

ADMINISTRATIVE HEARING OPTIONS
IN CALIFORNIA STATE GOVERNMENT

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INTRODUCTION

In the Supplemental Report that accompanied the 1983 Budget Act, the Legislature directed the Legislative Analyst to report on the costs and benefits associated with the provision of administrative hearings using three alternative approaches: (1) hearing conducted by the state agency administering the program, (2) hearing conducted by the Office of Administrative Hearings, and (3) hearing conducted by a neutral or private organization under contract to the state. This report was prepared in response to that requirement.

The report consists of four chapters. Chapter I provides background information on administrative hearings conducted within California state government. It also discusses each of the three options for providing these hearings that were identified in the Supplemental Report. The costs and principal benefits associated with each of these options are described in Chapters II & III, respectively. Chapter IV offers several recommendations for increasing the flexibility of state agencies in providing administrative hearings.

In determining the scope of this report, we chose not to address the issue of whether administrative hearing services should be provided on a centralized, rather than decentralized, basis. While this issue may warrant further study, it goes well beyond the central concern expressed by the Legislature when it directed us to prepare this report. Moreover, in the course of our study, we found no compelling evidence indicating that the state should move away from the decentralized system of providing

hearings that the Legislature has established and consistently funded over the years.

We would like to thank the staffs of the Office of Administrative Hearings, the Department of Finance and the other state and local agencies contacted for their cooperation and assistance in helping us to gather information for this study.

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EXECUTIVE SUMMARY

SUMMARY OF FINDINGS

1. The requirements of the California Administrative Procedure Act are limited in their application. Although the intent of the Legislature in adopting the Administrative Procedure Act (APA) in 1945 was to establish a statewide system for the conduct of administrative adjudication, the requirements of the APA are binding only for administrative hearings that involve the denial, suspension or revocation of a license. These APA hearings are conducted by the Office of Administrative Hearings (OAH) in the Department of General Services. Hearings which deal with such matters as workers' compensation, taxes, public utilities, and social welfare benefits, do not fall within the scope of the APA.

2. The administrative hearings system in California is largely decentralized. Due to the narrow focus of the APA, the vast majority of quasi-judicial hearings held in California are non-APA hearings, conducted in a variety of ways by numerous state agencies. Consequently, there has evolved in the state a decentralized, multifaceted system of administrative adjudication. Studies have shown that such a system is consistent with the administrative hearing procedures used in other states.

3. The state occasionally has used the private sector to provide administrative hearing services. Among the private-sector alternatives that could be relied on for these services are: the McGeorge Institute for Administrative Justice, the American Arbitration Association, a judge pro tem program, and private attorneys.

4. State agencies are limited by existing law in their ability to obtain administrative hearing services from the private sector. Because of these constraints, most state agencies are unable to realize the potential benefits from contracting with the private sector for these services.

5. The hourly cost of providing hearing services using different methods varies dramatically. The four factors which primarily account for these cost differences are: (1) the type of hearing officer used, (2) the method used to record the hearing, (3) the amount of travel required and (4) the level of administrative overhead costs.

6. The most important cost factor--the cost of the hearing officer--varies widely, depending on the type of hearing officer used. For example, the cost in 1983-84 of an OAH administrative law judge was \$75.80 an hour, while the cost of an agency-employed hearing officer was about \$24.00 an hour.

7. Use of state hearing reporters is the most expensive method for recording administrative hearings, by far. Both electronic recording and use of private sector hearing reporters cost approximately one-half of what it costs the state hearing to use its own reporters.

8. There are three main benefits from using more-experienced and more expensive hearing officers. In paying for more experienced hearing officers, the state "buys" more due process, equity and/or efficiency.

9. Three considerations primarily determine the level of hearing officer expertise needed: (a) the complexity of the hearing (for example, the complexity of the issues involved, the amount of evidence presented, and the amount of media coverage), (b) the impact of the hearing decision on individuals, and (c) the precedent-setting nature of the case.

10. Although use of hearing reporters is about twice as expensive as other means for recording hearings, the available evidence fails to confirm that this method results in higher-quality transcripts. In fact, several studies indicate that the electronic recording of hearings results in transcripts that are more accurate than those prepared by reporters.

11. There is no single quantitative indicator that can flag for an agency the most cost-effective method for conducting an administrative hearing. This is because, while it is relatively easy to compare the costs of various administrative hearing options, the corresponding benefits from using each option are not quantifiable. There are, however, some general guidelines that agencies can use to evaluate the level of hearing officer expertise needed for specific types of hearings, thereby enabling the state to provide adequate hearing officer services at the lowest possible costs.

RECOMMENDATIONS

1. We recommend that the Legislature eliminate the requirement in the APA that (1) all license hearings be conducted by OAH, and (2) that OAH only use administrative law judges (ALJs) in these license hearings, in order to increase state agencies' flexibility in providing license hearings. Under current law, agencies holding license and certification hearings must use OAH, and OAH must use ALJs--the most expensive type of hearing officer--in these hearings. We see no evidence, however, of the need for either of these requirements, as license hearings are generally no different or complicated than nonlicense hearings. Repeal of these requirements would allow agencies to provide the necessary hearing services at less cost.

2. We recommend that the Legislature review those agencies conducting administrative hearings to ensure that they have the maximum flexibility in providing administrative hearing services. Although agency hearings are extremely diverse, requiring different levels of hearing officer expertise, departments typically have only one or two types of officers. To ensure that agencies are providing the necessary levels of hearing officer expertise and experience at the lowest possible cost, the Legislature could have its budget subcommittees review an agency's hearing officer classifications at its next request for such resources.

3. We recommend that the Legislature (1) eliminate the requirement that the OAH use hearing reporters on all APA hearings, and (2) authorize OAH to determine the best method of recording the hearing. With the increased flexibility provided by these proposals, the OAH could make greater use of electronic recording, resulting in potentially significant cost-savings to the state.

4. We recommend that the Legislature promote and encourage the use of private contracting to secure administrative hearing services at "peak-load" times. Many agencies providing hearing services have "peak loads" at certain times of the year. If these peak loads are met through the use of full-time state employees, these agencies may have underutilized staff at other times of the year. To avoid this problem and to meet other temporary workload problems, departments should be encouraged to contract out for services during these times. Private lawyers, retired judges or law school students could be hired on a contract basis to provide these temporary hearing services.

5. We recommend that the Legislature establish a judge pro tem program in order to assess its feasibility in meeting the needs of departments providing administrative hearing services. A pro tem program could provide state agencies with an experienced group of lawyers or retired judges to serve as hearing officers on a volunteer basis. Such a program could result in significant annual cost savings to the state.

