

Advocating *for Change*

3

Using the Administrative
Petition to Serve
Community Health



Advocating for Change | Using the Administrative Petition to Serve Community Health

Written by Harry Snyder

Copyedited by Kathy Barreto Designed by Lane+Lane, Inc.

Copyright © 2010 The California Endowment. No part of this work may be used, reproduced or transmitted in any form or by any means without the prior written permission of The California Endowment.

This manual was published by the Health ExChange Academy of the Center for Healthy Communities.

Special acknowledgment is given to The California Endowment's public policy director, Barbara Masters, for her guidance and insight in developing the framework for *Advocating for Change*.

Advocating *for Change*

Using the Administrative
Petition to Serve
Community Health

 The
California
Endowment

Center for Healthy Communities

Foreword

The California Endowment places a strong emphasis on policy change activities, including advocacy, with the belief that policy change is necessary to make meaningful and lasting improvement in the health of Californians. Although no single policy or system change will achieve the ultimate goal of a healthier California, The Endowment firmly believes that everyone has a role to play and that all organizations can participate in the advocacy process.

To that end, The Endowment's Public Policy Department and the Center for Healthy Communities have developed *Advocating for Change* as part of the Center's Health ExChange Academy. Designed to provide you with the fundamentals of advocacy and the tools to put that knowledge into practice, *Advocating for Change: Using the Administrative Petition to Serve Community Health* is the third in a series of trainings to help staff at nonprofit organizations become more effective leaders in improving community health.

Special thanks are due to Harry Snyder, an advocate well-known for his prior work at Consumers Union, for writing this manual. The training program itself was developed by Harry and the team at the National Community Development Institute: Omowale Satterwhite, Shiree Teng and Diana Lee.

It is our hope that this manual and training will help you in your work in advocating for improved health outcomes in California's most underserved communities.

Sincerely,



Robert K. Ross, M.D.
President and Chief Executive Officer
The California Endowment

Table of Contents

1. INTRODUCTION	1
2. AN OVERVIEW OF THE ADMINISTRATIVE PETITIONING PROCESS	6
Administrative Agency Processes	7
The Right to Petition	9
Deciding on an Advocacy Strategy	13
3. LAYING THE GROUNDWORK	15
Research the Problem	15
Research the Law	16
Research the Agency	17
Define the Solution	20
Build a Coalition	22
4. WRITING THE PETITION	25
Frame the Issue	25
Watch Your Style	25
The Petition Format	26
Filing the Petition	28
Placing the Courtesy Call	29
5. WHAT TO DO AFTER YOU FILE	30
While Waiting for an Answer	30
If the Agency Holds Public Hearings	32
If the Petition Is Granted	38
If the Petition Is Denied	40
If the Agency Does Not Respond to Your Petition	42

Table of Contents *continued*

6. WORKING WITH REPORTERS	44
Petitioning Q&As	45
7. REFERENCES	46
8. CONSTITUTIONAL AND STATUTORY PROVISIONS	49
9. SAMPLE ADMINISTRATIVE PETITION	51
10. QUICK REFERENCE CHECKLIST	54
11. PETITIONING WORKSHEETS	62

Introduction

1

Every day, administrative agencies regulate the quality of the water we drink and the food we buy, set and enforce workplace safety rules, determine whether we qualify for MediCal or the Women, Infants and Children Program, and decide what chemicals we are exposed to and the level of exposure. The Department of Health and other state agencies monitor doctors, hospitals, HMOs, drug companies and other entities that make up our health care system. The Air Resources Board determines the quality of the air we breathe. Administrative agencies are also responsible for the delivery of essential services such as police, fire, emergency response, public health and welfare benefits.

When interacting with these agencies, communities confront the same problems over and over again. The police don't respond to emergency calls to end domestic violence. The local hospital doesn't have anyone who speaks a patient's language. There are no school-based health services to meet children's needs. Landlords won't remove lead-based paint from homes. Yet, too often, the agencies don't hear from community members—the people they are supposed to protect. Those times when we do make our needs known we are often ignored, or granted a meeting that produces no results. It should come as no surprise that many agencies do not use the powers they have to improve and protect the health of all Californians.

This manual tries to correct that imbalance. The steps it outlines are a means of organizing community concerns about health into a cohesive plan of action that formally requests effective solutions from administrative agencies. While its focus is governmental agencies, the same process can also be used to hold non-governmental organizations—such as fast-food companies and private hospitals—accountable.

This manual is the third volume of *Advocating for Change*, a series of publications to help grantees of The California Endowment (TCE) and others understand the role of advocacy in health policy. The first manual in the series, *Understanding How to Impact Health Policy*, covers the basics of how to be an advocate for better health (getting the facts, building support, making a plan, and communicating your message

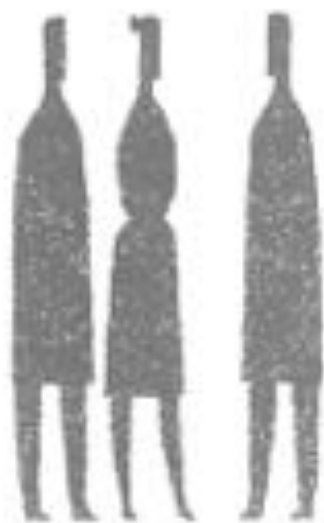
A petition can harness the wisdom and power of the community to bring about change and improvement.

to inform the public and decision makers). The second manual, *Persuading Decision Makers to Act for Better Health*, focuses on how to convince decision makers to take actions that will improve the health of Californians.

Health policy consists of the various rules governing health issues. For example, these rules determine how a diverse population receives appropriate health care, what worker safety protections are in place and how much pollution can be released into the air. Policy change is a shift in the rules that allows new ways of doing things, such as more culturally and linguistically appropriate health services, stronger measures to prevent repetitive stress injuries or stricter standards for release of pollutants. Advocacy is a way to change both the health policy rules and resource allocation decisions of government and private institutions.

This manual focuses on a specific advocacy tool: the administrative petition. The federal and state constitutions guarantee every person the right to petition government for the redress of grievances. Usually, we think of redressing our grievances by filing lawsuits (the judicial branch) or lobbying for new laws (the legislative branch). The administrative petitioning process involves the third branch of government—the executive branch. Often it is a less difficult and less expensive approach than a lawsuit, and less political than legislation.

Through skillful use of the administrative petition, we can improve the health of people in our communities. Instead of helping people with the same problem one person at a time, the petitioning process can help large groups of people by addressing the problem on a community-wide or even statewide basis. The administrative petitioning process is not about helping just one client or family member but about changing the system to help every person in that situation. A petition can harness the wisdom and power of the community to bring about change and improvement. It is an important tool to pursue your advocacy goals.



EXAMPLES OF INDIVIDUAL ACTION V. POLICY CHANGE

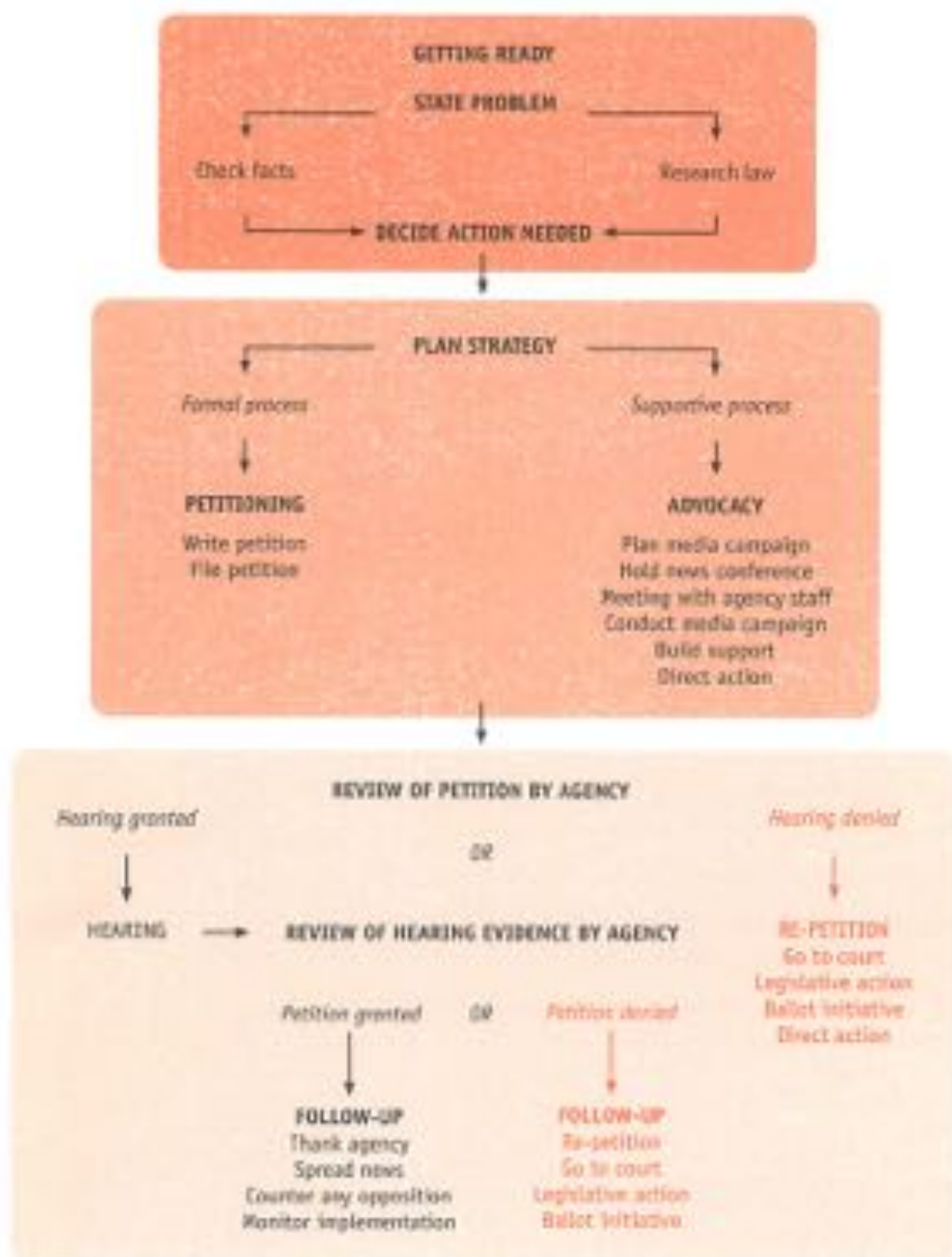
INDIVIDUAL ACTION	PETITIONING FOR POLICY CHANGE
Help my client contest medical bills that MediCal will not cover because the doctor did not bill in a timely fashion.	Petition the California Department of Health Care Services and Department of Managed Health Care for regulations requiring doctors to bill MediCal within six months or forfeit their right to payment.
Provide my mother who doesn't speak English with a translator at her doctor's office.	Petition her doctor's medical group to adopt a policy providing all patients with limited English proficiency access to qualified oral interpreters during visits.
Don't give my child money to buy junk food at school.	Petition the school district to adopt a policy prohibiting junk food sales in local public schools.

THIS MANUAL:

- provides an overview of the administrative petitioning process and the right to petition
- explains how to research a problem, the relevant law and agency; define the solution; and build a coalition for petitioning
- describes how to draft and file an administrative petition
- explains what to do after you file the petition, including how to prepare for and testify at public hearings
- covers how to work with the media and answer questions reporters often have about the petitioning process

THE PETITIONING PROCESS

This chart is one way to visualize the petitioning process as typically used. There are other variations and a number of outside activities that can be a part of the process. This representation will help you gain a general understanding of petitioning.



The manual also includes a list of references, citations from the federal and California laws that guarantee the public the right to petition their government in general and administrative agencies in particular, a sample administrative petition, a quick reference checklist, and petitioning worksheets.

Portions of this manual were previously published by Consumers Union as *Getting Action: How to Petition Government and Get Results*. We thank Consumers Union for making this information available to TCE grantees and others interested in improving health policy in California.

2

An Overview of the Administrative Petitioning Process

Both the U.S. and California constitutions give the public the right to petition government for the redress of grievances.

To supervise our increasingly complex society, state legislatures and the U.S. Congress, as well as county boards of supervisors and city councils, have created units of government called administrative agencies. These agencies are given a name, official powers, personnel, a budget and, most importantly, a mission. Agencies may be directed to clean up the environment (Environmental Protection Agency), safeguard children (Department of Child Welfare), regulate health maintenance organizations (Department of Managed Health Care) or secure other goals that promote the health and welfare of the public.

Many administrative agencies have been given broad powers to promote the public interest. For example, depending on the agency, it may have the power to:

- Set minimum standards for businesses, professions and industries;
- Establish rules for benefit programs;
- Gather information and data;
- Hold hearings and issue subpoenas;
- Investigate problems;
- Stop harmful conduct;
- Impose fines;
- Issue, suspend and revoke licenses and permits;
- Set rates; and
- Recommend new laws or changes to existing laws.

Most agencies are headed by an official who is appointed by and serves "at the pleasure" of the president, governor, or mayor, meaning he or she may be removed at any time. To promote independence, some agencies (such as the Federal Trade Commission and California Public Utilities Commission) are headed by a multi-member body whose members are appointed for a fixed term. At the local level, voters often elect the board members for school, utility and hospital districts.

