



## ASIAN AMERICAN BAR ASSOCIATION *of the Greater Bay Area*

AABA Education Committee and California Asian Pacific American Judges Association present:

### **Journeys to Becoming an Administrative Law Judge.**

May 4, 2023

Start time: 5:00 PM PST

End time: 6:30 PM PST

Total hours of MCLE: 1

Type of MCLE: General

Moderator: Hon. Dorothy Chou Proudfoot, San Francisco Rent Board

#### Speakers:

Hon. Eleazar Aramburo, California Department of Social Services

Hon. Michael Cabotaje, Social Security Administration

Hon. Demetrius Shelton, California Department of Social Services

Hon. Mark Win, U.S. Department of Health & Human Services

#### Agenda:

5:00 PM - 5:05 PM: Introductions

5:05 PM - 6:15 PM: Discussion

6:15 PM - 6:30 PM: Q&A and Concluding Remarks

Administrative law judges are an important part of the local, state, and federal government. Join us for an online panel and Q&A on the work of ALJs and pathways to the Administrative Judiciary.

#### Written Materials:

- Chart Comparison of Certain ALJ Careers
- What is an ALJ
- Federal Administrative Law Judge and Non-ALJ Positions, compiled by Jennifer Gee
- Fact Sheet on Administrative Law Judges  
(<https://www.opm.gov/media/wbwmiv4w/fact-sheet-administrative-law-judge-alj-positions-posted-030321.pdf>)
- Federal Agency ALJ List  
(<https://www.opm.gov/services-for-agencies/administrative-law-judges/#url=ALJs-by-Agency>)
- State Agency ALJ List
- Speaker Biographies

# JOURNEYS TO BECOMING AN ADMINISTRATIVE LAW JUDGE.



PLAN YOUR PATH MAY 4/5PM/ZOOM

## MEET THE SPEAKERS.



Hon. Demetrius Shelton  
California Dept. of Social Services



Hon. Eleazar Aramburo  
California Dept. of Social Services



Hon. Michael Cabotaje  
Social Security Administration



Hon. Mark Win  
US Dept. of Health & Human Services



Hon. Dorothy Chou Proudfoot  
San Francisco Rent Board  
(Moderator)

## WHAT YOU WILL LEARN.



The types of work done by ALJs and tips for appearing before an Administrative Law Judge



The hiring processes and skills required to be a successful ALJ, from the perspectives of current judges working in state and federal agencies



The importance of diversity in the Administrative Judiciary

This program is approved for one hour of MCLE credit.

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ASIAN AMERICAN BAR ASSOCIATION  
of the Greater Bay Area



International Association of  
**LGBTQ+ Judges**

Disclaimer. The panelists and moderator are acting in their personal capacity. The views expressed are their own and do not represent the views of the California Department of Social Services, State of California, Social Security Administration, Department of Health and Human Services, United States Government, San Francisco Rent Board, or the City and County of San Francisco.

## HOW TO BECOME AN ADMINISTRATIVE LAW JUDGE

	California Public Utilities Commission (CPUC) [45]	California Department of Insurance (CDI) [5]	Office of Administrative Hearings (OAH) [103]	California Unemployment Insurance Appeal Board (CUIAB) [130]	U.S. Department of Labor (USDOL) [41]
<b>Broad Subject Matter</b>	Electric, Gas, Rail Safety, Water Acquisition, Passenger Carriers Telecommunications, Wildfire Prevention	Workers' Compensation, Licensing, Insurance Code rate setting and compliance	GJ: Over 1500 state and local agencies (incl. Licensing, Dismissal, ISOs, DDS/DOR eligibility/services). SE: Special Education cases	Disability and Unemployment appeals from Employment Development Dept (EDD) Employer Tax Appeals	80 different statutes; longshore workers' comp, black lung benefits whistleblowers, traditional labor laws (FLSA, Child Labor Act, etc.)
<b>Knowledge of Subject Matter?</b>	Not required, but helpful	Not required, but helpful	Not required, but helpful	No	Preferred
<b>Number of Hearings/ Proceedings</b>	10-14 proceedings all year long	10-20 hearings per year	Number of hearings varies depending on hearing duration and Division	31-34 hearings per week; ½ day decision writing	180 cases assigned but 75% settle before hearing
<b>Length of Hearings/ Proceedings</b>	Proceedings take 3 months to 2 years. 1-2 hearings/mo, 2 hours to days	From 2 days to 2 years; 1-2 hearings per month	From a few hours to weeks	Hearings are 45 minutes, 7 - 9 / day, 3 ½ days week with ½ day decision writing/prep	Hearings can be 3 hours to 3 weeks; proceedings take months
<b>Types of Hearings/ Proceedings</b>	Adjudicatory, Rate setting, Rulemaking, Quasi-Legislative	Adversarial adjudicatory and rate making	Adversarial adjudicatory hearings; also, ADR, settlement conferences, and mediations	Adjudicatory	Adversarial adjudicatory hearings
<b>Typical Parties</b>	Pro pers; attorneys, public advocates, intervenors, businesses	Pro pers; consumer intervenors; attorneys	Agencies usually represented by attorneys; other parties either represented or self-represented	90% Pro pers, many with limited English. Some EDD reps. Almost no attorneys	50% of whistleblower cases have pro pers; 90% of all other cases have attorneys
<b>Management Structure Of ALJ Division</b>	5 Commissioners Chief ALJ 7 Assistant Chiefs	1 Chief ALJ 4 ALJs	1 Director and Chief ALJ, 1 Deputy Director, 2 Division Chiefs, 9 Presiding ALJs	5 Board members Chief ALJ 2 Assistant Chiefs 12 Presiding ALJ	Chief ALJ in DC; 8 District Offices, 3-5 ALJs each with District Chief in charge