CHAPTER I

ADMINISTRATIVE HEARINGS IN CALIFORNIA STATE GOVERNMENT

California's state agencies are empowered by constitutional, statutory, common and administrative law to determine and regulate many rights and obligations of individual citizens. Agencies use administrative adjudication hearings to make many of these determinations. Through these hearings, state agencies: set utility rates, arbitrate disputes between private employers and unions, regulate various professions, enforce safety in California workplaces, and take a variety of other actions which affect the lives of California citizens.

These administrative (or "quasi-judicial") hearings provide a formal process for resolving disputes between a state agency and an aggrieved party in lieu of initial review by the judicial system. Even when the courts are well qualified to resolve administrative disputes, agency adjudication often has been preferred for reasons of convenience and cost-effectiveness.

This chapter provides some basic background information on the administrative adjudication process in California. Specifically, it:

- o Describes the California Administrative Procedure Act (APA), the basic law governing administrative hearings in the state;
- o Briefly outlines the elements of the quasi-judicial hearing process; and
- o Describes the current methods used to conduct administrative adjudication hearings, as well as alternative methods.

THE ADMINISTRATIVE PROCEDURE ACT

The APA, enacted in 1945, serves as the primary guide for the conduct of administrative hearings in the state.¹ It was the earliest and most comprehensive state statute governing administrative law, and was designed to provide a set of procedures for appeal of administrative decisions, rules, and regulations. Passage of the APA was essentially a means of controlling the burgeoning growth of administrative agency decision making, and was the product of a number of years of intensive study and discussion of administrative law in California.

Although the intent of the Legislature in adopting the APA was to establish a statewide system for the conduct of administrative adjudication, the actual requirements of the act are quite limited in their application. Specifically, the adjudication procedures outlined in the APA apply only to hearings which involve the denial, suspension or revocation of a license. Quasi-judicial hearings which deal with such matters as workers' compensation, taxes, public utilities, and social welfare proceedings, though numerous, do not fall within the scope of the APA.

In addition, the act specifies that all hearings required to be conducted under the APA are to be conducted by hearing officers on the staff of the Office of Administrative Hearings (OAH) in the Department of General Services (DGS). Because the APA only applies to license hearings, however, agencies which conduct other types of administrative hearings are free to use their own staff of hearing officers.

1. Government Code Sections 11500-11528.

The decision to forego universal application of the APA seems to have been made in order to avoid major administrative changes in organizations that had a large administrative hearings workload. In its Tenth Biennial Report, which recommended legislation to establish the APA, the Judicial Council stated:

It was suggested to the council that all of the hearing officers should be drawn from the Office of Administrative Procedure (now the Office of Administrative Hearings) without exception. The theory behind such a requirement is, of course, that a complete separation of the functions of prosecuting and hearing would thus be achieved. Any such requirement would have produced such a drastic alteration in the existing structure of some agencies, however, that it was thought unwise.²

Although state agencies which hold nonlicense hearings are not required to follow APA guidelines, a study conducted in 1977 by the Department of Finance (DOF)³ concluded that many agencies actually use the APA as a guideline in establishing and conducting their quasi-judicial hearings. Furthermore, these agencies may contract with the OAH for hearing officer services.

The APA, while perhaps the primary guide for the conduct of quasi-judicial hearings in state government, is by no means the sole legal authority. The State Constitution, federal regulations and specific statutes are other authorities which govern state administrative hearing procedures. The narrow focus of the APA, in conjunction with other

2. First report of the Senate Interim Committee on Administrative Regulations and Adjudications to the 1957 session of the California Legislature, "The Use of Independent Hearing Officers for Administrative Adjudications," California State Senate, 1957.
3. Department of Finance, "Centralized v. Decentralized Services, Phase II Administrative Hearings," Report No. 078-3, November 1977, p.ix (hereafter cited as DOF study).

legislation and various court rulings over the years, has resulted in a highly decentralized system of administrative adjudication. Studies have shown that this arrangement is consistent with administrative hearing procedures in other states.⁴

OUTLINE OF THE ADMINISTRATIVE HEARING PROCESS

In order to better understand the differences between various methods of conducting administrative hearings, one should be familiar with the basic elements of a quasi-judicial hearing. Although processes differ from one agency to another, most follow a similar format.

The quasi-judicial hearing process begins when a filing is made requesting an administrative hearing. Agency support personnel then set a date for the hearing, assign the case, and coordinate the flow of information between the parties. In some agencies, a prehearing conference is held in which the agency attempts to settle informally the issue(s) which prompted the filing request. If such a conference is unsuccessful, however, the agency must proceed with a formal administrative hearing.

Quasi-judicial hearings are conducted by a hearing officer, and are generally recorded, either by a hearing reporter or an electronic recording device. The location of the hearing is dependent upon the specific laws governing an agency's hearing procedures. Some hearings, for example, must be held in the counties in which the filing originally was made. Others are heard at the agency's local regional office, while many are conducted only in Sacramento.

The actual hearing itself is somewhat similar to a court trial in that both parties may present evidence and testimony. The proceeding, however, is intended to be informal. The length of the hearing can range

4. DOF study, p. 11.

from one hour to several weeks, depending for the most part upon the complexity of the issues involved.

Once the hearing is completed, the hearing officer issues a decision. In most agencies, this is a proposed decision because final authority to decide an issue rests with top management or a higher-level board or commission. Any party which is unsatisfied with the final decision can petition the courts for judicial review. (The criteria that the 1977 DOF study considered essential for a quasi-judicial hearing to meet are listed in Appendix A.)

CURRENT METHODS FOR CONDUCTING ADMINISTRATIVE HEARINGS

Currently, administrative hearings in California are conducted by either the OAH or individual state agencies.

The Office of Administrative Hearings

The OAH, a division of the Department of General Services, conducts quasi-judicial hearings for various state and other public agencies. The OAH maintains three regional offices (in Sacramento, San Francisco and Los Angeles) and has a staff of 34 hearing officers.

Under the APA, the OAH is responsible for conducting hearings in connection with the issuance, renewal, suspension or revocation of a license for 70 state agencies listed in the APA.⁵ (See Appendix B for a list of these agencies.) The APA specifies that these hearings must be conducted by officers (called administrative law judges) who have been admitted to practice law in the state for at least five years, and that such hearings must be recorded by a certified hearing reporter.⁶

5. Government Code Section 11501.

6. Recent legislation--Ch 635/83 (AB 2034)--provides that, upon the consent of all parties, the proceedings of an APA hearing may be reported electronically. This legislation went into effect January 1, 1984.

Although license matters account for the majority of hearings conducted by OAH, the office also conducts a number of hearings for various public agencies. For example, OAH conducts "fair" hearings for the Department of Developmental Services (DDS) under an interagency agreement. OAH also conducts appeals hearings for the Office of Child Nutrition Services in the Department of Education under a similar agreement.

Table 1 summarizes OAH's state agency hearing workload from 1980-81 through 1983-84. The table indicates that almost 60 percent of the office's annual workload over the four-year period came from just four agencies--the Departments of Alcoholic Beverage Control, Real Estate, Motor Vehicles, and the Contractors' State License Board.

