III. NATURE OF HEARINGS

§7.14 A. Rights Under Administrative Adjudication Bill of Rights and Due Process

Bill of Rights. The 1995 amendments to the APA enacted the Administrative Adjudication Bill of Rights. Govt C §§11425.10–11425.60. The Administrative Adjudication Bill of Rights prescribes fundamental due process and public policy protections for persons involved in administrative adjudication by California state agencies. Unless specifically exempted, an agency's provisions governing an adjudicative proceeding must conform to the Administrative Adjudication Bill of Rights. Govt C §11425.10. See §1.26 for specific requirements of the bill of rights. Many of the provisions of the Administrative Adjudication Bill of Rights are also mandated by due process.

PRACTICE TIP➤ The extent to which the Administrative Adjudication Bill of Rights either elevates or provides definition to the administrative adjudication proceedings is unsettled. Counsel should therefore be particularly knowledgeable about the provisions of the Bill of Rights.

Less formal than judicial procedure. "[P]rocedural due process in the administrative setting does not always require application of the judicial model." *Dixon v Love* (1977) 431 US 105, 115, 52 L Ed 2d 172, 181, 97 S Ct 1723; *Blinder, Robinson & Co. v Tom* (1986) 181 CA3d 283, 289, 226 CR 339. The parties should observe the legislative intent that administrative hearings not become burdened with procedural technicalities. See *Stearns v Fair Employment Practice Comm'n* (1971) 6 C3d 205, 214, 98 CR 467. However, in a quasi-judicial proceeding, the proceedings should at least be conducted in a quasi-judicial manner. *Nishkian v City of Long Beach* (1951) 103 CA2d 749, 752, 230 P2d 156 (building permit). See also *Endler v Schutzbank* (1968) 68 C2d 162, 65 CR 297; *Garvin v Chambers* (1924) 195 C 212, 225, 232 P 696. For a general discussion of due process, see chap 1.

Objection during hearing; challenge by administrative mandamus. As in civil trials, a party must make proper objection to any claimed denial of a fair hearing at the administrative level to preserve the question for review. Parties may challenge any aspect of a hearing as procedurally inadequate under applicable constitutional and statu-

tory provisions, and counsel should be alert to possible procedural violations throughout the administrative proceeding. Relief is generally sought through administrative mandamus under CCP §1094.5 for failure to provide a fair hearing.

§7.15 1. Right to Present Evidence

A full and fair administrative hearing includes the right to present evidence and examine witnesses. Govt C §§11425.10(a)(1), 11513(b); *Alta-Dena Dairy v County of San Diego* (1969) 271 CA2d 66, 77, 76 CR 510. See §§7.99–7.101 for a discussion of calling witnesses. See §1.71 for discussion of this due process right; see also *Giuffre v Sparks* (1999) 76 CA4th 1322, 91 CR2d 171 (full evidentiary hearing consistent with due process). The informal nature of a hearing conducted under the APA does not require the full panoply of the Evidence Code provisions used in criminal and civil trials. *Petricka v DMV* (2001) 89 CA4th 1341, 1348, 107 CR2d 909.

Complies with due process. These rights are consistent with the constitutional right to procedural due process, a violation of which is arbitrary and capricious and an abuse of discretion. *Apte v Regents of Univ. of Cal.* (1988) 198 CA3d 1084, 1098, 244 CR 312; *King v Board of Med. Exam'rs* (1944) 65 CA2d 644, 649, 151 P2d 282; *Bascom v IAC* (1938) 25 CA2d 334, 77 P2d 305.

Orally or in writing. The Supreme Court has held that due process requires, at least in cases involving termination of welfare benefits, the right to contest factual matters orally. *Goldberg v Kelly* (1970) 397 US 254, 25 L Ed 2d 287, 90 S Ct 1011. In close contrast, the Court later held that written evidence would suffice in a disability case in which the issue was medical fitness for employment. *Mathews v Eldridge* (1976) 424 US 319, 47 L Ed 2d 18, 96 S Ct 893. In the limited context of an interim medical license suspension under Govt C §11529, affidavits may be sufficient. *Gray v Superior Court (Medical Bd. of Cal.)* (2005) 125 CA4th 629, 639, 23 CR3d 50. See also *Marvin Lieblein, Inc. v Shewry* (2006) 137 CA4th 700, 722, 40 CR3d 547 (written evidence sufficient to satisfy due process in context of pharmacist's debarment from Medi-Cal program).

§7.16 2. Right to Confront Witnesses

The respondent has a right to cross-examine witnesses and produce evidence in refutation. Govt C §11513(b). *Goldberg v Kelly* (1970)