## HOW TO BECOME AN ADMINISTRATIVE LAW JUDGE

	CPUC	CDI	OAH	CUIAB	USDOL
<b>Decision Review, Timeline, Length</b>	Proposed Decision (60 to 90 days) to be voted on by the Commission, which meets once or twice a month. Caseload: 8 – 15 Proceedings. Decisions 15 – over 100 pages	Proposed Decisions approved by Insurance Commissioner. 60-day deadline. Decisions 20 – 200 pages	GJ: Proposed Decisions (+/- 30 days) reviewed by agency for adoption, Final Decisions (+/- 10 working days)— Decisions 5 to over 100 pages. SE: Final Decisions within 10 days (expedited cases) or 45 days; Decisions 20 to over 100 pages	Decisions are final and due daily. 8-20 per day, 2 - 5 pages	No deadline for decisions. Decisions 20 - 120 pages. Decisions are final
<b>Autonomy</b>	Collaborative; 2 levels of review	Mostly independent. Chief reviews PDs	Mostly independent, but review required at 1 or 2 levels within office	Independent. No review. Board is 2 <sup>nd</sup> level appeal	Independent; decisions can be appealed by parties
<b>Work Week</b>	Very Flexible. ALJ manage own calendar	Flexible	Somewhat flexible - must hear assigned cases, but time off requests granted except for operational need; ALJs may telework when not on calendar	Not flexible	Flexible
<b>Facilities</b>	HQ in SF, small office in Sacto, LA, San Diego	HQ is Oakland; Courtrooms in Oakland and LA	5 regional offices with courtrooms; also hear cases offsite	12 Field Offices with outlying facilities. Appellate Operation in Sacto	3-5 ALJs per district office with one District Chief Judge. Courtroom in SF but hearings can be anywhere in the Western US
<b>Unique Qualities</b>	Mini-legislature, resolves disputes and adopts laws. Half ALJs are non-attorney. On site ADR	Very similar to complex civil court proceedings. Live court reporter, discovery, motions, multiple parties in each proceeding	OAH is the oldest central panel in the U.S. Hearings can be complex, and many GJ and SE hearings are similar to civil court proceedings.	4-10-40 Paper files due to EDD system. Heavy use of interpreters.	Jurisdiction includes over 80 different Federal statutes, and job entails travel; cases can be very complex with multiple parties

Disclaimer: This chart is informative in nature and is not the official statement of any agency. Some data may be outdated/changing, particularly due to Covid-19.

## **What is an Administrative Law Judge and What do They do?**

An Administrative Law Judge (ALJ), employed by the State of California, specializes in administrative law and presides over administrative hearings. Administrative hearings generally involve resolving disputes between government agencies and private citizens or companies. Some of these disputes include worker's compensation claims, unemployment appeals, professional license revocation, arbitration between contracted workers and the State, implementing legislation and inter-department issues. ALJs are a vital part of the inner workings of the California State Government and help maintain the general welfare of our State.

## **How do I become a State Attorney or Administrative Law Judge?**

There are many opportunities with the State of California, whether you are a new or experienced attorney. Prior to applying, an applicant should be aware that work with the State has its challenges. The salary is not generous and there is a one-year probation period. However, there is good job protection, the work is rewarding and it exposes you to a wide variety of practice areas. It is important to have all the information available when considering an offer from a governmental agency.

### **How to Apply:**

#### **STEP ONE:**

1. Go to [Calcareers.ca.gov](http://Calcareers.ca.gov)
2. Create an Account and a template
3. While logged in, set your Account so that you will be notified when an exam or position posts. Access the Saved Searches (formerly E-notify) tab in your CalCareer account. Once logged in, you can begin an Advanced Job Search, using filters to meet your criteria. On the Job Search Results page, click Save Search. Enter a Search Name and select a frequency of how you want to be notified.

#### **STEP TWO:**

1. While in [Calcareers.ca.gov](http://Calcareers.ca.gov), Click on Exam/Assessment Search
2. In Keyword type "Administrative Law Judge" All ALJ exams should post.
3. Take the ALJ exam for ***all agencies***. Entry level exams are largely generic and one does not need subject matter expertise. Agencies sometimes share exam lists with one another, but not always.

4. After your exam is graded, you will be ranked on an eligibility list. You must place in top three (3) ranks to be eligible for an interview. Depending on the agency, you will receive a notification either electronically, by mail or both.

