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Administrative Law

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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 hearings¹ to determine various matters, including the determination of certain personal and property rights, and the granting or revocation of an authority, license, or privilege.² With the enactment of Chapter 597, administrative law judges³ are permitted to conduct prehearing conferences⁴ 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.⁵ In addition, Chapter 597 requires the administrative law judge to issue a prehearing order incorporating the matters determined at the prehearing conference.⁶ 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.*

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.

12. CAL. GOV'T CODE § 11510; see CAL. CIV. PROC. CODE § 1985.