

# **Office of Administrative Hearings**



## **General APA Hearing Procedures**

**Effective January 1, 2006**

# CALIFORNIA CODE OF REGULATIONS

## TITLE 1. GENERAL PROVISIONS

### DIVISION 2. OFFICE OF ADMINISTRATIVE HEARINGS

#### CHAPTER 1. GENERAL APA HEARING PROCEDURES

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These regulations were amended December 1, 2004.  
Additionally, Regulation 1038 was amended effective January 1, 2006.

## **§ 1000. Purpose**

These regulations specify the procedures for the conduct of matters before the Office of Administrative Hearings. Parties should also refer to the Administrative Procedure Act (Government Code sections 11370 through 11529) and/or other laws which apply to their Case. When a statute is in conflict or inconsistent with these regulations, the statute shall take precedence.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11370-11529, Government Code.

## **§ 1002. Definitions**

(a) As used in these regulations, the following definitions apply:

- (1) "ALJ" means an administrative law judge of the Office of Administrative Hearings.
- (2) "Case" means the administrative action referred by an agency to OAH.
- (3) "Day" means a calendar day, unless otherwise specified.
- (4) "Declaration" means a statement under penalty of perjury that complies with Code of Civil Procedure section 2015.5.
- (5) "Hearing" means the adjudicative hearing on the merits of the Case.
- (6) "Motions" shall include all motions or applications for orders.
- (7) "OAH" means the Office of Administrative Hearings. Unless otherwise specified, "OAH" means the appropriate regional office to which the Case is assigned.
- (8) "Presiding Judge" means the Presiding Judge of the regional office of the Office of Administrative Hearings or his or her designee.
- (9) "Serve" or "Service" of papers means delivery of the document by the means specified in Regulation 1008 and as required by law.

(b) These definitions are supplementary to those found in Government Code section 11500 and other applicable laws and regulations.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 11500, Government Code; and Section 2015.5, Code of Civil Procedure.

## **§ 1004. Construction of Regulations**

(a) As used in these regulations, words in the singular shall include the plural and words in the plural shall include the singular, unless the context otherwise requires.

(b) Statutory references are to the Government Code unless otherwise specified.

(c) In these regulations, whenever a time is stated within which an act is to be done, the time is computed by excluding the first Day and including the last Day. If the last Day is any day OAH is closed for business, that Day is also excluded.

(d) Time limits set forth in these regulations are not jurisdictional.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 11370.5(b), Government Code.

## **§ 1006. Format and Filing of Papers**

- (a) After a Case has been assigned to a regional office of OAH for Hearing, all papers filed pursuant to any provision of law, regulation, or ALJ order shall be filed at that regional office within applicable time limits.
- (b) The first page of each paper filed should include the following:
  - (1) The name, address, and telephone number of the person filing the paper, including the State Bar number if the person filing the paper is an attorney;
  - (2) A caption setting forth the title of the Case, including the names of the agency and the respondent;
  - (3) The agency case number;
  - (4) The OAH Case number, if assigned;
  - (5) A brief title describing the paper filed;
  - (6) The dates of the Hearing and any future prehearing or settlement conferences, if known.
- (c) Papers should be filed on 8 ½” x 11” stock paper of customary weight and quality, with two normal-sized holes punched at the top (centered 2 1/2 inches apart, and 5/8 inch from the top of the paper).
- (d) Papers should be typed or computer-printed. Type should be at least pica (10 characters per inch) or 12 point print. The color of the type should be blue-black or black.
- (e) In addition to a paper copy, the ALJ may direct a party to submit pleadings or other papers on computer compatible diskette or by other electronic means if the party is able to do so.
- (f) A party may obtain proof of the filing of a paper by submitting either an extra copy of the paper or the first page only, with a self-addressed, return envelope, postage prepaid. The clerk will return the copy marked with the date of filing.
- (g) Papers may be filed with OAH by facsimile transmission. Unless required by the ALJ, the original paper need not be filed with OAH if the party obtains telephonic or other confirmation from OAH that a complete and legible copy of the papers was received.
- (h) Papers delivered by the U.S. Postal Service are filed on the date received by OAH. Papers hand delivered to OAH and complete papers received by OAH by facsimile transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the date received. Papers received after regular business hours are deemed filed on the next regular business day.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11507.3, 11507.7, 11508(c), 11511, 11511.5, 11512(c) and 11524, Government Code.