Unlike license hearings, which are subject to the requirements of the APA, other hearings conducted by the OAH may follow different processes, depending upon the laws governing the agency with which the OAH is contracting. In many cases, these laws are less restrictive than the APA. For example, special education due process hearings are not conducted by OAH administrative law judges, who meet the APA hearing officer requirements; instead, they are conducted by "hearing officers" on the staff of the OAH. These are individuals who have been admitted to the practice of law but who do not necessarily possess the minimum five years of legal experience required by the APA.

Table 1

State Administrative Hearings Conducted by the
Office of Administrative Hearings
Filings for 1980-81 through 1983-84

	1980-81		1981-82		1982-83		1983-84	
	No.	Percent of Total	No.	Percent of Total	No.	Percent of Total	No.	Percent of Total
Department of Alcoholic Beverage Control	678	16.0%	806	19.5%	782	17.7%	778	19.9%
Contractors' State License Board	591	13.9	630	15.2	810	18.3	772	19.8
Department of Motor Vehicles	537	12.7	433	10.5	451	10.2	418	10.7
Department of Real Estate	615	14.5	536	12.9	414	9.4	249	6.4
Board of Medical Quality Assurance	238	5.6	184	4.4	193	4.4	214	5.5
Board of Registered Nursing	140	3.3	124	3.0	183	4.1	184	4.7
Department of Fair Employment and Housing	95	2.2	165	4.0	107	2.4	120	3.0
Department of Insurance	266	6.3	106	2.6	166	3.7	85	2.2
Board of Barber Examiners	149	3.5	182	4.4	130	2.9	51	1.3
All Other State Agencies	<u>934</u>	<u>22.0</u>	<u>970</u>	<u>23.5</u>	<u>1,189</u>	<u>26.9</u>	<u>1,037</u>	<u>26.5</u>
Totals, State Agencies ^a	4,243	100.0%	4,136	100.0%	4,425	100.0%	3,908	100.0%

a. Total represents all hearings conducted by OAH for state agencies. Hearings conducted for nonstate agencies (school districts and local governments) averaged 8-10 percent of the total number of OAH filings between 1980-81 and 1983-84.

Another difference between APA license hearings and non-APA hearings conducted by OAH is that non-APA hearings do not necessarily require that a hearing reporter transcribe the proceedings. Instead, an electronic recording device may be substituted in place of the hearing reporter.

The OAH, then, provides more than one quasi-judicial hearing option. Because of the requirements of the APA, the OAH must use administrative law judges and hearing reporters in conducting licensing hearings. For those hearings outside the jurisdiction of the APA, however, the OAH has more flexibility in determining the type of hearings services that can be provided.

State Agencies

The vast majority of administrative hearings held by California state government are conducted not by OAH, but by hearing officers employed directly by state agencies. Because each agency has specific statutory authority to hold its hearings, the number and type of administrative hearings are as diverse as the agencies which conduct them. Table 2 lists the major types of quasi-judicial hearings conducted by state agencies. The table shows that the two types of hearings resulting in the most filings are disputes involving workers' compensation and unemployment benefit claims.

Generally, state agencies which conduct their own administrative hearings can be divided into two groups; agencies which are listed in the APA and those that are not.

1. Non-APA State Agencies. There are 22 state agencies that conduct quasi-judicial hearings which are not listed in the APA. (A list of these agencies appears in Appendix C.) These agencies account for the

Table 2

Types of Administrative Hearings
Conducted by State Agencies
1983-84

<u>State Agency Conducting Hearing</u>	<u>Type of Hearings^a</u>	<u>Number of Filings 1983-84</u>
Workers' Compensation Appeals Board, Department of Industrial Relations (DIR)	Disputed claims for compensating workers who suffer injury in the course of their employment.	153,460
Unemployment Insurance Appeals Board	Denial, termination or modification of unemployment benefits.	116,462
Division of Labor Standards Enforcement, DIR	Wage claims and related employee payment complaints.	71,260
Department of Social Services	Denial, termination or modification of benefits or services provided through Medi-Cal, Aid to Families with Dependent Children, or Food Stamps.	37,812
Board of Control	SB 90 claims, claims against the state, claims by victims of violent crime or hazardous substances.	23,338
Board of Prison Terms	Setting of parole dates and definite terms, parole violation, rescission and progress hearings.	6,857
Youthful Offender Parole Board	Violations of probation and parole, disposition hearings, rescissions and probable cause detention hearings for youthful offenders.	4,836
Occupational Safety and Health Appeals Board, DIR	Violations of laws and regulations governing the safety of work places.	1,228
State Personnel Board	Personnel actions of dismissal, suspension, demotions, etc.	1,223
Public Employment Relations Board	Unfair labor practice disputes.	1,004

a. Data originally compiled by the Department of Finance, Program Evaluation Unit.

vast majority of administrative hearings held in the state. Since the establishment of the APA, there have been attempts to bring these non-APA agencies under the act's provisions. These attempts, however, have met with limited success.⁷

The characteristics of non-APA administrative hearings are varied, which makes comparisons among them difficult. For instance, non-APA agencies with higher hearing caseloads generally maintain a permanent staff of hearing officers, while smaller agencies tend to rely on individual commission or board members to conduct their hearings. The background and experience of non-APA hearing officers differ from agency to agency, as well. For example, some non-APA agencies employ administrative law judges with extensive legal background to hear their disputes. Other agencies use hearing officers with auditing, scientific or management backgrounds. In general, most of these agencies have tailored their hearing staffs and processes to meet the type of issues and caseloads which they encounter most often.

7. The Senate Interim Committee on Administrative Regulations and Adjudications (see Note #2 above) concluded that "the public is entitled to have hearings officers...who are as far divorced as possible from the sphere of agency influence." The Legislature, however, did not place all agencies under the provisions of the APA, which would have provided for such independent hearing officers. In 1977, Herbert Nobriga, then Director of the Office of Administrative Hearings, promoted the idea of universal application of the APA throughout state government, and the establishment of a single agency to conduct administrative hearings. The previously mentioned Department of Finance study was commissioned to study the suitability of this proposal and found "no clear and obvious evidence that a centralized administrative law court would be either functionally or economically preferable" to the present system.

2. APA Agencies. Many agencies which are required by the APA to have their license hearings conducted by OAH perform other, nonlicense hearings on their own. For example, the Department of Social Services (DSS), which must have its license-related hearings handled by OAH, conducts thousands of its own benefit-related hearings (See Table 2).

For the most part, nonlicense hearings involving APA agencies are conducted by the agencies themselves, in accordance with their statutory authority. From time to time, however, nonlicense hearings of APA agencies have been assigned to OAH, as in the case of child nutrition contractor appeals, mentioned earlier.

