlawful refusal by either party to allow the discovery provided for in this section.

If the right of discovery granted under the preceding paragraph is denied by either the employee or the governing board, all the remedies in Section 2034 of the Code of Civil Procedure shall be available to the party seeking discovery and the court of proper jurisdiction, to entertain his or her motion, shall be the superior court of the county in which the hearing will be held.

The time periods in this section and of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and of Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall not be applied so as to deny discovery in a hearing conducted pursuant to this section.

The superior court of the county in which the hearing will be held may, upon motion of the party seeking discovery, suspend the hearing so as to comply with the requirement of the preceding paragraph.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

(b) The hearing provided for in this section shall be conducted by a Commission on Professional Competence. One member of the commission shall be selected by the employee, one member shall be selected by the governing board, and one member shall be an administrative law judge of the Office of Administrative Hearings who shall be chairperson and a voting member of the commission and shall be responsible for assuring that the legal rights of the parties are protected at the hearing. If either the governing board or the employee for any reason fails to
select a commission member at least seven calendar days prior to the date of the hearing, the failure shall constitute a waiver of the right to selection, and the county board of education or its specific designee shall immediately make the selection. When the county board of education is also the governing board of the school district or has by statute been granted the powers of a governing board, the selection shall be made by the Superintendent of Public Instruction, who shall be reimbursed by the school district for all costs incident to the selection.

The member selected by the governing board and the member selected by the employee shall not be related to the employee and shall not be employees of the district initiating the dismissal or suspension and shall hold a currently valid credential and have at least five years' experience within the past 10 years in the discipline of the employee.

(c) The decision of the Commission on Professional Competence shall be made by a majority vote, and the commission shall prepare a written decision containing findings of fact, determinations of issues, and a disposition which shall be, solely:

(1) That the employee should be dismissed.

(2) That the employee should be suspended for a specific period of time without pay.

(3) That the employee should not be dismissed or suspended.

The decision of the Commission on Professional Competence that the employee should not be dismissed or suspended shall not be based on nonsubstantive procedural errors committed by the school district or governing board unless the errors are prejudicial errors.

The commission shall not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension pursuant to paragraph (2) shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933.

The decision of the Commission on Professional Competence shall be deemed to be the final decision of the governing board.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

The governing board and the employee shall have the right to be represented by counsel.

(d) (1) If the member selected by the governing board or the member selected by the employee is employed by any school district in this state the member shall, during any service on a Commission on Professional Competence, continue to receive salary, fringe benefits, accumulated sick leave, and other leaves and benefits from the district in which the member is employed, but shall receive no additional compensation or honorariums for service on the commission.

(2) If service on a Commission on Professional Competence occurs during summer recess or vacation periods, the member shall receive compensation proportionate to that received during the current or immediately preceding contract period from the member’s employing district, whichever amount is greater.

(e) If the Commission on Professional Competence determines that the employee should be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge. The state shall pay any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, and the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee. The Controller shall pay all claims submitted pursuant to this paragraph from the General Fund, and may prescribe reasonable rules, regulations, and forms for the submission of the claims.

The employee and the governing board shall pay their own attorney fees.

If the Commission on Professional Competence determines that the employee should not be dismissed or suspended, the governing board shall pay the expenses of the hearing, including the cost of the administrative law judge, any costs incurred under paragraph (2) of subdivision (d), the reasonable expenses, as determined by the administrative law judge, of the member selected by the governing board and the member selected by the employee, including, but not limited to payments or obligations incurred for travel, meals, and lodging, the cost of the substitute or substitutes, if any, for the member selected by the governing board and the member selected by the employee, and reasonable attorney fees incurred by the employee.

As used in this section, “reasonable expenses” shall not be deemed “compensation” within the meaning of subdivision (d).

If either the governing board or the employee petitions a court of competent jurisdiction for review of the decision of the commission, the payment of expenses to members of the commission required by this subdivision shall not be stayed.