STEP THREE:

1. Return to Calcareers.ca.gov
2. Click on Advance Job Search or Geographic Job Search.
3. Type in “Administrative Law Judge”.
4. Once you find a position you want to apply, click on “Apply Now” button on the top right hand corner of the posting. This will take you to your account log in to begin the application process.
5. Once you have logged into your account, you will be asked if you have eligibility. If you have taken the examination and are in the top 3 ranks, you are eligible. Click “I am eligible” and follow the prompts to complete the information to create your template for this position. If you have previously created a template, you may select your template and modify it for each position. You can also save the template for future use. Your account information will automatically populate into the State Job Application, also known as the 678. The 678 must be completed and submitted with each application.
6. Apply for any and all ALJ positions. The gateway step is to enter state service. Once you have passed probation in one State position, it is easier to progress to other positions within the State.
7. If a posting deadline is approaching and you have not received your exam results, apply nonetheless to reserve your spot in the event you place in the top 3 ranks.

ASIAN AMERICAN BAR ASSOCIATION OF THE GREATER BAY AREA  
CALIFORNIA ASIAN PACIFIC AMERICAN JUDGES ASSOCIATION  
**HOW TO BECOME AN ADMINISTRATIVE LAW JUDGE**

## **Federal Administrative Law Judge and Non-ALJ Positions**

Compiled by Jennifer Gee

Administrative Law Judges (ALJs) are different from Administrative Judges (AJs).

### Administrative Law Judges

ALJs do not receive performance reviews or evaluations and are not bound by performance standards, though the Social Security Administration has unofficial production requirements for its ALJs. They also cannot receive performance bonuses or cash awards for their work.

ALJs are paid under an Administrative Law Judge pay scale that is specifically assigned to ALJs. As of January 1, 2021, the ALJ salary range for the San Francisco area<sup>i</sup> was from \$162,797 to \$183,300, depending on the ALJ's level.

They can only be removed from their position for good cause after the agency files an action with the Merit Systems Protection Board which will be heard by an ALJ assigned by the MSPB. This may change due to litigation that challenges the removal process, claiming that as inferior officers appointed by the President or an Agency Head under the Constitution, the President and Agency Heads should be able to remove ALJs at their discretion.

### Administrative Judges

AJs are subject to performance standards and performance reviews and must satisfy critical elements for their position. They can receive performance bonuses or cash awards for their work. They can be removed by their agency for unsatisfactory performance or misconduct. Their termination can be appealed to the Merit Systems Protection Board it will be heard by an administrative judge, not an ALJ.

AJs are paid under the Federal General Pay Schedule which is used for all Federal civilian employees. Positions range from the GS 11 level through the GS 15 level, but most agencies hire AJs at the GS-12 level, which starts at \$94,523. As of January 1, 2021, the GS 11 through GS 15 pay grade salaries in the San Francisco area range from \$78,761, to \$172,500. The AJ's exact pay depends on the grade and the step level within the grade.

### Other Federal Judicial Positions

There are other judicial positions in the Federal government besides ALJ and AJ positions. These include positions as Immigration Judges with the Department of Justice and positions as Administrative Appeals Judges which usually hear appeals or ALJ or AJ decisions. These positions have their own hiring process.

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**HOW TO BECOME AN ADMINISTRATIVE LAW JUDGE**

How to Get a Job As An ALJ or AJ

Following the Supreme Court's 2018 decision in *Lucia v. Securities and Exchange Commission* and President Trump's Executive Order 13843, the application process for ALJs and AJs is the same. Before the *Lucia* decision, the ALJ process required 7 years of litigation experience and included a long written application similar to the application to be appointed to the California Superior Court, a written examination and an oral examination.

The only requirement now to become an ALJ is to be a member of a bar. However, each hiring agency can add its own additional requirements.

AJs are not always required to be licensed attorneys. For example, the AJs with the Nuclear Regulatory Commission does not require its AJs to be members of the Bar.

Vacancies for ALJ and non-ALJ judicial positions are posted on the usajobs.gov web site.

Agencies that hire Administrative Judges (Not ALJs)

Department of Veterans Affairs  
Drug Enforcement Administration  
Equal Employment Opportunity Commission  
Federal Aviation Administration  
Federal Reserve Board of Governors  
Food and Drug Administration  
General Services Administration  
Merit Systems Protection Board  
Nuclear Regulatory Commission  
Patent and Trademark Office

Other Non-ALJ Judicial Positions

Immigration Law Judge  
Administrative Appeals Judge (various Federal agencies)

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<sup>i</sup> Federal salaries vary depending on the locality of the position. San Francisco has the highest locality pay adjustment.



# Fact Sheet: Administrative Law Judge (ALJ) Positions

## Important Links:

- [Executive Order 13843 - Excepting Administrative Law Judges from the Competitive Service](#)
- [OPM Memorandum Dated July 10, 2018](#)
- [OPM Guidance ALJ Loan Program Dated August 1, 2018](#)
- [OPM Guidance ALJ Promotions and Reassignments Dated August 27, 2018](#)

Note: All actions previously requiring the U.S. Office of Personnel Management (OPM) approval remain subject to OPM approval, regardless of whether the Administrative Law Judge (ALJ) is in the competitive or excepted service, with the exception of new appointments under the Schedule E authority.

