

CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENT

In the Matter of:

Precedent DLSE  
Decision No. DLSE-PD-001

Adat Shalom Board & Care, Inc. and  
Angelica Reingold's Appeal from Civil  
Citations Issued by Division of Labor  
Standards Enforcement,  
Department of Industrial Relations,  
State Of California

DECISION

Attached is a decision in the above-captioned Bureau of  
Field Enforcement ("BOFE") Citation case issued by the  
Division of Labor Standards Enforcement, designated as  
DLSE Precedent Decision No. DLSE-PD-001 pursuant to  
California Government Code section 11425.60.

This decision applies to Tier 2 hearings held under the  
informal procedures of the Administrative Procedures  
Act for BOFE , Retaliation Complaint Investigation  
(RCI), Licensing and Registration (L&R), Judgement  
Enforcement Unit (JEU) and Public Works.

Adopted as Precedent: October 1, 2024

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**DEPARTMENT OF INDUSTRIAL RELATIONS**  
**DIVISION OF LABOR STANDARDS ENFORCEMENT**

Before the Labor Commissioner of the State of California

In the Matter of:

Adat Shalom Board & Care, Inc. and Angelica Reingold's Appeal from Civil Citation Issued by:

Division of Labor Standards Enforcement,  
Department of Industrial Relations, State of California

STATE CASE NO. 35-CM-259095-17

**ORDER RE: FORM OF HEARING,  
DISCOVERY AND SCHEDULING**

On January 29, 2018, Adat Shalom Board & Care, Inc. ("ASBC") and Angelica Reingold (collectively, "Appellants") appealed two citations issued against them by the Division of Labor Standards Enforcement's ("DLSE" or "Respondents") Bureau of Field Enforcement ("BOFE") for unpaid minimum wages, overtime wages, meal period premiums and penalties. Citation WA358588 assessed restitution and liquidated damages pursuant to Labor Code sections 1197.1, 510, 226.7 and 1194.2. Citation WA358589 issued penalties for violation of Labor Code section 226(a). Both citations were issued on December 27, 2017.

On January 29, 2018, ASBC and Ms. Reingold also objected to the informal hearing procedure and demanded a formal hearing. The DLSE filed a response on April 25, 2018, seeking an order denying Appellants' demand for a formal hearing.

1 This Order addresses the form of the appeal hearing, the scope of discovery and the  
2 scheduling of the hearing.

3 **Form of Hearing**

4 Appellants object to the informal hearing pursuant to Government Code section 11445.30(b),  
5 which states that “[a]ny objection of a party to use of the informal hearing procedure shall be made  
6 in the party’s pleading.” However, Government Code section 11445.30 is inapplicable to this  
7 proceeding. Government Code section 11445.30(a) provides that “[t]he notice of hearing shall state  
8 the agency’s *selection* of the informal hearing procedure.” (Emphasis added.) The DLSE did not,  
9 and could not, select an informal hearing in lieu of a formal one, because the enabling statutes  
10 authorize only informal hearings.  
11

12 Pursuant to Government Code section 11410.10, Chapter 4.5 of the Administrative Procedure  
13 Act (“APA”) applies to all administrative agency decisions that, under the federal or state  
14 Constitution or a federal or state statute, require an evidentiary hearing for determination of facts for  
15 formulation and issuance of the decision.  
16

17 Labor Code section 1197.1(c)(1) provides that “if a person desires to contest a citation or the  
18 proposed assessment of a civil penalty, wages, liquidated damages, ... the person shall, within 15  
19 business days after service of the citation, notify the office of the Labor Commissioner that appears  
20 on the citation of his or her appeal by a request for an *informal* hearing.” (Emphasis added.) Labor  
21 Code section 558(b) specifies that “[t]he procedures for issuing, contesting and enforcing judgments  
22 for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall  
23 be the same as those set out in Section 1197.1.” The text of Labor Code section 226.5(a) is almost  
24 identical to Labor Code section 1197.1: “If a person desires to contest a citation or the proposed  
25 assessment of a civil penalty therefor, he or she shall within 15 business days after service of the  
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1 citation notify the office of the Labor Commissioner which appears on the citation of his or her  
2 request for an informal hearing.”