In the event that the decision of the commission is finally reversed or vacated by a court of competent jurisdiction, then either the state, having paid the commission members' expenses, shall be entitled to reimbursement from the governing board for those expenses, or the governing board, having paid the expenses, shall be entitled to reimbursement from the state.

Additionally, either the employee, having paid a portion of the expenses of the hearing, including the cost of the administrative law judge, shall be entitled to reimbursement from the governing board for the expenses, or the governing board, having paid its portion and the employee’s portion of the expenses of the hearing, including the cost of
the administrative law judge, shall be entitled to reimbursement from the employee for that portion of the expenses.

(f) The hearing provided for in this section shall be conducted in a place selected by agreement among the members of the commission. In the absence of agreement, the place shall be selected by the administrative law judge.

History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1978, Ch. 1172; by Stats. 1979, Ch. 666; by Stats. 1990, Ch. 956; by Stats. 1991, Ch. 498; and by Stats. 1985, Ch. 324.

Pupil Records—Privacy

44944.1. At a hearing conducted pursuant to Section 44944, the administrative law judge, before admitting any testimony or evidence concerning an individual pupil, shall determine whether the introduction of the testimony or evidence at an open hearing would violate any provision of Article 5 (commencing with Section 49073) of Chapter 6.5 of Part 27 of Division 4, relating to privacy of pupil records. If the administrative law judge, in his or her discretion, determines that any of such provisions would be violated, he or she shall order that the or any portion thereof at which the testimony or evidence would be produced, be conducted in executive session.

History—Added by Stats. 1977, Ch. 749; amended by Stats. 1985, Ch. 324.

Dismissal or Suspension of Probationary Employee Whose Probation Began Prior to 1983–84 Fiscal Year

44948. (a) Governing boards of school districts shall dismiss probationary employees during the school year for cause only, as in the case of permanent employees.

This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year or who are employed in a school district having an average daily attendance of less than 250 pupils.

(b) The governing board may suspend a probationary employee for a specified period of time without pay as an alternative to dismissal pursuant to this section. This subdivision shall apply only to probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.

History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1983, Ch. 498.

Dismissal or Suspension of Probationary Employee Whose Probation Began with 1983–84 Fiscal Year or Thereafter

44948.3. (a) First and second year probationary employees may be dismissed during the school year for unsatisfactory performance determined pursuant to Article 11 (commencing with Section 44660) of Chapter 3, or for cause pursuant to Section 44932. Any dismissal pursuant to this section shall be in accordance with all of the following procedures:

(1) The superintendent of the school district or the superintendent’s designee shall give 30 days’ prior written notice of dismissal, not later than March 15 in the case of second year probationary employees. The notice shall include a statement of the reasons for the dismissal and notice of the opportunity to appeal. In the event of a dismissal for unsatisfactory performance, a copy of the evaluation conducted pursuant to Section 44664 shall accompany the written notice.

(2) The employee shall have 15 days from receipt of the notice of dismissal to submit to the governing board a written request for a hearing. The governing board may establish procedures for the appointment of an administrative law judge to conduct the hearing and submit a recommended decision to the board. The failure of an employee to request a hearing within 15 days from receipt of a dismissal notice shall constitute a waiver of the right to a hearing.

(b) The governing board, pursuant to this section, may suspend a probationary employee for a specified period of time without pay as an alternative to dismissal.

(c) This section applies only to probationary employees whose probationary period commenced during the 1983–84 fiscal year or any fiscal year thereafter, and does not apply to probationary employees in a school district having an average daily attendance of less than 250 pupils.

History—Added by Stats. 1985, Ch. 498; by Stats. 1985, Ch. 1302; and by Stats. 1985, Ch. 324.

Dismissal of Certain Probationary Employees for Cause; Notice and Right to Hearing

44948.5. (a) This section applies to (1) probationary employees of a school district with an average daily attendance of less than 250 pupils, or (2) those persons currently employed as probationary employees whose probationary period commenced prior to the 1983–84 fiscal year.

