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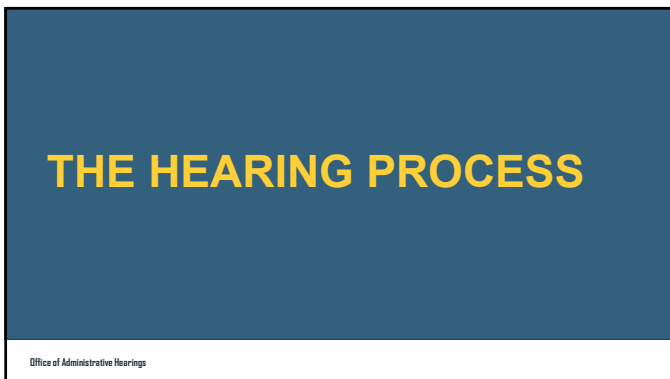
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### HEARINGS BEFORE OAH

- Hearings are generally open to the public (Gov. Code, § 11425.20)
- The ALJ may issue a protective order to close all or part of a hearing (Cal. Code Regs., tit. 1, § 1030)

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### HEARINGS BEFORE OAH

- Hearings are generally open to the public (Gov. Code, § 11425.20)
  - ALJ may issue a protective order to close all or part of a hearing (Cal. Code Regs., tit. 1, § 1030)
- **Documents submitted to OAH are subject to the Public Records Act (Gov. Code, § 6250-6270)**

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### HEARINGS BEFORE OAH

- Hearings are generally open to the public (Gov. Code, § 11425.20)
  - ALJ may issue a protective order to close all or part of a hearing (Cal. Code Regs., tit. 1, § 1030)
- Documents submitted to OAH are subject to the Public Records Act (Gov. Code, § 6250-6270)
- **Burden on parties to maintain the confidentiality of private information**

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## HEARINGS BEFORE OAH

- Hearings are generally open to the public (Gov. Code, § 11425.20)
  - ALJ may issue a protective order to close all or part of a hearing (Cal. Code Regs., tit. 1, § 1030)
- Documents submitted to OAH are subject to the Public Records Act (Gov. Code, § 6250-6270)
- Burden on parties to maintain the confidentiality of private information
  - **Redactions, confidential names lists, requests for protective orders sealing evidence or testimony**

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## THE HEARING PROCESS

Under the APA (Gov. Code, § 11513, subd. (b)), each party has the right to:

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## THE HEARING PROCESS

Under the APA (Gov. Code, § 11513, subd. (b)), each party has the right to:

- **Call and examine witnesses**

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### THE HEARING PROCESS

Under the APA (Gov. Code, § 11513, subd. (b), each party has the right to:

- Call and examine witnesses;
- **Introduce exhibits**

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### THE HEARING PROCESS

Under the APA (Gov. Code, § 11513, subd. (b), each party has the right to:

- Call and examine witnesses;
- Introduce exhibits;
- **Cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination**

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### THE HEARING PROCESS

Under the APA (Gov. Code, § 11513, subd. (b), each party has the right to:

- Call and examine witnesses;
- Introduce exhibits;
- Cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
- **Impeach any witness regardless of which party first called him or her to testify**

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### THE HEARING PROCESS

Under the APA (Gov. Code, § 11513, subd. (b)), each party has the right to:

- Call and examine witnesses;
- Introduce exhibits;
- Cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination;
- Impeach any witness regardless of which party first called him or her to testify; and
- Rebut the evidence against him or her.

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### THE HEARING PROCESS

The statutory rights *do not include* opening statements or closing arguments.

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### THE HEARING PROCESS

The statutory rights *do not include* opening statements or closing arguments.

However, the ALJ may permit openings and closings, to the extent they would be helpful to the ALJ.

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### THE HEARING PROCESS

The statutory rights *do not include* opening statements or closing arguments.

However, the ALJ may permit openings and closings, to the extent they would be helpful to the ALJ.

“When the administrative law judge alone hears a case, the judge shall exercise all powers relating to the conduct of the hearing.” (Gov. Code, § 11512, subd. (b).)

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### THE HEARING PROCESS

1. Opening Statements (as permitted)
2. Evidence
3. Closing Argument (oral or written, as permitted)

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### THE HEARING PROCESS

Opening Statements

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### THE HEARING PROCESS

#### Opening Statements

- An opportunity to explain briefly what the party believes the case is about and what the evidence will show.

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### THE HEARING PROCESS

#### Opening Statements

- An opportunity to explain briefly what the party believes the case is about and what the evidence will show.
- Parties may choose to waive opening statements.

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### THE HEARING PROCESS

#### Opening Statements

- An opportunity to explain briefly what the party believes the case is about and what the evidence will show.
- Parties may choose to waive opening statements.
- The party with the burden typically goes first.