ADMINISTRATIVE AGENCY PROCESSES

Administrative agencies carry out their missions through four main processes: rulemaking, adjudication, licensing and permitting, and ratemaking. Some agencies, such as school and hospital districts, provide services directly to the public.

Rulemaking

Rulemaking is the process agencies use to adopt, amend or repeal regulations. Typically, the legislative branch will adopt laws setting forth the mission and powers of the agency. The agency fills in the details of how it will meet its mission by adopting regulations. Some regulations are designed to prevent persons and businesses from behaving in ways that harm the public. For example, the Environmental Protection Agency has adopted regulations restricting the type and amounts of harmful pesticides farmers can use. Agencies also adopt regulations to require positive behavior. The Food and Drug Administration, for example, requires drug manufacturers to test their products for safety and efficacy before making them available to the public.

Before adopting a new regulation, agency officials must notify the public and provide an opportunity for people to be heard. Generally, agencies allow the public to submit written comments on the proposed rule. In important matters, there may be several rounds of comments and the agency may also hold hearings to gather public input. In California, agencies are required to hold a public hearing if any interested person submits a written request at least 15 days before the close of the comment period. A regulation is adopted when it is approved by the head of the agency and usually becomes effective 30 to 90 days later. The process can be expedited in emergency situations. Agencies must follow the same procedure when modifying or repealing existing regulations.

Adjudication

Adjudication is the process agencies use to determine whether a person or firm has violated a law or regulation and, if so, what punitive action should be taken. Any person can file a formal complaint and request that an agency use its power to enforce a law or regulation. Depending on the agency, it may have the power to issue cease-and-desist orders, impose fines, or revoke, suspend or modify licenses and permits. Because of these potential sanctions, the procedures for adjudicatory proceedings are similar to formal courtroom proceedings. For example, if you believe that an insurance company with an

office in your community refuses to sell car insurance to people of color (redlining) you can petition the State Insurance Commissioner to hold a hearing and determine (adjudicate) if the company's authority to do business in the state should be revoked.

Licensing and Permitting

Licensing and permitting is the process agencies use to grant individuals and businesses permission to engage in a particular occupation, operate in a certain manner, or do business within the agency's jurisdiction (city, county, state, etc.). In many cases, agencies will give the public notice of applications for licenses or permits and an opportunity to comment on the application. If there is enough public concern, an agency may hold hearings and even require studies on specific aspects of the application. At the conclusion of this process, the agency could grant the application unconditionally, grant the application with special conditions to protect the public interest, or deny the application altogether. In the event that a store wants to get a license from the city or state, your community can petition the regulatory agency, for example the California Department of Alcoholic Beverage Control, to deny the license if there are too many stores already selling liquor in the neighborhood.

Ratemaking

Provided that they do not collude with competitors or deceive consumers, most businesses are allowed to set the prices for their products and services. However, the prices of some services (such as telephone, water, electricity, natural gas and some kinds of insurance) are regulated by administrative agencies. Ratemaking is the process by which agencies determine the rates for these services. While the rates must meet constitutional requirements of fairness, agencies usually have considerable discretion in setting rates. For example, if you feel that the phone company is overcharging your rural community for telephone service, you can petition the Public Utilities Commission to lower the rates.

The ratemaking process is also an opportunity for the agencies to review the quality of service provided by regulated businesses. Agencies are required to give the public notice of and an opportunity to be heard in the ratemaking process.

THE RIGHT TO PETITION

Both the U.S. and California constitutions give the public the right to petition government for the redress of grievances. In addition, Congress and the California State Legislature have passed laws that specifically give the public the right to petition administrative agencies for rulemaking action. This means anyone can petition any government official, agency, board, department, or other unit of government at any level.

For most agencies, there is no special form for administrative petitions. While the contents of a petition, of course, will vary from issue to issue and agency to agency, all petitions should:

- Explain the problem and describe how the public is being harmed;
- Discuss why the agency is responsible for solving the problem; and
- Propose the actions that the agency should take.

The format described in Chapter 4 and the sample petition on page 51 can serve as a useful guide.

Petitioning Federal Agencies

The Federal Administrative Procedures Act (APA) gives the public the right to petition federal agencies and requires agencies to give prompt notice of denial and a brief statement of the grounds for denial. The law states, "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule," and requires that "Prompt notice shall be given of the denial in whole or in part... accompanied by a brief statement of the grounds for denial." A copy of the relevant sections of the Federal APA can be found on page 49.

The law leaves the specifics of the petitioning process up to each federal agency. Some have adapted detailed procedures. The Food and Drug Administration, for example, specifies the format of the petition, the type of information to include, and the issues to address. For example, lead is dangerous to children's physical and mental development. If local grocery stores serving Hispanic neighborhoods have been found to be selling imported candy which contains lead, a petition to the Food and Drug Administration could be filed to have the agency test the candy and ban the import of the candy if lead is found in it. To do this, you



would check with the FDA to learn their rules for filing your petition. Other agencies have not adopted any specific rules for petitions. See Chapter 3, page 19, for information on how to find out whether or not an agency has adopted a specific procedure for petitioning.

When a federal agency receives a petition and decides to begin the rulemaking process, the agency publishes a Notice of Proposed Regulation in the *Federal Register*, provides a period for public comment, and may hold public hearings. If an agency adopts a new regulation, the regulation takes effect after it is reviewed by Congress, through the General Accounting Office.

Petitioning State Agencies

California has one of the strongest petitioning laws in the country. With few exceptions, the law allows any person to petition state agencies for rulemaking action and requires that agencies receiving a petition respond within a specific period of time. The California Administrative Procedures Act, which covers most state agencies, states “[A]ny interested person may petition a state agency requesting the adoption, amendment or repeal of a regulation...” (California Government Code, Section 11340.6¹.) The Act also states that upon receiving a petition, a state agency must:

1. Notify the petitioner in writing of the receipt; and
2. Within 30 days either (a) deny the petition, indicating why the agency has reached its decision on the merits of the petition, or (b) schedule the matter for public hearing.

A copy of the relevant sections of the California Administrative Procedures Act can be found on page 49.

When state agencies schedule the matter for public hearing, it does not necessarily mean that they will take the requested actions. When consumer and community groups petitioned the California Department of Food and Agriculture (CDFA) for a change in regulations that would result in lower milk prices the agency held hearings, but they did not change any regulations. However, the CDFA stopped enforcing their regulations, and the price of milk dropped at grocery chain stores throughout California. The petition moved the agency to action, and

1. The California Administrative Procedures Act does not cover a few state agencies, such as the Public Utilities Commission. However, these agencies usually have their own petitioning law. (For example, Section 1708.5 of the Public Utilities Code requires that agency to permit interested persons to petition for the adoption, amendment or repeal of a regulation and establishes a six-month deadline for denying the petition or initiating a rulemaking proceeding.)

consumers saved a lot of money. The regulations were not changed, but they have not been enforced for over 20 years.

State agencies are required to give the public an opportunity to be heard before they can officially adopt a regulation. Generally, agencies ask for written comments and, in some cases, may hold public hearings. (Section 11346.8 states that agencies must hold a public hearing if “an interested person or his or her duly authorized representative submits in writing to the state agency, a request to hold a public hearing.”) After an agency adopts, amends or repeals a regulation, in most cases, the action is reviewed by the Office of Administrative Law and generally becomes effective 30 to 60 days after notice is published in the *California Regulatory Notice Register*.

Petitioning Local Agencies

As the federal government gives more authority to states to resolve problems, the states in turn are passing the buck to cities and counties. Local advocacy has thus become even more important. If the problem is mainly a local one, the best strategy might be to petition a city or county health department. In many cases, local agencies are likely to respond faster and be more responsive than a state or federal agency. On the following page is an actual case study of a community problem that could be addressed by using an administrative petition. To maintain confidentiality we used the name SAMPLE CITY rather than the real city name.

Even though most local governments have not passed the local equivalent to the Federal and California Administrative Procedures Acts, you still have a constitutional right to petition local agencies for “the redress of grievances.” The fastest way to find out whether a local government has any special rules on administrative petitioning is to contact the city attorney’s or county counsel’s office. To find out if other local governmental entities (e.g., a local hospital district) have any special rules on administrative petitioning, ask their legal department. Often, they will ask you to describe what you mean by the term “administrative petition.” If they do, simply state, “It is a petition that will request your agency to adopt a rule to address a problem.” If the local government does not have any special petitioning rules, follow the steps outlined in this manual and most local agencies will take your petition seriously and respond accordingly.



Case Study: Domestic Violence

When the police in Sample City respond to a complaint that domestic violence is occurring or threatened, they respond by dispatching a squad car with two officers. If the officers assess that there has been or there is a possibility of physical assault, almost always by a male partner, they arrest the man, who is held for a short time and then released. Many times the man returns to the home within 24 to 48 hours. He is often angry for having been reported and physical violence is once again threatened or occurs. The repetition of violence in these situations has become common and unfortunate.

When they make an arrest for domestic violence, the officers have the discretion to apply to the Superior Court for an Emergency Protective Order (EPO). Many officers are not familiar with EPOs and how to seek one. An EPO protects the family for seven to 10 days. The procedure is simple and the offender can be served before he is released from custody.

Unfortunately, very few officers ever seek an EPO. An EPO gives the family time to decide what to do: stay in their home or move, file for a Restraining Order of Protection from the court for long-term protection, or let the abuser back in the home.

By not seeking an EPO in these high-risk situations, women and families are exposed to further violence. The Sample City Alliance Against Domestic Violence is formed to take action to provide protection against the recurrence of domestic violence.

Community members in the Alliance reach out to neighbors, church members, and local organizations asking for stories where the police responded to domestic violence complaints. They also ask discreetly at beauty parlors and laundromats if anyone has any information. Following up on this fact-gathering, they talk to people who were involved in or observed cases of domestic violence. Gathering all that they have learned they file a petition with the Sample City Police Department, asking for changes in procedures for handling domestic violence cases and for all officers to be trained to use these new procedures.

Their petition names the petitioners—the Alliance and its members, individuals and organizations from the community—and clearly describes the changes they want the police department to make. The petition then goes on to describe the problem, how it is hurting women and children in the community, and why the police department has a legal duty to solve this problem. They conclude the petition by repeating what they want the police department to do. Please look at the Sample Administrative Petition on page 51 to see how this would look in real life.

Petitioning Non-Governmental Organizations

Federal and state petitioning laws and the constitutional right to petition for the redress of grievances apply only to government agencies. However, the same process can be used to petition private or nonprofit non-governmental organizations (private hospitals, grocery stores, insurance companies, HMOs, health care providers, etc.) to change their operations or procedures. The Tenderloin neighborhood of San Francisco had many intoxicated people lying and sleeping on the streets and in doorways. They were also using the streets as bathrooms. The Tenderloin parents, mostly immigrants from many countries, found the streets unsafe, unhealthy for their children and very unpleasant. They showed that fortified wine, cheap and with high alcohol content, was the primary drink causing the problem. Community groups, parents, individuals and activists petitioned the markets and liquor stores to stop the sale of fortified wines. The stores all agreed and the streets were cleaned and the problem improved. Documented facts, a united coalition of interested groups and a thoughtful, reasonable solution will focus public attention on the problem and elicit a response from most organizations.

DECIDING ON AN ADVOCACY STRATEGY

Petitioning an administrative agency is one of several advocacy strategies involving places where decisions are made that you can use to bring about a solution. Each of the places where decisions are made has its advantages and disadvantages, and which will work best depends on the particular situation. The basic advocacy places where decisions are made are:

- Private businesses;
- Legislatures;
- The courts;
- The ballot box;
- Battle/flashpoints involving “direct group action”;
- Government agencies; and
- Health care organizations.

The pluses, minuses and other factors to consider for each of these places where decisions are made are discussed in *Advocating for Change: Understanding How to Impact Health Policy*, pages 28–40.

Obviously, determining the “best” place to improve health policy will depend on the specific problem, resources available, receptivity of decision makers and other factors. Keep in mind that places where decisions are made are not always mutually exclusive. For example, often courts look on lawsuits more favorably if the litigants have petitioned the administrative agency to take corrective action before filing suit. A member of the legislature may be more likely to introduce a bill or hold hearings if the agency has failed to take a reasonable action that you requested. An administrative agency may be more willing to act if you first brought a problem to the attention of a private company and gave it a chance to correct the situation.

Also, after you choose a particular place where decisions are made, remember that supporters in other arenas can still play critical roles. For example, if you decide to petition a state agency, a legislator who cares about your issue might be persuaded to hold oversight or investigative hearings on the agency’s activities. The hearings allow you to air your concerns in a public forum and require agency officials to account for their actions or inaction. Legislative hearings are an opportunity for media coverage, which can generate additional pressure for the agency to take action.

When you file a petition you can use other strategies to change policy at the same time. When the community and consumer groups petitioned to lower milk prices in the example on page 10, they also had a bill introduced in the California Legislature that would have had the same results. The pressure of both the petition and pending legislation persuaded the CDFA to stop enforcing their costly regulation and the price of milk came down.



3

Laying the Groundwork

This chapter describes how to lay the foundation for a successful petitioning effort. Before preparing and filing a petition, you will need to research: (1) the problem, (2) the law and (3) the agency you are considering petitioning. Based on this research, the next step is to define the solution you are seeking. One of the keys to the petitioning process is making it a joint effort. Invite other individuals and organizations to work with you to define the problem, develop workable solutions, join as co-petitioners and show broad public support for the petition.