## ALJ Classification Authority

OPM continues to retain classification authority for all ALJ positions in the competitive and excepted service pursuant to 5 Code of Federal Regulations (CFR) 930.201(e)(3) and 5 United States Code (U.S.C.) 5372. There is no change to the procedure for OPM's review and approval of ALJ classification requests, including reclassification requests under 5 CFR 930.204(e)(2).

Agencies may change an ALJ position description (PD) to identify that the position is in the excepted service, but must obtain prior OPM approval for substantive PD additions and changes.

Agencies' classification submissions must include the proposed ALJ PD; the previously approved PD; a memo summarizing all changes to the Optional Form (OF) 8, Cover Sheet as well as changes to the position duties, if applicable; and an organizational chart that shows reporting structure alignment.

## Appointments

On July 10, 2018, the President signed Executive Order (E.O.) 13843 titled, "Excepting Administrative Law Judges from the Competitive Service" (83 FR 32755). The E.O. specifies that all appointments of ALJs made on or after July 10, 2018 must be made under Schedule E of the excepted service and acknowledges that such appointments must be made by the head of the hiring agency. (See additional information on Vacancy Announcements below.)

The E.O. also eliminates the need for OPM to conduct ALJ competitive examinations and provides that the appointment of an ALJ is not subject to the requirements of 5 CFR part 302, except that each agency shall follow the principle of veterans' preference as far as administratively feasible (see information below on Veterans' Preference). ALJs appointed to positions in the excepted service will be covered by the agency's excepted service hiring policies.

No new appointments may be made to the competitive service after July 9, 2018. An individual encumbering an ALJ position on July 10, 2018, shall remain in the competitive service while he or she remains in the position of ALJ (and will continue to be subject to the same conditions pertaining to employment in the competitive service). (See additional information on Promotions and Reassignments below.)

# **Fact Sheet: ALJ Positions**

## **Minimum Qualification and Licensure Requirement**

ALJs must meet the minimum qualification and licensure requirement specified in section 3(a)(ii) of the E.O. (5 CFR 6.3(b)). This means the minimum qualification and licensure requirement for an ALJ position is the possession of a professional license to practice law and being authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution at the time of selection and any new appointment (other than an incumbent ALJ). Judicial status is acceptable in lieu of “active” status in States that prohibit sitting judges from maintaining “active” status to practice law, and being in “good standing” also is acceptable in lieu of “active” status in States where the licensing authority considers “good standing” as having a current license to practice law. In addition, the head of an agency may establish any additional requirements he or she deems necessary.

## **Probationary/Trial Period**

ALJs are not subject to probationary periods in the competitive service or trial periods in the excepted service.

## **Nature of Action Code**

Agencies should use ZLM, EO 13843 as the nature of action and legal authority codes for Schedule E appointments of ALJs.

## **Promotions**

As stated in OPM’s August 27, 2018 guidance to chief ALJs and designees, there has been no change in the procedure for OPM to review and approve the advancement of an ALJ’s rate within pay level AL-3 under 5 CFR 930.205(g) regardless of whether the ALJ is in the competitive or excepted service. However, when an agency submits a request to OPM to approve the promotion of an ALJ to a higher level (AL-2 or AL-1) under 5 CFR 930.204(c) in either the competitive or excepted service, the agency’s request should now include documentation that the department head has approved the promotion.

Under the terms of the E.O., “[i]ncumbents of this position who are, on July 10, 2018, in the competitive service shall remain in the competitive service as long as they remain in their current positions.” Under the general civil service regulations, the internal reassignment or promotion of an officer or employee by his or her agency involves only a position change, and does not involve a new appointment under civil service law. 5 CFR 210.102; see also 5 CFR 335.101. Therefore, if the ALJ is in the competitive service, the ALJ remains in the competitive service after promotion.

Agencies are reminded that for competitive service incumbents, 5 CFR part 335 applies to promotions to a higher level. With certain exceptions, under 5 CFR 335.103(c)(1), a promotion to a higher level (including a time-limited promotion of more than 120 days, or a detail of more than 120 days) is subject to the competitive procedures of the agency’s merit promotion plan.

# **Fact Sheet: ALJ Positions**

## **Reassignments**

As stated in OPM's August 27, 2018 guidance to chief ALJs and designees, there has been no change in the procedure for OPM's review and approval of a routine geographic reassignment of an ALJ under 5 CFR 930.204(f) regardless of whether the ALJ is in the competitive or excepted service. However, when an agency submits a request for OPM to approve a reassignment to a different bureau within the same department, or a reassignment to perform a significantly different kind of work within the department, the agency's request to OPM should now include documentation that the department head has approved the reassignment.

Upon reassignment, an incumbent ALJ in the competitive service remains in the competitive service, because reassignment is a position change that does not result in a new appointment as a matter of civil service law.

## **Employment of a Former ALJ**

OPM explained in its July 10, 2018 memorandum to agencies that appointment of an ALJ by reinstatement (5 CFR 930.204(g)) is no longer available, because reinstatement is a competitive service appointment method, and new appointments of ALJs must be in the excepted service.

An agency head may appoint a former ALJ under excepted service Schedule E authority who meets the minimum qualification and professional license requirement specified in section 3(a)(ii) of the E.O. (5 CFR 6.3(b)) and in the above paragraph, Minimum Qualification and Licensure Requirement.

