

**HB**

**232**

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**cc:Mail for: Lisa Kirsch**

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**Subject:** HB 232 Admin Hearings

**From:** David Koivuniemi at DOA-DAS 5/2/97 5:31 PM  
**To:** lisa kirsch at LAA\_TRANS  
**cc:** chrystal\_smith@law.state.ak.us at CC2MHS1  
**cc:** teresa\_williams@law.state.ak.us at CC2MHS1  
**cc:** Sharon Barton@cchub.Alaska at CC2MHS1  
**cc:** Mark Boyer@cchub.Alaska at CC2MHS1  
**cc:** Alison Elgee@cchub.Alaska at CC2MHS1  
**cc:** Daniella Loper@cchub.Alaska at CC2MHS1  
**cc:** Shelley Higgins@cchub.Alaska at CC2MHS1  
**cc:** pat pourchot@Gov.Alaska at CC2MHS1  
**cc:** shari kochman@Gov.Alaska at CC2MHS1

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Lisa - the Department of Administration (DOA) is working on this bill but because of the press of business at the end of the session, we have not had sufficient time to collect all of the information necessary to figure out exactly what the bill does; which departments will be effected; which hearing officers will have to be moved to the DOA and what the fiscal impacts will be. We are not opposed to the bill at this point but think it is VERY important that such a significant overhaul of the administrative hearing process be done in a careful and orderly fashion so that everyone, especially the members of the public who use the appeal system, understand what the changes will do and why they are necessary.

We strongly encourage the Judiciary Committee to hold this bill to be worked on during the interim.

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HB 232--Admin hearings

I only have HSS and Admin(Off of commis)--Law has problems with the bill, but I have no note from them. What about various agencies who use admin hearing process? This bill covers all who fall under the APA--are none showing this bill will fiscally impact them? It looks like some agency positions may be eliminated or moved to the indep admin hearing section. This bill may end up passing out if we don't hear from the agencies--if there are problems perhaps it should remain in judiciary as an interim project.



## REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

### MEMORANDUM

TO: CO-CHAIRS HANLEY AND *Lea* RIAULT  
FROM: REPRESENTATIVE OGAN *Lea*  
DATE: JANUARY 26, 1998  
RE: HB-232 / SEPERATION OF POWERS BILL

.....  
I have asked the members of House Judiciary to move HB-232 on to Finance to take up the fiscal information on the measure.

In so doing I would request that you attempt to discover the full associated costs of administrative hearings in every agency of the state. This would include but not be limited to the salaries, contracts, and direct costs of hearing officers. I believe we should also look at such collateral costs as maintaining files, publishing decisions, numbers of hearings, time in decision writing and any training hearing officers receive.

It is my contention the Administration has not revealed these costs and until we have them no fiscal note on HB-232 can be accurate because it would not show the savings commonly associated with independent hearing offices (central panels).

I would respectfully request that sub-committee chairs be directed to obtain this information as a pre-requisite to finalizing their departmental budgets. I believe you will be astounded when these costs are uncovered and compared to states who hear thousands more administrative appeals than we do in Alaska.

Preliminary information shows our costs to be very high for the number of hearings we hold. HB-232 seeks to directly cut costs of hearings, establish fast fair procedures, and achieve the remarkable public satisfaction the other 21 states have who have separated the adjudication functions from the police and prosecution sections of government agencies.

Thank you for your assistance in this request.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 465-2075

April 25, 1997

The Honorable Joe Green, Chair  
House Judiciary Committee  
Alaska State Legislature  
State Capitol  
Juneau, Alaska

RE: HB232 (Consolidated Hearing Officer Panel)

Dear Representative Green:

I am writing at the request of your aide, Lisa Kirsch, to advise you of my preliminary observations on HB 232. These observations are not complete because I am still collecting materials and reviewing the bill to determine its impacts.

The idea of a centralized hearing panel is intriguing, but this bill involves some complexities that need to be addressed during a lengthier review period than is available during the remainder of this session. Preliminarily, this office has noted that the bill contains changes from the models so far reviewed.

One of the concerns my office has noted is that the bill would take away the adjudicatory function of the citizen boards and commissions that comprise the vast majority of decision-makers under the existing Administrative Procedure Act. Generally those boards consist of persons with particular expertise in the field as well as public members. Those boards and commissions include, for example, the Alcoholic Beverage Control Board, all occupational licensing boards, the Alaska Police Standards Council, the Alaska Labor Relations Agency, and the Alaska Public Offices Commission.

Other issues include the placement of the hearing officers into the classified service, the ability of a hearing officer to single-handedly set public policy in addition to determining facts and applying legal principles, the authority of a hearing officer over regulatory hearings as opposed to adjudicatory hearings, the loss of expertise in unique subject areas, whether a decision of one hearing officer would bind another hearing officer, whether the chief administrative hearing officer would have the power to make changes in decisions of individual hearing officers, and the unrestricted ability of the chief administrative hearing officer to accept money from private sources.

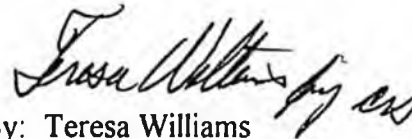
The Honorable Joe Green  
April 25, 1997

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I appreciate this opportunity to communicate with your office and look forward to ongoing opportunities to discuss the issues raised in this bill.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL



By: Teresa Williams  
Assistant Attorney General

cc: Pat Pourchot  
Chrystal Smith  
Deborah Behr

Ed Fetter  
Colorado Division  
of Adm. Hrqs.

303 - 894 - 2500

2:00 pm  
Mon

# Alaska State Legislature



HB 232  
Jud/Finance


Co-Chair, House Resources  
Community & Regional Affairs  
Legislative Council  
Special Committee on Fisheries  
Special Committee on Oil and Gas

State Capitol  
Room 128  
Juneau, Alaska 99801  
(907) 465-3878  
1-800-862-3878  
Fax (907) 465-3265

Representative Scott Ogan  
House District 27

## MEMORANDUM

**TO: ALL LEGISLATORS**

**FROM: REP. SCOTT OGAN** 

**DATE: APRIL 4, 1997**

**RE: ESTABLISHING A FAIR, EFFICIENT,  
ADMINISTRATIVE HEARING PROCESS**

\*\*\*\*\*  
As legislators we are constantly responding to people affected by state regulations. In a larger sense we also deal with budgets, and laws developed within the administrative realm of regulators. These enforcers have become an institutionalized 4th branch of government.

Whether it is a person or group interested in undertaking a community project, establishing a dog sled race, panning for gold, or buying the Alaska Railroad many of us feel obliged to warn persons about our state's propensity for regulating.

And what happens when those entrepreneurs who take the risks and commit to jumping through the hoops disagree with those who regulate them? How many businesses go under because of regulations? How often does the administration rule in favor of those who protest it's regulations?

In my opinion it is unreasonable to assume employees of a Department, who serve the Commissioner of that Department, associate with employees and regulators in the Department, and serve in other professional capacities within Department will render truly unbiased decisions with regard to the actions of the Department.

Legislatures, and indeed administrations, in other states are tackling this problem by separating adjudicators from agencies, streamlining hearing processes, and bringing an atmosphere of fairness back to their governments.

