

## **Representing the Pro Bono Client: Advocacy Skills for Administrative Hearings 2019**

**San Francisco, Live Webcast and [www.pli.edu](http://www.pli.edu),\* September 27, 2019**

### **Why You Should Attend**

The need for pro bono assistance with administrative hearings has never been higher. Clients who have been denied or are at risk of losing vital benefits, housing subsidies, or are facing school discipline have a right to an administrative hearing, but are often unrepresented in what can be a confusing and adversarial process. Significant changes to key public benefits programs, including Social Security, CalWORKs, CalFresh, Medi-Cal and In-Home Support Services have occurred in recent years imposing new complex rules. On the unemployment insurance front, while the number of applications has overall declined, we have yet to see a reverse of the recession-based trend of employers challenging many unemployment insurance benefit applications. Housing Authorities frequently seek to deny and revoke housing subsidies often due to tenuous allegations of criminal activity. Meanwhile, low-wage workers are experiencing wage theft at unprecedented rates and relying on the Labor Commissioner more than ever before to recover their unpaid wages.

Legal aid services have also suffered funding problems and staffing cuts with reduced ability to meet the demand to represent clients in these cases. Unfortunately, there are many individuals, who have been unlawfully deprived of critical benefits, are at risk of losing a housing subsidy, have not been paid according to basic wage and hour laws, and who are discontinuances from public benefits. This vulnerable population cannot navigate the administrative hearing process on their own. As a result, low-income families face hunger, homelessness, and economic instability.

This training is designed to help mitigate the crisis faced by low-income families everywhere by providing attorneys with a basic understanding of common issues and strategies in providing pro bono assistance with administrative hearings. The program will focus on California law, but will also cover many topics such as due process and other rights that apply nationwide; therefore, advocates from other forums would benefit from the information and attending the program.

## **What You Will Learn**

- An overview of administrative hearings low-income clients most frequently need involving:
  - State public benefits, including CalWORKs, CalFresh, Medi-Cal;
  - Federal public benefits, including Supplemental Security Income;
  - Federally assisted housing programs, including public housing and Housing Choice Voucher Program (HCVP or "Section 8");
  - Unemployment and state disability insurance claims and overpayments;
  - Unpaid wages, and other wage and hour-related rights; and
  - School discipline or expulsion.
- Best practices and common advocacy strategies, preparation, and procedures for administrative hearings, including:
  - Obtaining evidence: informal and formal discovery;
  - Drafting position statements/hearing briefs;
  - Presenting your case at hearing; and
  - Alternatives: Informal resolution.
- Rehearings and further appeals
- California law and practice specifics

## **Who Should Attend**

All attorneys interested in or currently assisting pro bono clients with administrative matters through representation or in clinical settings; law firm pro bono coordinators, managers and partners; legal clinic faculty and law students; and public interest and non-profit legal services attorneys and staff would benefit from attending this program.

## **AGENDA**

9:00

### **Opening Remarks**

*Lauren Hansen, Carole Vigne*

9:15

### **Overview of Administrative Hearing; Requesting and Preparing for Hearing**

#### **I. Overview of Administrative Hearing**

##### **A. Approach to Training**

- Much in common, each agency has special aspects

##### **B. Key Differences From Court**

- More informal setting, tone, rules
  - “Discovery”
  - Evidence rules
  - Office of Administrative Law Hearings/APA hearings more formal
- ALJ’s accustomed to lay (or no) representation
- Aid Paid Pending or benefits continuation
- Appeals based on administrative record

##### **C. Introduction to and Administrative Procedure for Benefits Rights**

- Social Services claims and appeals
- Supplemental Security Income claims and appeals
- Public Housing and HCVP reviews and hearings
- Public benefits claims and appeals: General Assistance, CalWORKs, CalFresh, Medi-Cal, etc.
- Unemployment and state disability Insurance claims and appeals
- Wage claims and adjudication process
- School discipline and expulsion hearings

#### **II. Requesting and Preparing for Hearing**

##### **A. Jurisdictional and Aid Paid Pending (APP) Limits**

- Hearing Requests
  - Program-by-program examples
- APP Limits
  - Varies program to program

- County programs (like GA, County Health) can be as short as 1 week
- Some programs include additional time for good cause or equity (e.g. WIC 10951, lack of notice)
- Some require confirmation of issues (APA hearings) with deadline to submit
- Can be different within program (e.g. SSA initial claims; Continuing Disability Reviews (CDRs); age 18 redeterminations)
- Issues
  - Date of notice vs. date of mailing (keep envelope); agency presumption of 5 days for mailing
- B. Requesting Format of Hearing and Special Services**
  - In person vs. video vs. phone hearings
    - SSA regulations (include right to in-person hearing)
  - Interpreters and accommodations
  - Program-by-program examples
- C. Discovery**
  - Informal exchange of information
  - File review
    - Statutory and regulatory rules re: charging fees to access record copies
    - Issues with/availability of electronic review
  - Access issues (privilege/confidentiality)
    - Some (APA) hearings have more formal process and strict timelines
  - Program-by-program examples
- D. Witnesses and Subpoenas**
  - Client and witness preparation
  - Subpoenas
    - Most agencies issue subpoenas, but not all websites/regulations tell you how to get it
    - Many subpoenas are not enforceable or are hard to enforce, but can reference issuance
    - Service issues
  - Declarations
  - Program-by-program examples
- E. Position Statements**
  - Notice of Hearing: list of issues and/or experts

- Agency position statements
  - Some require, and have deadline for, agency position
    - List of relevant rules
    - List of witnesses to be called
- Claimant's position: generally not required, but helpful
- Program-by-program samples and discussion thereof

#### **F. Postponements**

#### **G. Informal Resolution**

- Possibility of redetermination
- Possibility of settlement/mediation

***Jodie Berger, Lauren Hansen, Deep Kaur Jodhka, Oscar Lopez, Adam Poe, Whitney Rubenstein, Carole Vigne***

11:00 Networking Break

11:15

### **Administrative Hearing and Post-Hearing Issues**

#### **A. Hearings**

- ALJ "introduction"
- Recorded, under oath
  - Representative as witness
- Burden of Proof and order of hearing
  - ALJ duty to develop the record; "engaged neutrality"
  - Amount of representative input ALJ wants varies
- Cross examination of witnesses, medical and vocational experts
- Rules of evidence and evidentiary objections
- Program-by-program examples

#### **B. Post-Hearing**

- Reconsiderations
- Intermediate administrative appeals (i.e. to another level of Appeals Board or Council)
- Appeals (in Superior Court)
  - Including policy challenges on appeal (California Code of Civil Procedure § 1085)

***Jodie Berger, Lauren Hansen, Deep Kaur Jodhka, Oscar Lopez, Adam Poe, Whitney Rubenstein, Carole Vigne***

12:30 Adjourn

**Faculty:**

**Chairs:**

**Lauren Hansen**

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**Carole Vigne**

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**Senior Pro Bono Program Attorney: Christina Thompson**