## **Movement between Agencies (Interagency Transfers)**

OPM explained in its July 10, 2018 memorandum to agencies that appointment of an ALJ by interagency transfer (5 CFR 930.204(h)) is no longer available, since transfer is a competitive service appointment method, and new appointments of ALJs must be in the excepted service. Therefore, an ALJ serving in the competitive service who moves to another agency must do so through a Schedule E appointment. Upon such a move, the ALJ moves out of the competitive service and into the excepted service regardless of whether the move is at or above the ALJ's current pay level. As indicated in the above paragraph, Minimum Qualification and Licensure Requirement, incumbent ALJs moving to another ALJ position are not subject to the minimum qualification and licensure requirement.

## **Pay**

OPM explained in its July 10, 2018 memorandum to agencies that the E.O. does not affect the ALJ pay system. The provisions of 5 U.S.C. 5372 and 5 CFR 930.205 apply to ALJs in the competitive and excepted service.

Additionally, as stated in OPM's August 27, 2018 guidance to chief ALJs and designees, there has been no change in the procedure for OPM to review and approve the advancement of an ALJ's rate within pay level AL-3 under 5 CFR 930.205(g).

# **Fact Sheet: ALJ Positions**

## **Performance**

5 CFR 930.206(a) continues to apply. As OPM noted in its July 10, 2018 memorandum, agencies may not rate the job performance of an ALJ appointed in the competitive or the excepted service.

## **Awards and Incentives**

5 CFR 930.206(b) continues to apply. As OPM noted in its July 10, 2018 memorandum, agencies may not grant any monetary or honorary award or incentive under 5 U.S.C. 3502, 4503, 4504, or under any other authority, to an ALJ appointed in the competitive or the excepted service. This includes recruitment, relocation, and retention incentives under 5 U.S.C. 5753 and 5754 and the student loan repayment program under 5 U.S.C. 5379(d)(2) and 5 CFR 537.108(a)(2). An ALJ cannot meet the requirements for these incentives and payments because an agency may not rate the job performance of an ALJ.

## **Details**

OPM noted in its July 10, 2018 memorandum to agencies that the OPM regulations in 5 CFR 930.207 continue to govern intra-agency details.

Agencies may detail ALJs for up to 120 days without OPM approval. All details that will last more than 120 days, and details exceeding more than a total of 120 days in a 12-month period, require OPM approval regardless of whether the ALJs are in the competitive or excepted service.

## **ALJ Loan Program**

OPM explained in its July 10, 2018 memorandum to agencies that the OPM regulations in 5 CFR 930.208 continue to govern the ALJ Loan Program. OPM issued additional Loan Program guidance to chief ALJs and designees on August 1, 2018.

In summary, the department or agency that employs the ALJ to be loaned, whether in the competitive or excepted service, must furnish OPM with documentation that the ALJ's appointment was originally made or later ratified by the department head; and the department or agency that has accepted the services of the loaned ALJ must, as soon as practicable, furnish OPM with documentation that its department head has approved the loan. It is still the case that an ALJ loan is a reimbursable interagency detail, and that the ALJ remains an incumbent of the position from which he or she was detailed.

# **Fact Sheet: ALJ Positions**

## **Senior ALJ Program**

OPM explained in its July 10, 2018 memorandum to agencies that the OPM regulations in 5 CFR 930.209 continue to govern the Senior ALJ Program. The Senior ALJ Program established under 5 U.S.C. 3323(b)(2) is the exclusive means to reappoint a retired ALJ to an ALJ position under 5 U.S.C. 3105.

Senior ALJs appointed prior to July 10, 2018, remain in the competitive service for the duration of their appointment, including any extension periods authorized by OPM. All new appointments of Senior ALJs on or after July 10, 2018 are made to the excepted service under Schedule E.

As was the case before E.O. 13483, an agency may reemploy a retired ALJ in some other capacity, such as under an expert or consultant appointment, or to a General Schedule, Senior Executive Service, or Senior Level position, without utilizing the Senior ALJ Program or seeking OPM approval under that program.

## **Adverse Action**

OPM explained in its July 10, 2018 memorandum to agencies that ALJs in the excepted service will be subject to the same adverse action procedures as those governing ALJs in the competitive service with respect to actions to remove, suspend, reduce in level, reduce in pay, or furlough for 30 days or less (5 U.S.C. 7521 and 5 CFR part 1201).

## **Vacancy Announcements**

The excepted service has no requirement to post a USAJOBS announcement, or to follow the job posting requirements for competitive service positions set forth in 5 CFR 330.104. However, agencies should be mindful that the merit system principles (5 U.S.C. 2301) apply to excepted service recruiting as well as to competitive service recruiting. Agencies should uphold these principles by telling potential applicants about the vacancy and by recruiting in a manner to attract a sufficient pool of qualified applicants. Additionally, an agency may prescribe qualification requirements in addition to the minimum qualification and licensure requirement set forth in section 3(a)(ii) of the E.O. (5 C.F.R. 6.3(b)). But any agency-specific requirements must be provided to potential applicants, as OPM noted in its July 10, 2018 guidance.

