

**1997 Supplement to**  
**STATE AND FEDERAL**  
**ADMINISTRATIVE LAW**

**Arthur Earl Bonfield**  
**Michael Asimow**



**AMERICAN CASEBOOK SERIES®**

1997 SUPPLEMENT TO  
STATE AND FEDERAL  
ADMINISTRATIVE LAW

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# Preface

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This 1997 SUPPLEMENT includes significant developments in state and federal administrative law since the manuscript for our book went to press in 1988. The cut off date for state and federal materials is August 1, 1996.

October 1, 1996  
Arthur Earl Bonfield  
Michael Asimow

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**P. 46, add new note 5A after note 5:**

5A. *State constitutional law.* Although the California constitution uses the same language as the federal, the California Supreme Court has rejected the *Roth* rule. It holds that a discretionary standard can trigger due process protection.

*Saleeby v. State Bar of California*, 702 P.2d 525 (1985), involved a claim by a defrauded client for reimbursement from the state's Client Security Fund. By statute, "any payments from the fund shall be discretionary and shall be subject to such regulation and conditions as the [State Bar] shall prescribe." The Bar denied payment from the Fund to Saleeby and provided him no hearing and no statement of reasons for the denial.

After summarizing *Roth* and other federal due process cases, the court said: "California has expanded upon the federal analytical base by focusing on the administrative process itself. . . . [D]ue process safeguards required for protection of an individual's statutory interests must be analyzed in the context of the principle that *freedom from arbitrary adjudicative procedures* is a substantive element of one's liberty."

"No firm rule can be established to ascertain what protections are necessary in a particular situation. Rather the relief to be afforded depends upon balancing the various interests involved. Generally, the dictates of due process necessitate considering (1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) *the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible governmental official*, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. . ." [emphasis added]

The court held that Saleeby had a right to be heard and to respond (orally or in writing) to the Bar's determination and the Bar must issue sufficient findings to afford judicial review.