A major category of nonlicense hearings conducted by many APA agencies are provider audit appeals. These hearings are common among benefit and service agencies such as the Department of Mental Health (DMH), the DSS, and the Department of Health Services (DHS). For example, the DMH conducts appeal hearings for local mental health service providers who dispute the findings of a departmental audit examination. The DHS conducts similar hearings in connection with departmental audits of Medi-Cal providers.

The characteristics of audit appeal hearings differ from one agency to another. For instance, the type of hearing officers used for these audit appeal hearings varies among agencies. The DMH employs attorneys from its in-house legal staff, the DHS uses administrative law judges, and the DDS relies on "hearing auditors" to conduct its audit appeals hearings. The length of these hearings is dissimilar as well, largely because of differences in agency regulations, state statutes and federal requirements. What is consistent, though, is the nature of the audit appeal hearing

itself. It is a more technical, complex, and lengthy process than many other types of quasi-judicial hearings.

A second major category of nonlicense hearings conducted by APA agencies includes due process or fair hearings, involving the denial, termination, or modification of welfare, health, or related benefits. The DSS conducts the majority of these "beneficiary" hearings, having responsibility for both social welfare and Medi-Cal fair hearings. The department employs attorneys, as well as individuals with graduate degrees in social work, to conduct these hearings.

ALTERNATIVE METHODS FOR CONDUCTING ADMINISTRATIVE HEARINGS

In California, there are few private organizations which provide quasi-judicial hearing services. We have identified three private sector hearing options, none of which would be able to conduct all state agency administrative hearings. Therefore, each of the private sector hearing options discussed below should be considered as options only for individual state agencies, and not for state government as a whole.

McGeorge Institute for Administrative Justice

Perhaps the closest counterpart to OAH outside of California state government is the Institute for Administrative Justice located at the McGeorge School of Law in Sacramento. The McGeorge Institute conducts training for governmental agencies that hold quasi-judicial hearings.

During the early 1970s, the DSS contracted with the institute to obtain the services of approximately 60 second- and third-year law students to help relieve the department's backlog of hearings. At the peak of the institute's involvement, law students provided about one-third of the department's total hearing support. This contract was terminated in the late 1970s.

Another state agency that has used McGeorge law students to conduct its quasi-judicial hearings is the Agricultural Labor Relations Board. In the first year of the board's existence (1976), the McGeorge Institute provided recent law school graduates (individuals who had completed law school but had not yet passed the State Bar) to conduct hearings for the board. Once the board was able to establish a staff of permanent hearing officers, however, the contract with McGeorge was terminated.

American Arbitration Association

The American Arbitration Association (AAA) is a private nonprofit organization which offers dispute settlement services to businesses, trade associations, unions, families, communities, and all levels of government. These services include the provision of "conflict resolution" methods, such as arbitration, mediation, democratic elections, and other voluntary settlement procedures. Essentially, the AAA functions as an arbitration service provider. It prepares a list of potential arbitrators and arranges the date, time, and location for holding the arbitration session. The AAA also maintains a list of 60,000 experts in diverse fields and professions who are able to serve as arbitrators.

There are two ways in which the state could use arbitration or mediation as an alternative to the current system of administrative hearings. First, the state could use private arbitrators as hearing officers. Under this approach, agencies would contact the AAA, indicate the type of individual they need to conduct their administrative hearing, and let the association provide an arbitrator meeting that description. Alternatively, an agency could replace its entire administrative hearing system with an arbitration process.

While the AAA traditionally has provided the majority of its services to businesses and industries, it appears to be a viable administrative hearing option for state agencies.

Judges Pro Tem

For the past 10 years, the Los Angeles Municipal Court has operated a program in which local attorneys serve as judges pro tem for the Central Division of the Los Angeles Municipal Courts, where they adjudicate civil, small claims, traffic and landlord tenant disputes. The program is coordinated through the Los Angeles and Beverly Hills Bar Associations.

All attorneys serve on a "pro bono" or volunteer basis, in order to gain judicial experience. Each year, local attorneys are invited to participate in the program. The court requires the attorney to have been a practicing member of the State Bar for at least five years, and to have some specialized trial experience.

Although a program similar to the Los Angeles Municipal Court model might not be sufficient to provide full administrative hearing services for a state agency, it might offer a way to supplement existing administrative hearing services. For example, the Division of Industrial Accidents in the Department of Industrial Relations has recently employed judges pro tem in the prehearing process (stipulations of fact, settlement negotiations, etc.) to help reduce a large administrative hearing backlog. Since these hearing officers are volunteers, this alternative is not a costly one, involving only administrative overhead costs.

Private Attorneys

The City of Sacramento has, on occasion, used the services of private attorneys on an individual contract basis to conduct administrative hearings. Presumably, state agencies also might consider using private

attorneys to eliminate a hearing backlog, or to supplement existing staff during peak hearing periods.

Limitations on the Use of Private Entities to
Conduct Administrative Hearings

While private entities such as the AAA offer an alternative means for conducting administrative hearings, there are both constitutional and statutory provisions that limit the use of such entities.

Background. State law generally presumes that state services should be performed within the civil service system. The State Constitution defines the civil service to include "every officer and employee of the state" (Article VII, Section I). This definition, together with the statutes governing the operation of the state civil service system (Government Code, Section 28500 et seq.), have been the basis for several California Supreme Court decisions which have limited the ability of the state to employ private contractors to perform personal services.

In State Compensation Insurance Fund v. Riley (1937), the court concluded that if a service could be performed by a person selected under the civil service system, no private contracting for that service could be undertaken. The court also decided in Stockburger v. Riley (1937) that the legal determination regarding whether a service could be performed by the civil service does not depend upon economy or efficiency considerations. In the case of California State Employees Association v. Williams (1970), the court expanded the circumstances under which service contracting is authorized. The court ruled that a service could be performed by a private entity under contract with the state if such a contract was explicitly authorized by the Legislature (following guidelines established by past

court decisions), or if the activity involved a new function not previously performed by the particular state agency.

Based on these decisions, the State Personnel Board developed guidelines governing the practice of contracting for services. These guidelines, which recently were codified in law (Chapter 1057, Statutes of 1982), allow state contracting for services when one of ten special conditions exists. Such conditions include the following:

- o The service is not available within civil service;
- o The service is part of a new state function involving work authorized by the Legislature; and
- o The service is urgent, temporary, or occasional in nature, and timely delivery of the service is critical.

The new law also provides a legal basis for the use of private contracts when cost-savings can be achieved. In general, cost-based contracting for services by state agencies is permissible if:

- o The contract does not cause the "displacement" (layoff, demotion, or involuntary transfer) of civil service employees;
- o The contractor's wage scale is comparable to state pay rates;
- o The contract satisfies the state's affirmative action standards; and
- o The "potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government."

The DGS reports that no service contracts have been justified on a cost-savings basis since the new contracting law became effective on January 1, 1983.