In situations where the potential pool of qualified applicants includes employees in both the competitive and excepted service, the agency must recruit in such a way that allows all qualified and eligible employees to apply regardless of whether they are in competitive or excepted service. Specifically, when recruiting for promotion opportunities from among current ALJ employees, you should consider employees in both the competitive and excepted services.

OPM remains available to review ALJ vacancy announcements for the competitive and excepted service as a courtesy.

# **Fact Sheet: ALJ Positions**

## **Veterans' Preference**

Agencies filling positions in the excepted service, including using the new Schedule E authority to appoint ALJs, should have policies in place that govern the hiring and employment of excepted service employees. OPM has not provided interpretive guidance on implementing the principle of veterans' preference as far as administratively feasible. OPM recommends that agencies contact their respective Offices of General Counsel regarding the application and interpretation of veterans' preference in ALJ hiring. We note that there is Federal Circuit case law on the meaning of this language in other contexts that counsel may wish to consider.

## **Security, Suitability and Identity Credentialing**

Civil Service Rule VI, as amended by E.O. 13483, provides that appointments in the excepted service, including to the position of ALJ, are "subject to the suitability and fitness requirements of the applicable Civil Service Rules and Regulations." OPM reminded agencies in its July 10, 2018 memorandum that ALJ appointments are generally subject to investigation, a determination of fitness, a determination of eligibility for logical and physical access to agency systems and facilities, and, where applicable, a determination of national security eligibility. Incumbents who remain in the competitive service and whose positions have been designated as public trust positions will continue to be subject to periodic public trust reinvestigations.

## **Rulemaking Related to ALJ Positions**

Through his statutory rulemaking authority and E.O. 13483, the President amended Civil Service Rule VI, 5 CFR part 6, to place the position of ALJ in Schedule E of the excepted service; to provide that appointment of an ALJ is not subject to the requirements of 5 CFR part 302, except that each agency shall follow the principle of veterans' preference as far as administratively feasible; to make appointments subject to certain minimum licensure requirements, while permitting additional agency requirements for appointment as appropriate; and to provide that incumbent ALJs as of July 10, 2018 shall remain in the competitive service as long as they remain in their current positions.

The President also directed OPM to adopt such regulations as the Director determines may be necessary to implement this order, including, as appropriate, amendments to or rescissions of regulations that are inconsistent with, or that would impede the implementation of, this order. OPM is preparing new proposed regulations, as stated in its July 10, 2018 memorandum. Because this Fact Sheet describes requirements of the current regulations, OPM expects to issue new guidance, as appropriate, after the final rule is issued.

Program is provided on the [ALJ E.O. 13843 Guidance webpage](#).

Federal Administrative Law Judges by agency and level (EHRI-SDM as of March 2017)

AGENCY	AL-3	AL-2	AL-1	Total Number ALJs on Board
Commodity Futures Trading Commission	0	0	0	0
Consumer Financial Protection Bureau	1	0	0	1
Department of Agriculture	2	1	0	3
Department of Education	2	0	0	2
Department of Health and Human Services/Departmental Appeals Board	5	0	0	5
Department of Health and Human Services/Food and Drug Administration	0	0	0	0
Department of Health and Human Services/Office of Medicare Hearings and Appeals	94	6	1	101
Department of Homeland Security/United States Coast Guard	5	1	0	6
Department of Housing and Urban Development	2	0	0	2
Department of the Interior	8	1	0	9
Department of Justice/Drug Enforcement Administration	2	0	0	2
Department of Justice/Executive Office for Immigration Review	1	0	0	1
Department of Labor	32	8	1	41
Department of Transportation/Office of the Secretary	2	1	0	3
Environmental Protection Agency	2	1	0	3
Federal Communications Commission	1	0	0	1
Federal Energy Regulatory Commission	12	0	1	13
Federal Labor Relations Authority	1	1	0	2
Federal Maritime Commission	2	0	0	2
Federal Mine Safety and Health Review Commission	14	0	1	15
Federal Trade Commission	1	0	0	1
International Trade Commission	6	0	0	6
Merit Systems Protection Board	0	0	0	0
National Labor Relations Board	30	3	1	34
National Transportation Safety Board	3	0	0	3
Occupational Safety and Health Review Commission	11	1	0	12
Office of Financial Institution Adjudication	2	0	0	2
Securities and Exchange Commission	4	1	0	5
Small Business Administration	0	0	0	0
Social Security Administration	1,642	13	0	1,655
United States Postal Service	1	0	0	1
TOTAL	1,888	38	5	1,931

[Back to Top](#)

**CALIFORNIA AGENCIES EMPLOYING  
ADMINISTRATIVE LAW JUDGES, and NUMBERS\* EMPLOYED**

Air Resources Board - 0

Alcoholic Beverage Control - 4

CDCR- Board of Parole Hearings - 50

Public Utilities Commission - 58

Department of Social Services - 126

State Personnel Board - 13

Department of Insurance - 3

Department of Health Care Services - 15

Agricultural Labor Relations Board - 4

Dept Industrial Relations - Workers' Comp Judges and CalOSHAB ALJs - 203

DGS-Office of Administrative Hearings (OAH) - 82

CA Unemployment Insurance Appeals Board – EDD - 166

Office of Tax Appeals – 27

\*These numbers include rank and file ALJs and supervisors. Source: California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE), the union which represents state attorneys and ALJs. [Home - CASE | calattorneys.org](http://calattorneys.org)



## Dorothy Chou Proudfoot

Dorothy Chou Proudfoot is an Administrative Law Judge at the San Francisco Rent Board, presiding over arbitration hearings in residential rent control cases and mediating landlord-tenant disputes.