3 The DLSE’s obligation to hold a hearing to determine the merits of an appeal of the citations  
4 at issue here stems from this statutory language. This same language determines the kind of hearing  
5 the DLSE can hold – specifically, an informal one.  
6

7 Formal hearings held pursuant to Chapter 5 of the APA are referred to as “Tier 1”  
8 adjudications, while all other adjudications are called “Tier 2.” Tier 2 includes all adjudications that  
9 are *not* required by statute to proceed via a formal hearing. The vast majority of the large state  
10 adjudicatory systems, including the DLSE’s, fall within Tier 2. Government Code section 11445.20  
11 is one of many “flexibility-enhancing provisions” that were added when the APA was amended in  
12 1995, in order to increase efficiency by allowing Tier 1 agencies<sup>1</sup> to selectively proceed via an  
13 informal hearing. As stated by the Legislature, “[t]he informal hearing procedure is intended to  
14 satisfy due process and public policy requirements in a manner that is simpler and more expeditious  
15 than hearing procedures *otherwise required by statute*, for use in appropriate circumstances.”

16 (Government Code section 11445.10(b)(1); emphasis added.)  
17

18 Chapter 5 of the APA governs the conduct of formal hearings. Government Code section  
19 11501(a) states that Chapter 5 “applies to any agency as determined by the statutes relating to that  
20 agency.” In other words, formal hearings must be specifically required by statute. A Tier 1 agency  
21 (an administrative agency required by statute to hold a formal hearing) may, under certain  
22 circumstances set forth in Government Code section 11445.20, decide to hold an informal hearing  
23 instead. The agency must then provide notice to all parties that it has selected the informal hearing  
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26 <sup>1</sup> For ease of reference, this Order will refer to administrative agencies that are required by statute to  
27 adhere to Chapter 5 of the APA by holding Tier 1 formal hearings as “Tier 1 agencies,” and  
28 administrative agencies whose adjudications are not required by statute to conform to Chapter 5 of  
the APA as “Tier 2 agencies,” although “Tier 1” and “Tier 2” normally refer to the type of  
adjudication, rather than the agency.

1 procedure; a party may object to the use of the informal hearing procedure in its pleading; and the  
2 presiding officer must resolve the objection prior to the commencement of the hearing.

3 (Government Code 11445.30.)

4 The DLSE is not a Tier 1 agency, because it is not required by statute to hold formal  
5 hearings<sup>2</sup> for the resolution of BOFE citation appeals. As noted above, the DLSE is specifically  
6 mandated to resolve appeals of citations issued pursuant to Labor Code sections 226(a), 226.7, 510,  
7 1194.2 and 1197.1 by informal hearing.  
8

9 Government Code section 11445.10(a) provides: "Subject to the limitations in this article, an  
10 agency may conduct an adjudicative proceeding under the informal hearing procedure provided in  
11 this article." Government Code sections 11445.10, 11445.20, 11445.30, 11445.40, 11445.50 and  
12 11445.60 (Article 10 of Chapter 4.5 of the APA) set forth the parameters of the informal hearing that  
13 may be selected by a Tier 1 agency, in lieu of the formal hearing otherwise required by statute, when  
14 specific conditions are met. They do not describe the type of informal hearing that a Tier 2 agency  
15 holds per statutory mandate, as the DLSE does for BOFE citation appeals.  
16