Implications for Private-Sector Contracting. Because state agencies are allowed to contract for services from the private sector only under specified conditions, their ability to use private entities to conduct administrative hearings is quite limited. The primary constraint is the availability of administrative hearing services within the state civil service system--either from the OAH or other state agencies. As noted above, it generally is not possible to contract for services from the private sector when they are available within the civil service system. Thus, although state agencies have obtained administrative hearing services from private organizations in the past, these organizations have handled only a very small percentage of the total quasi-judicial hearing caseload. The use of private organizations to conduct administrative hearings generally has been on a temporary basis in order to assist existing agency administrative hearing staff.

In summary, even if the alternative of using private entities to conduct administrative hearings met all of the specific tests set forth in existing law, the contracting agency still would have to demonstrate that the economic benefits from contracting outweigh the public's interest in being served by state government. Moreover, public sector employee organizations presumably could challenge any state agency's decision to contract with a private organization to provide quasi-judicial hearing services on the basis that the jobs should go to state employees. Even the threat of such a challenge might dissuade state agencies from entering into a contract with a private organization for administrative hearing services. Thus, at present there is much uncertainty regarding the ability of state agencies to obtain administrative hearings from the private sector.

The costs and benefits associated with each of the administrative hearing options discussed above are different. The following chapter contains an analysis of the costs involved in conducting quasi-judicial hearings using these different approaches. (Chapter III looks at benefits.)

CHAPTER II

ALTERNATIVES FOR CONDUCTING ADMINISTRATIVE HEARINGS: COST COMPARISONS

This chapter analyzes the cost of conducting quasi-judicial hearings in different ways. Specifically, it describes the factors--both major and minor--which explain cost differences between the various hearing options. The differences in benefits associated with quasi-judicial hearing options are discussed in Chapter III.

MAJOR COST FACTORS

Type of Hearing Officer

The primary determinant of what an administrative hearing of a given length will cost is the type of hearing officer used to conduct the hearing. Table 3 presents the cost per hour for different types of hearing officers. It shows that charges range from \$24 to \$100 per hour. (The cost information in the table was prepared by the organizations themselves and includes both direct and indirect costs.)

Generally, the more experience and expertise possessed by a hearing officer, the higher the cost for that individual's services. For example, in 1983-84 an Administrative Law Judge I on the staff of the Office of Administrative Hearings (OAH) earned \$3,481 per month (first step), while a Hearing Officer I on the staff of the Department of Social Services (DSS) earned \$1,935 per month. This salary difference is due primarily to the fact that administrative law judges are required to have five years of experience in the practice of law, while hearing officers at DSS need only possess either a law degree and membership in the State Bar, or a master's degree in social work.

Table 3

Cost Per Hour Comparison of
Selected Administrative Hearing Officers
1983-84 Estimates

<u>Administrative Hearing Officers</u>	<u>Hourly Rate</u>
Administrative Law Judge (OAH) (conduct all APA hearings)	\$75.80
Staff Counsels (DMH) (audit appeal hearings)	52.00
Private Lawyers	50.00-100.00 ^a
Hearing Officers (OAH) (conduct non-APA hearings)	42.70
Law Students (McGeorge) (bid prepared for Department of Developmental Services fair hearing contract--1983)	29.00
Hearing Officers (DSS) (welfare and Medi-Cal fair hearings)	24.00

a. Hourly rates for private lawyers depend upon the type of legal service to be provided. Those public agencies which have used private attorneys as hearing officers report hourly rate costs between \$50-\$100.

Method of Recording Hearing

Another important factor which helps explain differences in the cost of administrative hearings is the method used to record hearings. Basically, there are two options available. One is to have a hearing reporter transcribe the proceedings manually; the second is to record the hearing electronically on magnetic tape.

As noted in Chapter I, a hearing reporter must be used in all Administrative Procedure Act (APA) hearings unless both parties agree to waive the requirement. The OAH maintains a staff of hearing reporters and charges clients on a per hour basis for their services. Although other state agencies also use hearing reporters, the majority of them record their hearings electronically. Usually, the agencies using electronic recording devices also assign an office worker or office assistant to monitor the tape recorder and take notes of the proceedings.

The personnel-related costs of using hearing monitors is less than one-half of what it costs to use hearing reporters. Even when the costs of recording and transcribing equipment, logs and cassette tapes are added to the personnel costs of electronic recording, electronic recording still holds a cost advantage over hearing reporters. In fact, the Department of General Services (DGS) determined in 1981 that the cost of electronic recording was 46 percent less than the cost of hearing reporter services.¹ In some cases, the cost advantage may be even greater. Several state agencies, such as the Departments of Social Services (DSS) and Mental Health (DMH), delegate the responsibility for electronically recording hearings to the hearing officer, in which case the cost of recording is covered by charge for the hearing officer.

In requiring that OAH reporters be used to record APA hearings, the state further increases the recording costs associated with these hearings.

1. Office of Administrative Hearings, Report to the Governor and to the Legislature, 1981. Also, see "Evaluation of the Feasibility and Potential Application of Recording OAH Hearings by Machines," Administrative Services Division, Program Analysis Section, Department of General Services, February 23, 1977, p.2.

This is shown in Table 4. The table contains information gathered by OAH showing the rates charged for OAH hearing reporters and those charged by a number of private hearing reporter firms.

Table 4
Certified Shorthand Reporter Rate Comparison

<u>Organization</u>	<u>Hearing Reporter Rates Per Day (1983)</u>
OAH	\$216.00
Rendel Hutchings, CSR (L.A., San Diego, Santa Ana)	150.13
James A. Ollsen, CSR (San Diego)	104.88
J.J. Reporting Service (San Jose)	100.00
Kirkpatrick & Lawler, CSR (San Bernardino)	90.00
Schiller, Combs, CSRS (San Francisco)	90.00
Peters Shorthand Reporting (Sacramento)	75.00
Ray Eggebratten, CSR (Fresno)	70.00

Source: Office of Administrative Hearings

As the table indicates, the cost of private reporting services in 1983 was approximately one-half the cost of OAH hearing reporters. And in one instance, a private service was less than one-third as expensive.

Some of the differences in cost between OAH and private reporters reflects the fact that the OAH rate includes the cost of travel, whereas the private rates do not. More importantly, OAH has salaried reporters, who must be paid even when they are not at a hearing. (Good scheduling and planning can minimize but not eliminate such "down" time.) Private employers, on the other hand, are able to pay only for work actually performed. This causes OAH rates to be higher, since OAH must "absorb" the cost of nonproductive hours.

MINOR COST FACTORS

Although the primary determinants of differences in the cost of conducting quasi-judicial hearings using different approaches are the type of hearing officer used and the method used to record the hearing, two other factors help account for these differences. These factors are travel and indirect costs.