RESEARCH THE PROBLEM

The first step is to get a clear understanding of the problem you are trying to solve. If you do not understand the problem, you will not be able to describe it effectively to anyone else. Even worse, you are likely to put a lot of time and effort into seeking solutions that will not improve the situation. In your research, get answers to the following questions:

- Who is being hurt by the current situation?
- How are they being hurt?
- How serious and/or widespread is the problem?
- If left unattended, will the problem get better or worse?
- Who is benefiting from the situation?
- Who has the power to solve the problem?
- Who else is working on or cares about this problem?

The answers to these questions may come from your first-hand experience and observations, but it also pays to look more broadly. First, you want to find out what others think by talking with community members and leaders as well as organizations that should be aware of the problem. Newspaper and magazine articles as well as academic papers and books may have good information that you can use. Check the Internet to see if there are useful sources of information including individuals, organizations, data sources, relevant laws or online postings. On the Internet you will also find government sources and the agency you intend to petition. For more details on essential places that pro-

You can ask an agency to do anything as long as you can show that the action falls within the agency's authority.



Getting and Using Government Information: Center for Public Interest Law

The Center for Public Interest Law published a damning report on the failure of California's Board of Medical Quality Assurance to discipline physicians. The report, *Physician Discipline in California: A Code Blue Emergency*, relied almost exclusively on medical board documents requested under the Public Records Act: It was virtually impossible for the board to deny the charges once this information was made public. CPIL's report generated extensive media coverage and led to new laws and regulations that greatly improved the effectiveness of the medical board.

vide guidance on petitioning and offer data to support your position or to refute a counterpoint, see *Advocating for Change: Understanding How to Impact Health Policy*, pages 8-9.

Government Information

Federal, state and local governments are a rich source of information. Government agencies continually collect and analyze data, publish reports and make recommendations. Your petitioning efforts will gain tremendous credibility if they are supported by information from government sources. In some instances, it may be necessary to file a Freedom of Information Act (FOIA) or Public Records Act request to get the materials you need. Under these laws, any person has the right to request government information and agencies can refuse the request only if the information falls within a narrow set of exempt categories. For more information on getting access to government records, see page 46.

RESEARCH THE LAW

Now that you've researched the problem, find out what laws are relevant to your petitioning efforts. Your research should answer the following questions:

- What behavior does the law prohibit or require?
- What are the reasons behind these prohibitions/requirements?
- What agencies (if any) are responsible for implementing, overseeing or enforcing these laws?
- What laws give the agency the authority to take the action that you are requesting?
- What procedures must the agency follow to exercise its authority?

Proper referencing is absolutely critical in legal research. Be sure that each statement you make about the law in your petition is followed by a code section or some other legal authority that supports the statement. For more information on researching the law, see page 46.

RESEARCH THE AGENCY

You've researched the problem and the law, now you need to find out more about the agency that has jurisdiction over the problem area. The questions about the agency that you need to answer are:

- ➔ What power(s) does the agency have to solve the problem? For example, does it have the power to conduct an investigation, collect and analyze data, hold hearings, issue orders to stop harmful actions, revoke or suspend a license or permit, adopt regulations, provide new services, provide existing services in a new or different way, etc.?
- ➔ What was the nature of the problem before the agency was given responsibility for it?
- ➔ What has the agency done about the problem?
- ➔ Has the agency's approach to the problem changed over time? If yes, how and why?
- ➔ What is the agency doing about the problem now?
- ➔ Are the agency's actions making things better or worse?
- ➔ Have elected officials or the media indicated an interest in the problem?
- ➔ Do agency officials have a history of working for the parties, people or companies now causing the problem or who would oppose corrective action?

People and organizations working in the field who are sympathetic to your cause are good sources for this type of information. Answers can also come from government reports, experts and even agencies in other states. For example, federal agencies often report on what is happening at the state level to address specific problems. Consulting these reports and talking with agency officials in other states could give you a perspective on whether agency officials in California could be doing more to address a particular problem.

Once you know about the agency's authority and its past approach toward the problem you are concerned about, it's time to focus on finding out who makes decisions in the agency and how these decisions are made. This means finding out:

- ➔ Who is likely to make the decision on your issue?
- ➔ Is the decision maker appointed or elected?



Researching Local Government Agencies

There are over 5,000 cities, counties, regional bodies and special districts in California, not including school districts and redevelopment agencies. A good starting point for researching local government agencies is the UC Berkeley Institute of Governmental Studies Web site, which includes links to directories of cities, counties, departments, and ordinances (igs.berkeley.edu/library/research/web_resources/local/). Once you have completed your basic research and identified a local agency that might have the power to solve the problem, you can contact the office of the city attorney or county counsel to ask for more information about the specific powers and procedures of that agency. You should also contact people and organizations sympathetic to your cause for their opinions.

- What is the decision maker's background?
- What are his or her views on the subject?
- Who are the decision maker's key staff people and what role are they likely to play?
- Who does the decision maker report to within the agency or the executive branch?
- Are there individuals or constituents outside of government whose views or opinions will be particularly influential?

Some of this information is readily available. For example, brief biographies of agency heads often appear on Web sites. Other information might be obtained by conducting a Lexis/Nexis or other database search of news articles. Find out as much as you can by asking knowledgeable people who support what you are trying to accomplish. If the decision maker is appointed, check who made the appointment and whether it can be revoked.

Use the information to plan your campaign and guide your efforts as you go forward. For example, if the official who will be making the decision on your petition is elected, what voters in his or her district think about the issue (or how the problem affects them) will be important. If the official is appointed, the views of the governor, mayor or other person who made the appointment are likely to be important, especially if the agency official can be removed at any time.

Most agencies are organized in the shape of a pyramid. At the top is the board or individual head. At the next level are a handful of division or department heads and below that various bureaus, sections, and other subunits composed of civil servants. Despite this common structure, the decision-making process can vary widely from agency to agency. In some agencies, lower-level staff will research all issues, but the decisions rest with the agency head. In other agencies, lower-level officials will actually make virtually all of the decisions (including policy decisions). Knowing how decisions are made and who will be making them is essential. As your campaign progresses, you will need to get your information to the

actual decision makers and make your arguments with their interests and concerns in mind. It is almost always a simple matter to talk to agency staff, on the phone or in person, as you find out how the decision you seek will be made.

When you interview individuals, have a list of questions and a list of any reports, studies or other documents that you wish to obtain from them. Do not ask questions designed to get the answer you want. At this stage, you need to know all sides of the issue, and you will get more and better information by asking neutral questions.

Take notes during an interview. If you want to quote in your petition or in a news release something that is said in conversation, ask for permission to do so. Always ask for leads to other sources of information, and if requested, make sure confidentiality is respected.

Research whether the agency has adopted any specific rules for petitioning. If the agency has adopted special rules, it is important to follow them. Otherwise, agency officials could reject your petition on technical grounds. If the agency does not have any specific rules regarding petitions, follow the steps described in Chapters 4 and 5 for guidance in how to prepare and file your petition and what to do after you file.

The fastest way to find out whether there are any special rules is to call the agency's general counsel's office and ask. The phone number and Web site for every federal agency can be found in the *U.S. Government Manual* available at most public libraries and online at www.gpoaccess.gov/gmanual/. The same information for state agencies can be found in the *State Yellow Book* and the State of California Web Portal at www.state.ca.us/directory.html.

You can also research this question yourself. For federal agencies, consult the *Code of Federal Regulations (CFR)*, which contains the regulations adopted by every federal agency. The CFR is available in most law libraries and online at www.gpoaccess.gov/cfr/. For each department or agency, there is an index of topics. Generally, the petitioning process can be found under "administrative



The Politics: Positive, Neutral or Negative

While agency heads are less political than elected officials, they are not totally insulated from political pressures. Most agency heads are appointed by and serve "at the pleasure of" the president, governor or mayor. Agencies must also go to Congress, the legislature, board of supervisors, or city council for their annual budget.

The politics may be positive (i.e., helpful to your campaign), neutral or negative. Also, the politics may change as the campaign unfolds. For example, elected officials may want to help your campaign as you demonstrate broad public support and/or after favorable media coverage, or they may become opposed as opposition groups make their positions known. For these reasons, it is important to know the politics of the situation as early as possible, take this factor into account in the planning process, and monitor it throughout the petition campaign.



Conflicts of Interest

State and federal agency officials are required to file annual statements disclosing their sources of outside income, property holdings, investments, non-governmental positions, etc. These reports are public information and may disclose any potential conflicts of interest that officials may have.

The law requires that agency officials not participate in matters where there is a conflict of interest; for example, a vote on a matter that could affect the value of a property that the official owns. Contact the general counsel's office for the particular agency to find out where you can view and/or get copies of the latest conflict of interest statements. For local officials, contact the county counsel or city attorney.

If officials are elected, you can check their campaign records to see whether they received contributions from individuals or businesses that are likely to be adversely affected if your petition is granted. While elected officials are not prohibited from deciding matters involving campaign contributors, you should be aware of this information in planning your campaign. For state officials, this information is available online at <http://cal-access.sos.ca.gov/Campaign/Candidates/>. For local elected officials, check with the city attorney.

regulations," "administrative practices and procedures," or "rulemaking." The Food and Drug Administration's petitioning regulations, for example, are listed under "administrative practices and procedures," while the Occupational Safety and Health Administration's petitioning regulations are listed under "Rules of procedure for promulgating, modifying or revoking occupational safety or health standards."

For state agencies, consult the *California Code of Regulations (CCR)*, which contain the regulations adopted by every state agency. The CCR can be found in most law libraries and online at <http://ccr.oal.ca.gov/>. For the relevant agency, look for keywords such as "administrative procedure," "petition," "regulation" or "rulemaking." For local agencies, the best approach is to call the office of the city attorney or county counsel and ask whether there are any special rules regarding petitioning.

DEFINE THE SOLUTION

Based on your experience, you probably have some ideas about what needs to be done to solve the problem. Think broadly. Real problems can be tough to solve and, often, it will take more than one type of action (and sometimes even more than one agency) to correct the situation.

Keep in mind that you can ask an agency to do anything as long as you can show that the action falls within the agency's authority. For example, in Ohio, a coalition of consumer groups and labor unions filed a petition with the Ohio Department of Insurance asking that the department review the sale of a nonprofit health insurance provider to a for-profit hospital chain. The coalition also requested that the department release critical documentation and hold public hearings before making a decision about the sale. There was no procedure on the books that specifically authorized the actions they requested, but they made sense and the agency had sufficient general authority to take the actions requested.

Don't limit your research to California. Find out what other states have done about the problem and whether those

actions have been effective. If another state has a particularly innovative approach to the problem, you may want to request that agency officials try it in your community. The more you can rely on demonstrated methods, the easier it will be to argue your case. Also, reporters are more likely to cover your petition if you can point them to concrete examples showing that your solution works. If your solution involves government spending, have your own credible estimate of the costs required and an answer to the question of where the money will come from. If necessary, find an expert who will lend his or her credibility to the proposed solution.

Don't rely on generalities. Use the knowledge that you've gained in researching the problem, the law and possible solutions to refine your ideas into a set of specific actions that will improve the situation. For example, assume your community was concerned about environmental pollutants causing acute asthma attacks in children and decided that the state needed to adopt rules to significantly reduce air pollution and provide comprehensive preventive treatment to children. If possible, try to define your solution in terms of an objective standard. For example, you could define a significant reduction in air pollution as a 75 percent reduction in the number of "spare the air days" and define comprehensive treatment to mean that five specified services are available to children at all local health clinics.) By presenting a clearly defined solution, you will be able to communicate to agency officials what you are seeking, evaluate solutions proposed by others and know when you have achieved your overall goal.

As you formulate your proposed solutions, keep in mind that there is a distinct tactical advantage to asking for rulemaking action (i.e., the adoption, amendment, or repeal of a regulation) as one of your requested actions. A petition for rulemaking to a state agency brings you under Government Code Section 11340.6 requiring the agency to respond within 30 days. Federal agencies are required to give petitioners "prompt notice" whether they are granting or denying a petition for rulemaking.



Consumers Union and Nonprofit Conversion

Keep in mind that you can petition an agency even if it has not adopted any specific rules regarding petitions. For example, Consumers Union and 24 other community organizations petitioned the Department of Corporations (DOC) to write and implement regulations governing the conversion of a nonprofit health maintenance organization into a for-profit business.

The petition was written in a legal format, and although the DOC had no specific procedure to petition for rulemaking, these groups titled their request an "Administrative Petition" and presented the case just as they would for any other petition. In response, the DOC began formal proceedings, including public hearings, for the approval of the conversion. The result was the creation of two private foundations endowed with over \$4 billion: The California Endowment and The California Health Care Foundation, dedicated to addressing health needs in California.

Solving a public health problem doesn't happen overnight. So it's important to define a set of discrete, short-term goals—for example, to educate and organize community members, form a coalition of community and other interested groups, conduct surveys and other research to document the problem, use the media and the Internet to build support, and take direct group action for change. Setting interim targets like these will help to keep your campaign on track and allow people in your community to see the progress you are making.