After considerable thought and research I have chosen the latest and most widely accepted model as a starting point here in Alaska. Legislators, administrators, and legal experts, in answering the due process rights of the private sector in other states give their highest support for this approach. We would be the first state to have the opportunity to adopt this rigorously tested model which has recently been adopted unanimously by the American Bar Association House of Delegates. Expert administrative law judges in both Colorado and Maryland hail this model act as the best in the nation and send their support for assisting in it's implementation should we adopt it in Alaska. Praised by administrations, legislators, courts, but most importantly the public, this highly evolved adjudication structure is credited with restoring public confidence when it is properly applied.

The turn around in business climate, investment interest, worker's comp. rates, insurance, bonding costs, and overall public attitude toward government can be seen in the surveys and results contained in the overview provided to us by Colorado.

It is impossible to calculate with numbers the benefits to all sectors of society when conflicts between government and citizens are reduced, but based on the decrease in adjudication costs alone they should be substantial. The big winners will be our citizens when their endeavors are served by an adjudication office which is anchored in the foundation of due process rights.

I invite your support in establishing a fair adjudication process in Alaska by co-sponsorship of HB-232

Co-Chair, House Resources  
Community & Regional Affairs  
Legislative Council  
Special Committee on Fisheries  
Special Committee on Oil and Gas



State Capitol  
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Juneau, Alaska 99801  
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**Representative Scott Ogan**  
House District 27

\*\*\*\*\* *FOR IMMEDIATE RELEASE* \*\*\*\*\*

***VALLEY LAWMAKER PUSHES FOR SEPARATION OF POWERS***

A major reform of the state's regulatory hearing process is underway via a bill sponsored by Rep. Scott Ogan (R) Palmer. Ogan calls his measure the separation of powers act. The measure would remove all in-house hearings from agencies and move them to an independent office within the Department of Administration. "People need to get fair and impartial hearings when they challenge government. To deliver that we need to have highly skilled, due process oriented hearing officers who are not connected to agencies," said Ogan.

The concept of independent hearing officers is not totally new in Alaska. The last legislature working with governor Knowles established a more autonomous administrative tax law judge. Ogan wants to expand the framework and cites separation of powers acts being adopted in at least 18 other states. A highly respected Chief Administrative Law Judge, Mr. Ed Felter from Colorado supplied Ogan with the language for his bill. "I have obtained the best model available. It was patterned after Maryland's central hearing adjudication system. They handle over 50,000 appeals annually with a budget of 2 million dollars. Here in Alaska we are spending over three times that amount on far fewer hearings," said Ogan.

The figures aren't all in for the total number of hearings in Alaska but Ogan expects the numbers to be at least 50% less than Maryland's 50,000. "Once we get a total number we can calculate average hearing costs. When queried about the costs involved with the new Division Ogan said he expects "... a more efficient system which will not only bring government costs down but level the playing field for the private sector to produce more revenue."

The Colorado Chief Administrative Law Judge sent Ogan a report touting the high levels of success by separating adjudicatory from prosecutorial powers. Ogan has adopted that state's hearing office mission statement into the purpose and intent section of his bill. "To deliver high quality adjudication in a timely, cost efficient manner with respect for the dignity of the individual and their due process rights"... "this says it all," said Ogan.

# STATE OF ALASKA

## DEPARTMENT OF LAW

### OFFICE OF THE ATTORNEY GENERAL

January 26, 1998

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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P.O. BOX 110300-DIMOND COURT HOUSE  
JUNEAU, ALASKA 99811-0300  
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The Honorable Rep. Joe Green  
Chair, House Judiciary Committee  
House of Representatives  
State Capitol Rm 118  
Juneau 99801-1182

Re: IID 232 - Independent Hearing Officers

Dear Chairman Green:

HB 232 would revise the Administrative Procedure Act (APA) to create a centralized group of hearing officers. These persons would be classified employees within a new agency within the Department of Administration.

The APA applies to agency functions listed in AS 44.62.330, and to those agencies where the Administrative Procedures Act is made applicable in the particular statute that grants adjudicatory powers.

I have attached my letter of April 25, 1997 and have additional comments. Currently, the bill contains fundamental drafting flaws that require extensive revision of the bill. Additionally, the bill raises significant legal issues that must be considered.

#### DRAFTING PROBLEMS

- In a number of proposed amendments to the APA, the language assumes that statutes within the APA are applicable in non-APA proceedings. However, the span of statutes within the APA are by definition only applicable to the listed agencies. *more specific*

- Many statutes within the APA, that are not proposed to be amended, contain language that would be inconsistent with amendments in the bill. In order to correct these inconsistencies, the APA as a whole must be revised.

#### APPLICATION TO BOARDS AND COMMISSION THAT PROVIDE PURELY ADJUDICATIVE FUNCTIONS

- The bill would remove adjudicatory functions from certain boards and commissions that exist solely for that function, such as the Alaska Labor Relations Agency.

The Honorable Rep. Joe Green  
Chair, House Judiciary Committee  
House of Representatives

January 26, 1998  
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#### APPLICATION TO LICENSING BOARDS AND COMMISSIONS

- The bill would remove adjudicatory functions from boards and commissions that currently determine licensing and discipline for many occupations and businesses, such as all occupational licensing boards, the Alaska Police Standards Council, and the Alcoholic Beverage Control Board. The AHO would determine suitability for licensure, whether misconduct has occurred, and the level of sanction for misconduct. Those matters are currently determined by citizen boards and commission consisting of persons with particular expertise in the field as well as public members.

#### FINAL DECISION-MAKING AUTHORITY

- The bill grants final decision-making authority on legal, factual, and public policy issues to the AHO. This is a broad grant of executive power to a non-constitutional judicial officer. Because the agency itself no longer makes the final decision, it would have the power to appeal the AHO's decision to the superior court.

- Currently, the court system grants deference to the expertise of the agency in a number of areas. For example, questions of law involving "special agency expertise, or "the determination of fundamental policies within the scope of the agency's statutory function," are reviewed under the rational basis test. Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 903 (Alaska 1987). In reviewing agency decisions involving fundamental policy determinations, court's role is to ensure that the agency has taken a hard look at the salient problems and has genuinely engaged in reasoned decision making. Id. The "reasonable and not arbitrary " test applies when the court is reviewing an agency interpretation of its own regulations. Handley v. State, Dep't of Revenue, 838 P.2d 1231, 1233 (Alaska 1992). The standard of review is deferential because the "agency is best able to discern its intent in promulgating the regulation at issue." Rose v. Commercial Fisheries Entry Comm'n, 647 P.2d 154, 161 (Alaska 1982). This expertise is lost if final decision-making power is placed with an AHO.

#### HEARING OFFICER POWERS

- language requiring the chief administrative hearing officer (AHO) to "protect and ensure the decisional independence of each hearing officer" may preclude the chief AHO's ability to promote consistency in decision-making and inhibit the ability to provide supervision.

- allows the Chief AHO to accept "money, grants, bequests, and services" from any public or private source. Presumably, that power is limited to accepting the items for the benefit of the division. The question arises whether this power impermissibly conflicts with the Executive Budget Act or the prohibition on dedicated funds. An additional question is whether funds or services could come from an interested party to an adjudication.

- Does not preclude AHOs from engaging in the practice of law outside of employment as a hearing officer in "pro bono" cases in which an adversary party or decision-maker is the state.