## § 1008. Service; Proof of Service

- (a) Proof of Service of papers shall be a Declaration stating the title of the paper Served or filed, the name and address of the person making the Service, and that he or she is over the age of 18 years and not a party to the matter.
- (b) Service may be made by leaving the paper at the residence or business of the person named to be Served, with a person not less than 18 years of age. Where Service is made in this manner, the proof of Service shall also state the date and place of delivery and the name of the person to whom the papers were handed. Where the person making the Service is unable to obtain the name of the person to whom the papers were handed, the person making the Service may substitute a physical description for the name.
- (c) Where Service is made by mail, the proof of Service shall show the date and place of deposit in the mail, the name and address of the person Served as shown on the mailing envelope and that the envelope was sealed and deposited in the mail with the postage fully prepaid.
- (d) Where Service is by facsimile the proof of Service shall state the method of Service upon each party, the date and time sent and the facsimile number to which the document was sent.
- (e) The proof of Service shall be signed by the person making it and contain the following statement above the signature:

"I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and this Declaration was executed at (city, state) on (date)."

The name of the declarant shall be typed and signed below this statement.
- (f) A proof of Service made in accordance with Code of Civil Procedure section 1013a complies with this Regulation.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 11440.20, Government Code; and Section 1013a, Code of Civil Procedure.

## § 1012. *Ex Parte* Petitions and Applications for Temporary or Interim Orders

- (a) This regulation applies to any *ex parte* petition or application an agency files with OAH for temporary relief or interim orders specifically authorized by statute or regulation.
- (b) Absent a showing of good cause, parties shall be given at least 24 hours notice of the specific relief sought and the date, time, and place of the *ex parte* proceeding. Notice may be given by telephone or facsimile transmission.
- (c) At the time of the *ex parte* appearance the petitioner or applicant shall submit a written Declaration stating the manner in which the notice was given.
- (d) If prior notice was not given, the petitioner or applicant shall submit a written Declaration stating the facts showing cause why the notice under subdivision (b) could not be given or should not be required.

- (e) *Ex parte* petitions and applications shall be in writing and comply with Regulation 1006. The petition or application shall state the statutory authority for the temporary relief and include a proposed order.
- (f) Except as provided in Regulation 1022(b), Regulation 1022 does not apply to *Ex parte* petitions and applications filed under this regulation.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 494, Business and Professions Code; Sections 1550.5 and 1558, Health and Safety Code; and Section 11529, Government Code.

## **§ 1014. Pleadings; Notice of Defense; Withdrawal of Notice of Defense**

- (a) When a party amends a pleading, the party shall Serve on all other parties and promptly file with OAH a complete, new pleading incorporating the amendments. The new pleading shall be titled a "First Amended" pleading, and subsequent amended pleadings shall be titled consecutively. If the amendments are made during the Hearing, the party shall use highlighting or any other effective method to identify the changes made to the pleading. The ALJ may allow exceptions for minor amendments during Hearing.
- (b) OAH prefers amended to supplemental pleadings. However, if a party issues a supplemental pleading, the party shall Serve on all other parties and promptly file with OAH the supplemental pleading which shall be titled a "First Supplemental" pleading. Subsequent supplemental pleadings shall be titled consecutively.
- (c) A party who withdraws a notice of defense, a request for Hearing, or an asserted special defense shall immediately notify OAH and all other parties.
- (d) When a party withdraws a notice of defense or a request for Hearing, the agency shall promptly notify OAH of the agency's decision either to proceed with the Hearing as a default or request that the scheduled Hearing be taken off calendar as a result of the party's withdrawal of the notice of defense or request for Hearing. If the agency's request to take the Hearing off calendar is made before the scheduled Hearing, the agency shall file the request in writing and include the name of the party who has withdrawn the notice of defense or request for Hearing.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11505, 11506 and 11507, Government Code.

## **§ 1015. Notice of Representation and Withdrawal of Counsel or Other Representative**

- (a) Any counsel or other representative who has assumed representation of a party after the agency has referred a Case to OAH shall give written notice to OAH and all other parties of his or her name, address, telephone and fax number (if any) and the name of the represented party, within a reasonable time after assuming representation.
- (b) Any counsel or other representative may withdraw as counsel or representative of record by giving written notice to OAH and all parties of the withdrawal. The written notice shall include the last known address of the formerly represented party.
- (c) Upon withdrawal by counsel or other representative:
  - (1) OAH retains jurisdiction over the Case.
  - (2) The formerly represented party bears the burden of keeping OAH and all other parties informed of a current address for purposes of Service. If notice of address is not given, any party may Serve the formerly represented party at the last known address and the current address of record with the agency, if a statute or regulation requires the party to maintain an address with the agency and to notify the agency of any change of address.
  - (3) The formerly represented party is responsible for preparation and representation throughout the remainder of the Case, unless and until such party retains new counsel or other representative.
- (d) Withdrawal or change of counsel or other representative does not alone constitute grounds for continuance of any previously scheduled proceeding in the Case.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11505, 11506 and 11524, Government Code.

