



THE CHALLENGES AND REWARDS OF AN ADMINISTRATIVE LAW JUDGE

Nina Schuyler

It's midmorning and in a hearing room of the California Unemployment Insurance Appeals Board (CUIAB) in San Francisco about six people are waiting for their cases to be heard. Presiding Administrative Law Judge Ronald L. Kammann sits at a desk at the front of the room, the American and California flags behind him. There's a computer to his left and a stack of files to his right.

Facing him are two tables, with chairs at each table. The man who's appealing the denial of his unemployment benefits sits at one, unrepresented, and at the other are his former employer and his attorney. Fifteen chairs are available for witnesses and audience members.

"Have you reviewed all the documents in the appeal file?" asks Kammann.

The man says he has. So does the employer.

Kammann explains the hearing procedure and issue on appeal—in this case whether the man was fired for "misconduct." He takes the file documents into evidence and then swears in and begins questioning the parties.

After background questions, Kammann asks, "Why were you discharged?"

"They said I broke their cash-handling rules," says the man.

"Did you?"

"No."

"Exactly what did they say you did?"

Kammann's questioning goes on and on, in part because there is no jury, and because at the end of this hearing, he will have to write an opinion detailing his decision and his reasoning.

Despite the intimate nature of the hearing room—it's small, there is no raised judge's bench and no gavel, and Kammann wears a suit not a black robe (although robes and gavels are optional)—a formal, restrained, respectful tone permeates the proceeding. And it's clear that Kammann and the parties take his position as adjudicator seriously.



“To excel as an administrative law judge, you have to be interested in people,” says Kammann, who has served as presiding administrative law judge for CUIAB in San Francisco since 1991. “You’ve got to be a good listener and be decisive. Often your decisions are made under difficult circumstances because you’re juggling conflicting evidence, [hearing] sometimes highly emotional parties, and balancing compassion with a commitment to the law. All of this you have to do in the context of high-volume proceedings.”

Statewide there are three hundred thousand unemployment appeals a year, says Kammann, handled by a couple of hundred administrative law judges. “California is by far the busiest and the most productive state in the country in terms of handling its UI [unemployment insurance] appeals,” he says.

CALIFORNIA'S ALJS

It's possible to go through law school and spend years practicing law and know very little about administrative law judges (ALJs). Yet throughout the state ALJs are making important decisions every day, sometimes with millions of dollars at stake. It's also the only exposure that most people will get of the legal system.

The unemployment insurance program, with twelve offices in California, is only one of many state programs that employ ALJs. Although the number fluctuates due to departures and vacancies, there are about six hundred ALJs in California, according to Patrick Whalen, general counsel for California Attorneys, Administrative Law Judges, and Hearing Offices in State Employment (CASE), the union that represents ALJs.

ALJs are not elected or appointed like a superior court judge or court of appeals justice. Rather they are lawyers who apply for the position. At a minimum, an ALJ must have passed the bar and have five years of experience practicing law. “But most ALJs have much more experience than that,” says Ron L. Diedrich, acting director of California's Department of General Services and chief administrative law judge of the Department of General Service's Office of Administrative Hearings (OAH).

Depending on the department, an ALJ might also be required to have experience either conducting a judicial or quasi-judicial hearing or appearing before a trial court or a quasi-judicial administrative body. In fact, many ALJs were once attorneys who appeared before ALJs representing clients.

According to Whalen, an ALJ who is just starting out is considered an ALJ I and earns between \$7,500 and \$9,000 a month. The salary range for a more senior ALJ (ALJ II) is between \$7,850 and \$9,500 a month. “We are always looking for talented people who have a real passion or calling for public service,” says Diedrich. Many superior court justices and magistrates are graduates from the ALJ ranks. “The fact that you've had experience on the bench adjudicating cases weighs in your favor,” says Whalen.