BUILD A COALITION

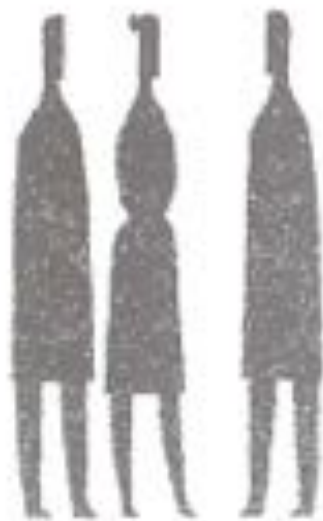
While one person or organization may petition an agency, it's better if more individuals and organizations join in the effort. A number of petitioners shows agency officials that there is broad public support for the measures requested in the petition and increases the resources behind the petitioning effort.

In building a coalition, try to reach out to politically diverse groups—the broader the representation, the more powerful the effect. It is much harder for an agency to dismiss a petition that is supported by a wide range of organizations, particularly if those organizations aren't often on the same side.

Remember, this is a campaign. You are trying to persuade agency officials, the media and the general public that there is broad consensus about the seriousness of the problem and the solutions that should be adopted to solve it.

Successful Coalition Components

Try to include organizations that are considered knowledgeable in the field. Agencies and the media will treat you more seriously if the coalition includes organizations with a history of action and experience in the particular field. Sometimes, however, these organizations don't exist—your problem may be so new or so localized that you are the first to attack it. In that case, reach out to organizations in neighboring communities or with related interests, inform them about the problem you are concerned about and if they seem supportive, invite them to join your coalition. Most groups working for better health will be willing to be part of the community effort, especially if you recognize that different organizations can help in different ways.



THE SUCCESS OF A COALITION DEPENDS ON SEVERAL FACTORS, INCLUDING:

Agreement by all coalition members regarding the fundamental goal and the plan to achieve it.

Leadership with the time, skills, experience, resources and coalition support to do the job.

A clear understanding of each coalition member's level of participation. For example, some organizations may want to sign on the petition as co-petitioners; others may be more comfortable sending letters of support; some may be able to do limited research in their community; some may be able to have a representative testify if there is a public hearing; and others might want to participate fully. Make it possible for members to contribute to the effort in many different ways according to their resources and priorities.

A commitment to regular and complete communications; for example, no special side deals or private conversations.

Defined decision-making with fast-track authority. There are likely to be instances when decisions will need to be made quickly. Will the leader(s) of the coalition (a single person, organization or small executive committee of members) have the authority to make the decision? If so, what kinds of decisions can the leadership make? Should coalition members be polled before some kinds of decisions? If so, which decisions and how should members be polled (email, fax, phone)?

Agreement on the style of the campaign: will it take a hard, aggressive style or a soft, diplomatic one? Will the campaign aim for high media visibility or work quietly behind the scenes?

Agreement on the sharing of credit and how the contribution of each member will be acknowledged.

Clear assignments of work according to each member's strength, resources, capacity and experience in organizing, research, use of the media, negotiating skills and leadership. After work is delegated, coalition members should be accountable for their part in the whole effort.

All members agree that they are "in for the long haul" and will support everyone else's interests, until the job is done. No selling out or side deals.

Coalition members present a united front and choose designated speakers/representatives, giving them the necessary decision-making authority.

All successes celebrated and acknowledged by all members.

4

Writing the Petition

Experience has shown that you improve your chances of success if you follow a few basic steps in preparing your petition. This will help you present the facts, the law, your arguments and solutions in a professional, clear and persuasive manner. A brief and simple petition can succeed just as well as a long and complex one.

FRAME THE ISSUE

Your petition should define the problem in a way that is understandable, not only to the agency but to the media and the public. For example, the Children's Advocacy Institute (CAI) framed a fight to strengthen the licensing system intended to protect the health and safety of children in childcare. To present the problem in a way that the public would immediately understand, CAI showed that laws and regulations requiring immunizations, nutrition and inspections in dog kennels were more stringent than in childcare settings.

WATCH YOUR STYLE

Use language that is objective and even-handed. Sensationalism, exaggeration and excessive rhetoric tend to undermine your credibility. Let the facts speak for themselves. The more complex the issue, the more you should strive for a simple, straightforward style. Use short sentences and short paragraphs. Break the petition into distinct sections. Use active verbs where possible and keep adjectives and adverbs to a minimum. It's much easier for agency officials to review a clear, precise petition than a long-winded, jargon-filled document.

While your petition is directed at the agency, it is also an event that allows newspaper and television reporters to cover the problem you are trying to address. A short summary that states the key facts—who, what, when, where, how and why—will help reporters quickly understand the purpose of the petition. A well-crafted introduction can serve as a summary for reporters.

A court may eventually review the administrative action an agency takes as a result of your petition to determine whether the agency officials did what the law requires. To establish the best possible record

Your petition should define the problem in a way that is understandable not only to the agency but to the media and the public.



Short and Effective

In 1987, the consumer protection organization Motor Voters sent a one-page letter petitioning the National Highway Traffic Safety Administration (NHTSA) to require car manufacturers to include information in owner manuals about the NHTSA's auto safety hotline and its defect investigation and recall procedures. The petition described the problem briefly, proposed language for the regulation and stated the agency's responsibility. The NHTSA granted the petition and after the first year, calls to the hotline increased by 60 percent.

The petition by Consumers Union and 24 other groups, described on page 21, which resulted in the creation of two health foundations worth a total of \$4 billion, was only eight pages long.

for judicial review, your petition should clearly show how the law requires the agency to take the action you request. It should also demonstrate why alternative actions or no action at all would be contrary to the law.

THE PETITION FORMAT

All petitions should include the following:

- An introduction.
- A statement of facts about the problem.
- Identification of the individuals and organizations submitting the petition; i.e., petitioners.
- The legal authority for agency action.
- The relief or solution sought.
- A conclusion.
- Supporting exhibits (if necessary).

The same format can be used when filing complaints or comments in licensing and permitting proceedings.

Introduction

The introduction should summarize the key facts. It should briefly identify who the petitioners are, the problem you are seeking to address, the action(s) requested of the agency, and why the action is necessary to protect the public.

Statement of Facts

The statement of facts should discuss three points: the current situation, why it is harmful to the public and why it is the agency's responsibility to take action. If appropriate, the statement of facts is an excellent place to use graphs and charts. Not only do they help give a better picture of the problem; they also give reporters good illustrations to use in their stories.

If you have relevant information from government sources that support your argument (especially from the agency you are petitioning), include it in your statement. Data from government sources add credibility to your petition and make it harder for the agency to deny that a problem exists.

Make sure that the facts and data in your statement are absolutely accurate. Double-check your numbers. It's easy to make an inadvertent mistake and sometimes difficult to catch it.

Petitioners

After the statement of facts, identify the petitioners and describe their interest in the action being sought. If the petitioner is an organization, briefly state its mission and what it does. If the petitioner is an individual, state the person's name and explain how he or she is affected by the problem.

For the benefit of reporters, put the names of the best-known individuals and organizations at the top of your list. You want the media to see quickly that the problem has attracted the attention of prominent individuals and organizations. A number of co-petitioners also makes the petition more newsworthy and requires an agency to pay attention.

Legal Authority

The section on legal authority has two parts. First, identify the statute that gives you the right to petition. For example:

"This petition is filed pursuant to Article I, Section 3 of the California Constitution and the First Amendment to the United States Constitution, which guarantee the public the right to petition government for the redress of grievances. Additionally, this petition is filed pursuant to California Government Code Sections 11340.6 and 11340.7, which mandate a speedy response or a public hearing."

Second, you should identify the laws that give the agency the authority to take the action that you are requesting. Don't just list the laws. For the benefit of reporters, either quote or summarize relevant portions of the law.

Relief Requested

This section should describe the corrective action(s) that you want the agency to take. If you want the agency to adopt a regulation, describe what you would like the regulation to do. For example, "Petitioners request that the Board adopt regulations requiring that patients have access to their medical records in the event of closure, bankruptcy or insolvency of the provider." It is also a good idea to draft the proposed regulation and attach it to the petition as an exhibit.



Conclusion

Conclude by urging the agency to take prompt action. The signatures of the petitioners or their representatives should follow the conclusion. For the convenience of agency officials, on the first page and the last page put the name of the person that the agency should contact, his or her address, phone number, fax number and email address. This will also make it easier for reporters and others interested in the petition to get follow-up information.

Exhibits

If necessary, use exhibits to illustrate critical facts in the petition. Exhibits can include letters, newspaper articles, reports, photographs or even objects. Again, graphs and charts are always excellent ways to present complex information or technical data. But remember to use restraint. Like the rest of the petition, the exhibits need to be credible and should not be so numerous that they are overwhelming or tedious. Even if it is obvious, give each exhibit a descriptive title. Label each exhibit so you can easily refer to it in the body of the petition (Exhibit A, B, C, etc.).

The Final Step—A Cover Letter

Prepare a cover letter addressed to the head (or heads) of the agency. The letter should briefly explain the reasons for the petition without rhetoric or sensational language and urge the agency to take prompt, effective action.

FILING THE PETITION

When the petition and cover letter are in final form, file them with the appropriate agency. Filing simply means delivering the documents to the appropriate person at the agency. Unless the agency has specifically assigned someone to receive petitions, you should deliver the documents to the head of the agency. Consult the agency's Web site to find out his or her name and address, or call the agency. Some agencies—boards and commissions—are headed by several individuals. Deliver copies of the documents to each.

Deliver the petition personally if you can. Ask for a signed and dated receipt from the person you deliver it to. Otherwise, use registered mail or other methods that will provide you with a signed receipt upon delivery. A dated proof of delivery is particularly important for petitions for rulemaking to state agencies, since the agency has 30 days from receipt to deny the petition or schedule the matter for hearing.

PLACING THE COURTESY CALL

Agency officials generally dislike surprises. If they're caught off guard by questions from the media, for example, they may appear unprepared to deal with a problem even though it falls within the agency's jurisdiction. Feeling challenged and surprised, they may take an unnecessarily hostile position. To avoid this reaction and open a channel of communication, you may want to give agency officials a courtesy telephone call to inform them that you will be filing a petition. If you plan to contact the media, let the agency officials know that reporters may call them about the petition. Make your courtesy call in the afternoon, the day before you actually file the petition. This allows the agency to be prepared, but does not give it enough time to launch its own attack on your petition.

Agency officials may attempt to dissuade you from immediately filing your petition. For example, they may request that you meet with them before you go ahead. They may also ask for an advance copy of your petition and news release. Providing advance copies could give the agency a chance to review the petition and formulate a positive response. On the other hand, giving the agency too much time could allow it to formulate a counter-attack. Before making the phone call, decide how you will respond to such requests.

5

What to Do After You File

Public hearings are excellent opportunities to air your views, respond to any opposition and correct any misperceptions.

Filing your petition is the culmination of your research, organizing, coalition building, solution crafting and writing. Filing launches your official request for change. However, your work is not over.

WHILE WAITING FOR AN ANSWER

Don't just sit back and wait for the agency to respond. Build public support and provide the agency staff members with any help that they may need to understand the issue and move the petition forward.

Build Public Support

During this period, build on any media coverage of your petition to suggest editorials and op-ed pieces supporting your proposals. Try to keep the issue in the public eye. Keep reporters informed about what's happening (or not happening) on your petition. Calls from reporters asking agency officials what they are going to do about the problems will make it harder for the officials to ignore your petition. If news stories are run, all the better. Take advantage of the media coverage to broaden your support.

Work with Agency Staff

Find out who is dealing with your petition at the agency and make yourself available to answer questions, provide additional information and otherwise assist them in understanding the problem and finding an effective solution. Because decision makers often either delegate to their staff or give great weight to the views of staff members, try to establish a good working relationship with them. If you work well with the staff, you may find out what agency officials are thinking about the issues raised in your petition, what opponents are saying in rebuttal, who will make the decision and possibly even what that decision is likely to be.

Meeting with Agency Officials

Before the agency makes a decision on your petition, there may be an opportunity to meet face-to-face with the officials who will make the decision. This may be the head of the agency or staff at a lower level. Whether you or agency officials request the meeting, do not approach

it casually. The face-to-face meeting is an opportunity (perhaps your best opportunity) to:

- Inform and educate the agency head and staff directly;
- Show public support and commitment;
- Respond to questions and concerns; and
- Directly ask the agency head for a commitment to take action.

Be aware, however, that agency officials may have different reasons for meeting with you. These reasons might be to:

- Measure the strength, unity and resolve of your coalition;
- Give the appearance of action and ease public concern without meaningful change;
- Discourage you from pressing forward; or
- Deflect your coalition to another issue that the decision maker is concerned about.

Advocating for Change: Persuading Decision Makers to Act for Better Health describes what to do before, during and after to maximize the potential of a face-to-face meeting. (pages 16–22.) That manual also shows you how to avoid some traps in face-to-face meetings; for example, what you should do if you find out that the meeting is stacked against you.

Before an agency can act on a petition, it generally must give the public adequate notice and an opportunity to comment. If the agency intends to adopt regulations, it will publish the proposed regulations and invite public comment for 30 to 60 days. At the federal level all notices are published in the *Federal Register*. State agencies publish their notices in the *California Administrative Notice Register*. Often, agencies will also issue news releases and send notices to interested parties.

You can expect those who oppose your proposals to express their views in letters to the agency. So you need to make sure your supporters send the agency letters endorsing the proposals—the more, the better.