The Honorable Rep. Joe Green  
Chair, House Judiciary Committee  
House of Representatives

January 26, 1998  
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#### CLASSIFIED SERVICE

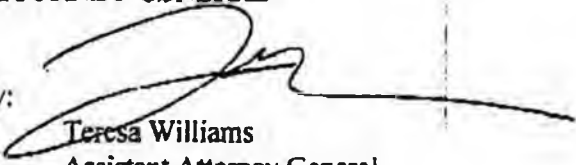
- The placement of AHOs in the classified service poses problems because the Alaska Labor Relations Agency would come under the bill. Inclusion in a bargaining unit could affect the impartiality or interest of AHOs who would be hearing labor relation disputes. (Additionally, the ALRA was moved from the Department of Administration earlier because the department represents the state as an employer.)
- The bill does not state whether the Chief AHO will be in the classified service or the partially-exempt service.
- The minimal performance standard for employees within the classified service to continue in state service is "minimally acceptable."

I would welcome the opportunity to work with your committee and to ongoing opportunities to discuss the issues raised in this bill.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Tercsa Williams  
Assistant Attorney General

TW:jem

Attachment

cc: Pat Pourchot, Governor's Legislative Director  
Crystal Smith, Dep't of Law Legislative Liaison  
David Koivumiemi, Dep't of Administration Legislative Liaison

## MEMORANDUM

**Date:** 5/5/98

**To:** Joe Green

**From:** Kevin Jardell

**Re:** **HB 232 Independent Division of Administrative Hearings and the Administrative Procedure Act.**

### BACKGROUND

Representative Ogan introduced HB 232, Independent Division of Administrative Hearings, in the first session of the 20<sup>th</sup> legislature. The focus of this legislation was to remove the administrative hearing functions of government from the agencies who write, promulgate and enforce regulatory law. At that time the Department of Law, with promises of cooperation in hand, convinced Rep. Ogan that they would assist in drafting the legislation over the interim. Over the interim the Dept. of Law failed to do any work on the issue, and instead waited for the session to attempt to derail the legislation. Based on comments from Assistant Attorney General Teresa Willaims she is attempting to have the administration revise the APA. An attempt was made to draft the necessary changes to the Administrative Procedure Act, but unfortunately, due primarily to subsistence, HB 232 was once again placed on hold until the interim.

A large part of the Dept. of Law's concerns were centered around the need to address the entire Administrative Procedure Act. The administrative procedure act has not undergone a major revision since its inception in 1959. Instead of updating the APA and correcting its problems legislation has focussed on exempting agencies from its regulation.

### PROPOSAL

Rewrite the Administrative Procedure Act, including the establishment of an independent division of administrative hearings, over the interim to be introduced in the next legislature.



Co-Chair, House Resources  
Community & Regional Affairs  
Legislative Council  
Special Committee on Fisheries  
Special Committee on Oil and Gas

State Capitol  
Room 128  
Juneau, Alaska 99801  
(907) 465-3878  
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Representative Scott Ogan  
House District 27  
**SPONSOR STATEMENT**

**HB-232 / SEPARATION OF POWERS**

What HB-232 is designed to do:

Remove administrative hearing functions of government from the agencies who write, promulgate and enforce regulatory law. In other words to separate the adjudicatory function of the executive from the prosecutorial function.

Why HB-232 is needed:

"As a matter of theory, the existence of a judiciary (sometimes quasi-judiciary) within the executive branch of the government seems explicitly self contradictory or, at best, a violation of the doctrine of separation of powers." (Volume XIV Journal of Administrative Law Judges 1994)

1. From The New York Study (ibid.)

*"Often the influence of executive agency officials upon those within the agency who have adjudicatory responsibilities is so pervasive as to prevent agency hearings from being truly fair and impartial. Any system in which executive personnel can manipulate what transpires in the hearing room is a system which falls short of its goal and needs to be reformed."*

How HB-232 accomplishes the structural goal:

HB-232 is based on a model act unanimously adopted by the American Bar Association House of Delegates in Feb. '97. It is based on Maryland's independent hearing system which is recognized as being the best in existence.

HB-232 establishes the framework for an independent hearing division, including qualifications for officers, judicial conduct, power and duties of hearing officers, authority in decisions, cooperation of other agencies, and appointing authority.

## Achieving the full due process goal:

" If the hearing officer is structurally independent of the agency. If his /her position, salary, work conditions, job evaluations, and circumstances of employment are fully protected, his / her only motivation is to hold a fair and impartial hearing". (Vol. XIV Journal of Admin. Law Judges. '94)

The legislature does not have the ability or the authority to manage the administrative hearing process. Only the executive can accomplish this task. The success in providing due process for the public can only be fully realized through the determined efforts of the governor, commissioner, and chief hearing officer. They must work with the legislature to attain the common goal of .. "*delivering high quality adjudication in a timely, cost efficient manner with respect for the dignity of the individual and their due process rights.*" That must be our common mission.

Realizing .. "government seldom operates in the abstract nor are improvements often effectuated in furtherance of political theory..", we as leaders need not fall into those ruts. I urge the House and Senate along with the administration to move forward on HB-232, not only in response to abuses or problems, but even more importantly, as a matter of good government.

# Legislative Research Services

Alaska State Legislature  
Legislative Affairs Agency  
Division of Legal & Research Services



130 Seward Street, Suite 218  
Juneau, Alaska 99801-2196  
Phone: (907) 465-3991  
Fax: (907) 463-3351

April 25, 1997

## MEMORANDUM

TO: Representative Scott Ogan

FROM: Paul Brandt and Patricia Young  
Legislative Analysts

A handwritten signature in blue ink, appearing to read "P. Young", is written over the "FROM" line.

RE: **State of Alaska Administrative Adjudications--Expenditures for Fiscal Years 1994 Through 1996**  
Research Request 97.049 (Revised)

You asked about the cost of administrative adjudications in Alaska state government. Specifically, you wanted to know the total expenditures for administrative adjudications, or appeals, made by each department, the court system, and the University of Alaska during fiscal years 1994 through 1996.<sup>1</sup>

In order to obtain the requested information, we surveyed the directors of administrative services, or their equivalent, in each department. Specifically, we asked for the amounts spent on personal services for hearing officers and support personnel, contractual arrangements, and all associated costs including such things as travel, equipment and supplies.<sup>2</sup> We asked departments to exclude expenditures associated with judicial review of administrative decisions.

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<sup>1</sup>Pursuant to the Alaska Administrative Procedure Act (Alaska Statutes 44.62.330 - 630), administrative adjudications involve appeals of agency decisions regarding rights, authorities, licenses, or privileges. Among others, appealable decisions would include procurement disputes, labor relations conflicts, permit decisions, cash and medical benefit awards and denials (unemployment insurance, workers' compensation, Medicaid, and public assistance), permanent fund dividend distributions, and denial and revocation of occupational licenses.

<sup>2</sup>Expenditures for such things as subpoenas; witness fees, travel, food, and lodging; depositions; and reporter services are included in associated costs.