(b) No later than March 15 and before a probationary employee is given notice by the governing board that his or her services will not be required for the ensuing year for reasons other than those specified in Section 44945, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or, in the case of a district which has no superintendent, by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

If the probationary employee has been in the employ of the district for less than 45 days on March 15, the giving of the notice may be deferred until the 45th day of employment and all time period and deadline dates prescribed by this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (c) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.
The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (b), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute a waiver of his or her right to a hearing. The notice provided for in subdivision (b) shall advise the employee of the provisions of this subdivision.

(d) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(e) The governing board’s determination not to reemploy a probationary employee for the ensuing school year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the schools and the pupils thereof. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(f) Notice to the probationary employee by the governing board that his or her service will not be required for the ensuing year, shall be given no later than May 15.

(g) If a governing board notifies a probationary employee that his or her services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee’s written request, provide the employee with a statement of its reasons for not reemploying him or her for the ensuing school year.

(h) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(i) In the event that the governing board does not give notice provided for in subdivision (e) on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(j) If after request for hearing pursuant to subdivision (c) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (d), (e), (f), and (i) which occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.

History—Added by Stats. 1983, Ch. 498, amended by Stats. 1985, Ch. 324.

**Notice and Right to Hearing Required for Dismissal of Permanent or Probationary Employee for Reasons Specified in Section 44955**

44949. (a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a
hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

1. The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

2. The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

3. The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.

The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

Reduction in Number of Permanent and Probationary Employees

44955. (a) No permanent employee shall be deprived of his or her position for causes other than those specified in Sections 44907 and 44923, and Sections 44932 to 44947, inclusive, and no probationary employee shall be deprived of his or her position for cause other than as specified in Sections 44948 to 44949, inclusive.

(b) Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, whenever the governing board determines that attendance in a district will decline in the following year as a result of the termination of an interdistrict tuition agreement as defined in Section 46304, whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, or whenever the amendment of state law requires the modification of curriculum, and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

In computing a decline in average daily attendance for purposes of this section for a newly formed or reorganized school district, each school of the district shall be deemed to have been a school of the newly formed or reorganized district for both of the two previous school years.

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determin-
ing the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

1. The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

2. For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

\section*{Community Colleges}

\subsection*{Arbitration Proceedings; Discovery, Evidence, and Decision}

78675. The arbitrator shall conduct proceedings in accordance with the provision of Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of the Government Code except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. He shall determine whether there is cause to dismiss or penalize the employee. If he finds cause, he shall determine whether the employee shall be dismissed and determine the precise penalty to be imposed, and he shall determine whether his decision should be imposed immediately or postponed pursuant to Section 87672.

No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters which occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

\subsection*{Conduct of Proceedings; Accusation; Notice of Defense}

78679. The administrative law judge shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 Division 3 Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court. In all cases, discovery shall be completed prior to one week before the date set for hearing. The written notice delivered to the employee pursuant to Section 87672 shall be deemed an accusation. The written objection of the employee delivered pursuant to Section 87673 shall be deemed the notice of defense.

\subsection*{Grounds for Dismissal of Permanent Employee}

78732. No regular employee shall be dismissed except for one or more of the following causes:

\begin{itemize}
\item [(a)] Immoral or unprofessional conduct.
\item [(b)] Any violation of Article 4 (commencing with Section 11400) of Chapter 3 of Title 1 of Part 4 of the Penal Code.
\item [(c)] Dishonesty.
\item [(d)] Incompetency.
\end{itemize}
(e) Evident unfitness for service.
(f) Physical or mental condition which makes him or her unfit to instruct or associate with students.
(g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the community colleges by the board of governors or by the governing board of the community college district employing him or her.
(h) Conviction of a felony or of any crime involving moral turpitude.
(j) Knowing membership by the employee in the Communist Party.

History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1978, Ch. 969; by Stats. 1981, Ch. 476; and by Stats. 1982, Ch. 251.