She earned her undergraduate and law degrees from the University of California, Berkeley. She practiced civil litigation at Heller Ehrman LLP before spending sixteen years as a Marin County Deputy District Attorney. From 2008-2009, she was also cross-designated as a Special Assistant United States Attorney, prosecuting federal offenses in the Northern District of California.

She is a Past President and current Membership Chair of the Earl Warren American Inn of Court and Co-Chair of the Administrative Law Judges Committee of the California Asian Pacific American Judges Association. A sustaining member of the Asian American Bar Association of the Greater Bay Area, she also serves on the Board of the AABA Law Foundation.

She previously served on the Administrative Judiciary, Bylaws, Judicial Independence, and LGBTQ Committees of the National Association of Women Judges. She was the first Asian-American President of the Marin County Bar Association, a Vice-President of Women Lawyers of Alameda County, a First Vice-President of Marin County Women Lawyers, and served on the Board of Governors of California Women Lawyers.

She is the recipient of the Alameda County Bar Association's 2023 Distinguished Service Award for a Judicial Officer. She is a two-time recipient of the Minority Bar Coalition Unity Award, receiving the honor for her work with Marin County Women Lawyers and Women Lawyers of Alameda County.

She has taught Trial Advocacy in the Intensive Advocacy Program at the University of San Francisco School of Law, the Women in Trial Initiative of the Bar Association of San Francisco, and the inaugural Trial Practicum of the Contra Costa County Bar Association. She has been a panelist and moderator for various educational programs on implicit bias. She serves as a volunteer mentor with the Race, Policy, and Law Academy at Oakland Technical High School, has coached, scored, and presided over various Mock Trial and Moot Court competitions for fourteen years, and has served on the Cal Band Alumni Association Council for over two decades.

## Eli Aramburo

Eli Aramburo was appointed as an Administrative Law Judge in 2009 with the California Unemployment Insurance Appeals Board (CUIAB) and transferred to the Department of Social Services in 2014 where she is currently hearing appeals under the Affordable Care Act and Foster Care Licensing and Funding. A graduate of UC Berkeley and UCLA Law School, Eli practiced family law and juvenile law in the Bay Area. Eli's passion is to serve and protect vulnerable children and adults to encourage personal responsibility and foster independence. The best part of working for the State of California is working to alleviate poverty during periods of crisis and having the opportunity to work with other committed colleagues.

## Michael Cabotaje

Michael Cabotaje currently serves as the Hearing Office Chief ALJ for the Social Security Administration's San Rafael, California Hearing Office. In this Federal government position, he leads an office of judges, attorneys, and support staff in hearing claims made under the Social Security Act, mainly involving claimant applications for disability insurance benefits and the Supplemental Security Income payments. He has been a federal ALJ since his appointment in October 2016.

Prior to this, Michael served as Deputy Chief Counsel for the San Francisco Region of the U.S. Department of Health and Human Services, Office of the General Counsel. As Deputy Chief Counsel, Michael managed federal attorneys and staff serving HHS agency clients, primarily the Centers for Medicare and Medicaid Services and the Indian Health Service. His portfolio included administrative and Federal Court HHS program litigation, employment law, and civil rights.

Before becoming a Federal agency manager, Michael was an attorney for the Social Security Administration, Office of the General Counsel, where he practiced before the Federal district and appellate courts, the EEOC, and the MSPB. Prior to his federal service, Michael was a litigation associate at the Los Angeles and San Francisco offices of the law firm Buchalter Nemer.

Michael received his law degree from UC Berkeley School of Law in 1998 and his undergraduate degree from Columbia University in 1995. He is a member of the California bar. He lives in San Francisco with his partner, his two school-age children, and their dog.

## Demetrius Shelton

The Honorable Demetrius Shelton is an Administrative Law Judge for the California Department of Social Services and prior to this served as Deputy City Attorney for the City of Oakland for over a decade. Judge Shelton, the 68<sup>th</sup> President of the National Bar Association (“NBA”), is also Past National General Counsel of Alpha Phi Alpha Fraternity, Inc. and a Past President of NBA affiliates the Charles Houston Bar Association and the California Association of Black Lawyers (“CABL”). Judge Shelton is an appointee to the American Bar Association (“ABA”) Legal Opportunity Scholarship Committee which administers the ABA Legal Opportunity Scholarship Fund created to encourage racial and ethnic minorities to go to law school and to provide financial assistance. Judge Shelton also chaired the NBA’s 2020 Census Task Force and the NBA’s historic Election Protection Committee safeguarding the vote and leading to the election of America’s first Black president Barack Obama.

In 2005/2006, Shelton served as Vice President of the State Bar of California, the largest mandatory bar association in the country and the governing body that regulates the practice of law throughout the state of California. He has the distinction of having been elected to the Board of Governors in 2003 and in his victory became the first African American in the history of the State Bar of California to be elected to represent the 3rd District. During this time Shelton was also instrumental in establishing the State Bar’s historic “Pipeline Task Force” and first ever Judicial Summit on Diversity.