## Summary

The results of the survey are compiled on Tables 1 and 2. Table 1 summarizes expenditures made for administrative appeals during fiscal years 1994 through 1996. Table 2 shows expenditures by funding source (general funds, federal funds, and other receipts). Because there is no single source of data in each department and no specific accounting codes are used in the statewide accounting system to identify such expenditures, it is important that these data be viewed as estimates only.

With these caveats in mind, one can see that during the three target years, state expenditures for direct and associated costs of administrative adjudications averaged nearly \$5.5 million per year. Of that amount, an average of approximately \$1.2 million per year were from federal funds. These federal dollars represent funding for administration of programs such as unemployment insurance, child support enforcement, and highways. During each of the target years, over one-third of the state's annual expenditures were made by the Department of Labor, and nearly half of those expenditures were federal funds. The vast majority of administrative adjudications within the Department of Labor involved disputes over unemployment and workers' compensation.

## How Expenditure Data Were Compiled

For a variety of reasons, we advise caution when interpreting data presented in Tables 1 and 2. Numerous sources were used to collect expenditure data. No single state department, division, or information source collects specific data on expenditures for administrative adjudications. Some data were simply unavailable.<sup>3</sup> Additionally, department personnel used subjective judgments in determining expenditures. For example, because work on appeals comprises only a portion of numerous employees' duties, department officials often had to estimate personal services costs based on perceived percentages of employee time devoted to such appeals. Furthermore, administrators often delegated to division staff the task of determining how much each division spent on administrative appeals. The final expenditure figures, then, are in many cases compilations of data based on the subjective judgment of several individuals. **These data should be viewed strictly as estimates.**

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<sup>3</sup>For example, the Alaska Public Utilities Commission within the Department of Commerce and Economic Development changed its accounting system in March 1996; consequently, commission officials were unable to provide data on adjudication expenditures prior to that time.

Representative Scott Ogan

April 25, 1997

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### **Administrative Adjudication Expenditures by Department**

Tables 1 and 2 provide data on expenditures for administrative adjudications for each department, the court system, and the University of Alaska for fiscal years 1994 through 1996.<sup>4</sup> Items of note include the following:

- The Department of Labor (DOL)--which administers cash benefit programs such as unemployment insurance and workers' compensation--reported the largest expenditures for administrative appeals. During fiscal years 1994 through 1996, the Department of Labor's expenditures averaged one-third of the state's total expenditures for administrative appeals as estimated by this survey. Over 40 percent of those expenditures were federal dollars.
- The Departments of Commerce and Economic Development (DCED) and Fish and Game (ADF&G) also reported relatively high expenditures for appeals. These expenditures are largely attributable to DCED's occupational licensing functions and ADF&G's permitting activities. At least 60 percent of DCED's expenditures each year were attributable to investigations related to occupational licensing and disciplinary actions.
- While most departments only deal with administrative appeals generated by internal departmental decisions, the Department of Administration (DOA) is responsible for labor relations complaints involving mediation and arbitration for all state agencies. The expense of labor relations mediators and arbitrators accounted for over 80 percent of DOA administrative appeal expenditures during all three fiscal years.
- The majority of appeals in the Department of Revenue concerned permanent fund dividend eligibility and child support disputes. A significant portion of Revenue's expenditures came neither from the state's general fund nor from federal dollars but from the Permanent Fund Corporation's administrative budget. Additionally, federal dollars for administration of child support enforcement accounted for over 30 percent of the department's expenditures during fiscal years 1995 and 1996.

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<sup>4</sup>As of this date, the Departments of Corrections and Education have not yet responded.

Representative Scott Ogan

April 25, 1997

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- Federal dollars represent an average of 47 percent of appeal expenditures in the Department of Health and Social Services. Most appeals concerned eligibility for Medicaid and cash benefits for public assistance programs.
- Federal dollars represented an average of 71 percent of expenditures for administrative construction and lease appeals in the Department of Transportation and Public Facilities during fiscal years 1994-1996.
- Federal dollars represented an average of 73 percent of appeal expenditures in the Department of Education. Most appeals concerned eligibility for special education and vocational rehabilitation.

We hope this information is useful for your purposes. If you have questions about this data, or need more information, please contact us.

**Table 1**  
**Expenditures for Administrative Adjudications**  
**Fiscal Years 1994 - 1996**  
**(dollars in thousands)**

Department	Fiscal Year 1994	Fiscal Year 1995	Fiscal Year 1996
Administration (a)	727.8	886.6	812.8
Commerce and Economic Development (b)	837.4	928.1	1,056.6
Community and Regional Affairs (c)	0.0	0.0	0.0
Corrections (d)	64.5	0.0	0.0
Education (e)	63.7	172.0	190.3
Environmental Conservation (f)	5.0	7.4	75.0
Fish and Game (g)	629.2	614.5	612.6
Health and Social Services (h)	341.7	296.0	353.4
Labor (i)	1,684.7	1,781.6	2,041.0
Law (j)	0.0	0.0	0.0
Military and Veterans' Affairs (k)	0.0	0.0	0.0
Natural Resources (l)	7.0	7.8	0.8
Public Safety (m)	15.0	18.0	32.1
Revenue (n)	370.7	374.1	352.6
Transportation and Public Facilities (o)	114.7	46.0	137.3
University of Alaska (p)	276.2	192.2	205.6
Alaska Court System (q)	2.9	5.3	12.3
Office of the Governor, Lt. Governor, and Division of Elections (r)	16.8	9.6	46.3
<b>Total</b>	<b>5,157.3</b>	<b>5,339.2</b>	<b>5,928.7</b>

**NOTES:**

Departments responded to a survey asking for administrative appeals expenditures for fiscal years 1994 through 1996. Data include amounts spent for personal services (hearing officers, persons serving in that capacity, and support personnel); contractual arrangements; and associated costs including travel, equipment, and supplies. Costs associated with judicial review of administrative procedures were not included.

- (a) Administration--Most expenditures were for labor-related appeals. The department is responsible for mediation and arbitration in labor relations disputes for all departments.
- (b) Commerce and Economic Development--Most expenditures were for occupational licensing appeals, and at least 60 percent of these expenditures were for investigations regarding licensing and disciplinary actions. The department total does not include complete data for the Alaska Public Utilities Commission because of changes in their accounting system.
- (c) Community and Regional Affairs--No expenditures for administrative appeals during fiscal years 1994-1996.
- (d) Corrections--Most 1994 expenditures were for an RSA with the Department of Law for prisoner rights litigation.
- (e) Education--Most expenditures were for special education and vocational rehabilitation related appeals. The department continues to compile data for 1994; consequently, the 1994 data is incomplete.
- (f) Environmental Conservation--Most expenditures were for air quality, water quality, or solid waste permit appeals.
- (g) Fish and Game--Most expenditures were for permit appeals before the Commercial Fisheries Entry Commission.
- (h) Health and Social Services--Most expenditures were for appeals concerning Medicaid and cash benefits for public assistance programs.
- (i) Labor--Most expenditures were for workers' compensation and unemployment benefit appeals.
- (j) Law--No expenditures for administrative appeals during fiscal years 1994-1996.
- (k) Military and Veterans' Affairs--No expenditures for administrative appeals during fiscal years 1994-1996.
- (l) Natural Resources--Most expenditures were for appeals concerning procurement disputes or land use permits.
- (m) Public Safety--Most expenditures were for hearings before the Violent Crimes Compensation Board.
- (n) Revenue--Most expenditures concerned permanent fund dividend eligibility and child support enforcement.
- (o) Transportation and Public Facilities--Most expenditures were for construction and lease appeals.
- (p) University of Alaska--Most expenditures were for labor relations, procurement-related appeals, and student grievances.
- (q) Alaska Court System--Expenditures were for procurement-related appeals.
- (r) Office of the Governor--Expenditures were for hearings before the Human Rights Commission.