Ex Parte Communications Forbidden in Adjudicatory Cases

In cases involving rulemaking or policy-making (e.g., rules regarding the future conduct of the agency, many individuals or companies), generally there is no prohibition on communicating with agency officials. In adjudicatory cases (e.g., a formal complaint against a specific individual or company for past conduct that could result in a fine, suspension or other punitive sanction), there may be a legal prohibition against communicating with certain officials such as the administrative law judge hearing the case and/or agency head. The purpose of these laws prohibiting *ex parte* communications (communications with the decision maker when all parties are not present) is to protect the due process rights of the individual or company that is the subject of the complaint. In adjudicatory cases, check with the general counsel's office of the agency to see whether such a prohibition applies and, if so, precisely which agency officials are off limits. Ask for a copy of the law so you can read it for yourself.

IF THE AGENCY HOLDS PUBLIC HEARINGS

If the issue is a significant one, or if it generates a lot of interest, the agency will probably hold a public hearing. The California Administrative Procedures Act also gives you the right to request a public hearing in rulemaking cases. Public hearings are excellent opportunities to air your views, respond to any opposition and correct any misperceptions. Hearings are also excellent media opportunities. To get the most out of public hearings, take the following steps:

Before the Hearing

Find Out the Format

Hearing procedures vary from agency to agency. Find out who will preside at the hearing. Will it be the agency head or someone else? Will oral testimony be allowed and, if so, what are the time limits? How will witnesses be chosen? Do individuals and organizations that wish to testify have to make a request in advance and if so, to whom, how and by when? Will people who simply attend the meeting be able to testify? In what order will witnesses testify? For example, the witness order might be: first party to sign the petition, petitioners then opposition, alternating between supporters and opponents, members of the public then experts, etc. Will witnesses be questioned? Will the agency receive post-hearing comments?

If you don't like the format, propose changes. For example, if you believe the hearing officer is opposed to your position, ask the agency to select an impartial officer. If the location, time or sign-up procedure for the hearing makes it virtually impossible for people who are harmed by the problem to testify, request that the agency change the arrangements. For example, attending a hearing in Sacramento at 9 a.m. may be convenient for opposition lobbyists but impossible for individuals who live in Los Angeles or San Diego. If a time limit on testimony will restrict your presentation, see if the agency will give you more time.

If the agency schedules witnesses in advance of the hearing date, try to testify as early as possible, preferably first or second. Early witnesses tend to get the full attention of the presiding officer(s) and the media in attendance.

Line Up Witnesses

You will want to have two or three witnesses who can speak articulately and authoritatively about the problem and answer any technical ques-



tions. Expert witnesses such as professors, doctors, scientists, etc. are particularly helpful. You should also try to get as many other witnesses as you can to attend and testify, even if it's only to give a one-minute statement of support. These additional witnesses will help demonstrate the breadth of your public support. Choose witnesses who will make a positive impression on the agency and the public.

Prepare Your Testimony

Your testimony should present the case as clearly, persuasively and comprehensively as possible. It should describe the current problem and show how it is hurting the public. It should also point out that the agency has the authority to take the corrective action requested and explain why that action will be effective.

While preparing your testimony, check to see if there have been any significant changes in the facts, the law or government policy since you filed the petition. You would quickly lose credibility if you testified to something that was no longer the case. Also, try to respond to all of the arguments raised in the opposition to your case. Substantiate critical facts and key legal points by identifying your sources. If the facts are complex, use charts, graphs or diagrams to illustrate your points. If you have previously submitted materials (for example, exhibits to your petition), you can refer to them in your testimony.

If your testimony is long, prepare a summary for yourself. Read the summary at the hearing and submit the full testimony for the record. Take enough copies of your testimony for the presiding officials, staff, the reporters in attendance and other people who might want it.

Coordinate Your Testimony with Others

When testifying, don't necessarily try to cover everything yourself. The attention of presiding officer(s), agency staff, reporters and others in attendance is a limited commodity. Decide what areas need to be covered (facts, data, analysis, personal accounts, law, policy, etc.) and decide which speaker(s) would be the best for each. Avoid unnecessarily repeating each other's testimony. Be sure you agree on the main points.

Be prepared for questions such as, "Would the problem be solved by the following approach..." The agency might be trying to find out whether your coalition would settle for less than what you have asked for in your petition. Decide what you will do and what your bottom line is, or plan to ask for time to consult with members of the coalition.

Organize Support

In addition to the witnesses you enlist, try to get as many supporters as possible to attend the hearings. The mere presence of a large group of interested people observing the proceedings can make a strong impression on agency officials.

If you know that an agency staff person supports your point of view, see if he or she will suggest to the presiding officer questions that will help bolster your case and questions that highlight weaknesses in the opposition's case. If the agency is headed by a multi-member body and you know a member is supportive, you should encourage the member beforehand to ask the opposition hard questions. You might ask if it would help the member if you drafted sample questions to give him or her an idea of what would be helpful to get on the record.

Inform the Media

Public hearings about a serious health problem are newsworthy events that many reporters will want to cover. Several days before the hearing, inform the media about the upcoming hearing. A good way to do this is to issue a news advisory. In addition to when, where and the subject of the public hearings, the news advisory should include a brief statement covering:

- The facts behind the petition;
- The groups filing the petition;
- The actions you are requesting; and
- Why the actions are necessary to protect the public.

Send the advisory to all media outlets that may have an interest in covering the hearings. Place follow-up calls to reporters who previously covered your petition or asked to be kept informed.

At the Hearing

Get to the hearing early. Bring materials and either hand them to reporters or place them on a press release table, if one has been provided. Bring plenty of copies and hold some in reserve to be sure that all reporters get a copy. Sit in the front row, where you can see and be seen by agency officials. Check with them to see if there have been any last-minute changes. Introduce yourself to reporters. If possible, you might hold an impromptu news conference just before the hearing and just outside the hearing room. The reporters will be there and you can help them frame the way they will write about your petition and the hearing.

When it's your turn to testify, distribute copies of your testimony to the presiding officer, agency staff and hearing recorder, if there is one. Begin your testimony by introducing yourself and thanking the agency for the opportunity to testify. Keep your testimony brief. Do not drone through pages of details; simply summarize and submit the full testimony (which includes the details) for the record. Speak clearly.

During your testimony, you may want to expand on a point or respond to a particular question or concern raised earlier. If you are not comfortable with adding spur-of-the-moment comments to your prepared testimony, wait until you have finished your prepared remarks and introduce your additional comments by saying, "I would also like to take this opportunity to respond to earlier remarks."

In some cases, you may find that you need to correct an earlier statement made by a witness who supports your position. Try to avoid contradicting an ally. A good approach is to say, "I would like to clarify a point mentioned by _____." To avoid this problem, try to meet with your supporters to coordinate your testimony and agree on your message. You may want to conclude your testimony by asking if there are any questions.



Covering All Important Points

If you know that you won't have enough time to cover all of the points you would like in your oral testimony, divide them among several witnesses. If you are the first to testify, give agency officials a preview of what they will be hearing, for example, "Madame Hearing Officer, my testimony will describe the problem in Southern California. Later today, you will be hearing testimony from _____, who will present information about the problem in the rest of the state. A third witness, Professor _____ from the School of Public Health, University of California at Berkeley, will testify regarding the actions that should be taken by this agency to address the problem and how these actions will improve the health of Californians."

Answer Questions Directly

Don't be intimidated by questions. They are generally asked to clarify statements you made in your testimony, or to solicit your views on issues beyond the scope of your testimony. In many instances, there won't be any questions.

When you are asked a question, answer directly; don't ramble. If appropriate, use the question to make additional points in support of your proposal. But, always start by first answering the question asked. And, where possible, start your answer with a clear declarative phrase; for instance, "Yes, I agree, and ..." or "No, because" If you don't know the answer, don't fake it. It is fine to say, "I don't know the answer to that. I want to give you accurate information so let me check into it and I will get back to you." If someone else from your coalition will be covering the subject or knows the answer, you can defer to them by saying, "That area will be covered by _____, who is testifying later this morning. I believe he can answer your question and provide you with additional information on that subject." Make sure that the question is answered. If you don't have an opinion, don't feel obligated to make one up on the spot. Simply state, "I don't really have an opinion on that subject."

Respond to Hostile Questions Calmly

If you encounter a presiding officer or staff person who is bent on embarrassing and discrediting you, keep your composure. Don't let the questioner put words in your mouth. Look out for questions such as, "Did you say ...?" or "Is it your position that...?" Stick to your position and bolster it with documented facts and legal authority. If your answer is interrupted by another, unrelated question, politely say that you need to finish answering the first question before addressing the second one.

Don't be intimidated or discouraged by harsh questioning. Such interrogation is generally ineffective and makes the reporters present more sympathetic to your case. If the agency's bias is blatant, that may fuel more news stories and even cause the state legislature or city council to hold hearings on the agency's conduct. Also, when the presiding officer or the agency staff exhibits such hostility that it interferes with the presentation of evidence, a reviewing court may impose legal sanctions on the agency or overturn its decision.

After the Hearing

Post-Hearing Comments

Agencies may or may not allow post-hearing comments. If they do, take advantage of the opportunity to answer any questions raised at the public hearing and rebut opposing arguments. You may also use post-hearing comments to bring recent developments to the agency's attention. Your post-hearing comments should:

- Review the facts raised in your petition and testimony;
- Review the arguments raised by the opposition;
- Explain why the opposition's arguments are faulty. They may be faulty because they are contrary to the law or facts; because they are illogical or inconsistent; or because they contradict other opposing testimony;
- Discuss how recent developments in the law, facts or government policy strengthen your case and weaken that of your opponents;
- Include any items that you promised in your testimony.

Testimony and post-hearing comments, including exhibits, are formal mechanisms for communicating with agency officials. They form the official record for an agency's decision. When permitted, you should also use informal contacts with agency staff to encourage them to grant the petition. If other members of your coalition have a good relationship with agency officials, ask them to speak to the officials about the petition. Informal lobbying efforts are important to the success of the petition and should be maintained through all stages of the petitioning process.

After the Comment Period

After the close of the comment period, stay in contact with agency officials. Ask about the progress of their deliberations and what your opponents are saying so you can counter their arguments. Make yourself available to answer any questions. Offer to provide additional information. Monitor the agency's actions and those of your opponents, who will be lobbying the agency just as hard to defeat your petition.

Remember, several layers of internal review may prolong the process, especially for a major change. Stay in touch with agency officials and keep track of what's happening at every stage of the process.



Watch Out for Your Opponents Trying to Undermine Your Progress

If you're winning, watch out for your opponents trying to undermine your progress. For example, if you are successfully persuading agency officials, your opponents might go to the legislature to try to block the agency from acting. Often, you can head off these types of maneuvers by paying an early courtesy visit to key legislators to inform them of the problem, why it's controversial and how it is being addressed in another forum. Under these circumstances, many legislators will be just as happy to stay out of the fray and some may even be helpful. After the visit, stay in touch with the legislators. Don't be out-manuevered and, above all, don't be complacent.

IF THE PETITION IS GRANTED

Congratulations—you've made it! If the agency announces that it will take some or all of the actions you have requested, you and the members of your coalition can celebrate. Thank everyone who supported your effort and give praise for a job well done. Then get back to work to make sure that your proposal clears any additional hurdles and is implemented properly.

If your petition results in a new regulation or the amendment or repeal of an existing regulation in California, the agency's decision must be in writing and delivered to the Office of Administrative Law for publication in the *California Regulatory Notice Register*, according to California Government Code Section 11340.7(d). The decision must identify the party submitting the petition, the regulations requested to be affected, reference to the authority to take the action requested, the reasons supporting the agency's decision, the agency contact person and the right of interested persons to obtain a copy of the petition from the agency. The Office of Administrative Law will review the agency's regulation to see whether it meets prescribed standards. Usually, there is also a grace period to allow persons covered by the new regulation to adjust to it. Stay in contact with agency officials throughout this period to make sure they don't back away from their decision.

Spread the News

Issue a news release announcing the agency's action and praising the agency for it. (This will help to counter the criticism that your opponents will heap on the agency.) Also, let the media know when the new regulations go into effect.

Thank the Agency

Send a brief thank-you note, along with the news release, to the agency head(s) and appropriate staff. They will appreciate your recognition, since their work is generally thankless. Also, the news release will show agency officials that you will defend their decision if there are any public attacks by your opponents. No gloating—careless state-

ments will be used to damage your credibility and inspire opponents to devote more resources against you.

Counter the Opposition

If the actions you secured were controversial and opposed by powerful interests, pay careful attention to possible attempts to reverse your victory. Opponents may file a lawsuit, or ask the legislature to pass a law undoing the agency's action. In either case, think about how to respond. Do you have the time, money and expertise to participate in a lawsuit or inform the legislature? Now that the agency has taken action, can you count on it to defend it vigorously? Are agency officials counting on you to help them defend their decision?

If the agency's action is challenged in court, one way to support the agency's decision short of becoming a full party to the lawsuit is to request the court's permission to file an *amicus curiae* (friend of the court) brief. Amicus briefs can be very influential when they are filed on behalf of credible organizations and address the public policy issues supporting the agency's decision in a compelling manner. You will probably need the help of an attorney to prepare the request to the court and, if it's granted, the amicus brief itself. If the problem affects people with low incomes, you may be able to find free legal assistance through local legal services programs. In addition, some local bar associations offer *pro bono* (free) legal assistance.