## **§ 1016. Consolidated Proceedings; Separate Hearings**

- (a) A party who brings a Motion for consolidated proceedings or separate Hearings pursuant to section 11507.3 shall comply with Regulation 1022.
- (b) Before an ALJ orders consolidated proceedings or separate Hearings pursuant to section 11507.3, the ALJ shall provide notice to all parties and allow a reasonable time for the parties to file with OAH and Serve on all other parties any written opposition. Failure to file a timely opposition shall constitute a waiver of objection to an order of consolidation or severance.
- (c) The parties may stipulate to consolidated proceedings or separate Hearings. In the event a stipulation is reached, the moving party shall file a written stipulation with OAH, signed by all parties, and with a signature line for the ALJ to order the consolidation. The ALJ has sole discretion to decide whether proceedings shall be consolidated or separated.
- (d) If OAH consolidates Cases for Hearing, the ALJ shall prepare a separate proposed decision for each agency pleading that was consolidated, unless the agency requests or agrees otherwise.

## **§ 1018. Agency Request for Hearing; Required Documents**

- (a) An agency's request to OAH to set a Hearing date shall be in writing and contain the following information:
- (1) The title of the Case including the identities of the agency and respondent(s);
  - (2) The agency case number and, if known, the OAH number assigned to the Case;
  - (3) The names, addresses and phone numbers of all parties who must receive notice of the hearing and their representatives, if any;
  - (4) The time estimate for Hearing, taking into account the time for respondent's presentation of evidence;
  - (5) The dates the agency and its counsel are unavailable for Hearing over the next six months; and the unavailable dates of all other parties for Hearing, if known; (6) Preferred Hearing dates, but only if the agency includes at least three alternative preferred Hearing dates and the agency confirms in the request either that all parties have agreed to the specific dates or that it has made reasonable efforts to confer with all other parties for mutually acceptable Hearing dates, and includes the reasonable efforts the agency has made;
  - (7) A reference to any statute or regulation (if other than section 11517(c)) which specifies the time within which the Hearing shall be held or the proposed decision issued; and
  - (8) The city or county in which the Hearing will be held, pursuant to section 11508.
- (b) OAH may defer setting a matter for Hearing until the agency supplies all of the information set forth in subparagraph (a).
- (c) The document used by the agency to request the Hearing date shall contain a space for OAH to insert the OAH number assigned to the Case, and the date(s), time and location set for the Hearing. OAH shall transmit this information simultaneously to the agency, respondent(s), and each respondent's representative as identified in the written request to set. The transmission of this information by OAH does not replace the notice of Hearing required by section 11509.
- (d) The agency shall file the following documents with OAH at the time it files the written request to set a Hearing date or as soon thereafter as the documents become available:
- (1) accusation, statement of issues, statement of charges, suspension order, or other initial pleading, with proof of Service on all parties;
  - (2) notice of defense executed by respondent(s);
  - (3) notice of Hearing, with proof of Service on all parties.

## **§ 1019. Request for Security.**

- (a) Any party or participant in a proceeding before OAH may request security for the proceeding. The request for security shall be made to the Presiding Judge as soon as the need for security is known.
- (b) The Presiding Judge or the ALJ presiding over the proceeding may determine on his or her own initiative that security is required.
- (c) To assure that appropriate safety measures are arranged, the person requesting security shall inform the Presiding Judge of the nature of the safety risk.
- (d) If the request for security is made without sufficient time for OAH to obtain appropriate security, the Presiding Judge has discretion to continue the proceeding.

Authority cited: Section 11370.5(b), Government Code.

Reference: *Zaheri v New Motor Vehicle Board* (1997) 55 Cal.App.4<sup>th</sup> 1305, 64 Cal.Rptr.2d 705.

## **§ 1020. Motion for Continuance of Hearing**

- (a) A Case filed with OAH is assigned to the Presiding Judge until reassigned to another ALJ.
- (b) A Motion to continue a Hearing shall be in writing, directed to the Presiding Judge, and Served on all other parties.
- (c) Before filing the Motion, the moving party shall make reasonable efforts to confer with all other parties to determine whether any party opposes the Motion and to obtain future dates when all parties are unavailable for Hearing over the next six months and at least three alternative preferred future Hearing dates.
- (d) The Motion shall include all facts which support a showing of good cause to continue the Hearing, as well as:
  - (1) the Case name, and OAH Case number;
  - (2) the date, time and place of the Hearing ;
  - (3) the address and daytime telephone number of the moving party;
  - (4) the name, address and telephone number of all other parties;
  - (5) a list of all previous Motions to continue the Hearing and the dispositions thereof;
  - (6) whether or not any party opposes the Motion;
  - (7) any future dates when the parties are unavailable for Hearing over the next six months and any preferred future Hearing dates obtained pursuant to paragraph (c);
  - (8) if the moving party has not included all of the information required pursuant to this paragraph (d), the reasons why it is not included;
  - (9) a reference to any legal or other requirement to set the Hearing within a certain period of time, and whether or not the parties have waived the requirement.