**SOURCES:** Directors of Administrative Services for each department.

**TABLE 2**  
**Expenditures for Administrative Adjudications (a)**  
**Fiscal Years 1994-1996**  
**(dollars in thousands)**

Department	Fiscal Year 1994				Fiscal Year 1995				Fiscal Year 1996			
	Federal Receipts	General Fund	Other Receipts (b)	Total	Federal Receipts	General Fund	Other Receipts (b)	Total	Federal Receipts	General Fund	Other Receipts (b)	Total
Administration	0.0	727.8	0.0	727.8	0.0	886.6	0.0	886.6	0.0	812.8	0.0	812.8
Commerce and Economic Development	0.0	820.4	17.0	837.4	0.0	911.1	17.0	928.1	0.0	1,056.6	17.0	1,056.6
Community and Regional Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Corrections	0.0	64.5	0.0	64.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Education	46.5	0.0	17.2	63.7	138.9	10.0	23.1	172.0	123.1	20.0	47.2	190.3
Environmental Conservation	0.0	5.0	0.0	5.0	0.0	7.4	0.0	7.4	0.0	75.0	0.0	75.0
Fish and Game	0.0	629.2	0.0	629.2	0.0	614.5	0.0	614.5	0.0	612.6	0.0	612.6
Health and Social Services	170.3	171.4	0.0	341.7	147.3	148.7	0.0	296.0	142.0	162.2	49.2	353.4
Labor	682.7	1,002.0	0.0	1,684.7	735.1	1,046.5	0.0	1,781.6	852.1	1,188.9	0.0	2,041.0
Law	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Military and Veterans' Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Natural Resources	0.0	7.0	0.0	7.0	0.0	7.8	0.0	7.8	0.0	0.8	0.0	0.8
Public Safety	0.0	0.0	15.0	15.0	0.0	0.0	18.0	18.0	2.0	1.6	28.5	32.1
Revenue	0.0	90.3	280.4	370.7	101.4	39.2	233.5	374.1	123.5	39.5	189.8	352.6
Transportation and Public Facilities	114.7	0.0	0.0	114.7	14.4	9.6	22.0	46.0	112.2	0.7	24.4	137.3
University of Alaska	0.0	276.2	0.0	276.2	0.0	192.2	0.0	192.2	0.0	205.6	0.0	205.6
Alaska Court System	0.0	2.9	0.0	2.9	0.0	5.3	0.0	5.3	0.0	12.3	0.0	12.3
Office of the Governor, Lt. Governor, and Division of Elections	0.0	16.8	0.0	16.8	0.0	9.6	0.0	9.6	0.0	46.3	0.0	46.3
<b>Total</b>	<b>1,014.2</b>	<b>3,813.5</b>	<b>329.6</b>	<b>5,157.3</b>	<b>1,137.1</b>	<b>3,888.5</b>	<b>313.6</b>	<b>5,339.2</b>	<b>1,354.9</b>	<b>4,234.9</b>	<b>356.1</b>	<b>5,928.7</b>

**NOTES:**

(a) Departments responded to a survey asking for data on expenditures for administrative appeals for fiscal years 1994 through 1996, including amounts spent for all personal services, contractual arrangements, and all associated costs such as travel, equipment, and supplies. Departments excluded costs associated with judicial review of administrative procedures. See Table 1 for additional notes.

(b) "Other" receipts include Reimbursable Service Agreements (RSA) from other agencies (for DCED and DHSS), administrative funds from the Permanent Fund (for Revenue), and an RSA of lease receipts from Anchorage International Airport (for DOT/PF).

**SOURCES:** Directors of Administrative Services in each department.

# STATE OF COLORADO

GENERAL SUPPORT SERVICES  
DIVISION OF ADMINISTRATIVE HEARINGS

The Chancery  
1120 Lincoln Street, Suite 1400  
Denver, Colorado 80203  
Phone: (303) 894-2500  
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Roy Romer  
Governor

Department of Personnel  
André N. Pettigrew  
Executive Director

Edwin L. Felter, Jr., Director  
and Chief Administrative Law Judge

April 18, 1997

Teresa Williams, Esq.  
Assistant Attorney General  
Office of the Attorney General  
1031 West 4th Ave., Suite 200  
Anchorage, Alaska 99501

Re: Model Act Creating the State Central Hearing Agency

Dear Ms. Williams:

Per your telephone request of today, I am enclosing the Model Act as unanimously adopted by the House of Delegates of the American Bar Association in San Antonio on February 3, 1997.

If you need anything further or have additional questions, please feel free to call me at any time.

Very truly yours,

Edwin L. Felter, Jr.

enclosure

**CREATING A  
STATE CENTRAL HEARING AGENCY  
(OFFICE OF ADMINISTRATIVE HEARINGS)**

**AN ACT concerning**

**Office of Administrative Hearings**

**FOR the purpose of establishing an Office of Administrative Hearings as an independent agency in the Executive Branch in order to provide a source of independent administrative law judges to preside in contested cases; providing for the appointment of a chief administrative law judge; establishing the chief administrative law judge's qualifications, compensation, powers, and duties . . . [other purposes]**

**Section 1. BE IT ENACTED BY THE [NAME OF LEGISLATIVE BODY], That the Laws of [STATE] read as follows:**

**Article - State Government**

**Subtitle [    ]. Office of Administrative Hearings**

**Part I. Office of Administrative Hearings**

**Section 1-1 Scope of Subtitle.**

**(a) Exceptions - - This subtitle does not apply to:**

- (1) an agency of the Legislative Branch of the State government;**
- (2) an agency of the Judicial Branch of the State government; or**
- (3) the following agencies of the Executive Branch of the State government:**

- (i) the Governor;
- (ii) [exception]; and
- (iii) [exception]

(b) except as provided in paragraphs (1), (2), and (3) of subsection (a) of this section, this subtitle shall apply to each agency that employs or engages one or more hearing officers or administrative law judges, either full or part-time, to adjudicate contested cases unless the agency has been exempted by the Governor under subsection (c) of this section.

(c) until one year from the effective date of this statute the Governor temporarily may exempt an agency from this subtitle.

#### **Section 1-2 Establishment and Appointment of Administrative Law Judges**

(a) The Office of Administrative Hearings is created as an independent agency in the Executive Branch of State Government for the purpose of separating the adjudicatory function from the investigatory, prosecutory and policy-making functions of agencies in the Executive Branch. Administrative law judges shall be selected and appointed [by the Governor upon screening and recommendation of a judicial nominating commission] [through competitive examination in the classified service of state employment] [by the chief administrative law judge].

(b) The hearing officers and administrative law judges of the agencies to which this subtitle applies shall become employees of the Office of Administrative Hearings. [The grandfathered hearing officers and administrative law judges are exempt from the qualifications contained in Section 1-6(a)(2).]