Travel

As mentioned previously, both federal and state laws can exert an influence over an agency's policies regarding where hearings are held. In some cases, these laws prevent the agency from adjusting its hearing locations so as to minimize costs. In order to reduce travel costs associated with administrative hearings, OAH and many state agencies maintain regional offices (typically in Los Angeles and San Francisco). This reflects the fact that the vast majority of all quasi-judicial hearing requests originate in the major population centers.

Policies governing the location of administrative hearings can affect the feasibility of using private entities to conduct the hearings. For example, as Table 3 shows the McGeorge Institute could provide hearing

officers at a cost well below that for other hearing alternatives. The hourly charge listed in Table 3, however, does not include the cost of transporting law students to and from the hearing site. If an agency's hearings were held only in Sacramento, the cost of travel would be insignificant. For an agency which conducts administrative hearings around the state, however, travel costs could reduce--or even eliminate--the cost advantage from using McGeorge law students.

Travel costs could be minimized by recruiting judges pro tem, arbitrators, or private lawyers from the area in which the hearing was held. This would be possible, however, only where an adequate pool of arbitrators and lawyers existed, and for only those agencies that possess the necessary administrative resources to coordinate such an effort.

Varied Indirect Cost Rates

Administrative overhead charges also account for differences in the cost of conducting quasi-judicial hearings using various approaches. Agencies incur indirect expenses attributable to the hearing function when they train hearing officers in the substantive legal issues involved in the hearings, provide general technical support, and arrange for hearing facilities and foreign language interpretation for claimants.

These charges are particularly significant in the case of the OAH. The OAH is a unit of the DGS, and as such bears a portion of the entire department's indirect cost (in addition to its own office overhead). The department maintains that these additional indirect costs provide a greater level of support to OAH which, in turn, results in better service to the office's clients. We were unable to determine whether OAH receives additional administrative benefits in proportion to these DGS overhead charges.

SUMMARY

As described above, the two most important factors accounting for differences in the cost of administrative hearings are, first and foremost, the type of hearing officer used, and secondarily, the method employed to record the hearing. With regard to the former, there is a strong relationship between the cost of a hearing officer and that officer's legal experience. This is why an OAH law judge is the most expensive officer option, followed by departmental legal counsel and then less experienced hearing officers. With regard to the method used to record hearings, OAH hearing reporters are, by far, the most expensive option. Private hearing reporters and electronic recording are both considerably less costly.

Thus, the highest hourly cost for conducting an administrative hearing is incurred when an agency uses an OAH administrative law judge and an OAH hearing reporter. Current law requires that these resources be used for most APA hearings. Conversely, hourly cost of conducting hearings is relatively low when hearing officers and electronic recording devices are used (as they are, for example, in connection with DSS fair hearings).

In using different methods to conduct administrative hearings, however, an agency does not necessarily receive the same level or quality of services. Differences in these benefits obtained from each method are discussed in the next chapter.

CHAPTER III

ADMINISTRATIVE HEARING OPTIONS: BENEFIT COMPARISONS

As described in Chapter II, there are several options for conducting administrative hearings, each of which involves different cost considerations. In this chapter, we examine the benefits provided by each option--that is, the benefits accruing to the state from using a higher-cost option or the benefits foregone as a result of using a lower-cost option.

As the differences in cost are due primarily to the differences in the type of hearing officer used and the method used to record the hearing, we focus on these two components.

HEARING OFFICER EXPERIENCE

The single costliest component of any administrative hearing is the cost of the hearing officer. In paying more or less for an administrative hearing officer, the state is essentially buying more or less experience. Certainly, there are characteristics other than experience, such as verbal skills and a sense of fairness, which individuals conducting administrative hearings should possess. Experience, however, is probably the single best objective indicator of the benefits that the state can expect from a given administrative hearing officer.

As noted in Chapter I, an administrative law judge, the costliest type of hearing officer, must have been admitted to practice law in the state and have at least five years of legal experience. On the other hand, a hearing officer, which costs 44 percent less than a judge, need only have

been admitted to the practice of law. The least expensive hearing officer alternative (other than the judges pro tem) is the law school student, whose experience is limited to two or three years of law study. Thus, there is, not surprisingly, a strong positive relationship between the cost of obtaining hearing officer services and the legal expertise provided to the state.

Benefits Associated With Experience

Presumably, the more experience the state buys, the better a "product" the state receives in terms of the quality of quasi-judicial hearings. The main benefits of having more experienced officers fall in one of three categories:

- o Due Process. Due process is the protection of individuals against the arbitrary exercise of power by government.¹ In administrative proceedings, basic requirements of procedural due process are satisfied if a person is given a fair hearing, upon reasonable notice, before a board, tribunal, or court having jurisdiction over the proceedings and parties.² Generally, hearing officers with more experience are better qualified to ensure that the liberty and property of the individuals involved in a hearing are protected.
- o Equity. Impartiality and fairness in the hearing are the primary measures of equity. Experienced administrative hearing officers are generally perceived by participants in the hearing process as being more just and impartial in conducting a proceeding than other, less expert hearing officers.

1. 2 Am Jur 2d Administrative Law § 353.
2. 2 Am Jur 2d Administrative Law § 353.

- o Efficiency. Administrative hearing officers with greater experience are also perceived as more efficient in conducting hearings. These hearing officers are able to oversee the proceedings and render decisions with greater speed than other less experienced hearing officers.

Determining the Expertise Needed

As described in Chapter I, state agencies conduct a wide variety of administrative hearings, and the level of administrative hearing officer expertise needed to conduct those hearings is just as diverse. Three main variables can be used to evaluate the level of hearing officer expertise needed for a particular administrative hearing category:

- o Complexity of the Hearing. Certain factors tend to increase the complexity of an administrative hearing and thus require the presence of a more-experienced hearing officer. One such factor is the amount of evidence presented in a hearing. For example, Department of Health Services (DHS) audit appeal hearings and Public Utilities Commission (PUC) rate setting hearings involve the presentation of large amounts of evidence. As a result, they generally require a lengthier factfinding process.
A hearing is also more complicated to the extent that it involves close public scrutiny. Such a hearing might be a Board of Medical Quality Assurance proceeding to determine whether or not to revoke the license of a physician accused of sexual misconduct. Again, an experienced hearing officer would be more capable of ensuring that the media attention surrounding such a hearing would not detract from the proceedings.

Another factor affecting the complexity of the hearing is whether or not the parties are represented by legal counsel. In hearings where individuals typically are not represented by a lawyer (for instance, Medi-Cal beneficiary hearings), the proceedings tend to be more informal, and thus, there is less need for more expert hearing officers.