If your opponents go to the legislature, you might be able to interest organizations that work with the legislature to oppose the legislation. This would combine your expertise in the issue with their expertise in the legislative process.

Monitor Implementation

Now that you've come this far, make sure that the agency implements its decision. After the action has had a chance to work, check to see whether it has solved or alleviated the original problem. If not, you may need to seek another remedy.

If the agency has adopted a regulation requiring or prohibiting certain actions, check whether the individuals and entities covered by the regulation are complying. Spot checks, surveys and consumer complaints are some ways to check compliance. If violations are widespread, request that the agency take enforcement action. If necessary, file a formal complaint and seek sanctions against the violators.





Rejection by Agency Turns into Legislative Victory

Consumers for Auto Reliability and Safety (CARS) filed a petition with the National Highway Traffic Safety Administration (NHTSA) to require automobile manufacturers to provide the mechanisms necessary for passengers to adjust the height of lap/shoulder belts so that they fit properly. The petition was widely supported by safety organizations, insurance companies, seniors' groups and parents. Auto manufacturers opposed the petition, claiming that even though the devices would cost only \$2 each, the proposed regulation did not meet the agency's cost-benefit analysis.

The NHTSA rejected the petition, but CARS and its coalition partners convinced Congress to adopt the requirement as part of an omnibus transportation bill. "The petition focused everyone on the problem and the ease of the solution. It served as the catalyst for Congressional action," said Rosemary Shahan of Consumers for Auto Reliability and Safety.

IF THE PETITION IS DENIED

Don't be discouraged if your petition is denied.² Your efforts have by no means been wasted. If nothing else, you have at least alerted the media and policymakers to the problem and built a coalition. And you may have laid the groundwork for future action by the agency or the legislature. For example, depending on the reason(s) given by the agency for denying your petition, you might be able to collect evidence that the agency says is missing, refine your proposed solutions so that they are acceptable to the agency, or seek legislation giving the agency the authority to address the problem. The sidebar on this page highlights how an administrative petition, even when initially unsuccessful, can set the stage for future policy solutions.

Possible Next Steps

If the agency denies the petition and you want to continue to pursue the matter, there are several steps you can take. You can petition the agency again. You can sue. You can take your case to the legislature. Or, you can take the issue to voters using a ballot measure. Regardless of which option you choose, continue to document new examples of the problem and work with the media to keep the problem in the news.

Another Petition

Even if the agency denies your petition, you can prepare and file a second petition. You should consider petitioning the agency again if the facts, law or government policy changes so significantly that agency officials need to reconsider their position. Suppose, for example, that the agency denied the petition because it did not have the legal authority to take the action requested, but the legislature later passed a law giving the agency that authority. A second petition would then be appropriate.

2. If your petition requested the adoption, amendment or repeal of a regulation (i.e., rulemaking) and the petition is denied in whole or in part, the agency is required to put its decision in writing and identify the reasons supporting the agency determination (Cal. Gov. Code Section 11100.7). If your petition requested other kinds of action but not rulemaking and agency officials tell you orally that they are not granting the petition, ask that they put their decision in writing so you will have a written record to take to court or the legislature should you decide to pursue those options.

California Government Code Section 11340.7 states, "Any interested person may request reconsideration of any part or all of a decision of any agency on any petition submitted." The request must (1) identify the "reason or reasons why an agency should reconsider its previous decision" and (2) be filed no later than 60 days after the date of the decision involved. Agencies have 30 days to respond to requests for reconsideration. If you want to request reconsideration and it is more than 60 days after the agency's decision, do so anyway. State the reasons why you couldn't submit the request within the deadline (for example, the request for reconsideration is prompted by recent developments showing a worsening situation, etc.) and request that the agency voluntarily comply with the 30-day time limit for responding under Section 11340.7.

Going to Court

Judicial review of the agency's action is the most effective check against the illegal exercise of administrative authority. If you sue for judicial review, the court will examine the agency's action (or refusal to act) with the following questions in mind:

- Did the agency exceed its legal authority?
- Did it interpret and apply the relevant laws correctly?
- Were its proceedings fair and consistent with legal requirements?

Although courts may review almost any aspect of an agency's operation, they are generally reluctant to impose their own views as long as the agency can support the action it took based on the evidence in the record of the proceeding.

Courts will scrutinize the agency's action more closely if the legislature has not given the agency broad powers or discretion; the agency has a history or reputation for arbitrary actions or abusing or exceeding its authority; the issues involved do not require any particular expertise possessed by the agency; the hearing procedures were biased or prejudiced; or the agency's actions affect some constitutionally protected right.

Keep in mind that litigation is frequently a long and uncertain process. Lawsuits can take several years before the trial and all appeals are completed. Before you decide to file a suit, consider whether the chances of success justify the expense and whether success in the lawsuit will further your overall mission. If you win your case, you may be entitled to recover your attorney's fees and court costs from the agency.

Legislative Action

If your proposal has broad public support and if the agency's refusal to act is contrary to a clearly stated public policy, you may succeed with the legislature even if you failed with the agency. In addition to passing bills, the legislature can hold hearings on the matter or conduct an investigation into the agency's activities.

Before you seek support in the legislature, consider the following questions:

- What do you want the legislature to do?
- Can you mount an effective lobbying campaign?
- What are the chances of success?

Don't forget that the opposition will fight in the legislature to preserve their victory.

Ballot Measure

The California Constitution gives the public the right to pass laws directly through the initiative process. Many local governments have a similar process. A successful initiative requires drafting a proposed law that can survive legal challenge, gathering sufficient signatures to qualify the measure for the ballot and persuading a majority of voters to approve it. Explore this option only if you feel that your proposal has strong public support.

IF THE AGENCY DOES NOT RESPOND TO YOUR PETITION

If you filed your petition with the proper person at the agency (page 28), have met with or tried to meet with agency staff (page 30) and have given agency officials a reasonable length of time to consider the petition, most agencies will respond. In the rare event that the agency does not respond to your petition, you could:

Go to the Media

You could alert reporters to the fact that agency officials have not responded to the petition. Reporters will be interested in knowing when you filed the petition, whether you have met or tried to meet with agency officials, which officials at the agency are responsible for considering the petition and what they've told you (if anything) about its status. Reporters who covered the filing of your petition should be particularly interested in knowing whether the agency has taken any

6

Working with Reporters

News stories come about because petitioners have worked hard to reach and educate reporters.

The news media can play an important role in the administrative petitioning process. Newspaper articles and broadcast coverage about your petition, the serious problem that it seeks to address and whether agency officials will take action to correct the situation put the issue before the public. This makes it harder for the agency to ignore your petition, dismiss the problem as unimportant or refuse to take effective action. Media coverage is also an important counterweight to pressure on agency officials from powerful interest groups.

There are a number of newsworthy events in the petitioning process. They are (1) the filing of the petition, (2) the agency's decision to schedule the matter for hearing, (3) any public hearings held by the agency, (4) the agency's decision granting or denying the petition, and (5) follow-up actions you decide to take. Each of these is an opportunity for media coverage. There may be other opportunities as well; e.g., release of a new study validating your position, announcement that an influential person or organization is calling on agency officials to take action, or the fact that other states or local jurisdictions are taking or considering taking the actions you are seeking.

Even if your petition is newsworthy, media coverage will not happen automatically. In most cases, news stories come about because petitioners have worked hard to reach and educate reporters. You may want to consult some of the publications listed in References on page 48, which explain in detail how to conduct a media campaign, including how to develop a media list, write a news release and hold a news conference. The learning curve may be steep at first, but once you and your coalition have mastered the skills needed to work with reporters, they can be applied to any number of issues.

As you work with reporters in the course of the petitioning process, some of the questions you should expect are:

PETITIONING Q&AS

QUESTION: I've never heard of an administrative petition. Is that like a lawsuit or more like an ordinary signature petition?

POSSIBLE ANSWER: Under the California Administrative Procedures Act, which is part of the California Government Code, an administrative petition is a formal request to an agency to adopt, amend or repeal a regulation. The law requires the agency to respond to the petition in writing within 30 days. The agency can deny the petition, stating why it has reached this decision on the merits of the petition, or schedule the matter for public hearing. Common signature-gathering petitions don't have this kind of legal standing.

QUESTION: How do you think the agency will respond to your petition?

POSSIBLE ANSWER: We think that we have made a good case and we expect the agency to act responsibly by...

QUESTION: Why hasn't something been done about this before?

POSSIBLE ANSWER: It was only recently that the problem became so large that it could no longer be ignored.

QUESTION: Isn't this a problem that could be solved without the help of government?

POSSIBLE ANSWER: In the past, we have tried to solve these problems without government intervention but were unsuccessful because....

QUESTION: Do you really think that what you're asking for will solve the problem people are facing?

POSSIBLE ANSWER: If agency officials take the actions we've requested, people will no longer have to....

QUESTION: Why didn't you just go to the legislature or file a lawsuit?

POSSIBLE ANSWER: We want to give the agency a chance to solve the problem. We think that it has the power, resources and expertise to find the best solution. If the agency doesn't act, we will consider other ways to address the situation.

7

References

Research

Bardach, E. *A Practical Guide for Policy Analysis: The Eightfold Path to More Effective Problem Solving*. CQ Press, 2008.

Berring, R. C. *Finding the Law* (11th ed.). St. Paul, MN: West Group, 1999. Updates available at: www.law.berkeley.edu/faculty/berringr/findingthelaw/menu.html

Consumer's Guide to Legal Help on the Internet. American Bar Association. www.abanet.org/legalservices/findlegalhelp/home.cfm

E-The People

www.e-thepeople.com

Federal and State FOI Resources and Guides. The Freedom of Information Center, University of Missouri School of Journalism. <http://foi.missouri.edu/laws.html>

The Freedom of Information Act: A User's Guide. Washington, D.C.: Freedom of Information Clearinghouse, 1997 (rev. 2005). www.citizen.org/documents/FOIABrochureWEB.pdf

Guide to Law Online. U.S. Law Library of Congress. www.loc.gov/law/guide/

Hane, P. J. *Super Searchers in the News: The Online Secrets of Journalists and News Researchers*. Medford, NJ: CyberAge Books, 2000.

InSITE: Finding the Law. Cornell Law Library. <http://library2.lawschool.cornell.edu/insiteasp/default.asp>

A Pocket Guide to the California Public Records Act. The First Amendment Project and Society of Professional Journalists (Northern California), 2003. www.thefirstamendment.org/publicrecordsact.pdf

U.S. Government Telephone and E-mail Directories <http://www.usa.gov/Contact/Directories.shtml>

Coalition Building

Activists' Center for Training in Organizing and Networking (ACTION)
www.actionpa.org

Bobo, K.; J. Kendall; S. Max. *Organizing for Social Change* (3rd ed.). Seven Locks Press, 2001.

Center on Budget and Policy Priorities
www.cbpp.org

Center for Community Change
www.communitychange.org

Center for Third World Organizing
www.ctwo.org

Community Toolbox. University of Kansas.
<http://ctb.ku.edu/en/>

Kahn, S. *How People Get Power* (revised ed.). NASW Press, 1994.

The Midwest Academy
www.midwestacademy.com

Deciding on an Advocacy Strategy

The Legislative Process: A Citizen's Guide to Participation. Senate Select Committee on Citizen Participation in Government, 1996.

Schultz, J. *The Democracy Owners' Manual*. Rutgers University Press, 2002.

Shultz, J. *The Initiative Cookbook: Recipes and Stories from California's Ballot Wars*. The Democracy Center, 1996.

Snyder, H.; C. Oshiro; R. Holton. *Getting Action: How to Petition Government and Get Results*. 2002.
www.consumersunion.org/other/g-action1.htm

Strategy Development: Key Questions for Developing an Advocacy Strategy. The Democracy Center.
www.democracyctr.org/advocacy/strategy.htm

Working with Reporters

Dorfman, L.; S. Herbert. *Communicating for Change Module 5: Engaging Reporters to Advance Health Policy*. Health ExChange Academy of the Center for Healthy Communities, 2007.

Media Advocacy Manual. American Public Health Association, 18 June 2003. www.apha.org/about/news/mediaadvocacy.htm

Public Media Center
www.publicmediacenter.org

Saasta, T. *How to Tell and Sell Your Story Part I: A Guide to Media for Community Groups and How to Tell and Sell Your Story Part II: A Guide to Developing Effective Messages and Good Stories about Your Work*. Center for Community Change, 1998.

Salzman, J. *Making the News: A Guide for Nonprofits and Activists*. Westview Press, 1998.

Constitutional and Statutory Provisions

8

United States Constitution, Amendment I

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

California Constitution, Article I, Section 3

"The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good."

Title 5 United States Code Sections 553(e) and 555(e)

Section 553(e):

"Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."

Section 555(e):

"Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial."

California Government Code Sections 11340.6 and 11340.7

Section 11340.6:

"Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation as provided in Article 5 (commencing with Section 11346). This petition shall state the following clearly and concisely:

- (a) The substance or nature of the regulation, amendment, or repeal requested.

(b) The reason for the request.

(c) Reference to the authority of the state agency to take the action requested.”

