

5062 Conduct of Hearing and Evidence

(a)

A party appearing in a hearing shall have his or her evidence and witnesses and be ready to proceed.

(b)

An administrative law judge shall consider only those issues in a department action which are appealed, petitioned, or noticed by the agency. A related issue shall not be considered unless a waiver is obtained from all parties. If the department amends the action which is appealed or petitioned, the scope of an administrative law judge's consideration extends to the amended department action, provided that the department either serves it on all other parties at least 10 days before the hearing, or all other parties waive such service.

(c)

Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(d)

Each party shall have these rights: (i) to review the case file; (ii) to call and examine parties and witnesses; (iii) to introduce exhibits; (iv) to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination; (v) to impeach any witness regardless of which party first called the witness to testify; and (vi) to rebut the evidence against it.

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(e)

Except as otherwise prohibited by law, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(f)

An administrative law judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, or to prevent injustice, undue burden, or prejudice.

(g)

The rules of privilege shall be effective to the extent that they are required by law

to be recognized at the hearing.

(h)

In a proceeding in which conduct that constitutes sexual harassment, sexual assault, or sexual battery is alleged, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to the limitations set forth in Government Code section 11440.40.

(i)

Evidence of communications made in settlement is subject to the limitations of Government Code section 11415.60. Evidence of communications made in alternative dispute resolution under Article 5 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, commencing with section 11420.10, is subject to the limitations of Government Code section 11420.30. Evidence of communications made in mediation is subject to the limitations of Evidence Code section 1152.5.

(j)

An administrative law judge may exclude an untimely exhibit, including an untimely statement that a party intends to constitute its appearance pursuant to rule 5061(c).

(k)

An administrative law judge may order the taking of interrogatories and depositions inside or outside the state, upon such terms and conditions as may be just.

(l)

An administrative law judge may question any party or witness and may introduce exhibits.

(m)

The taking of evidence in a hearing shall be controlled by the administrative law judge in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the administrative law judge shall identify and explain the issues and the order in which evidence will be received.

(n)

A hearing shall be open to public observation unless an administrative law judge orders closure or makes other protective orders pursuant to Government Code section 11425.20 or Unemployment Insurance Code section 2713. This section does not apply to a prehearing conference conducted pursuant to rule 5066 or a settlement conference.

(o)

If an electronic hearing is open to public observation, members of the public may be physically present at the place where the administrative law judge is conducting the hearing, and any member of the public who is so present may review the case file, the audiovisual record, and any transcript that has been prepared.

(p)

Information obtained by the agency in the administration of its functions under the code is confidential and not open to the public. A party waives confidentiality in such information after it is presented to the agency during the course of a public hearing on the merits of the party's appeal.