Unprofessional Conduct or Incompetency; Notice of Charges

87734. The governing board of any community college district shall not act upon any charges of unprofessional conduct or incompetency unless during the preceding term or half school year prior to the date of the filing of the charge, or at least 90 days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct or incompetency, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his faults and overcome the grounds for such charge. The written notice shall include the evaluation made pursuant to Article 4 (commencing with Section 87660) of this chapter, if applicable to the employee. “Unprofessional conduct” and ”incompetency” as used in this section means, and refers only to, the unprofessional conduct and incompetency particularly specified as a cause for dismissal in Section 87732 and does not include any other cause for dismissal specified in Section 87732.

History—Added as part of recodification by Stats. 1976, Ch. 1010.

Cause, Notice and Right to Hearing Required for Dismissal of Probationary Employee

87740. (a) No later than March 15 and before an employee is given notice by the governing board that his services will not be required for the ensuing year, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee, or in the case of a district which has no superintendent by the clerk or secretary of the governing board, that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

If a contract employee has been in the employ of the district for less than 45 days on March 15, the giving of the notice may be deferred until the 45th day of employment and all time periods and deadline dates prescribed in this subdivision shall be coextensively extended.

Until the employee has requested a hearing as provided in subdivision (b) or has waived his or her right to a hearing, the notice and the reasons therefor shall be confidential and shall not be divulged by any person, except as may be necessary in the performance of duties. However, the violation of this requirement of confidentiality, in and of itself, shall not in any manner be construed as affecting the validity of any hearing conducted pursuant to this section.

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing must be in writing and must be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, this failure to do so shall constitute waiver of his or her right to a hearing. The notice provided for in subdivision (a) shall advise the employee of the provisions of this subdivision.

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency in that chapter, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the students thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board or on any court in future litigation. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds.
The board may adopt from time to time such rules and procedures not inconsistent with provisions of this section as may be necessary to effectuate this section.

(d) The governing board’s determination not to reemploy a contract employee for the ensuing school year shall be for cause only. The determination of the governing board as to the sufficiency of the cause pursuant to this section shall be conclusive, but the cause shall relate solely to the welfare of the schools and the students thereof and provided that cause shall include termination of services for the reasons specified in Section 87743. The decision made after the hearing shall be effective on May 15 of the year the proceeding is commenced.

(e) Notice to the contract employee by the governing board that the employee’s service will not be required for the ensuing year shall be given no later than May 15.

(f) If a governing board notifies a contract employee that his or her services will not be required for the ensuing year, the board shall, within 10 days after delivery to it of the employee’s written request, provide him or her with a statement of its reasons for not reemploying him or her for the ensuing school year.

(g) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee.

(h) In the event that the governing board does not give notice provided for in subdivision (e) on or before May 15, the employee shall be deemed reemployed for the ensuing school year.

(i) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivisions (c), (d), (e) and (h) which occur on or after the date of granting the continuance shall be extended for a period of time equal to the continuance.

Reduction in Number of Permanent Employees

87743. No regular employee shall be deprived of his position for causes other than those specified in Sections 87453, 87467 and 87484, and Sections 87732 to 87739, inclusive, and no contract employee shall be deprived of his position for cause other than as specified in Section 87740 except in accordance with the provisions of Section 87463 and Sections 87743 to 87762, inclusive.

Whenever in any school year the average daily attendance in all of the schools of a district for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years, or whenever a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year, and when in the opinion of the governing board of said district it shall have become necessary by reason of either of such conditions to decrease the number of regular employees in said district, the said governing board may terminate the services of not more than a corresponding percentage of the certificated employees of said district, regular as well as contract, at the close of the school year; provided, that the services of no regular employee may be terminated under the provisions of this section while any contract employee, or any other employee with less seniority, is retained to render a service which said regular employee is certificated and competent to render.

Notice of such termination of services either for a reduction in attendance or reduction or discontinuance of a particular kind of service to take effect not later than the beginning of the following school year, shall be given before the 15th of May in the manner prescribed in Section 87740 and services of such employees shall be terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 87413 and 87414. In the event that a regular or contract employee is not given the notices and a right to a hearing as provided for in Section 87740, he shall be deemed reemployed for the ensuing school year.

The board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render.