17 Stated differently, there are in essence three kinds of administrative hearings: informal,  
18 required by statute; formal, required by statute; and "optional informal," where a Tier 1 agency  
19 normally required to adjudicate formally may *choose* to adjudicate informally. Chapter 4.5 of the  
20 APA applies to all administrative hearings, including formal hearings that must also adhere to the  
21 additional requirements set forth in Chapter 5 of the APA; Tier 1 agencies must comply with both  
22 Chapter 4.5 and Chapter 5. Article 10 of Chapter 4.5 applies specifically to optional informal  
23 hearings, and, by extension, only to Tier 1 agencies. By contrast, the informal hearing required of  
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26 <sup>2</sup> Licensing is an exception. A disciplinary action involving revocation or actual suspension of a  
27 license, including those adjudicated by Tier 2 agencies (like the DLSE) that otherwise only hold  
28 informal hearings, will proceed via a formal hearing where required by statute. (See, e.g. Labor  
Code sections 1692 (farm labor contractor license revocation), 1700.2 (talent agency license  
revocation).)

1 the DLSE, a Tier 2 agency, by the authorizing statutes at issue in this case is not optional and is not  
2 contemplated by Article 10.

3 In addition to objecting to an informal hearing pursuant to Government Code section  
4 11445.30(b), Appellants also rely on Government Code section 11445.50(a) to argue that the  
5 presiding officer should deny use of the informal hearing procedure because cross-examination is  
6 necessary and would delay or complicate an informal hearing. Government Code section  
7 11445.50(a) is inapplicable to this proceeding for two reasons: First, denying the use of the informal  
8 hearing procedure presumes another option (a formal hearing) that is not available to the DLSE.  
9 Second, as explained above, Article 10 of Chapter 4.5 of the APA (of which Government Code  
10 section 11445.50 is a part) does not describe the DLSE's BOFE citation appeal hearings, which  
11 routinely incorporate cross-examination.  
12

13  
14 Lastly, Government Code section 11470.10 may not be relied upon to convert this  
15 proceeding to a formal hearing. Government Code section 11470.10(a)(1) provides that the  
16 presiding officer ("PO") "[m]ay convert the proceeding to *another type of agency proceeding*  
17 *provided for by statute* if the conversion is appropriate, is in the public interest, and does not  
18 substantially prejudice the rights of the party." (Emphasis added.) As discussed above, a formal  
19 hearing is not provided for by the statutes authorizing an appeal in this case; Government Code  
20 section 11470.10(a)(1) is therefore inapplicable here.  
21

22 Although a formal hearing in this matter is not authorized by law, it is also not necessary to  
23 ensure that the parties' due process rights are protected. The Administrative Adjudication Bill of  
24 Rights (Chapter 4.5, Article 6 of the APA) applies to all adjudicative proceedings – formal and  
25 informal. The DLSE's BOFE citation appeal hearings conform to all of the requirements set forth in  
26 Government Code sections 11425.10 – 11425.60, including open hearings, separation of functions,  
27 written decisions and restricted ex-parte communications. The issue that appears to be of  
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1 paramount concern to Appellants, the opportunity to present and rebut evidence, is guaranteed by  
2 Government Code section 11425.10(a)(1). Pursuant to Government Code section 11425.10(b),  
3 “[t]he governing procedure by which an agency conducts an adjudicative proceeding may include  
4 provisions equivalent to, or more protective of the rights of the person to which the agency action is  
5 directed than, the requirements of this section.” The DLSE exceeds the minimum requirements set  
6 forth in Government Code section 11425.10(a)(1) by routinely allowing for opening and closing  
7 statements; the introduction of physical and documentary evidence; witness testimony and cross-  
8 examination; and shall adhere to its standard hearing procedure in this case.  
9

