

# Representing Yourself in a APA Hearing

So...

You're thinking about representing yourself...

## What is the Office of Administrative Hearings (OAH)?

The Office of Administrative Hearings is an independent hearing tribunal established by the Legislature to implement the Administrative Procedure Act (APA), found in California Government Code section 11500 and following. These laws, and OAH Regulations (Title 1 of the California Code of Regulations, section 1000 and following) set forth the procedures for most OAH hearings. The California Code of Regulations, the Government Code and most statutes can be found in public libraries or on the internet (<http://ccr.oal.ca.gov/> and <http://www.leginfo.ca.gov/>, respectively). Copies of the APA and subpoenas, including large print subpoenas, are available from OAH.

The Office of Administrative Hearings (OAH) is providing this page to help you prepare for your administrative hearing. This page is not a substitute for having an attorney. It is a guide for you. The information refers to the most common kinds of cases that come before OAH. However, not all cases are the same, and yours may be different. We cannot tell you about all possible situations that might arise. But we hope this page will help you better understand the process and prepare.

## What Will My Hearing Be Like?

Your hearing will be very similar to a trial in court, with witnesses, exhibits and rules of evidence. An Administrative Law Judge will preside. The judge is not employed by the agency bringing this action, but by OAH. Normally an attorney represents the agency bringing the action. You may be represented by an attorney, but if you are, you must pay for your own attorney. You may choose to represent yourself. However, an attorney may be better able to present your side.

When the hearing begins, each side may present an opening statement. This tells the judge what that side intends to prove. Each side can then offer relevant evidence to prove its case.

Evidence can be testimony taken under oath at the hearing or it can be certain kinds of documents, such as business records. You must prove that the documents you submit are authentic.

The agency usually presents its evidence first. The agency attorney will ask its witness questions (direct examination). When the attorney is finished, it will be your turn to ask questions of that witness (cross-examination). The agency attorney will have a second chance to ask questions (redirect) and then you will have a second chance (recross).

After the agency has presented its witnesses, it will be your turn. You may make a statement yourself and call your

witnesses. As you finish with each of your witnesses (and your testimony), the agency attorney will cross-examine. As stated before, you will have a second chance to ask questions of each witness. Even if you choose not to testify, the agency attorney may cross-examine you.

After you have presented your case, the agency may call rebuttal witnesses. Rebuttal witnesses may only testify to issues you brought up in your case. If the agency calls rebuttal witnesses, you may be allowed to call additional witnesses to address the issues discussed by rebuttal witnesses. Few hearings involve rebuttal witnesses.

Remember: Before the hearing closes, you must submit all the evidence you want the judge to consider.

After all testimony has been heard, each side can make a closing argument. Usually the agency goes first; you go next. The party that goes first has the opportunity to make the last comments.

Closing argument is your chance to sum up the evidence and tell the judge why you should prevail in your case. It can address only those facts brought out in testimony of witnesses or in documents received into evidence. In some cases, the judge may want the parties to submit written, instead of oral, argument. If so, a schedule will be set up to mail the written arguments.

## **What Do I Need To Prove?**

In a Statement of Issues, the burden is on you to prove your side. If you are applying for a license, you must prove you meet the qualifications for that license.

If you already have a license and the agency wants to take disciplinary action against you, generally the agency has the burden of proof. This means that the agency must establish that you violated the laws or regulations charged in an Accusation.

Even when the agency has the burden of proof, you should prepare to offer evidence of your good character and conduct, mitigation, rehabilitation and evidence refuting the charges, as appropriate.

## **May I See The Agency's Evidence Against Me?**

When you receive the Accusation, Statement of Issues or other document setting forth the issues, you will normally find a paper entitled "Request for Discovery" or something similar. That request is from the agency, and it requires you to provide the listed information to the agency attorney. You have the same right to get information from the agency. Simply send the same type of request to the agency attorney. You may also write the agency attorney and ask to see and/or copy the investigative file and any other documents or relevant evidence the agency has regarding your case. You may have to pay for copies. You also have a right to receive a witness list.

Generally, you must request "discovery" within 30 days of receiving the initial Accusation or Statement of Issues, or within 15 days of any supplemental Accusations or Statements of Issues. In some cases, these times may be shorter. Be sure to read the documents you receive to verify the time you have to request discovery.

## What Kind of Evidence Will I Need For the Hearing?

Depending on your case, you may want to bring witnesses who know about the issues involved with the charges against you. If there are documents, such as contracts, business records or checks that help prove your side, try to bring the original and two copies. You may bring photographs or other items that are relevant to your defense. Items you want to be considered must be left with the judge. Generally, you may substitute copies of those items in place of the originals.

## How Do I Get Records From a Business?

If you are a party to a hearing, you have the right to subpoena from individuals, businesses and government agencies relevant records or other things to be produced at the hearing. Contact OAH well ahead of the hearing for subpoena duces tecum forms. You must arrange to pay required fees and have someone else serve the subpoenas. See also California Code of Civil Procedure, sections 1985-1985.4 for other important information.

## How Do I Get a Witness to Come to the Hearing?

A witness can come voluntarily to the hearing. However, a subpoena protects your right to have that person present. Contact OAH well ahead of the hearing for subpoena forms to compel the attendance of persons whose testimony is relevant to your case. You must arrange to pay required fees and have someone else serve the subpoenas.

## Is It OK to Bring Letters Instead of Witnesses?

Some letters and other documents may be admitted in evidence for limited purposes, but generally it is better to bring witnesses who can help present your side of the case and answer any questions raised. The judge will not speak with witnesses, except at the hearing itself. If you do choose to offer letters, declarations or other documents, make sure you check the Administrative Procedure Act first to understand what you must do to get them admitted in evidence.

*Remember: This hearing is your chance to tell the judge your side. It is important to have your witnesses present at the hearing to testify.*

## If I Forget Something, Can I Send It Later to the Judge?

Your chance to present evidence is at the hearing. Only in rare cases will the judge allow you to send evidence later.

## Is There a Way To Settle This Without a Hearing?

### Informal Hearing / Mediation / Settlement Conferences

Cases often settle without going to hearing. Contact the agency attorney to see if you can work something out. You may also contact OAH for possible assistance, including requesting mediation. In lengthy and complex cases, OAH requires a settlement conference. You will receive a notice to attend a settlement conference, if required in your case.

## **What If I Can't Be There On The Day Set?**

You must show good cause to change a hearing date. If you cannot attend on the date and at the time shown, you must contact OAH as soon as you know of the problem. To request a change of date, you must file a written statement, with a copy to the agency attorney, explaining the reasons for the change. The sooner you make your request, the more likely it will be granted.

*Remember: You must file a timely Notice of Defense in order to have a hearing.*

## **What If I Don't Attend?**

If you request a hearing and do not attend the hearing, the agency can still proceed with the case against you. (If you do not request a hearing, the agency most likely will proceed against you in your absence.)

## **What If I Need An Interpreter?**

If you or a witness need a sign or language interpreter, immediately contact the agency attorney or OAH so that a certified interpreter can be provided. Normally, it is not sufficient to bring a friend or relative to interpret for you.

## **Will The Hearing Location Be Accessible To People With Disabilities?**

Hearing locations are to be accessible to persons with disabilities. However, check in advance with OAH to assure accessibility. In addition, if you know persons who plan to attend have special needs that require reasonable accommodation, please contact OAH as soon as possible, so arrangements can be made.

*The Office of Administrative Hearings complies with the Americans with Disabilities Act. Alternative formats for this pamphlet will be made available to those requesting it.*