- (e) If the Motion is not timely pursuant to section 11524(b) or other applicable law, the Motion shall include all facts justifying the lack of timeliness.
- (f) The Motion may include a proposed order granting the continuance.
- (g) Any party may request a written order from OAH reflecting the disposition of the Motion.
- (h) Any party opposing the Motion shall file with OAH and Serve on all other parties a written opposition.
- (i) The Presiding Judge may waive any requirement of this regulation, including but not limited to the requirement for a written Motion, written opposition, written order, and/or any notice to other parties.
- (j) Regulation 1022 does not apply to Motions for continuance filed under this regulation.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 11524, Government Code. *Arnett v Office of Administrative Hearings*, 49 Cal. App. 4th 332 (1996).

## **§ 1022. Motions**

- (a) All Motions made prior to the Hearing shall be directed to the Presiding Judge. Thereafter, Motions shall be directed to the ALJ assigned to the Hearing.
- (b) A Motion shall be made with written notice to all parties, unless the Motion is made during a Hearing while on the record. If a specific statute or regulation permits an *ex parte* petition or application, the moving party shall give all other parties 24-hour notice in accordance with Regulation 1012. Every written Motion shall be filed with an attached proof of Service showing that all parties have been Served with the Motion.
- (c) If a prehearing conference has been scheduled, all Motions to be heard at the prehearing conference shall be filed in accordance with Regulation 1026(b), unless the Presiding Judge determines otherwise.
- (d) Motions and any response thereto shall conform to the requirements of Regulation 1006. The Motion shall state in plain language the relief sought and the facts, circumstances, and legal authority that support the Motion.
- (e) Except as otherwise provided by statute or regulation, or as ordered by the Presiding Judge, a Motion shall be filed and Served at least 15 Days before the date set for the commencement of the Hearing, and any response to the Motion shall be filed and Served no later than 3 Days before the date the Motion is scheduled to be heard.
- (f) Except as otherwise provided by statute or regulation, or as ordered by the Presiding Judge, a Motion shall be decided without oral argument. A party may request oral argument at the time of filing the Motion or response.
- (g) If the Presiding Judge orders oral argument, OAH shall set the date, time and place. The Presiding Judge may direct a party to Serve written notice on all other parties of the date, time, and place of the oral argument. Oral argument may be made in person or by telephone

conference call, video conference, or any other electronic means, in compliance with section 11440.30 and Regulation 1030.

- (h) The Presiding Judge has discretion to decide whether oral argument shall be stenographically reported on his or her own motion or upon the written request of any party which includes the reasons for the request.
- (i) The ruling on any Motion shall be made by written order, unless the Motion and ruling are made during the course of a Hearing while on the record. The ALJ may direct the prevailing party to prepare the order, or dispense with the requirement of a written order.
- (j) This regulation does not apply to a Motion to continue a Hearing pursuant to section 11524 and Regulation 1020. Requests for *Ex Parte* Petitions and Applications for Temporary or Interim Orders shall be made pursuant to the provisions of Regulation 1012, and do not constitute a Motion within the meaning of this regulation. A request for a settlement conference pursuant to Regulation 1028, a prehearing conference pursuant to Regulation 1026, or security pursuant to Regulation 1019 does not constitute a Motion within the meaning of this regulation.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11440.30, 11507.3, 11507.7, 11508(c), 11511 and 11524, Government Code.

## **§ 1024. Subpoenas; Motion for a Protective Order**

- (a) Subpoena forms are available from OAH. Subpoenas may also be issued pursuant to section 11450.20(a).
- (b) A Motion pursuant to section 11450.30 for a protective order, including a Motion to quash, shall be made in compliance with Regulation 1022. The Motion shall be made within a reasonable period after receipt of the subpoena. The person bringing the Motion shall Serve copies of the Motion on all parties and persons who are required by law to receive notice of the subpoena.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 1985-1985.4, Code of Civil Procedure; and Sections 11450.05, 11450.20, 11450.50 and 11450.30, Government Code.

## **§ 1026. Prehearing Conferences**

- (a) After a Case is assigned to OAH, any party may file with OAH and Serve on all parties a request for a prehearing conference. A request for a prehearing conference shall be directed to the Presiding Judge and state the reasons for the conference. If the request is granted, OAH shall set the date and time for the conference. Regulation 1022 does not apply to a request for a prehearing conference.
- (b) Motions to be heard at the prehearing conference shall be filed with OAH no later than 15 Days before the prehearing conference and shall otherwise comply with Regulation 1022. Responses shall be filed with OAH no later than 3 business days prior to the prehearing

conference. The ALJ may, in his or her discretion, allow oral Motions during the prehearing conference.

