Administrative Law

Administrative Law; administrative hearings—procedure

Government Code §§ 11511.5, 11513.5 (new); §§ 11510, 11523 (amended).
AB 2769 (Sher); 1986 STAT. Ch. 597
Sponsor: Department of General Services
AB 3482 (Harris); 1986 STAT. Ch. 899
Sponsor: Author

Existing law, the Administrative Procedure Act, specifies the procedures used to conduct administrative adjudicatory hearings to determine various matters, including the determination of certain personal and property rights, and the granting or revocation of an authority, license, or privilege. With the enactment of Chapter 597, administrative law judges are permitted to conduct prehearing conferences for the following purposes: (1) exploring settlement possibilities; (2) preparing stipulations; (3) clarifying issues; (4) identifying and limiting the number of witnesses; (5) considering objections to offers of evidence; (6) determining the order of presentation of evidence and cross-examination; (7) ruling on the issuance of subpoenas and protective orders; (8) scheduling the submission of written briefs, commencement of the hearing, and conduct of the hearing; and (9) dealing with any other matters promoting the orderly and prompt conduct of the hearing. In addition, Chapter 597 requires the administrative law judge to issue a prehearing order incorporating the matters determined at the prehearing conference. Finally, Chapter

1. CAL. GOV'T CODE § 11500(f) (definition of administrative adjudicatory hearing).
2. Id. §§ 11370-11528.
3. Id. § 11500(d) (definition of administrative law judge).
4. An administrative law judge may conduct a prehearing conference on motion of a party or by the judge's order. Id. § 11511.5(a). The judge must set the time and place for the prehearing conference, and the agency must give reasonable written notice to all parties. Id.
5. Id. § 11511.5(b)(1)-(9).
6. Id. § 11511(c). The judge may direct one or more of the parties to prepare the prehearing order. Id.
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899 prohibits, while an administrative adjudicatory proceeding is pending, any *ex parte* communication between the administrative law judge and any party, any person interested in the outcome, or any judge who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.7

Under existing law, an administrative law judge or a state agency8 involved in the administrative hearing, may issue subpoenas9 and subpoenas duces tecum.10 In addition, existing law permits attorneys in judicial proceedings to issue subpoenas and subpoenas duces tecum.11 Chapter 597 expands existing law by authorizing attorneys in administrative hearings to issue subpoenas and subpoenas duces tecum.12

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7. Id. § 11513(a).
8. Id. § 11500(a) (definition of agency). "Agency" includes the state boards, commissions, and officers enumerated in Government Code § 11501. Id. See id. § 11501.
9. CAL. CIV. PROC. CODE § 1985 (definition of and procedure for issuing a subpoena).
10. CAL. GOV'T CODE § 11510(a). See also CAL. CIV. PROC. CODE §§ 1985 (definition of subpoena duces tecum); 1985.3 (procedure for issuing subpoena duces tecum).
11. CAL. CIV. PROC. CODE § 1985. Existing law provides that in judicial proceedings, a subpoenaed person who cannot appear at the time specified in the subpoena may agree to an alternative time of appearance with the party who issued the subpoena. Id. § 1985.1. Chapter 597 extends this opportunity to arrange an alternative time of appearance to a subpoenaed person in an administrative hearing. CAL. GOV'T CODE § 11510.