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**THE HEARING PROCESS**

Evidence

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**THE HEARING PROCESS**

Evidence

- Hearings need not be conducted according to the technical rules of evidence (Gov. Code, § 11513, subd. (c).)

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**THE HEARING PROCESS**

Evidence

- Hearings need not be conducted according to the technical rules of evidence (Gov. Code, § 11513, subd. (c).)
- **“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 that might make improper the admission of the evidence over objection in civil actions.” (Ibid.)**

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## THE HEARING PROCESS

### Evidence

- Hearings need not be conducted according to the technical rules of evidence (Gov. Code, § 11513, subd. (c).)
- "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 that might make improper the admission of the evidence over objection in civil actions." (*ibid.*)
- **Evidence typically consists of exhibits and witness testimony.**

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## THE HEARING PROCESS

### Evidence – Handling Exhibits Before the Hearing

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## THE HEARING PROCESS

### Evidence – Handling Exhibits Before the Hearing

- For hearings using Case Center, the parties should do four things.

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## THE HEARING PROCESS

### Evidence – Handling Exhibits Before the Hearing

- For hearings using Case Center, the parties should:
  1. Redact all private information from all hearing exhibits that will not be subject to a protective order.

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## THE HEARING PROCESS

### Evidence – Handling Exhibits Before the Hearing

- For hearings using Case Center, the parties should:
  1. Redact all private information from all hearing exhibits that will not be subject to a protective order.
  2. Upload their exhibits before the hearing begins.

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## THE HEARING PROCESS

### Evidence – Handling Exhibits Before the Hearing

- For hearings using Case Center, the parties should:
  1. Redact all private information from all hearing exhibits that will not be subject to a protective order.
  2. Upload their exhibits before the hearing begins.
  3. Ensure they can access the other party's exhibits, either on Case Center, downloaded, or printed out.

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## THE HEARING PROCESS

### Evidence – Handling Exhibits Before the Hearing

- For hearings using Case Center, the parties should:
  1. Redact all private information from all hearing exhibits that will not be subject to a protective order.
  2. Upload their exhibits before the hearing begins.
  3. Ensure they can access the other party's exhibits, either on Case Center, downloaded, or printed out.
  4. **Ensure all witnesses have access to the exhibits, either on Case Center, downloaded, or printed out.**

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## THE HEARING PROCESS

### Evidence – Handling Exhibits During the Hearing

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## THE HEARING PROCESS

### Evidence – Handling Exhibits During the Hearing

- The ALJ will refer to the exhibit based on its designation within Case Center. There is no need to mark the exhibits for identification.

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### THE HEARING PROCESS

#### Evidence – Handling Exhibits During the Hearing

- The ALJ will refer to the exhibit based on its designation within Case Center. There is no need to mark the exhibits for identification.
- **The party offering the exhibit must move it into evidence.**

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### THE HEARING PROCESS

#### Evidence – Handling Exhibits During the Hearing

- The ALJ will refer to the exhibit based on its designation within Case Center. There is no need to mark the exhibits for identification.
- The party offering the exhibit must move it into evidence.
- **The opposing party will have an opportunity to object.**

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### THE HEARING PROCESS

#### Evidence – Handling Exhibits During the Hearing

- The ALJ will refer to the exhibit based on its designation within Case Center. There is no need to mark the exhibits for identification.
- The party offering the exhibit must move it into evidence.
- The opposing party will have an opportunity to object.
- **The ALJ will rule on all objections and say whether the exhibit is admitted or excluded.**

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### THE HEARING PROCESS

Evidence – Handling Exhibits During In-Person Hearings

- In-person hearings use Case Center unless the ALJ directs otherwise.

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### THE HEARING PROCESS

Evidence – Handling Exhibits During In-Person Hearings

- In-person hearings use Case Center unless the ALJ directs otherwise.
- Parties show exhibits to the other party or attorney, then hand the exhibits to the ALJ to be marked.

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### THE HEARING PROCESS

Evidence – Handling Exhibits During In-Person Hearings

- In-person hearings use Case Center unless the ALJ directs otherwise.
- Parties show exhibits to the other party or attorney, then hand the exhibits to the ALJ to be marked.
- The party offering the exhibit must move it into evidence.
- The opposing party will have an opportunity to object.
- The ALJ will rule on all objections and say whether the exhibit is admitted or excluded.

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**THE HEARING PROCESS**

Evidence – Witness Testimony

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**THE HEARING PROCESS**

Evidence – Witness Testimony

- Parties must conduct their examination through questions.