- o Impact on Individuals. The experience needed in a hearing officer also depends on the potential impact of the hearing decision on the individuals involved. For instance, a workers' compensation hearing involving the potential termination of benefits would have more serious ramifications on an individual than a hearing involving simply the reduction of existing benefits. Similarly, a utilities hearing involving a \$1 billion rate increase would most certainly require a more experienced officer than a hearing involving a \$70,000 requested rate increase.
- o Precedent-Setting Nature of Case. The amount of legal precedent that could result from a hearing would also affect the needed level of hearing officer expertise. Hearings which center on issues for which there are few, if any, previous decisions or opinions on which to draw might require a more expert hearing officer. For example, since the Public Employment Relations Board (PERB) frequently is dealing with precedent-setting issues regarding the state's relatively new employer-employee relations law which will be read and used by other hearing officers and judges, PERB should be assigning more experienced administrative hearing officers to these types of cases.

In assigning hearing officers to cases, state agencies do take into account the case variables described above in order to link the desired benefits with the needed expertise. As noted earlier, however, statutory and constitutional restrictions prevent many agencies from using some of the options for conducting hearings available to other agencies. For example, certain agencies are required by APA statutes to use expensive ALJs from the Office of Administrative Hearings (OAH) to conduct their hearings, even though a less-expensive hearing officer might suffice. In addition, constitutional restrictions on contracting with the private sector hamper agencies' ability to use private hearing officers when this alternative would provide the needed level of expertise at the lowest cost.

In Chapter IV, we offer some recommendations for improving agencies' flexibility in providing hearing officer services.

METHOD OF RECORDING HEARINGS

The other principal determinant of quasi-judicial hearing costs is the method used to record the hearing. Basically there are three options available to state agencies: (1) state hearing reporters, (2) private hearing reporters, and (3) electronic recording.

As indicated in Chapter II, state hearing reporters are more expensive than private reporters. Generally, private reporters cost only one-half as much as OAH reporters. Similarly, the electronic recording of hearings is about one-half as expensive as state hearing reporters.

The premise underlying the use of a more expensive method to record an administrative hearing is that the state will receive the benefit of a more accurate transcription. This not only helps to ensure a fair hearing for the parties involved, it also assists others reviewing the case (for

example, a judge taking the case upon appeal or a lawyer interested in any precedents involved in the hearing).

To what extent is this premise valid? We evaluate it below.

State Versus Private Reporters

Given the significant cost difference between state and private reporters, we would expect the former to provide greater benefits in the form of more accurate transcriptions. Unfortunately, it is difficult to test this assumption, as state agencies do not currently use private hearing reporter services. Presumably, this is the result of restrictions on state personal services contracting (see Chapter I).

State Reporters Versus Electronic Recording

At present, several state agencies, such as the PERB and the State Personnel Board (SPB) electronically record hearing proceedings. Many studies have been conducted comparing the effectiveness of this approach with the use of hearing reporters. The results of the most significant of these studies can be briefly summarized as follows:

- o A 1973 study conducted by the Sacramento courts found that hearing reporter transcripts contained three times as many errors as those prepared from electronic recording.
- o A 1977 study conducted by the Department of General Services (DGS) concluded that the quality of transcripts prepared using electronically reported hearings equaled or exceeded the quality of transcripts prepared by stenographic reporters.
- o A study conducted by the Department of Finance in 1978 found that a transcript produced from a court reporter contained about twice as many errors as a transcript produced from an electronic recording.

- o The OAH found in 1980 that a potential annual savings of over \$400,000 could be achieved by OAH client agencies through the use of electronic recording.
- o In a 1982 study of the Workers' Compensation Appeals Board (WCAB), the Auditor General found that the WCAB could save approximately \$1 million annually by employing electronic recording devices to perform some of the functions carried out by court reporters. The Auditor General also found that an electronic recording system would increase the accuracy of the hearing record.
- o The federal General Accounting Office (GAO) concluded in 1982 that electronic recording systems are a proven alternative to the traditional practice of using court reporters to record judicial proceedings. The GAO concluded that electronic recording provides a better record of court proceedings and could save the federal judicial system as much as \$10 million annually.

We were unable to find any study which concluded that (1) reporters were more accurate than electronic recording, or (2) electronic recording was more expensive than stenographic reporting. Moreover, those agencies that rely on electronic recording, such as PERB and SPB, appear satisfied with their arrangements. Thus, the preponderance of evidence indicates that hearing reporters do not provide additional benefits that are sufficient to justify the higher cost of using them to record the proceedings. In fact, there is considerable evidence that reporters are both more costly and less accurate.

There may be some instances, however, where it is more beneficial to use hearing reporters than electronic recordings. For instance, the PUC uses reporters, rather than electronic devices, to record its administrative hearings in order to provide for the speedier transcription of hearings. The PUC indicates that transcripts needed by the concerned parties on the day of the hearing are completed more quickly when reporters are used. This is because they are able to dictate their shorthand notes directly to their typists. It takes somewhat more time for these typists to transcribe the proceedings from a tape. Thus, when a variable other than accuracy or cost (such as speed of transcription) is of prime importance, the use of hearing reporters may be advantageous.

SUMMARY

It is relatively easy to compare the cost of using different approaches to conduct and record administrative hearings. Comparing the quality of services, however, is much more difficult, since we cannot assess or quantify such benefits as "due process" or "fair and just" hearings. It is possible, nevertheless, to develop general guidelines for evaluating the level of the hearing officer expertise needed to conduct competently different types of proceedings.

The ability of agencies to follow these guidelines, however, is constrained by a number of factors to match up resources with tasks. These constraints, and alternatives for relaxing them, are discussed in the following chapter.

CHAPTER IV
RECOMMENDATIONS

At present, state agencies seeking to provide administrative hearing services on the most cost-effective basis are constrained in a number of ways. In this chapter, we offer recommendations for increasing these agencies' flexibility in conducting administrative hearings, thereby making possible cost-savings to the state without sacrificing the integrity of the hearing process.

Eliminate OAH-Related Statutory Requirements

As described in earlier chapters, the Administrative Procedure Act (APA) requires agencies holding license and certification hearings to use the services of the Office of Administrative Hearings (OAH). In addition, the APA requires OAH to conduct license hearings using administrative law judges--the most expensive type of hearing officer.

Our review of the state's current adjudication system indicates that these requirements are not necessary. In particular, it is not clear what state purpose is served by requiring that license hearings be conducted by ALJs. Generally, license proceedings are no more complicated or significant than nonlicense hearings, which are conducted primarily by less-expensive types of hearing officers. Thus, by requiring that ALJs be used to conduct license hearings, the state appears to be buying more hearing officer experience than is warranted by the nature of these cases.

Accordingly, we recommend that the Legislature eliminate the requirement that license hearings under the APA be conducted exclusively by ALJs.

Furthermore, it is not clear that OAH's statutory monopoly on conducting license hearings is still justified. The state has developed a varied and multifaceted system of providing administrative hearings that is responsive to the needs of both program managers and program participants. Consequently, there no longer seems to be any need to require that state agencies conducting license hearings use the services of the OAH. In order to increase these agencies' flexibility in providing license hearings, we therefore recommend that the Legislature eliminate the requirement in the APA that all license hearings be conducted by OAH.