- (c) A request to continue the date of the prehearing conference shall be directed to the Presiding Judge. After commencement of the prehearing conference, the assigned ALJ may continue it to any other convenient time prior to the Hearing date.
- (d) At least 3 business days before a prehearing conference, each party shall file with OAH and Serve on all other parties a prehearing conference statement containing the following information:
  - (1) Identification of all operative pleadings by title and date signed;
  - (2) The party's current estimate of time necessary to try the Case;
  - (3) The name of each witness the party may call at the Hearing along with a brief statement of the subject matter of the witness's expected testimony;
  - (4) The identity of any witness whose testimony will be presented by affidavit pursuant to section 11514;
  - (5) The name and address of each expert witness the party intends to call at the Hearing along with a brief statement of the opinion the expert is expected to give and a copy of the expert's current resume;
  - (6) The need for an interpreter or special accommodation;
  - (7) A list of the documentary exhibits the party intends to present and a description of any physical or demonstrative evidence; and
  - (8) A concise statement of any legal issues or affirmative defenses that may affect the presentation of evidence or the disposition of the Case.
- (e) Exhibits need not be premarked or filed with the prehearing conference statements unless requested by the ALJ. Exhibits shall be exchanged between the parties at least 3 business days before the prehearing conference. On agreement of the parties, exhibits already produced in discovery need not be exchanged.
- (f) The prehearing conference may be held by telephone or other electronic means pursuant to section 11511.5(c).
- (g) After the prehearing conference, the ALJ shall issue a prehearing conference order which incorporates the matters determined at the conference. This order may be issued orally if an accurate record is made. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of a written order by the ALJ. If no matters were determined or dates set at the prehearing conference, a prehearing conference order is not required.
- (h) Upon request of a party, the ALJ shall prepare a written prehearing conference order. The ALJ may direct a party to prepare a proposed prehearing conference order.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11420.10, 11445.10, 11511.5 and 11514, Government Code.

## **§ 1027. Informal Hearings**

An agency may file a written request directed to the Presiding Judge to set a Case for an informal hearing. The request shall explain how the circumstances are appropriate for an informal hearing procedure, pursuant to section 11445.10 et seq. The Presiding Judge may order the Case to proceed as an informal hearing. If the Case proceeds by informal hearing, the Presiding Judge or assigned ALJ shall advise the parties of the procedures to be applied pursuant to section 11445.40.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11445.10-11445.60 and 11470.10, Government Code.

## **§ 1028. Settlement Conferences; Settlements**

- (a) After a Case is assigned to OAH, any party may file with OAH and Serve on all parties a request for a settlement conference. A request for a settlement conference shall be directed to the Presiding Judge. If the request is granted, OAH shall set the date and time for the conference. Regulation 1022 does not apply to a request for a settlement conference.
- (b) Each respondent and his or her representative and an agency counsel or other representative, if the agency is not represented by counsel, shall appear in person at all settlement conferences. Each party or representative who attends the settlement conference shall be fully familiar with the facts and issues in the Case and shall have authority, or be able to obtain authority immediately by telephone, to negotiate settlement terms subject to the approval by the agency head. An agency representative who is familiar with the case, and has authority to approve settlement terms subject to the approval by the agency head, must be available to participate in the settlement conference in person or by telephone, subject to section 11511.7.
- (c) The Presiding Judge may excuse the attendance or participation of a party or representative upon a showing of good cause. A request to be excused shall be made not less than 3 business days before the date of the conference.
- (d) A Request to continue the settlement conference shall be addressed to the Presiding Judge.
- (e) The settlement conference ALJ may structure the conference to meet the needs of the particular dispute. A telephonic settlement conference may be arranged pursuant to section 11511.7(b).
- (f) A party may file a written settlement conference statement with OAH that describes the factual and legal issues and the status of any previous settlement discussions in the Case. The statement may be Served on all other parties or it may be marked “confidential” and submitted only to the Presiding Judge or the settlement conference ALJ. The statement should be submitted at least 3 business days before the conference. The Presiding Judge or settlement conference ALJ may require a party to file a settlement conference statement.
- (g) A party should bring any pertinent documents and a draft of any settlement proposal on disk or in writing to the settlement conference.