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**THE HEARING PROCESS**

Evidence – Witness Testimony

- Parties must conduct their examination through questions.
- **The answers to the questions – not the questions themselves – constitute the testimonial evidence.**

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## THE HEARING PROCESS

### Evidence – Witness Testimony

- Parties must conduct their examination through questions.
- The answers to the questions – not the questions themselves – constitute the testimonial evidence.
- **The ALJ may invite unrepresented parties to testify narratively and explain what they think the ALJ should know when deciding the case.**

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## THE HEARING PROCESS

### Evidence – Witness Testimony

- Parties must conduct their examination through questions.
- The answers to the questions – not the questions themselves – constitute the testimonial evidence.
- The ALJ may invite unrepresented parties to testify narratively and explain what they think the ALJ should know when deciding the case.
- **The ALJ is permitted to ask clarifying questions to any witness.**

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## THE HEARING PROCESS

### Evidence – Witness Testimony: Differences in APA

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### THE HEARING PROCESS

Evidence – Witness Testimony: Differences in APA

- Questions may exceed the scope of direct examination or cross-examination, provided the inquiry is relevant (Gov. Code, § 11513, subd. (b))

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### THE HEARING PROCESS

Evidence – Witness Testimony: Differences in APA

- Questions may exceed the scope of direct examination or cross-examination, provided the inquiry is relevant (Gov. Code, § 11513, subd. (b))
- Agency may call the respondent to testify after they have elected not to testify voluntarily in their case in chief (*Ibid.*)

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### THE HEARING PROCESS

Evidence – Witness Testimony: Differences in APA

- Questions may exceed the scope of direct examination or cross-examination, provided the inquiry is relevant (Gov. Code, § 11513, subd. (b))
- Agency may call the respondent to testify after they have elected not to testify voluntarily in their case in chief (*Ibid.*)
- ALJ may exclude evidence if its probative value is “substantially outweighed by the probability that its admission will necessitate undue consumption of time.” (Gov. Code, § 11513, subd. (f))

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**THE HEARING PROCESS**

Evidence – Administrative Hearsay Rule

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**THE HEARING PROCESS**

Evidence – Administrative Hearsay Rule

- **“Hearsay evidence’ is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200, subd. (a).)**

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**THE HEARING PROCESS**

Evidence – Administrative Hearsay Rule

- **“Hearsay evidence’ is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” (Evid. Code, § 1200, subd. (a).)**
- **“Except as provided by law, hearsay evidence is inadmissible.” (Id., subd. (b).)**

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## THE HEARING PROCESS

### Evidence – Administrative Hearsay Rule

- "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." (Evid. Code, § 1200, subd. (a).)
- "Except as provided by law, hearsay evidence is inadmissible." (*Id.*, subd. (b).)
- **Under the APA, "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."** (Gov. Code, § 11513, subd. (d).)

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## THE HEARING PROCESS

### Evidence – Administrative Hearsay Rule & *Lake v. Reed*

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## THE HEARING PROCESS

### Evidence – Administrative Hearsay Rule & *Lake v. Reed*

- Official record exception to hearsay rule:  
"Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered in any civil or criminal proceeding to prove the act, condition, or event if all of the following applies:  
(a) The writing was made by and within the scope of duty of a public employee.  
(b) The writing was made at or near the time of the act, condition, or event.  
(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness." (Evid. Code, § 1280.)

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### THE HEARING PROCESS

Evidence – Administrative Hearsay Rule & *Lake v. Reed*

- Official record exception to hearsay rule.
- *Lake v. Reed* (1997) 16 Cal.4th 448 clarified the official record exception related to reports of police officers.

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### THE HEARING PROCESS

Evidence – Administrative Hearsay Rule & *Lake v. Reed*

- Official record exception to hearsay rule.
- *Lake v. Reed* (1997) 16 Cal.4th 448 held:  
 Police officer's direct observations as noted in their report may be received as direct evidence under official record exception.

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### THE HEARING PROCESS

Evidence – Administrative Hearsay Rule & *Lake v. Reed*

- Official record exception to hearsay rule.
- *Lake v. Reed* (1997) 16 Cal.4th 448 held:  
 Police officer's direct observations as noted in their report may be received as direct evidence under official record exception.  
 Other content of police report may be received as administrative hearsay and used to supplement or explain other evidence under administrative hearsay rule.

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### THE HEARING PROCESS

Evidence – Affidavits as Evidence (Gov. Code, § 11514)

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### THE HEARING PROCESS

Evidence – Affidavits as Evidence (Gov. Code, § 11514)

- Instead of calling a witness in person, a party may submit an affidavit.