### **Section 1-3 Responsibility.**

(a) Except as provided herein, the Office shall administer the resolution of all contested cases [unless the agency head or governing body of any agency hears the case without delegation or assignment to a hearing officer or administrative law judge].

(b) Upon referral by an agency, one or more administrative law judges shall administer the resolution of the matters referred.

### **Section 1-4 Chief Administrative Law Judge - In general.**

(a) The Office is headed by a chief administrative law judge [appointed by the Governor with advice and consent of the Senate for a term of ( ) years], [through competitive examination in the classified service of state employment] who may be removed only for good cause following notice, and an opportunity for an adjudicative hearing and shall continue in office until a successor is appointed.

(b) The chief administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;
- (2) devote full time to the duties of the Office and shall not engage in the practice of law;
- (3) be eligible for reappointment;
- (4) receive the salary provided in the state budget [receive a salary in the same amount as that provided by law for a { } court judge];
- (5) be licensed to practice law in the State and admitted to practice for a minimum of five years;

- (6) have the powers and duties specified in this subtitle; and
- (7) be subject to the code of conduct for administrative law judges.

(c) The chief administrative law judge may employ a staff in accordance with the State budget.

#### **Section 1-5 Chief Administrative Law Judge - Powers and Duties.**

- (a) The chief administrative law judge shall:
- (1) supervise the Office of Administrative Hearings;
  - (2) [appoint and remove administrative law judges in accordance with this subtitle (the other option is for the Governor to appoint through a judicial nominating commission as provided by Section 1-2)];
  - (3) assign administrative law judges in any case referred to the Office;
  - (4) protect and ensure the decisional independence of each administrative law judge;
  - (5) establish and implement standards and specialized training programs and provide materials for administrative law judges;
  - (6) provide and coordinate continuing education programs and services for administrative law judges, including research, technical assistance, technical and professional publications, compile and disseminate information, and advise of changes in the law relative to their duties;
  - (7) adopt rules to implement this subtitle through rulemaking proceedings in accordance with the Administrative Procedure Act or other law.
  - (8) adopt a code of conduct for administrative law judges;

- (9) monitor the quality of state administrative hearings through the provision of training, observation, feedback and, when necessary, discipline of A.L.J.s who do not meet appropriate standards of conduct and competence, subject to the provisions of Section 1-6(a)(4) below;
- (10) submit an annual report on the activities of the Office to the Governor and to the [Legislature].
- (11) [cooperate and assist the State Advisory Council in the discharge of its duties pursuant to Sections 1-12 through 1-14 of this Act.]

(b) The chief administrative law judge may:

- (1) serve as an administrative law judge in a contested case;
- (2) [establish qualifications for the selection of administrative law judges];
- (3) furnish administrative law judges on a contractual basis to governmental entities other than those required to use their services;
- (4) accept and expend funds, grants, bequests and services, which are related to the purpose of the Office, from any public or private source;
- (5) enter into agreements and contracts with any public or private agencies or educational institutions;
- (6) [create specialized subject matter divisions within the Office.]

#### **Section 1-6 Administrative Law Judges.**

(a) An administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;

- (2) be admitted to practice law [in the State] [for a minimum of five years];
- (3) be subject to the requirements and protections of [e.g., classified service of State employment and the State ethics code];
- (4) be removed, suspended, demoted, or subject to disciplinary or adverse actions including, any action that might later influence a reduction in force, only for good cause, after notice and an opportunity to be heard in an Administrative Procedure Act or other statutory-type hearing and a finding of good cause by an impartial hearing officer;
- (5) be subject to a reduction in force only in accordance with established, objective civil service or merit system procedures;
- (6) receive compensation provided in the State budget [receive a salary in the same amount as that provided by law for a (\_\_\_\_\_) court judge];
- (7) not perform duties inconsistent with the duties and responsibilities of an administrative law judge;
- (8) devote full time to the duties of the position and [shall not engage in the practice of law unless serving as a part-time administrative law judge];
- (9) be subject to administrative supervision by the chief administrative law judge; and
- (10) be subject to the code of conduct for administrative law judges.

(b) An administrative law judge shall not be responsible to or subject to the supervision, direction or direct or indirect influence of an officer, employee, or agent engaged in the performance of investigatory, prosecutory, or advisory functions for an agency.

**Section 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.**

(a) All agencies of State government shall cooperate with the chief administrative law judge in the discharge of the duties of the Office.

(b) The Office shall be subject to audit by [the legislative audit office under the same rules and rotation by which other State agencies are audited].

(c) Except in arbitration or similar proceedings as provided by law or in this subtitle or in regulations adopted under this subtitle, an agency may not select or reject a particular administrative law judge for a particular proceeding.

**Section 1-8 Designation of Administrative Law Judges.**

If the Office is unable to assign an administrative law judge in response to an agency referral, the chief administrative law judge shall designate in writing an individual to serve as an administrative law judge in a particular proceeding before the agency [if the individual meets the qualifications for an administrative law judge established by the Office and is subject to the Code of Judicial Conduct].

**Section 1-9 Powers of Administrative Law Judges.**

An administrative law judge shall have the power to: (1) issue subpoenas; (2) administer oaths; (3) control the course of the proceedings; (4) engage in or encourage the use of alternative dispute resolution methodologies as appropriate; and (5) order a party, a party's attorney, or other authorized representative, to pay reasonable expenses,

including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, (6) perform other necessary and appropriate acts in the performance of duties.

**Section 1-10            Decision-making Authority.**

(a)    The assigned administrative law judge shall render the final decision of the agency not subject to agency review, in all hearings for the following agencies:

- (1)    [Name of Agency];
- (2)    [Name of Agency]; and
- (3)    [Name of Agency].

(b)    Except as provided by law, the administrative law judge shall issue a proposed [initial, recommended] decision unless the agency authorizes the issuance of a final decision, as provided in the Administrative Procedure Act..

(c)    Where a matter is referred to the Office by an agency, the referring agency shall take no further adjudicatory action with respect to the proceeding, except as a party litigant, as long as the Office has jurisdiction over the proceeding. [Nothing in this subsection shall be construed to prevent an appropriate interlocutory review by the agency nor an appropriate termination or modification of the proceeding by the agency.]

**Section 1-11 Proposed Decisions and Orders.**

In reviewing a proposed (initial, recommended) decision or order received from the administrative law judge, the agency head or governing body of the agency shall not modify, reverse or remand the proposed decision of the administrative law judge except for specified reasons in accordance with law. Judicial review of agency decisions shall occur in accordance with the Administrative Procedure Act [or other specific statutory provision].

**OPTIONAL**

**Section 1-12 State Advisory Council on Administrative Hearings -  
Establishment; Composition; Appointment.**

- (a) There is a State advisory council on administrative hearings.
- (b) The council consists of nine members.
- (c) Of the nine council members:
  - (1) One shall be a member of the Senate of [ ];
  - (2) One shall be a member of the House of [ ];
  - (3) One shall be the Attorney General or the Attorney General's designee;
  - (4) Two shall be directors, secretaries, chief executives, or their designees from agencies involved in the adjudication of contested cases before the Office.
  - (5) Two shall be from the general public; and

(6) Two shall represent the state bar association.

(d) The Governor shall appoint the members specified in subsection (c)(4) through (6) of this section.