History—Added as part of recodification by Stats. 1976, Ch. 1010; amended by Stats. 1985, Ch. 324.
Government Code

Claims for Money or Damages Against State; Law Governing Presentation in Certain Cases

905.2. There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the state:
(a) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.
(b) For which the appropriation made or fund designated is exhausted.
(c) For money or damages (1) on express contract, or (2) for an injury for which the state is liable.
(d) For which settlement is not otherwise provided for by statute or constitutional provision.

Exception

905.3. Notwithstanding any other provision of law to the contrary, no claim shall be submitted by a local agency or school district, nor shall a claim be considered by the Board of Control pursuant to Section 905.2, if such claim is eligible for consideration by the Board of Control pursuant to Article 3.5 (commencing with Section 2250) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code.

Permission for Radio and Television Stations to Broadcast and Telecast Administrative Proceedings

6091. Radio and television stations shall be permitted to broadcast and telecast, either directly or by means of transcriptions and film, the proceedings of all meetings and hearings, other than adjudicative proceedings conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, of all state, county, and municipal administrative agencies that are required by law to be open to the public, provided that cameras and other equipment used at the meeting or hearing must operate silently and not require auxiliary lighting.

Any such agency may waive the provisions requiring silent operation of the cameras and other equipment or excluding auxiliary lighting for such cameras and other equipment.

The chairman or presiding officer of the agency may require pooling of equipment when he deems it necessary to limit the number of pieces of equipment for the orderly conduct of the meeting.

Meetings of, or hearings by, administrative agencies to consider the appointment, employment or dismissal of a public officer or employee or to hear appeals by or complaints or charges brought against such officer or employee shall not be subject to the provisions of this chapter.

Code of Ethics

8920. (a) No Member of the Legislature, state elective or appointive officer, or judge or justice shall, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed in the laws of this state.

(B) No Member of the Legislature shall do any of the following:

(1) Accept other employment which he has reason to believe will either impair his independence of judgment as to his official duties or require him, or induce him, to disclose confidential information acquired by him in the course of and by reason of his official duties.

(2) Willfully and knowingly disclose, for pecuniary gain, to any other person, confidential information acquired by him in the course of and by reason of his official duties or use any such information for the purpose of pecuniary gain.

(3) Accept or agree to accept, or be in partnership with any person who accepts or agrees to accept, any employment, fee, or other thing of monetary value, or portion thereof, in consideration of his appearing, agreeing to appear, or taking any other action on behalf of another person before any state board or agency. This subdivision shall not be construed to prohibit a member who is an attorney at law from practicing in that capacity before any court or before the Workers' Compensation Appeals Board and receiving compensation therefor. This subdivision shall not act to prohibit a member from acting as an advocate without compensation or making inquiry for information on behalf of a constituent before a state board or agency, or from engaging in activities on behalf of another which require purely ministerial acts by the board or agency and which in no way require the board or agency to exercise any discretion, or from engaging in activities involving a board or agency which are strictly on his or her own behalf. The prohibition contained in this subdivision shall not apply to a partnership of which the Member of the Legislature is a member if the Member of the Legislature does not share directly or indirectly in the fee, less any expenses attributable to that fee, resulting from the transaction. The prohibition contained in this subdivision as it read immediately prior to January 1, 1983 shall not apply in connection with any matter pending before any state board or agency on or before January 2, 1967, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 2, 1967. The prohibition contained in this subdivision, as amended and operative on January 1, 1983, shall not apply to any activity of any
Member in connection with a matter pending before any state board or agency on January 1, 1983, which was not prohibited by this section prior to that date, if the affected Member of the Legislature was an attorney of record or representative in the matter prior to January 1, 1983.

(4) Receive or agree to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which no payment or reimbursement is made by the State of California.

(5) Participate, by voting or any other action, on the floor of either house, in committee, or elsewhere, in the passage or defeat of legislation in which he has a personal interest, except as follows:

(i) If, on the vote for final passage by the house of which he is a member, of the legislation in which he has a personal interest, he first files a statement (which shall be entered verbatim on the journal) stating in substance that he has a personal interest in the legislation to be voted on and, notwithstanding that interest, he is able to cast a fair and objective vote on that legislation, he may cast his vote without violating any provision of this article.

