



Internal Audit of Workforce Planning, Career Development, and Succession Planning (2)



Carl Danner
Chief Internal Auditor

California Public Utilities Commission
Finance and Administration Committee Meeting

November 18, 2015





Presentation Overview

- Context for this Presentation
- Role of Expertise for ALJs
- ALJ Compensation Levels
- Recommendations





Context for this Presentation

- Most results from our audit of workforce planning, career development, and succession planning were presented on October 21, 2015.
- We focus here on two specific audit issues concerning the Administrative Law Judges (ALJs):
 - The role of expertise in the selection, development and assignment of ALJs;
 - Relative compensation levels for ALJs among the senior staff of the CPUC.
- This presentation is not about other workforce planning-related practices within the ALJ Division, many of which were substantial and well-documented.





ALJs and Expert Agency Determinations

- ALJs review, test, analyze, and prepare proposals for a large share of the Commission's formal decisions.
- Subject matters at issue in CPUC proceedings range both widely and deeply, e.g. finance, engineering, law, economics, statistics, management, industry specifics, technologies, and so on.
- Among other functions, formal decisions determine facts, make public policy, interpret law, and settle disputes.
- The CPUC's status as an expert agency both receives some appellate deference, and obligates us to apply expertise effectively in decision making.





Common Visions of Desired ALJ Characteristics

- In our audit interviews, all agreed that ALJs require:
 - A judicial temperament;
 - A commitment to due process;
 - A commitment to fairness to parties;
 - Organizational skills;
 - Writing skills.
- We found that ALJ Division training and employee development does emphasize these elements.





Differing Visions of ALJ Qualifications, Development and Work Assignments (1)

- By contrast, we found substantial disagreement on some other aspects of desired backgrounds and roles for ALJs:
 - How specialized is their role, and what expertise should they have?
 - What professional backgrounds best qualify candidates for ALJ positions?
 - How are ALJ assignments to cases handled today, with regard to particular areas of expertise ALJs may possess?





Differing Visions of ALJ Qualifications, Development and Work Assignments (2)

- **First vision:** ALJs are general-purpose judges, who:
 - Can handle all proceedings using generalized judging skills and experience;
 - Are primarily attorneys;
 - Have no particular need for other subject-matter expertise.
- **Second vision:** Technical expertise is desirable among ALJs, who:
 - Can be matched to particular proceedings based on that expertise;
 - Are both attorneys, and non-attorneys.
- Differences of opinion even extended to today's case assignment practices, i.e. there was not agreement on whether ALJs currently are assigned to cases based on expertise, or not.





Vision 1: ALJs Need Not Be Experts

- Technical expertise is only one factor in CPUC decisions.
- Parties have multiple opportunities to explain their issues and challenge those presented by others.
- Rotating assignments can help ALJs become experienced in analyses that arise repeatedly.
- Technical staff regularly collaborate with ALJs, and Commissioners and advisors can make time for priority matters.
- Experts can develop strong views and be more closed-minded.
- All ALJs should be equally capable of handling all proceedings regardless of subject matter.
- Training and experience as an [attorney](#) is the best preparation for the CPUC ALJ role.





Vision 2: ALJs Should Be Experts

- No gatekeeping is performed re: qualifications of expert witnesses, placing greater burdens on ALJs to sort out the fallacious from the reliable.
- Policy judgments are pervasive in CPUC proceedings, and can require expertise to perform well.
- Errors in PDs stimulate ex parte contacts, a current concern.
- Commissioners, advisors, and technical staff can be stretched thin and not always available to ALJs.
- Experts can be more open-minded and better at recognizing certain issues.
- Collectively, ALJ Division is stronger when it contains more kinds of expertise within its ranks.
- Useful expertise and skills are often found among **non-attorneys**, historically about half of ALJs.





ALJ Compensation and Status

- Relatively low ALJ compensation is also an issue with broader ramifications:
 - ALJs occupy a key role, yet their salaries lag behind those of agency management (supervisors and above).
 - A possible conflict issue: ALJs can potentially seek pay raises by taking a promotion with a CPUC staff division that is a party to their proceedings.
 - It can take several years for new ALJs to develop fully into the role, so excessive turnover can be costly for training and handling of most complex cases.
 - ALJ Division reports that vacancies are an ongoing issue.





Selected CPUC Positions as of July 2015

Beginning and Ending Salary Comparison

* - Includes 5% Training Increase
 # - Proposed Classification





Audit Recommendations

- The competing visions of ALJs raise some key issues for the Commission's work:
 - One way or another, considerable expertise needs to be applied to the CPUC's formal decision process – whether in the person of the drafters, through collegial or staff support and collaboration, or from decision maker involvement or intervention.
 - Given the role of ALJs, agency leadership should be comfortable with who they will tend to be, and what knowledge and skills they will tend to have.
- As well: ALJs should be among the agency's most capable and experienced staff, and should be paid accordingly.





Thank you!
For Additional Information:
www.cpuc.ca.gov