- (h) The settlement conference statement, other settlement materials, and settlement discussions shall not be disclosed to the Hearing ALJ and are deemed confidential unless the parties agree otherwise.
- (i) Any settlement shall be included in a written stipulation, settlement agreement or consent order, or an oral agreement placed on the record.
- (j) The parties shall promptly notify the OAH calendar clerk of any resolution that terminates a Case before OAH. OAH will vacate all Hearing dates upon receipt of a written request and notice of final resolution of the Case from the agency. A copy shall be Served on all other parties. Notice of final resolution of a Case consists of written confirmation from the agency that all parties have signed a final written agreement resolving the Case (subject to approval by the agency head) or that the agency has taken any unilateral actions legally required to withdraw, dismiss, or otherwise resolve the Case. A copy of the signed settlement, stipulation, agency order or any other paperwork terminating a matter before OAH, or , at the discretion of the agency, the first page and signature pages thereof, shall be filed with OAH.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11415.60 and 11511.7, Government Code.

## **§ 1030. Conduct of Hearing; Protective Orders**

- (a) A party seeking an order for closure or other protective order for all or part of a Hearing, including a request to seal the record, pursuant to section 11425.20 shall file a Motion stating in plain language the relief sought and the facts, circumstances, and legal authority that support the Motion.
- (b) A party seeking to have all or part of a Hearing conducted by electronic means pursuant to section 11440.30 shall file a Motion stating in plain language the relief sought and the facts, circumstances, and legal authority that support the Motion .
- (c) An ALJ, in his or her discretion, and with due consideration for the effect on witnesses, the Hearing process, and existing protective orders, may grant a request by a party or interested person to film, photograph, or record the Hearing. A record made pursuant to this section shall not be part of the official record.
- (d) If a party's Motion or request under subsections (a), (b), or (c) of this Regulation is granted, the ALJ may direct the moving party to make the necessary arrangements and pay the related costs.
- (e) The ALJ may:
  - (1) Exclude persons whose actions impede the orderly conduct of the Hearing;
  - (2) Restrict attendance because of the physical limitations of the Hearing facility; or
  - (3) Take other action to promote due process or the orderly conduct of the Hearing.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11425.20,11440.30, and 11455.10, Government Code.

## § 1032. Interpreters and Accommodation

- (a) A party shall give timely notice to OAH and the agency when that party or the party's representative or witness needs any of the following accommodations during a proceeding before OAH:
- (1) Language assistance, including sign language.
  - (2) Accommodation for a disability.
  - (3) Electronic amplification for hearing impairment.
  - (4) Any other special accommodation.
- (b) Unless otherwise provided by contract, the agency shall provide the appropriate language assistance.
- (c) An interpreter at a Hearing or other proceeding shall be sworn by oath or affirmation to perform his or her duties truthfully. The oath or affirmation shall be in substantially the following form:
- “Do you swear or affirm that, to the best of your skill and judgment, you will make a true interpretation of the questions asked and the answers given and that you will make a true translation of any documents which require translation?”
- (d) A party may ask the ALJ assigned to the Hearing to direct payment for the cost of interpreter services pursuant to section 11435.25.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 751, Evidence Code; and Sections 11435.05, 11435.10, 11435.55, and 11435.65, Government Code.

## § 1034. Peremptory Challenge

- (a) Pursuant to section 11425.40(d), a party is entitled to one peremptory challenge (disqualification without cause) of an ALJ assigned to an OAH Hearing. A peremptory challenge is not allowed in proceedings involving petitions or applications for temporary relief or interim order or in a proceeding on reconsideration or remand; and shall not apply to panel members of a Commission on Professional Competence, other than the ALJ, in proceedings under Education Code section 44944. In no event will a peremptory challenge be allowed if it is made after the Hearing has commenced.
- (b) A peremptory challenge shall be:
- (1) Directed to the Presiding Judge;
  - (2) Filed by a party, attorney or authorized representative;
  - (3) Made in writing or orally on the record in substantially the following form:  
“I am a party to [CASENAME] and am exercising my right to a peremptory challenge regarding ALJ [NAME], pursuant to Regulation 1034 and Government Code section 11425.40(d)”;
  - (4) Served on all parties if made in writing; and
  - (5) Filed in compliance with the time requirements of subsections (c), (d), and (e) herein.
- (c) If, at the time of a scheduled prehearing conference, an ALJ has been assigned to the Hearing, any challenge to the assigned ALJ shall be made no later than commencement of that prehearing conference.
- (d) Except as provided in (c), if the Hearing is to be held at an OAH regional office, the peremptory challenge of the assigned ALJ shall be made no later than 2 business days before the Hearing.
- (e) Except as provided in (c), if the Hearing is to be held at a site other than an OAH regional office, the peremptory challenge of the assigned ALJ shall be made by noon on Friday prior to the week in which the Hearing is to commence.
- (f) A party may contact OAH to determine the name of the ALJ assigned to the Hearing.
- (g) A Hearing shall not be continued by reason of a peremptory challenge unless a continuance is required for the convenience of OAH. If continued, the Hearing shall be rescheduled to the first convenient date for OAH.
- (h) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under sections 11425.40, 11430.60 and 11512(c) or any other applicable provisions of law.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11425.40, 11430.60 and 11512(c), Government Code.