(ii) If the member believes that, because of his personal interest, he should abstain from participating in the vote on the legislation, he shall so advise the presiding officer prior to the commencement of the vote and shall be excused from voting on the legislation without any entry on the journal of the fact of his personal interest. In the event a rule of the house, requiring that each member who is present vote aye or nay is invoked, the presiding officer shall order the member excused from compliance and shall order entered on the journal a simple statement that the member was excused from voting on the legislation pursuant to law.

The provisions of this section do not apply to persons who are members of the state civil service as defined in Article VII of the California Constitution.

History—Added by Stats. 1966 (1st Ex. Sess.), Ch. 163, ratified at General Election November 8, 1966; amended by Stats. 1967, Ch. 814; and by Stats. 1982, Ch. 740.

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. 1305; and by Stats. 1985, Ch. 324.

Meetings to Be Open and Public; Attendance

54953. All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

History—Added by Stats. 1983, Ch. 1588.

Emergency Situation

54956.5. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

For purposes of this section, "emergency situation" means any of the following:

(a) Work stoppage or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) Crippling disaster which severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting by telephone and all telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

Notwithstanding Section 54957, the legislative body shall not meet in closed session during a meeting called pursuant to this section.

All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this section, with the exception of the 24-hour notice requirement.

The minutes of a meeting called pursuant to this section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

History—Added by Stats. 1979, Ch. 223; amended by Stats. 1981, Ch. 906; and by Stats. 1986, Ch. 641.

Executive Sessions; Exclusion of Witnesses; Employee

54957. Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of
public buildings or a threat to the public's right of access to public services or public facilities, or from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. The legislative body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

For the purposes of this section, the term "employee" shall not include any person elected to office, or appointed to an office by the legislative body of a local agency; provided, however, that nonelective positions of city manager, county administrator, city attorney, county counsel, or a department head or other similar administrative officer of a local agency shall be considered employee positions; and provided further that nonelective positions of general manager, chief engineer, legal counsel, district secretary, auditor, assessor, treasurer, or tax collector of any governmental district supplying services within limited boundaries shall be deemed employee positions.

Nothing in this chapter shall be construed to prevent any board, commission, committee, or other body organized and operated by any private organizations as defined in Section 54952 from holding closed sessions to consider (a) matters affecting the national security, or (b) the appointment, employment, evaluation of performance, or dismissal of an employee or to hear complaints or charges brought against such employee by another person or employee unless such employee requests a public hearing. Such body also may exclude from any such public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

History—Added by Stats. 1953, Ch. 1568; amended by Stats. 1957, Ch. 1314; by Stats. 1958, Ch. 647; by Stats. 1961, Ch. 1671; by Stats. 1971, Ch. 987; by Stats. 1973, Ch. 987; by Stats. 1986, Ch. 1284; and by Stats. 1982, Ch. 388.

Penal Code

Discharged Probationer; Pleading Prior Conviction

12034. (a) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereafter dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13355 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing; however, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency.

Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction under Section 12021.

This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor which is within the provisions of subdivision (b) of Section 42001 of the Vehicle Code, or to any infraction.

(c) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the county for the cost of services rendered at a rate to be determined by the county board of supervisors not to exceed sixty dollars ($60), and to reimburse any city for the cost of services rendered at a rate to be determined by the city council not to exceed sixty dollars ($60). Ability to make this
reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (f) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the cost for services established pursuant to this subdivision.

(d) No relief shall be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(e) If, after receiving notice pursuant to subdivision (d), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

History—Added by Stats. 1935, Ch. 604; amended by Stats. 1941, Ch. 1112; by Stats. 1951, Ch. 183; by Stats. 1961, Ch. 1735; by Stats. 1967, Ch. 1271; by Stats. 1970, Ch. 333; by Stats. 1971, Ch. 434; by Stats. 1976, Ch. 911; by Stats. 1979, Ch. 199; by Stats. 1983, Ch. 1118; and by Stats. 1985, Ch. 1472.