Section 11340.7:

“(a) Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346), a state agency shall notify the petitioner in writing of the receipt and shall within 30 days deny the petition indicating why the agency has reached its decision on the merits of the petition in writing or schedule the matter for public hearing in accordance with the notice and hearing requirements of that article.

(b) A state agency may grant or deny the petition in part, and may grant any other relief or take any other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of this action.

(c) Any interested person may request a reconsideration of any part or all of a decision of any agency on any petition submitted. The request shall be submitted in accordance with Section 11340.6 and include the reason or reasons why an agency should reconsider its previous decision no later than 60 days after the date of the decision involved. The agency’s reconsideration of any matter relating to a petition shall be subject to subdivision (a).

(d) Any decision of a state agency denying in whole or in part or granting in whole or in part a petition requesting the adoption, amendment, or repeal of a regulation pursuant to Article 5 (commencing with Section 11346) shall be in writing and shall be transmitted to the Office of Administrative Law for publication in the *California Regulatory Notice Register* at the earliest practicable date. The decision shall identify the agency, the party submitting the petition, the provisions of the *California Code of Regulations* requested to be affected, reference to authority to take the action requested, the reasons supporting the agency determination, an agency contact person, and the right of interested persons to obtain a copy of the petition from the agency.”

Sample Administrative Petition

9

(Type in name of responding agency)

Sample City Police Department

Sample City Legal Assistance and)

Sample City Alliance)

Against Domestic Violence)

ADMINISTRATIVE PETITION TO PROTECT FAMILIES FROM DOMESTIC VIOLENCE

Petitioners.)

)

)

Petitioners, (insert names of petitioners) Sample City Legal Assistance and Sample City Alliance Against Domestic Violence, request that (insert name of petitioned agency) Sample City Police Department (SCPD) take immediate and effective action to (briefly describe the purpose of the petition) adopt a Department-wide regulation requiring police officers to seek Emergency Protective Orders (EPOs) on all domestic violence calls when a respondent is arrested.

Presently, (summarize current state of affairs) an arresting officer uses his or her discretion to determine whether to apply for an EPO from the Superior Court. This being the case, respondents are often released from custody and return to the victim's home within 24–48 hours of the violent incident.

These actions are hurting (briefly describe who is being hurt by the current state of affairs, and how) victims of domestic violence and their families by exposing them to further acts of violence. This includes the most vulnerable in our society, children. For example, (insert specific example(s), illustrating the harm caused).

The (insert name of petitioned agency) SCPD is under a legal duty to (briefly summarize the agency's responsibility) serve and protect members of the Sample City community. This includes, but is not limited to, adopting rules that will protect families in situations where there is a high risk of domestic violence.

Petitioners request that the agency fulfill this responsibility by taking the following actions (*list corrective actions*):

- 1) Adopt a regulation requiring SCPD arresting officers to apply to the Superior Court for an EPO on every domestic violence call when a respondent is arrested.
- 2) Train all SCPD officers to follow this procedure, thus removing the element of discretion.
- 3) Require officers to notify victims about nonprofit agencies and other community resources that can assist victims to make these temporary orders more long-term.

STATEMENT OF FACTS

(explain the situation in greater detail—additional pages can be attached if necessary) Currently, SCPD officers use their discretion to determine if and when to issue an EPO. Many officers are not familiar with EPOs and do not know how to seek an EPO. An EPO protects a family for approximately 7–10 days. This can be just what the family needs, TIME. Time to decide if they are going to stay in the home or move. Time to decide if the abuser will be allowed to come back to the home. Time to file a Restraining Order of Protection with the court, thereby working out custody issues and permanent protection issues.

PETITIONERS

(insert names of petitioners) Sample City Legal Assistance, Inc. is a nonprofit organization that is dedicated to (describe the purpose of the organization) providing free legal services to the low-income and senior population in Sample City. Sample City Alliance Against Domestic Violence is an alliance of 22 nonprofit organizations working to prevent domestic violence.

To this end, *(petitioners' names)* Sample City Legal Assistance and Sample City Alliance Against Domestic Violence are active in (describe the organizations' activities) providing community education and providing case management to families who are victims of domestic violence. In 2007, Petitioners provided legal assistance, case management services and other assistance to over 1,300 victims of domestic violence.

(OR)

(insert name of petitioner) _____ is a resident of the state of _____. She is directly affected by the current state of affairs because *(describe how the petitioner is affected)* _____

AUTHORITY

The right to petition *(insert type of agency)* city agencies is contained in (insert the code section number of state or local petitioning law) Section 1.28.150 of the Sample City Municipal Code, which states that “any interested person may petition a city agency requesting the adoption or repeal of a regulation.” Within 30 days of receiving a petition, city agencies are required to deny the petition or set the matter for hearing. Section 1.28.160.

This administrative petition is also filed under Section 3 of the California Constitution and the 1st Amendment to the U.S. Constitution, both of which give the public the right to petition government for the redress of grievances.

The *(insert agency's name)* SCPD's authority to take the actions requested in this petition derives from *(insert the statute, court decision, or other appropriate legal authority)* Sample City Municipal Code Section 1.39.160, which gives the agency the power to *(quote or summarize relevant portions of the statute or decision)* adopt rules and regulations regarding domestic violence intervention and prevention. *(insert additional authority, if any)* _____ further provides that the agency (shall or may) *(quote relevant portions of the statute or decision)* _____

RELIEF REQUESTED

Petitioners request that the *(insert agency's name)* Sample City Police Department take the following actions *(list corrective actions requested)*:

- 1) Adopt a regulation requiring arresting officers to apply to the Superior Court for an EPO on every domestic violence call when a respondent is arrested.
- 2) Train all SCPD officers to follow this procedure, thus removing the element of discretion.
- 3) Require officers to notify victims about nonprofit agencies and other community resources that can assist victims to make these temporary orders more long-term.

CONCLUSION

In view of the seriousness of the present problem, petitioners urge that the *(insert agency's name)* Sample City Police Department immediately take the actions set forth in this petition.

DATED: *(insert date of filing)* 2/28/2008.

Respectfully submitted,

(insert petitioner's name, if an individual, or petitioner's representative, if an organization)

Sample City Legal Assistance and Sample City Alliance Against Domestic Violence

By: *(signature)* _____

By: *(signature)* _____

10

Quick Reference Checklist

This Quick Reference Checklist provides a summary of the actions you should take at each stage of the petitioning process. Keep it in front of you as you plan and use it as a checklist to make sure you have not overlooked anything important. If you are unclear about items in the checklist, review the sections of the manual that discuss those items.

LAYING THE GROUNDWORK

1. What is the problem you are concerned about?

- Who is being hurt by the current situation?
- How are they being hurt?
- Who is benefiting from the situation?
- How are they benefiting and how much?
- Who else is working on or cares about this problem?

2. Is the problem one of public concern?

- How serious and/or widespread is the problem?
- Does it affect a lot of people?
- Are they unable to avoid harm?
- If left unattended, will the problem get better or worse?

3. What does the law have to say about the problem?

- What behavior does the law prohibit or require?
- What are the reasons behind these prohibitions/requirements?
- What agencies (if any) are responsible for addressing the problem?
- What powers does the agency have to solve this problem?
- What procedures must the agency follow to exercise its power?

4. What has the agency done to solve/alleviate/worsen the problem?

- What was the nature of the problem before the agency was given responsibility for it?
- What has the agency done about the problem?
- Has the agency's approach changed over time? If yes, how and why?
- What is the agency doing about the problem now?
- Are the agency's actions making things better or worse?

Do agency officials have a history of working for the parties, people or companies now causing the problem or who would oppose corrective action?

If no actions are being taken, why?

What actions are being taken in other states?

5. How are decisions made within the agency?

Who is likely to make the decision on the subject you are concerned about? (Who has the power to solve the problem?)

What is the decision maker's background?

What are his or her views on the subject?

Is the decision maker appointed or elected?

Who are the decision maker's key staff people, and what role are they likely to play?

Who does the decision maker report to within the agency or the executive branch?

Are there individuals or constituents outside of government whose views or opinions will be particularly influential?

6. What actions should the agency take to solve/alleviate the problem?

Prohibit certain harmful activity?

Require certain beneficial activity?

Provide a certain service directly to the public?

Investigate a certain area?

7. Can you build a successful coalition behind the petition?

Have coalition members agreed to a common goal and plan?

Does the leadership possess the time, skills, experience and resources to do the job?

Is there a clear understanding regarding who will join as co-petitioners, send letters of support, play a lead role or supporting roles in the campaign?

Are members committed to communicating fully and thoroughly?

Is there a clear understanding about what kinds of decisions leaders can and can't make without consulting all members?

Have the members agreed on the overall style of the campaign?

How will work be divided?

How will credit be shared?

Are all members in it for the long haul and committed to presenting a united front?

Before going on, determine whether:

Petitioning is still the best route to solving the problem.

You have the time, money, people and expertise to keep going.

You have the commitment to see things through to the end.

REVIEW YOUR ANSWERS TO THE PREVIOUS QUESTIONS AND DECIDE WHETHER YOU WANT TO GO FORWARD WITH A PETITION.

WRITING THE PETITION

1. Do you have an Introduction?

- ☐ Does it briefly and concisely identify:
 - The petitioners?
 - The agency being petitioned?
 - The facts giving rise to the petition?
 - The actions you would like to see taken? AND
 - The reason why the actions are necessary to protect the public interest?

2. Do you have a Statement of Facts? Does it:

- ☐ Explain the current state of affairs?
- ☐ Say how and why the public is being hurt?
- ☐ Say why it's the agency's duty to act?
- ☐ State what actions need to be taken?

3. Do you have a Petitioners section? Does it:

- ☐ Identify each person or group petitioning? AND
- ☐ State why each petitioner is affected by the problem?

4. Do you have a Legal Authority section? Does it:

- ☐ Identify the law that gives you the right to petition?
- ☐ Identify the laws that give the agency the authority to take the requested actions?
- ☐ Quote or summarize relevant portions of the authorizing statutes?

5. Do you have a Relief section? Does it:

- ☐ List all corrective actions you are requesting that the agency take?

6. Do you have a Conclusion? Does it:

- ☐ Include a statement urging the agency to take action? AND
- ☐ Include signatures of the petitioners or their representatives?

7. Have you attached exhibits that support your petition? Do they:

- ☐ Highlight and illustrate critical facts? AND
- ☐ Does each have a title and label?

Can you find other documents (maps, charts, newspaper articles, etc.) that will support your petition?

Do you have too many exhibits?

8. Overall, is your petition persuasive?

Is it clear to an outsider?

Does it make the problem seem urgent?

Do the solutions you propose seem reasonable and responsible?

Have you avoided sensational or rhetorical language?

9. Have you prepared a cover letter?

Is it addressed to the head of the agency?

Does it briefly explain the reasons for the petition?

Does it urge the agency to take prompt action?

10. How are you filing the petition?

By personally delivering a copy to the head of the agency?

By using registered mail or some other delivery method that assures you a signed receipt?

11. Are you planning to give agency officials a courtesy call before you file? If officials request, are you prepared to:

Delay filing your petition?

Provide them with an advance copy?

AFTER FILING THE PETITION

1. Are you checking with agency officials to encourage action?

Has the petition been reviewed?

What does she/he think about it?

What are the problem areas?

What is the opposition doing?

Who else will review the petition?

When can a decision be expected?

2. Are you keeping on top of events?

Are you renewing contact with the agency every couple of days?

Are you making yourself readily available for questions?

Are you monitoring the actions of the agency?

- Are you monitoring the actions of your opponents?
- Are you monitoring new developments that impact the problem or your proposed relief/solution to address the problem?
- Are you building public support for the petition?
- Are you communicating with the media?

IF THE AGENCY SCHEDULES THE MATTER FOR HEARING

1. Should you seek a change in the format of the hearing?

- Who will preside?
- Will oral testimony be permitted? If so, what time limits will be placed on witnesses?
- Can witnesses be questioned?
- How will witnesses be scheduled?
- Will post-hearing comments be permitted?
- If the arrangements are not satisfactory, can you press for:
 - Replacing a biased or hostile hearing officer?
 - Seeking extra time for witnesses?
 - Alternating witnesses pro and con?
 - Being heard early in the proceeding?
 - Changing the time/place of the hearing so your supporters can attend?

2. Do you need to change or supplement your petition?

- Does it still seem clear, persuasive, and comprehensive?
- Have there been any new developments?
- Are there changes in the facts, the law or government policy to consider?
- Can you bolster your arguments at any point where you expect trouble?

3. Does your planned testimony give maximum support to your petition?

- Does your testimony explain the current state of affairs?
- Does it discuss how and why people are being hurt?
- Does it state why the agency is responsible for taking corrective action?
- Does it discuss the corrective action needed?
- Does it substantiate facts and legal principles by citing sources?
- Is it free of complex statements, long-windedness, sensationalism and rhetoric?
- If facts are complex, can you illustrate your points with display-size graphs, charts and diagrams?

4. Have you selected witnesses who will give maximum support to your petition?

- If the time allowed for each witness to testify is brief, can you split the testimony among several witnesses?
- Do your witnesses speak well in public?
- Are they knowledgeable about the issues?
- Do they have the credentials (degrees, position, training, experience) to give weight to their testimony?
- Do they have the appearance and bearing to make a good impression on the agency?
- Do they have the capacity to attract the attention of the media?