Ron L. Diedrich

THE OFFICE OF ADMINISTRATIVE HEARINGS

OAH is the oldest central panel of ALJs in the country. It's also a big employer of ALJs. Established by the California legislature in 1945, OAH provides ALJs to more than fourteen hundred state and local government agencies to adjudicate and provide alternative dispute resolution services. When fully staffed, OAH has a chief ALJ, a deputy chief, ten presiding ALJs, and ninety ALJs. The office handles about ten thousand to fourteen thousand cases each year.

According to Diedrich, licensing cases, which involve the denial or revocation of someone's license, make up a lot of the cases—they always rank in the top five of all cases handled by OAH. Also in the top five are entitlement cases involving special education for children. Cases from the Departments of Social Services, Motor Vehicles, and Real Estate also make up a big part of the caseload, says Diedrich. "We hear a huge spectrum of cases," he says. "It's a very varied practice."

Governor Arnold Schwarzenegger appointed Died-

rich to his position in April 2004, but Diedrich has a long history with OAH. Prior to becoming director, he worked as a supervising deputy attorney general at the State Attorney General's Office and regularly appeared before OAH's ALJs. In that capacity, he was a member in the civil division in the licensing section. In the early 1980s, he served as a hearing officer at OAH. "I had spent my entire legal career primarily doing administrative law," he says.

Based on his nearly thirty years of experience in the area of administrative law, Diedrich has definite views on what makes a good ALJ. "In addition to good listening skills and an appropriate judicial demeanor, you need excellent writing skills," says Diedrich. "You are writing your own opinions, and these opinions are often more akin to appellate court decisions."

OAH hearings are more formal than hearings held by ALJs in the unemployment arena, he says. "At an OAH hearing, you'd think you were in superior court, except for the lack of a jury," says Diedrich. The OAH has six regional offices and hearings are usually held in a courtroom. It's typical to find a court reporter, a witness box, a judge's bench and the ALJ wearing a black robe, and at least one attorney for a party. And the hearings are much longer and often more complicated than in the unemployment area. "A fair number of hearings go on for weeks," says Diedrich. On average, a hearing lasts five days. OAH also provides its ALJs with a lot of training: one hundred hours a year.

DEPARTMENT OF HEALTH CARE SERVICES: THE OFFICE OF ADMINISTRATIVE HEARINGS AND APPEALS

Administrative Law Judge Dwight V. Nelsen with the Office of Administrative Hearings and Appeals (OAHA), an office within the Department of Health Care Services (DHCS), also frequently appeared before an ALJ before becoming one. Most of his legal experience has been in the government sector: a deputy attorney general, a deputy county counsel, a deputy public defender, an attorney for DHCS. "I always knew when an ALJ retired, so I knew when there'd be an opening," says Nelsen. In 2003, when such an opening occurred, he applied for an ALJ position and received an offer.

“I was attracted to the position because of the high level of independence,” says Nelsen. “It’s a lot of responsibility, but you also get a level of respect.”



Dwight V. Nelsen

OAHA employs ten ALJs who hear cases involving Medi-Cal, the Women and Infant Children (WIC) program, and cases in which a person has been denied or had revoked her certified nurse assistant or X-ray technician certificate.

“At OAHA, we handle appeals from major players in the health industry, including large chain nursing homes, hospitals, and individual practitioners,” says Nelsen. “OAHA also contracts with the Department of Public Health to conduct appeals concerning WIC markets, certified nurse assistants, and X-ray technicians.”

The value of the cases range from a \$250 fine of a ven-

dor at a gasoline market selling cigarettes to a minor (based on the Stop Tobacco Access to Kids Enforcement Act) to millions of dollars, involving a hospital and Medi-Cal funds.

Nelsen travels up and down the state as an ALJ: Sacramento, San Diego, Los Angeles. “There is no such thing as a routine case,” he says.

THE PUBLIC UTILITIES COMMISSION

For Karen V. Clopton, chief administrative law judge at the Public Utilities Commission (PUC), there’s no such thing as an insignificant case. “We are providing leadership in the area of energy efficiency and reducing global warming and greenhouse gas house emissions,” she says. California is often a bellwether state, she goes on. “We are helping set the bar and influencing the national debate on how we are going to live as citizens in the twenty-first century.”