Judge Shelton has a long history of leadership and service to the legal community and community at large and, in addition to those mentioned above, has served on a number of boards and committees, including the Alameda County Bar Association, the Bar Association of San Francisco, the Allen E. Broussard Scholarship Foundation, the San Francisco Neighborhood Legal Assistance Foundation (now “Bay Area Legal Aid”), and Legal Services for Prisoners with Children.

Prior to joining the bar, while studying law at the University of California, Davis School of Law (King Hall), he served as Chapter President and Associate Director for the Western Region of the National Black Law Student’s Association, and provided free legal services through the law school’s Family Law and Immigration Law clinics. Shelton has also served with great pride on King Hall’s Alumni Association Board of Directors.

Shelton is frequently called upon by local, legal and national media and organizations to provide commentary. Shelton provided testimony as a featured panelist at the American Bar Association’s “Stand Your Ground Hearings” as shown on C-Span, and provides commentary on youth interactions with law enforcement officials and cases involving allegations of police officers use of excessive force. Judge Shelton is the recipient of numerous awards and recognitions, including the City of Oakland’s “Juneteenth Legacy Award”, the “Jefferson Award” sponsored by CBS and KPIX News, the Oral Lee Brown Foundation’s “Pioneer Award”, the Oakland NAACP’s Centennial Anniversary honoree, the Judicial Council of the State Bar of California’s Bench-Bar Coalition “Bar Leader of the Year”, the Alameda County Bar Association’s “Distinguished Service Award”, the Charles Houston Bar Association’s “Clinton White Advocacy Award” and 2022 “Hall of Fame” inductee, “Attorney of the Year” by CABL, and named one of the “101+ Men Making a Difference in Our Community” by Black Expo. Ltd.” In the 50th Anniversary Issue of *Ebony* magazine in 1995 he was prophetically recognized as one of the “Thirty Leaders of the Future” for his many contributions to the community.

Judge Shelton’s leadership has also been recognized by many local and national leaders, including May 6, 2006 being declared “Demetrius Shelton Day” in the cities of Oakland by Mayor Jerry Brown and San Francisco by Mayor Gavin Newsom, and eight years prior the City of Oakland proclaiming November 5, 1998, “Demetrius D. Shelton Day in the City of Oakland” and the City of San Francisco and then Mayor Willie Brown passing a resolution honoring him “for his courage, and outstanding leadership.”

Shelton has also been recognized by the National Bar Association with its “Presidential Award” on six occasions, the Charles Houston Bar Association with its “President’s Award”, Congresswoman Barbara Lee, the Hon. Tani Cantil-Sakauye, Chief Justice of the California Supreme Court, United States Senator Dianne Feinstein, Senator Don Perata – President pro Tempore of the Senate of the State of California, California Assembly Member Sandre Swanson, the Hon. John Chiang – Chair of the California State Board of Equalization, the Office of the San Francisco City Attorney, and the Office of the Oakland City Attorney for his continuous efforts.

As President of the NBA, Shelton worked to build a “pipeline to the legal profession” and to dismantle what has become known as the “school-to-prison pipeline.” Toward this end, he published, *“How the Law Treats You Differently When You Turn 18”* aimed at educating the youth of America as to their rights and responsibilities under the law upon reaching the age of majority. The publication continues to be presented nationwide via “Youth Empowerment Symposiums” which have a dual purpose of introducing the youth participants to the practice of law as a possible career choice.

Shelton has also spearheaded efforts: 1) to safeguard the vote during the historic 2008 United States presidential election; 2) opposing the split of the United States Court of Appeals for the Ninth Circuit; and 3) calling for a thorough investigation into Hurricane Katrina and other disaster relief efforts, and mobilizing attorneys throughout the nation to assist in these endeavors and in the recovery.

Shelton was born in Bernice, Louisiana and is a long-time resident of Berkeley, California. He received his Bachelor of Arts degree in Economics from the University of California, Los Angeles, a certificate in Public Policy/Administration from the University of California, Berkeley’s Graduate School of Public Policy as an Alfred P. Sloan (Ford) Foundation Fellow, and his Juris Doctorate from the University of California, Davis School of Law (King Hall).

## Mark Win

Mark Win obtained a juris doctor from the University of California College of the Law, San Francisco, and began his legal career in the Social Security Administration's Office of General Counsel in San Francisco, litigating matters related to the Social Security program in the federal district courts of California, Nevada, Arizona, and Hawaii, and in the Ninth Circuit Court of Appeals. He also came to specialize in federal employment law, representing both the Social Security Administration and, from 2010 to 2014, the Department of Veterans Affairs in employment law litigation. After his time with the VA, he returned to the Social Security Administration and ultimately began supervising the San Francisco office's employment law division. He also assisted in the implementation of the Social Security Administration's new harassment prevention program, training cohorts of investigators in week-long sessions at the agency's headquarters in Baltimore, MD. He took a position as a Supervisory Administrative Law Judge in the United States Department of Health and Human Services' Office of Medicare Hearings and Appeals (OMHA) in 2016.