5. Have you done everything possible to attract public support?

- Have you sought out interested persons and groups to speak?
- Have you briefed them on the issues?
- Have you urged them to make their interest plain by:
 - Presenting oral testimony?
 - Submitting written comments?
 - Attending the hearing?
- Have you kept media coverage alive by issuing a news advisory about the hearing and facts of your petition?
- Have you prepared extra copies of the news advisory for distribution at the hearing?
- Have you prepared extra copies of your testimony, including graphics, for distribution at the hearing?

6. If post-hearing comments are allowed, are you presenting a complete case?

- Have you reviewed the facts in your petition and testimony?
- Have you reviewed the arguments raised by your opponents?
- Have you discussed how the opposing arguments are faulty?
- Have you discussed how recent developments add to your case and/or detract from your opponents' case?
- Have you included all of the items you promised to produce?

7. Are you maintaining contact with agency officials?

- Are you monitoring the progress of their deliberations?
- Are you making yourself available for questions?
- Are you keeping supporters up to date on the progress of the petition?

IF THE AGENCY GRANTS THE PETITION

1. Have you taken steps to solidify the agency's decision?

- Is the agency complying with all legal requirements?
- Has the agency's decision been announced to the news media?
- Is the agency actually implementing its decision?
- Have you thanked the agency for their decision?

2. Have your opponents shifted the fight to another forum?

- Have they filed a lawsuit to stop the agency from taking action? OR
- Have they gone to the legislature for a law that would prevent the agency from taking action?

3. If so, should you participate in the ensuing struggle?

- Do you have the resources to intervene in a lawsuit or lobby against a bill?
- Can the agency be counted on to competently defend itself?
- Are you likely to win if you intervene?
- What are the consequences if your adversaries win?

4. Has the petitioning effort either solved or alleviated the original problem?

IF THE AGENCY DENIES THE PETITION

1. Are agency officials likely to respond differently to a second petition?

- Has there been a significant change in:
 - The facts?
 - The laws? OR
 - Government policy?

2. Can you bring a successful court action against agency officials?

- Do you have the resources to initiate and maintain an effective court action?
- Do you have a reasonable chance of winning, taking into account the strengths and weaknesses of your case, the status of the law, the resources of your opponents and inclination of the courts and judges who will be making the decision?
- Will success in the lawsuit further your overall mission?

3. Can you get help from the state legislature, board of supervisors or city council? Is it possible to pass a ballot measure/initiative?

- Will a new law, resolution, legislative hearing or ballot measure/initiative help to solve the problem?
- Do you have the resources to stage an effective lobbying campaign?
- Do you have a reasonable chance of succeeding, taking into account the issues involved, your likely supporters and opponents, and the course that a bill, resolution, or request must chart before becoming effective?

IF THE AGENCY DOES NOT RESPOND TO THE PETITION

1. Did you file the petition with the proper person at the agency?

2. Have you tried to meet with agency officials?

3. Should you alert the media?

4. Should you alert higher ups at the agency or in the executive branch to the lack of action?

- Who do the individuals reviewing your petition report to?

5. Can you get help from the legislature, board of supervisors, city council?

- Would legislative action (a new law, ordinance, resolution, hearing, meeting, investigation, inquiry, etc.) spur the agency to act?

6. Should you petition another agency?

- Is there another agency that has the power to take some or all of the actions you are seeking?

7. Can you sue the agency and get a court order requiring it to respond?

- Do you have the resources to hire a lawyer or access to pro bono counsel?
- Is there a law/ordinance specifically requiring the agency to respond?

11

Petitioning Worksheets

The Worksheets outline tasks that will help to organize your research, writing, decision making and actions. Your answers will provide a convenient summary of your findings and strategy, and form the basis for your plan. The Worksheets should be used with the Quick Reference Checklist.

1. INVITING OTHERS TO JOIN	63
2. RESEARCHING THE PROBLEM	64
3. RESEARCHING THE LAW	65
4. RESEARCHING THE ADMINISTRATIVE AGENCY	69
5. DEVELOPING SOLUTIONS	70
6. FILING THE PETITION	72
7. THE NEWS MEDIA	73
8. AFTER YOU FILE YOUR PETITION	77
9. IF THE AGENCY SCHEDULES THE MATTER FOR HEARING	78
10. PREPARE YOUR TESTIMONY	79
11. MARSHALL SUPPORT	82
12. POST-HEARING COMMENTS	83
13. IF THE AGENCY GRANTS THE PETITION	85
14. IF THE AGENCY DENIES THE PETITION	86
15. IF THE AGENCY DOES NOT RESPOND TO THE PETITION	87

1. Inviting Others to Join

1. The following persons/groups are likely to be interested in supporting your petition:

a.

Because

b.

Because

c.

Because

d.

Because

e.

Because

2. The person(s) who will be responsible for contacting the above persons/groups and asking for their support is/are:

a.

b.

c.

d.

e.



2. Researching the Problem

1. The following persons are being hurt by the current situation:

a. _____

Because _____

b. _____

Because _____

c. _____

Because _____

2. The persons listed in No.1 are able/unable to protect themselves because:

3. The following persons or organizations are benefiting from the current situation:

a. _____

Because _____

b. _____

Because _____

c. _____

Because _____

4. If left unattended, the problem is likely to (get worse/stay the same/get better) because:

3. Researching the Law

Note: Proper referencing is absolutely critical in legal research. Be sure that each statement you make on this worksheet is followed by a code section or some other legal authority that supports the statement.

1. The law requires that:

a.

Code Section:

b.

Code Section:

c.

Code Section:

d.

Code Section:

e.

Code Section:

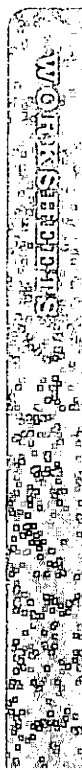
2. The law requires these actions because:

a.

Code Section:

b.

Code Section:



3. Researching the Law

c. _____

Code Section: _____

d. _____

Code Section: _____

e. _____

Code Section: _____

3. The law prohibits:

a. _____

Code Section: _____

b. _____

Code Section: _____

c. _____

Code Section: _____

d. _____

Code Section: _____

e. _____

Code Section: _____

4. The law prohibits these actions because:

a.

Code Section:

b.

Code Section:

c.

Code Section:

d.

Code Section:

e.

Code Section:

5. The agencies responsible for implementing, overseeing or enforcing the laws above are:

a.

Code Section:

b.

Code Section:

c.

Code Section:

d.

Code Section:

e.

Code Section:



3. Researching the Law

6. The powers given to the agencies listed in No. 5 are:

Agency:

Power:

Code Section:

Any special steps that agency must take to use this power:

Agency:

Power:

Code Section:

Any special steps that agency must take to use this power:

Agency:

Power:

Code Section:

Any special steps that agency must take to use this power:

Agency:

Power:

Code Section:

Any special steps that agency must take to use this power:

Agency:

Power:

Code Section:

Any special steps that agency must take to use this power:

4. Researching the Administrative Agency

1. To solve the problem, the agency has (list actions taken by the agency):

a.

b.

c.

d.

e.

2. These actions have (improved/worsened/not affected) the situation in that:

3. If you petition the agency, the decision will be made by:

4. He/she is accountable to:

5. His/her background is:

6. His/her views on the subject are:

7. He/she will respond to the following constituencies:

8. Taking Nos. 5–7 into account, I think he/she will be (sympathetic/neutral/indifferent/unsympathetic/hostile) to the petition because:

5. Developing Solutions

1. The agency could solve or alleviate the problem by:

a. Prohibiting persons from:

1.

2.

3.

4.

b. Permitting persons to:

1.

2.

3.

4.

c. Requiring persons to:

1.

2.

3.

5. Developing Solutions

4.

.....

.....

d. Taking disciplinary action against:

1.

.....

2.

.....

3.

.....

4.

.....

e. Holding hearings and opening an investigation into:

1.

.....

2.

.....

3.

.....

4.

.....

f. Performing the following services:

1.

.....

2.

.....

3.

.....

4.

.....

g. Also taking the following actions:

1.

.....

2.

.....

3.

.....

4.

.....



6. Filing the Petition

Note: The information collected on these worksheets is the basis of your petition. A petition should normally comprise all of the sections included in the checklist found on pages 54–61. Keep the checklist before you as you write. When done, review the checklist to insure that no vital part has been left out of your petition. Suggested wording for parts of the petition may be found in the sample petition form on pages 51–53.

1. You will file the petition on:

2. The person who will be responsible for filing the petition is:

1. You need to reach the following persons/groups because they are affected by the problem and need to be aware of the issues and what can be done:

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

2. You also need to reach the following persons/groups because they are likely to be influential in the agency's decision:

- a. _____
- b. _____
- c. _____
- d. _____
- e. _____

3. The media which will reach the above persons/groups are:

a. Newspapers (daily, weekly, student, foreign language, neighborhood, etc.):

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____



7. The News Media

b. Radio stations (network, local, foreign language, university, public, etc.):

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

c. Television stations (network, local, cable, foreign language, public, etc.):

1.
2.
3.
4.
5.
6.
7.
8.
9.
10.

d. Magazines (weekly, monthly, specialty):

1.
2.
3.

4.

5.

6.

7.

8.

e. Wire services:

1. *Associated Press*

2.

3.

4.

5.

f. Other:

1. *Community organizations and church newsletters*

2.

3.

4. Rank the previous media outlets in order of importance/effectiveness in reaching your audience:

.....
.....
.....
.....
.....
.....
.....
.....

5. Your media contact person will be:

.....



7. The News Media

6. The theme(s) you will emphasize to the media is (are):

- a. _____
- b. _____
- c. _____

7. To explain the issue to reporters you will use (check one or more):

- *News release*
- *News conference*
- *Other*

8. You will issue your news release/hold your news conference:

- on* _____
- at* _____

Note: The information collected on these worksheets is the basis of your news release or press conference. Consult the checklist on pages 54–61. Keep the checklist before you as you plan. Periodically, review the checklist to insure that you have not forgotten anything.

8. After You File Your Petition

1. The person who is responsible for keeping in touch with agency officials is:

.....

2. You will also monitor the agency's action by:

.....

.....

.....

.....

3. The person who is responsible for keeping your coalition and supporters up to date on the progress of the petition is:

.....

4. The person who is responsible for keeping the media up to date is:

.....



9. If the Agency Schedules the Matter for Hearing

1. The hearing arrangements are (satisfactory/unsatisfactory) because:

.....

.....

.....

.....

.....

.....

2. If the arrangements are unsatisfactory, the actions you should take are:

a.

.....

.....

.....

b.

.....

.....

.....

c.

.....

.....

.....

d.

.....

.....

.....

10. Prepare Your Testimony

Note: The information collected on this worksheet is the basis of your written testimony. Consult the checklist on pages 54–61. Keep the checklist before you as you write your testimony. When done, review the checklist to insure that nothing has been left out.

1. In preparing your testimony you should:

a. Bolster the following points:

1.
.....
2.
.....
3.
.....
4.
.....
5.
.....
6.
.....

b. Incorporate the following changes in the facts, law or government policy since you filed your petition:

1.
.....
2.
.....
3.
.....
4.
.....



10. Prepare Your Testimony

5.

6.

c. Respond to opposing arguments as follows:

Opposing argument:

Your response:

Opposing argument:

Your response:

Opposing argument:

Your response:

2. At the hearing, your witnesses will be:

Witness:

Testifying that:

10. Prepare Your Testimony

Witness:

Testifying that:

Witness:

Testifying that:

Witness:

Testifying that:

3. Your media contact person will be:

4. The person responsible for taking notes and obtaining copies of testimony is:



11. Marshall Support

1. You will ask the following persons/groups to support your effort by testifying or attending the hearing:

a.

b.

c.

d.

e.

f.

g.

h.

i.

2. The person(s) responsible for contacting the above persons/groups is (are):

.....

12. Post-Hearing Comments

1. The arguments raised in opposition are:

a.

b.

c.

d.

2. They are defective because:

a.

b.

c.

d.

12. Post-Hearing Comments

3. Recent developments adding to your case are:

a. _____

b. _____

c. _____

d. _____

4. Items you promised to supply the agency are:

a. _____

b. _____

c. _____

d. _____

13. If the Agency Grants the Petition

1. Before the agency's decision becomes effective (list actions which must occur before the decision is effective):

a. _____

b. _____

c. _____

d. _____

e. _____

2. You will issue a news release/hold a news conference:

on _____

at _____ *a.m./p.m.*

3. This decision will solve/alleviate the original problem by:

4. To solve the entire problem, you should:



14. If the Agency Denies the Petition

1. You should/should not re-petition the agency because:

2. You should/should not pursue a court action against the agency because:

3. You should/should not go to the legislature for a bill, resolution, or hearings because:

15. If the Agency Does Not Respond to the Petition

1. The petition was/was not filed with the proper person at the agency.

.....

2. You have/have not asked to meet with agency officials.

.....

3. You should/should not alert the media because:

.....

.....

.....

4. You should/should not alert higher ups at the agency or in the executive branch because:

.....

.....

.....

5. You should/should not go to the legislature/board of supervisors/city council for help because:

.....

.....

.....

6. You should/should not petition another agency because:

.....

.....

.....

7. You should/should not sue the agency because:

.....

.....

.....



Notes:

A series of horizontal dotted lines providing a space for handwritten notes.