## § 1038. Ordering the Record.

- (a) Any person may request a copy of all or a portion of the record, subject to any protective orders or provisions of law prohibiting disclosure. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by an ALJ, the final decision, a transcript of all proceedings, all exhibits whether admitted or rejected, the written evidence and any other papers in the Case, except as provided by law.
- (b) Except as provided in (f), no portion of the record will be prepared until the requesting person has paid a deposit equal to the estimated cost of preparation. The deposit will be applied to the actual cost and any excess will be returned to the person who submitted it. The record will not be released until the person ordering the record has paid any balance due for the actual cost of preparing the record.
- (c) If OAH has contracted for the stenographic reporting or tape recording of the proceeding, a person may contact the OAH transcript clerk to order and pay for preparation of all or a portion of the transcript in the Case. If the agency for whom OAH has conducted the proceeding has contracted for the stenographic reporting or tape recording, a person seeking to order all or a portion of the transcript or a copy of the tape must contact the agency directly.
- (d) Any person may contact the OAH transcript clerks or the agency to order and pay for copying of any other portions of the record in a Case, except as provided in (c).
- (e) If the official record of the Hearing or other proceeding was made by audio tape, copies of the audio tape(s) are available upon written request to the OAH transcript clerk and payment of the costs of duplication, except as provided in (c). Copies of audio tapes and transcripts made from the copies are not part of the official record.
- (f) A party seeking a waiver of fees and costs to prepare the record for the purpose of judicial review under Code of Civil Procedure section 1094.5 who has been declared *in forma pauperis* (Government Code section 68511.3) shall submit a valid order issued by the Superior Court.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 1094.5, Code of Civil Procedure; Section 11512, 11523, and 69950, Government Code; and Section 985, California Rules of Court.

## § 1040. Monetary Sanctions

- (a) The ALJ may order a party, a party's representative or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.
  - (1) "Actions or tactics" include, but are not limited to, the making or opposing of Motions or the failure to comply with a lawful order of the ALJ.
  - (2) "Frivolous" means
    - (A) totally and completely without merit or
    - (B) for the sole purpose of harassing an opposing party.
- (b) The ALJ shall not impose sanctions without providing notice and an opportunity to be heard.
- (c) The ALJ shall determine the reasonable expenses based upon testimony under oath or a Declaration setting forth specific expenses incurred as a result of the bad faith conduct. An order for sanctions may be made on the record or in writing, setting forth the factual findings on which the sanctions are based.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 128.5, Code of Civil Procedure; and Section 11455.30, Government Code.

## **§ 1042. Cost Recovery**

- (a) An agency shall allege in its pleading any request for costs, citing the applicable cost recovery statute or regulation.
- (b) Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:
  - (1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.
  - (2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.
  - (3) When the agency presents an estimate of actual costs incurred, its Declaration shall explain the reason actual cost information is not available.
  - (4) The ALJ may permit a party to present testimony relevant to the amount and reasonableness of costs.
- (c) The proposed decision shall include a factual finding and legal conclusion on the request for costs and shall state the reasons for denying a request or awarding less than the amount requested. Any award of costs shall be specified in the order.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 125.3(c), 3753.5(a), 4990.17 and 5107(b), Business and Professions Code; and Sections 11507.6 and 11520(b), Government Code.

## **§ 1044. Request for Expenses After Default**

When a request is made for expenses pursuant to section 11520(b), the requesting party shall submit a Declaration setting forth, with specificity, the expenses incurred as a result of respondent's failure to appear.

Authority cited: Section 11370.5(b), Government Code.

Reference: Section 11520(b), Government Code.

## **§ 1046. Amicus Briefs**

A non-party with an interest in the outcome of the Hearing may, by Motion, request permission to file an Amicus brief. The Motion shall show good cause for allowing the brief, giving consideration to the following factors:

- (a) Due process of law;
- (b) Whether matters in the Amicus brief will be helpful to the ALJ;
- (c) The interests of the public and public policy; and
- (d) The costs to the parties to reply to the Amicus brief.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11500(b) and 11512(b), Government Code.