State departments would still be able to contract with OAH for hearing services if they so choose. Eliminating this APA requirement would simply permit these departments to establish an alternative type of administrative hearing process where such a process is more cost-effective.

Promote the Use of State Hearing Officer Options

As described in Chapter III, administrative hearings conducted by state agencies require varying levels of hearing officer expertise. Yet typically, state agencies will use only one or two types or classifications of hearing officer. For example, the Public Utilities Commission, the Agricultural Labor Relations Board, and the Public Employment Relations Board use only ALJs; the Department of Mental Health uses only staff counsels and the Department of Social Services uses only hearing officers.

In many cases, agencies may need only one type of hearing officer to conduct hearings on a cost-effective basis. It appears to us, however, that by providing agencies with more than one classification, the state would be ensuring that the proper level of hearing officer expertise and experience can be provided at the lowest possible cost.

Accordingly, we recommend that the Legislature review the hearing officer classifications used by those agencies which conduct administrative agencies hearings to ensure that they have the maximum flexibility in providing administrative hearing services. A convenient method of implementing this recommendation would be for legislative budget committees to review a state agency's hearing officer classifications whenever that agency requests additional hearing officer resources.

Eliminate OAH Hearing Reporter Requirement

As noted earlier, a hearing reporter must be used to record the proceedings of any APA hearing, unless both parties agree to waive the requirement. The available evidence, however, clearly indicates that the electronic recording of hearings provides just as accurate a record of the proceedings at much less cost. Consequently, the presumption in favor of using hearing reporters is not justified in terms of quality or cost.

Accordingly, we recommend that the Legislature (1) eliminate the requirement that the OAH use hearing reporters on all APA hearings, and (2) authorize OAH to determine the best method of recording the hearing. If this recommendation is adopted, OAH will not be required to use electronic recordings. It simply would have the option on a case-by-case basis to use the most cost-effective form of recording hearings.

Encourage Private Sector Options

At present, legal restrictions on state contracting limit the ability of state agencies to obtain administrative hearing services from the private sector. Some of these restrictions are imposed by the State Constitution, and would require a vote of the people to be changed. There are, however, at least two steps that the Legislature could take in order to expand the use of private sector resources for conducting administrative hearing when doing so would be cost-effective.

- o Peak-Load Contracting. Instead of hiring additional staff to assist with hearing backlogs during peak periods, state agencies should be able to use private lawyers, retired judges, and law school students, on a contract basis, to provide temporary administrative hearing services. Private contracting to meet peak-load needs would ensure that state hearing officers are always fully utilized, with no costly down time.

Accordingly, we recommend that the Legislature promote and encourage the use of private contracting to secure administrative hearing services in order to meet temporary needs. This can probably be done most effectively during the annual budget review process.

- o Judge Pro Tem Program. The state could also benefit from establishing a judge pro tem program, similar to the one operated by the Los Angeles Municipal Court. Such a program could provide state agencies with an experienced group of lawyers (or retired judges) to serve as hearing officers on a pro bono basis. For agencies with a small number of hearings, a judge pro tem program

could mitigate the need to establish a separate administrative hearing office. For agencies with an ongoing need for peak-load hearings assistance, a pro tem program could provide a readily available pool of hearing officers from which to draw, on an "as needed" basis.

Given the potential savings from having such a program, we recommend that the Legislature establish a pilot judge pro tem program in order to assess its feasibility in meeting the needs of departments providing administrative hearing services.

Appendix A

Principal Elements of an Administrative Hearing^a

1. All parties should give sworn testimony and have the right to testify.
2. All parties should have the opportunity to cross examine (or question) witnesses.
3. A permanent record of the hearing should be available for review.
4. The hearing should follow (generally) rules of evidentiary and procedural due process.
5. The hearing officer (or agency) should have subpoena power for persons and records.
6. The hearing officer should make a proposed/final decision based on the evidence presented.
7. Timely notice of the hearing should be given to all parties.
8. When one of the parties is not competent in the English language, an interpreter should be allowed to be present.
9. The hearing should be public.

a. Compiled by the Department of Finance, Program Evaluation Unit.

Appendix B

Agencies Listed in the Administrative Procedure Act Conducting Administrative Hearings

Accountancy, State Board of
Aging, State Department of
Air Resources Board, State
Alcohol and Drug Programs 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
Boating and Waterways, Department of
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' State License Board
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
Employment Agencies, Bureau of
Engineers, State Board of Registration for Professional
Fabric Care, State Board of
Fair Employment and Housing Commission
Fair Political Practices Commission
Fire Marshal, State
Fire Services, State Board of
Food and Agriculture, Director of
Forestry, Department of
Funeral Directors and Embalmers, State Board of
Geologists and Geophysicists, State Board of Registration for
Guide Dogs for the Blind, State Board of
Health Services, State Department of
Home Furnishings, Bureau of
Horse Racing Board, California
Insurance Commissioner
Labor Commissioner
Landscape Architects, State Board of

Appendix B--contd

Medical Quality Assurance, Board of
Mental Health, State Department of
Motor Vehicles, Department of
Nursing, Board of Registered
Nursing Home Administrators, Board of Examiners of
Optometry, State Board of
Osteopathic Examiners of the State of California, Board of
Pharmacy, California State Board of
Public Employees' Retirement System, Board of Administration of the
Real Estate, Department of
Resources Agency, Secretary of the
San Francisco, San Pablo and Suisun, Board of
Pilot Commissioners for the Bays of
Savings and Loan Commissioner
Shorthand Reporters Board, Certified
Social Services, State Department of
Statewide Health Planning and Development, Office of
Structural Pest Control Board
Tax Preparer Program, Administrator
Teacher Preparation and Licensing, Commission for
Teachers' Retirement System, State
Transportation, Department of
Veterinary Medicine, Board of Examiners in
Vocational Nurse and Psychiatric Technician Examiners
of the State of California, Board of
Water Resources, Department of

Appendix C

Agencies Not Included in the Administrative Procedure Act Conducting Administrative Hearings

Agricultural Labor Relations Board
Athletic Commission
Control, Board of
Energy Resources Conservation and Development Commission
Equalization, Board of
Franchise Tax Board
Government Organization and Economy, Commission on California State
Housing and Community Development, Department of
Judicial Performance, Commission on
Lands Commission, State (Permit Action)
Occupational Safety and Health Appeals Board,
Department of Industrial Relations (DIR)
Personnel Board, State
Prison Terms, Board of
Public Employment Relations Board
Public Utilities Commission
San Francisco Bay Conservation and Development Commission
Social Services Advisory Board
Transportation, Department of (Board of Review)
Unemployment Insurance Appeals Board
Water Resources Control Board
Workers' Compensation Appeals Board/Division of Industrial Accidents (DIR)
Youthful Offender Parole Board