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### THE HEARING PROCESS

Evidence – Affidavits as Evidence (Gov. Code, § 11514)

- Instead of calling a witness in person, a party may submit an affidavit.
- **10 days before hearing, the party must serve the affidavit and a Notice of Intent.**

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### THE HEARING PROCESS

#### Evidence – Affidavits as Evidence (Gov. Code, § 11514)

- Instead of calling a witness in person, a party may submit an affidavit.
- 10 days before hearing, the party must serve the affidavit and a Notice of Intent.
- **Must object within seven days. If no objection, no cross-examination, and affidavit “is given the same effect as if the affiant had testified orally.”**

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### THE HEARING PROCESS

#### Evidence – Affidavits as Evidence (Gov. Code, § 11514)

- Instead of calling a witness in person, a party may submit an affidavit.
- 10 days before hearing, the party must serve the affidavit and a Notice of Intent.
- Must object within seven days. If no objection, no cross-examination, and affidavit “is given the same effect as if the affiant had testified orally.”
- **If objection and the witness does not appear, the affidavit is administrative hearsay only.**

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### THE HEARING PROCESS

#### Closing Arguments

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## THE HEARING PROCESS

### Closing Arguments

- An opportunity to explain briefly what the party believes the evidence showed and what the outcome should be.
- Parties may choose to waive closing arguments.
- The party with the burden typically goes first.

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## THE HEARING PROCESS

### Closing Arguments

- Oral closing argument is favored over written brief.
- Longer, more complex cases are generally granted the opportunity to brief the case.
- A briefing schedule should be established before closing the record.

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## ADDITIONAL GUIDANCE

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### EFFECTIVE PRESENTATIONS

- Consider if the ALJ needs to be educated about the relevant law; cite the statutes, regulations, and cases that support the party's position; consider submitting hearing brief and list of citations
- Demonstrate knowledge of substantive, procedural, and evidentiary laws and rules
- Tell the story in a well-organized way
- Focus evidentiary presentation on material issues raised by the pleadings, law, and regulations
- Demonstrate professionalism, courtesy, and cooperation
- Show awareness of the record and needs of the ALJ and court reporter

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### EFFECTIVE PRESENTATIONS (CONTINUED)

- **Agency Counsel:**
  - Ensure pleadings are clear, with facts tied to specific statutes and regulations (Gov. Code, §§ 11503 and 11504)
  - Serve amended pleadings with sufficient time for respondent to prepare a defense (Gov. Code, § 11507)
  - Present evidence or argument about what discipline should apply and why, with reference to disciplinary guidelines
  - Maintain perspective
    - The purpose of professional discipline is not punishment, but protecting the public; show how discipline will help protect the public

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### EFFECTIVE PRESENTATIONS (CONTINUED)

- **Respondent's Counsel:**
  - **Defense**
    - Cannot impeach a conviction
    - Can present evidence on facts and circumstances of conviction
  - **Mitigation and Rehabilitation**
    - The foundation of rehabilitation is taking responsibility for one's actions
    - Scope and timing of rehabilitation
    - Provide evidence of rehabilitation
  - **Character Witnesses**
    - Consider number of live witnesses vs. written statements in support
    - Does the witness/statement show knowledge of the crime or misconduct
  - **Disciplinary Guidelines**
    - Present evidence or argument about how model terms do or do not apply, and the impact of potential disciplinary terms on the respondent

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### EXHIBITS AND WITNESSES

- Ensure witnesses have access to exhibits
- Reach stipulations on admissibility, where possible
- Differences between in-person vs. remote hearings
- Prepare exhibit index the ALJ can use as an exhibit list
- Have witnesses prepared to testify on call in multiple-day hearings, so hearing time is not wasted; confirm availability well before the hearing
- Ensure experts avoid advocacy; credentials and publications are important, but expert must be able to communicate effectively

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### EFFECTIVE OBJECTIONS AND EXAMINATION

- State objections to proposed evidence, not arguments
- Direct objections and requests to ALJ
- On evidentiary rulings, make argument for record and then move on
- Ask to approach witness; do not crowd witness
- Show exhibit to opposing counsel/party first, then hand it to the ALJ to be marked
- Treat all participants with respect
- Conduct examination by asking questions, not making statements or arguments

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### CREDIBILITY DETERMINATIONS (GOV. CODE, § 11425.50, subd. (b))

- If a decision includes a determination based substantially on credibility of a witness, decision must identify specific evidence of observed demeanor, manner or attitude
- Decision with this specificity entitled to "great weight" on judicial review.
- See Evidence Code section 780

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### DISCIPLINARY GUIDELINES

- Set forth in relevant statutory/regulatory scheme, or adopted through regulation
- Identify the factors to be considered in determining appropriate discipline, if any
- May be found on agency website
- Provide a road map for the parties' presentations

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### SECURITY AND SAFETY OF HEARINGS

- OAH may order CHP to be present during a hearing if safety concerns have been raised
- A request for security may be made by any party or by ALJ on ALJ's own motion
- OAH may set the hearing at a different location for security reasons

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### NEXT SESSION:

- After the Hearing:
  - Dos and Don'ts of Administrative Hearings
  - Post Hearing Briefing
  - Submission of Additional Documents
  - Reopening the Record
  - Proposed Decision
  - Questions

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