10 Appellants’ demand for a formal hearing is denied.

11 **Discovery**

12 Citing Government Code section 11507.6, Appellants propounded discovery requests  
13 directed at the DLSE, styled as Requests for Production and Interrogatories. Appellants also cite to  
14 Government Code section 11511 as a basis for deposing witnesses.<sup>3</sup> As discussed above, Chapter 5  
15 of the APA, inclusive of Government Code sections 11507.6 and 11511, is inapplicable to this  
16 proceeding. There is no right conferred by statute to formal discovery in an informal hearing  
17 conducted pursuant to Chapter 4.5 of the APA. Additionally, there is no constitutional right to  
18 prehearing discovery in administrative proceedings. (*Mohilef v. Janovici* (1996) 51 Cal.App.4<sup>th</sup> 267,  
19 302.)  
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22 Appellants raise concerns regarding their ability to adequately defend against the subject  
23 citations absent the ability to propound discovery. However, Chapter 4.5, Article 11 of the APA  
24 vests administrative agencies overseeing informal hearings with broad subpoena power that allows  
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27 <sup>3</sup> It should be clarified that in a formal hearing conducted pursuant to Chapter 5 of the APA, a  
28 deposition may only be ordered upon a showing that the witness will be unable or cannot be  
compelled to attend the hearing. (Government Code section 11511.)

1 parties to seek extensive information of each other prior to a hearing. (Government Code section  
2 11450.05(b).)

3 Government Code section 11450.10(a) provides that “subpoenas and subpoenas duces tecum  
4 may be issued for attendance at a hearing and for production of documents *at any reasonable time*  
5 *and place* or at a hearing.” (Emphasis added.) The presiding officer must issue a subpoena or  
6 subpoena duces tecum at the request of a party, or the attorney of record for a party may issue a  
7 subpoena. (Government Code section 11450.20(a).) Failure to comply with a subpoena may be  
8 punished as contempt. (Government Code section 11450.20.) A person served with a subpoena or  
9 subpoena duces tecum may object to its terms by a motion for a protective order, including a motion  
10 to quash. (Government Code 11450.30(a).) The presiding officer must resolve any objection to a  
11 subpoena, issuing an order on terms and conditions “appropriate to protect the parties or the witness  
12 from unreasonable or oppressive demands, including violations of the right to privacy.”  
13 (Government Code section 11450.30(b).)

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16 In sum, the parties may seek information relevant to the contested citations by requesting the  
17 issuance of, or having their counsel issue, a subpoena for the production of documents.  
18 Significantly, production may be required at any reasonable time, including prior to the hearing.  
19 Chapter 4.5, Article 11 of the APA provides specific tools for both the enforcement of and  
20 opposition to any such subpoena (that are of equal force to those set forth in Chapter 5 of the APA to  
21 compel discovery in a formal hearing).  
22

23 The parties have clearly stated their disagreement regarding the identification of potential  
24 witnesses prior to the hearing. Should the parties fail to resolve this question through the meet and  
25 confer ordered herein, the process set forth in Chapter 4.5, Article 11 of the APA for issuing, serving  
26 and objecting to a subpoena should be followed, and an order resolving any objection will be issued  
27 thereafter.  
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2 **ORDER**

3 The Appellants' demand for a formal hearing is denied.

4 The Parties are hereby ordered to:

- 5 1. Meet and confer within 15 days from the date of this Order, regarding the following:
- 6 a. Scope of information and documents that will be voluntarily exchanged between
  - 7 the parties.
  - 8 b. Estimated length of the hearing.
  - 9 c. Proposed dates for the hearing, including at least two different options with start
  - 10 dates before November 1, 2018.
- 11 2. Submit a joint statement, no later than August 6, 2018 that sets forth the estimated length
- 12 of, and the proposed dates for, the hearing.


13 The parties are reminded that no ex-parte communications are permitted. All

14 communications with the Presiding Officer must be in writing and addressed to all parties.

15 Dated: July 12, 2018

16 DIVISION OF LABOR STANDARDS ENFORCEMENT  
17 Department of Industrial Relations  
18 State of California

*For Julia Figueira -  
McDonough*

19   
20 By: \_\_\_\_\_  
21 JULIA FIGUEIRA-McDONOUGH  
22 Presiding Officer

23 State of California  
24 Division of Labor Standards Enforcement  
25 Department of Industrial Relations  
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