## **§ 1048. Technical and Minor Changes to Proposed and Final Decisions**

- (a) The agency may make an application to OAH to correct a mistake or clerical error, or make minor or technical changes, in a proposed decision by filing a written request addressed to the Presiding Judge.
  - (1) The application must be signed on behalf of the agency that is seeking the correction(s) and identify the correction(s) being sought and the reasons therefor. The application shall be served on all other parties, together with a copy of the proposed decision. A copy of the proof of service shall be filed with the application.
  - (2) A party shall have a period of 10 days from the date the application is served to file written opposition. The opposition shall be served on all parties and filed with OAH, with a copy of the proof of service.
  - (3) If opposition is filed, the Presiding Judge may permit oral argument or decide the matter on the papers alone. If the Presiding Judge permits oral argument, at least 5 days notice of the time and place for oral argument shall be given. The Presiding Judge shall decide the matter no later than 5 days after it is submitted.
  - (4) If the application is granted, the Presiding Judge shall prepare, and cause to be served on all parties, a notice and order of correction and/or a corrected proposed decision, which shall identify the correction(s) made.
  - (5) If the application is denied, the Presiding Judge shall cause notice of the denial to be served on all parties.
  - (6) The Presiding Judge will designate the same ALJ who prepared the proposed decision in the case to review and decide the application for correction. If the same ALJ is not reasonably available, the Presiding Judge may designate another ALJ.

- (b) Any party other than the agency shall file an application with the agency to correct a mistake or clerical error, or make minor or technical changes, in a proposed decision. Subject to section 11517(c)(2)(C), the agency may decide the application itself or refer it to the Presiding Judge to decide. If the application is referred to the Presiding Judge, the provisions of paragraph (a)(1)-(6) shall apply.
- (c) An ALJ who prepares a proposed decision may, on his or her own motion, correct any mistakes or clerical errors or make minor or technical changes in the proposed decision. The ALJ must cause to be served on all parties, a notice and order of correction and/or a corrected proposed decision, each of which shall identify the correction(s) made. Before making any correction under this paragraph, an ALJ may, in his or her discretion, provide notice to all parties and an opportunity to be heard.
- (d) Section 11517(c)(2)(C) authorizes the agency to make technical or other minor changes to a proposed decision and adopt it as the decision in the Case. The agency may obtain an electronic copy of the proposed decision for this purpose upon written request addressed to the Presiding Judge of the OAH office that issued the proposed decision. When OAH provides an electronic copy of the proposed decision to the agency, it does not constitute OAH's approval of any changes the agency proposes. The agency shall send a copy of the proposed decision, as corrected, to OAH.
- (e) OAH may correct a clerical error or mistake, or make technical or minor changes, in a proposed decision if all of the parties agree to the correction. The stipulation pursuant to the agreement must be in writing, signed by all parties, and clearly identify the change(s) or correction(s) to be made in the proposed decision. The stipulation must be filed with the Presiding Judge. If the stipulation is accepted, the Presiding Judge shall prepare, and cause to be served on all parties, a notice and order of correction and/or a corrected proposed decision, each of which shall identify the correction(s) made. If the stipulation is rejected, the Presiding Judge shall cause notice thereof to be served on all parties.
- (f) No change or correction to a proposed decision shall be effective if the agency rejects or adopts the existing proposed decision without the change or correction.
- (g) Government Code section 11518.5 governs corrections of mistakes or clerical errors in agency decisions issued after adjudicative proceedings that are subject to the formal hearing provisions of the Administrative Procedure Act in Title 2, Division 3, Part 1, Chapter 5, commencing with Government Code section 11500.
- (h) Decisions issued by an ALJ in proceedings that are not subject to the formal hearing provisions of the Administrative Procedure Act (Title 2, Division 3, Part 1, Chapter 5, commencing with Government Code section 11500) may be corrected in accordance with the procedures provided in paragraphs (a), (b), and (e).
- (i) In no event may any correction made pursuant to this policy statement result in reconsideration, or change the factual or legal basis, of a proposed or final decision.
- (j) All documents filed or issued with a request to correct a proposed or final decision shall become a part of the record in the Case.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11517(c) and 11518.5, Government Code.

## **§ 1050. Remand or Reconsideration.**

- (a) An agency referral of a Case to OAH for rehearing or reconsideration pursuant to sections 11517(c)(2)(D) or 11521(b) shall be filed in the OAH regional office that issued the proposed decision. The referral shall be in writing, directed to the Presiding Judge, and shall contain the following:
- (1) Information as required in Regulation 1018, except for Hearing dates if no Hearing is requested;
  - (2) The name of the ALJ who prepared the proposed decision;
  - (3) A copy of any agency order or decision for rehearing or reconsideration and the proof of Service of the order or decision on all parties; and
  - (4) The evidence or issues to be considered on rehearing or reconsideration.
- (b) The agency shall lodge the record in the Case, including the transcript, exhibits, and other papers that are part of the record, with OAH promptly after the agency has received it. If the agency has not lodged the complete record at least 15 days before the scheduled Hearing in the Case, it shall provide written notice thereof to OAH and all other parties.

Authority cited: Section 11370.5(b), Government Code.

Reference: Sections 11517(c)(2)(D) and 11521(b), Government Code.