**Section 1-13 Terms; Compensation; Chair.**

- (a) (1) The term of a member of the council is four years.  
(2) The terms of the members are staggered as required by the terms provided for members of the council on [DATE].  
(3) A member is eligible to serve more than one term.  
(4) A member shall not be disqualified by virtue of being engaged in the practice of law or appearing regularly as an attorney before the Office.

(b) A member of the council may not receive compensation, but is entitled to reimbursement for expenses under the standard state travel regulations.

(c) The council shall designate a chair from among its members.

**Section 1-14 Powers and Duties; Meetings.**

- (a) The council shall:
- (1) advise the chief administrative law judge in carrying out the duties of the Office;

- (2) identify issues of importance to administrative law judges that should be addressed by the chief administrative law judge;
- (3) review issues and procedures relating to administrative hearings and the administrative process:
- (4) review and comment upon rules of procedure and other regulations and policies proposed by the chief administrative law judge;
- (5) review and comment on the annual report submitted by the chief administrative law judge; and
- (6) conduct a study of agencies which employ hearing officers to adjudicate contested case hearings which have been exempted by the Governor pursuant to Section 1-1(3) and recommend to the Governor those agencies for which such exemption should be continued by [DATE].

(c) The council shall meet at a regular time and place to be determined by the council.

**Section 1-15      Effective Date.**

That Sections 1-1 through 1-14 shall take effect on [DATE].

**MODE! ACT:** February 3, 1997, as unanimously adopted by the House of Delegates of the American Bar Association.

propmode.cor/sb/cl

HEIN  
ED ~~HEIN~~  
586 7261  
PRO - ALJ

MEMO TO: Dave Stancliffe  
FROM: Ed Hein *EA*  
RE: HB 232 -- Independent Division of Administrative Hearings  
DATE: January 19, 1998

**Sectional analysis of HB 232**

Sec. 1. Purpose and Intent is to provide for:

- increased separation of the administrative adjudication function from agencies' investigative, prosecutory, and policy-making functions;
- the rendering of high-quality, timely administrative adjudications;
- respect & dignity of parties and a guarantee of due process protections in administrative hearings.

Sec. 2. Adds responsibility for the Independent Division of Administrative Hearings [IDAH] and Chief Administrative Hearing Officer [CAHO] to the Department of Administration's duties.

Sec. 3. Creates the Independent Division of Administrative Hearings. Adds new Article 9 to AS 44.21. [New sections]:

AS 44.21.510. Division and Chief Administrative Hearing Officer

(a) Places IDAH in Department of Administration, to be headed by a Chief Administrative Hearing Officer [CAHO].

(b) Specifies that CAHO will be appointed by Commissioner of Administration; must be an Alaska licensed attorney, admitted to practice for 5 years; must devote full time to the position and may not practice law privately for compensation while in office.

AS 44.21.520. Powers & duties of CAHO

(a) Mandatory duties: supervise division; hire hearing officers and staff; assign cases for hearings; contract with temporary hearing officers if no qualified hearing officer is available within IDAH to hear particular cases; ensure decisional independence of hearing officers; establish and implement standards and training programs for hearing officers; monitor quality of state's administrative hearings; submit annual report to governor; adopt a code of conduct for hearing officers; adopt regulations to implement this legislation.

(b) Discretionary powers: CAHO may serve as a hearing officer in individual cases; set requirements for establishing a register of qualified hearing officers (licensed Alaska attorneys with 5 years' law practice); assign hearing officers to non-Article 8 cases at agencies' request; receive appropriate money, grants, gifts, and services from public and private sources.

AS 44.21.530. Powers of, and restrictions on, hearing officers.

(a) In addition to other specified duties, hearing officers: may engage in alternative dispute resolution (ADR) methods; may order a party to pay reasonable expenses of other side for frivolous or bad-faith actions; is subject to a code of conduct established by CAHO.

(b) Hearing officers: may not perform duties inconsistent with responsibilities; must devote full-time to duties (unless appointed to part-time position); may not engage in private practice of law for compensation.

(c) Hearing officers cannot be subject to supervision or influence by agency employees engaged in investigations, prosecutions, or advisory functions.

AS 44.21.540. Cooperation of other state agencies

(a) Agencies must cooperate with division and chief

(b) Agencies may not select or reject particular hearing officers assigned by CAHO, except as otherwise provided by law for arbitration or similar proceedings or special circumstances recognized in regulations.

(c) Agencies cannot take further action in the proceeding after matter is referred to the division.

AS 44.21.590. Defines "division" as IDAH for purposes of Article 9 of AS 44.21.

Sec. 4. Amends AS 44.62.350(a) to shift authority to appoint hearing officers from governor to CAHO in contested cases governed by APA Article 8 or when an agency has requested CAHO to assign a hearing officer.

Sec. 5. Amends AS 44.62.350(b) to prohibit agency hearing officers from hearing cases governed by IDAH.

Sec. 6. Amends AS 44.62.450(a) by deleting agencies' authority to determine whether agency will hear contested cases along with the hearing officer.

Sec. 7. Amends AS 44.62.450(b) by eliminating agencies' presiding over hearings in contested cases.

Sec. 8. Amends AS 44.62.450(c) by deleting agency members from recusal provision for contested cases.

Sec. 9. Clean-up amendment of AS 44.62.500(b), concerning proposed decisions, reflecting

changes in Secs. 6-8, and 11.

Sec. 10. Amends AS 44.62.500(c) [APA] to provide that if the proposed decision in a contested case is not adopted by the agency, the agency may decide the case or refer it to the CAHO for assignment to the same or a different hearing officer.

Sec. 11. Adds new subsections (d) and (e) to AS 44.62.500 [APA] to provide that:

(d) an agency must specify on the record the reasons for modifying, reversing, remanding, or order reconsideration of a proposed decision; and prohibits the agency from taking action to change a hearing officer's final decision.

(e) hearing officers' decisions in adjudications under APA Article 8 are final decisions, not subject to agency review; agencies that voluntarily use IDAH hearing officers may authorize the hearing officer to make the final administrative decision in the case; copies of the decision must be served on the parties and filed with the Lieutenant Governor; provides for judicial review and reconsideration of hearing officers' final decisions.

Sec. 12. Amends AS 44.62.520(a) to allow hearing officers to order an effective date of decision sooner than 30 days.

Sec. 13. Amends AS 44.62.540 to provide for reconsideration of cases by hearing officers.

Sec. 14. Amends AS 44.62.590(a) to add hearing officers to provisions for certifying facts regarding contempt to the superior court.

Sec. 15. Amends AS 44.62.640(b) to add definition of "chief administrative hearing officer."

Sec. 16. Repeals AS 44.62.500(a), which had provided for agencies to hear contested cases, but had required the hearing officer who presided at the hearing to be present during consideration of the case and, if requested, to advise the agency.

Sec. 17. Transitional provision allowing existing state hearing officers to be eligible for hiring as hearing officers with the IDAH.

Sec. 18. Effective date.

### **Comparison of HB 232 with ABA Model Act Creating a State Central Hearing Agency (1997)**

Model Act was originally proposed and drafted by the National Association of Administrative Law Judges [NAALJ] in 1995. It was circulated and discussed among all state central panel chief judges before being approved unanimously by the American Bar Association's House of

Delegates on February 3, 1997.