Clopton manages forty-five administrative law judges who regularly hear complex cases, some of which involve days of testimony and evidence gathering. The result can be a three-hundred-page decision. “Our practice is not volume-oriented, but more qualitative,” says Clopton.

Clopton, who just celebrated her first anniversary as chief ALJ, recently implemented changes to make those decisions more transparent and understandable to the public. The ordering paragraphs, those sections in which the ALJ states what the complainant or utility must do, must be clearly written and understandable to a layperson. To implement that change, she meets regularly with her four assistant chief ALJs to review the decisions. “If I can’t understand the decision after practicing twenty-five years, then a member of the public who wants to understand the decision will have trouble,” she says.

To meet the demands of the job, ALJs with the PUC receive regular opportunities for more training at the National Judicial College. Turnover is low because the hours are steady and regular, says Clopton, and there are a lot of family-friendly policies in place, including telecommuting.

CHALLENGES

Similar to an Article 3 judge, Dwight Nelsen finds the most challenging aspect of his job is making the right decision. “The laws are not always straightforward in the medical arena,” he says. “The attorneys who practice in this area are bright and knowledgeable, and the department’s attorneys advocate very well.”

Like all ALJ decisions, Nelsen’s final decision can be appealed—first to the chief administrative law judge, then a party can file a writ of mandate with the superior court. Before making his final decision, Nelsen often confers with the nine other ALJs in the department. When he’s ready to release a decision, he’ll review it with two other ALJs for content, typos, and theories.

At the PUC, ALJs need to have a thick skin, says Clopton, because an ALJ’s decision goes before the commission. The commission discusses the ALJ’s decision in a public forum and either adopts it or rejects it. If the latter, a commissioner can write an alternate decision.

Because of fiscal constraints, an ALJ’s workload is heavy, regardless of what department he or she works for. While it’s difficult to give an average, says Diedrich, a rough number for an ALJ with OAH is seventy-five

to ninety cases a year. “And you work under tight time constraints,” he says.

At CUIAB, the workload is even heavier: ALJs hear seven or eight cases a day. A standard ALJ II calendar is thirty hearings a week, says Kammann. During economic downturns, such as now, the number of unemployment appeals burgeons, and the office goes into hyperspeed, with judges handling three cases per hour on “master calendars.” “It can be difficult and demanding,” says Kammann. “I’ve seen a lot of judges over the years who were crackerjack attorneys, and they can’t do this. You have to control a hearing, the parties, the witnesses, and, sometimes toughest of all, the attorneys. You’ve got to make solid and immediate evidentiary rulings. Above all, you’ve got to provide a due process hearing that is fair, full, and complete. Then, you’ve got to be able to dictate a multipage, well reasoned, understandable decision and do that in a compressed time frame. It’s as much art as professional skill, experience, and ability.”

But, he’s quick to add, “It’s a lot of fun. If you like people, if you’re interested in the situations they can get themselves into, it’s fascinating. You see every set of circumstances you can imagine. You see every type of employment there is—including the fishing industry, logging, construction, agriculture, medical/health care, legal, high tech. It’s necessary work and it’s never dull.” Diedrich echoes Kammann’s sentiments: “This is a great job,” Diedrich says. “You have the ability to effect real change and deal with real people on issues that are incredibly important to them on a day-to-day basis. That’s the reason most ALJs stay on as ALJs. They get real satisfaction in serving the public.”

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Karen V. Clopton

ALJ JOB LISTINGS

California Unemployment Appeals Board:

www.cuiab.ca.gov/job_opportunities.shtm

Department of General Services:

www.dgs.ca.gov/Jobs/JobOpps.htm

State Personnel Board:

www.spb.ca.gov/employment/wvpos_index.htm

California Public Utilities Commission:

www.cpuc.ca.gov