The Model Act, like HB 232, provides for establishment of a corps of independent administrative law judges [ALJs] who will, in appearance and in fact, be separated from potential bias, conflicts of interest, and undue influence of the state administrative agencies whose actions the ALJs review in contested cases brought by private parties.

The Model Act provides for the establishment of an Office of Administrative Hearings [OAH], to be headed by a Chief Administrative Law Judge. The Act is set out in 15 sections.

#### Sec. 1-1 Scope.

The Model Act exempts from coverage all Legislative and Judicial branch agencies, the Governor, and individual executive departments and agencies specified by the Legislature. It allows the Governor to temporarily exempt individual agencies during the first year after the Act takes effect. Within the Executive branch, all non-exempted agencies having hearing officers or ALJs would be covered by the Act.

HB 232 covers only agencies listed in AS 44.62.330, who administrative adjudications in contested cases are governed by Article 8 of the Administrative Procedure Act. Other Executive branch agencies may request that IDAH hearing officers be assigned to decide their cases on an individual basis.

#### Sec. 1-2 Establishment and Appointment of Administrative Law Judges

The Model Act creates the Office of Administrative Hearings as an independent agency in the Executive branch. The Act proposes that ALJs would be selected and appointed either by: 1) the Governor, after screening and recommendation by a judicial nominating commission; 2) competitive examination in the classified service; or 3) the CAHO. The Model Act would automatically make all existing state hearing officers employees of the IDAH, and would exempt such grandfathered hearing officers from the qualification requirements of the Act.

HB 232 makes the IDAH an independent Executive branch agency within the Department of Administration. The bill specifies that IDAH hearing officers are to be hired by the CAHO. Existing state hearing officers do not automatically become employees of the IDAH, but all who apply are eligible for such employment under the bill's transitional provision. The bill does not clearly state whether such hearing officers must meet the qualifications specified elsewhere in the bill [Alaska licensed attorneys with 5 years law practice], nor does it require the CAHO to hire any of them.

#### Sec. 1-3 Responsibility.

The Model Act provides that the Office of Administrative Hearings shall handle all contested administrative cases, except as otherwise provided in the Act. An optional provision would also exempt cases heard by the heads or governing bodies of individual agencies without a hearing officer.

HB 232 removes the authority of covered agencies to conduct their own hearings in

contested cases. Exempted agencies would continue to be able to conduct their own hearings.

#### Sec. 1-4 Chief Administrative Law Judge - In General.

The Model Act provides that the Chief Administrative Law Judge would be either: 1) appointed by the Governor, with advice and consent of the Senate for a term of years; or 2) under the classified service and hired through competitive examination. In either event, the Chief ALJ could be removed only for good cause following notice and an opportunity for an administrative hearing. A removed Chief ALJ would continue in office until a successor is appointed.

HB 232 provides that the CAHO is appointed by the Commissioner of Administration. No term of office is specified and no grounds for removal are stated. Presumably the CAHO's term and removal would be governed by the same provisions that govern other division directors appointed by the commissioner.

The Model Act mandates that the Chief Administrative Law Judge must: take an oath of office; devote full time to the duties of the office; be eligible for reappointment; receive the salary provided in the state budget [or the same salary as a state judge]; be currently licensed to practice law in the state and have been licensed for at least 5 years; and be subject to a code of conduct for ALJs. The Chief Administrative Law Judge may employ staff within the state budget.

HB 232 provides that the CAHO must be an Alaska licensed attorney, admitted to practice for 5 years; must devote full time to the position and may not practice law privately for compensation while in office.

#### Sec. 1-5 Chief Administrative Law Judge — Powers and Duties.

The Model Act requires the Chief Administrative Law Judge to supervise the Office of Administrative Hearings [OAH]; assign ALJs to cases referred to the OAH; protect and ensure the decisional independence of each ALJ; establish and implement standards and specialized training programs for ALJs; adopt rules to implement the Act; adopt a code of conduct for ALJs; monitor the quality of state administrative hearings; submit an annual report on the OAH to the Governor [and the Legislature]; [cooperate and assist with a State Advisory Council, if any].

The Model Act authorizes the Chief Administrative Law Judge to serve as an ALJ in individual contested cases; [establish qualifications for the selection of ALJs]; furnish ALJs to other agencies by contract; accept funds, grants, gifts, and services related to the purposes of the OAH; enter into contracts with public and private agencies or educational institutions; and [create specialized subject matter divisions within the OAH].

HB 232 provides virtually all the same powers and duties as the Model Act.

#### Sec. 1-6 Administrative Law Judges

The Model Act provides that ALJs shall: take an oath of office; be admitted to law practice [in the state][for at least 5 years]; be subject to the requirements and protections of state employment [classified service employees' protections]; be removed or disciplined only for good cause, after notice and an opportunity to be heard in an APA or statutory-type hearing and a

finding of good cause by an impartial hearing officer; be subject to reduction in force only in accordance with established civil service or merit system procedures; be compensated as provided in the state budget [or salary pegged to state judges' salaries]; not perform duties inconsistent with ALJ duties and responsibilities; devote full time to the position of ALJ [unless appointed part-time]; be subject to supervision by the Chief Administrative Law Judge; and be subject to the code of conduct for ALJs.

The Model Act also provides that ALJs are not to be supervised, directed, or influenced by agency officials or employees engaged in investigations, prosecutions, or advisory functions.

HB 232 has a much shorter section on administrative hearing officers. Qualifications for hearing officers are provided elsewhere, but are the same as the Model Act. HB 232 gives hearing officers the same powers and duties already prescribed in Article 8 of the APA. The bill also specifically provides, like the Model Act, that hearing officers: are subject to a code of conduct; may not perform duties inconsistent with their responsibilities as hearing officers; may not engage in private law practice; and cannot be subject to supervision or influence by agency employees engaged in investigations, prosecutions, or advisory functions.

#### Sec. 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.

The Model Act requires all state government agencies to cooperate with the Chief Administrative Law Judge; subjects the OAH to audit by the Legislative audit office; prohibits agencies from selecting or rejecting particular hearing officers of the OAH.

HB 232 likewise requires other state agencies to cooperate with the CAHO and prohibits them from selecting or rejecting hearing officers assigned by the CAHO, except in cases of arbitration or other special circumstances recognized in regulations. HB 232 does not provide for Legislative audit.

#### Sec. 1-8 Designation of Administrative Law Judges.

The Model Act provides that the Chief Administrative Law Judge shall designate in writing an individual to serve as an ALJ in a proceeding before an agency if the OAH does not have an ALJ that can be assigned in response to an agency referral.

HB 232 authorizes the CAHO to contract with suitable individuals to serve as temporary hearing officers within the IDAH if no qualified IDAH hearing officer is available.

#### Sec. 1-9 Powers of Administrative Law Judges.

The Model Act gives ALJs power to: issue subpoenas; administer oaths; control the course of proceedings; use alternative dispute resolution methods; order a party or their attorney to pay reasonable expenses for bad-faith actions or tactics that are frivolous or intended solely to cause unnecessary delay.

HB 232 either provides all these powers or gives hearing officers the powers already listed in Article 8 of the APA. These existing powers include subpoena power, among others. [See new Sec. 44.21.530(a)] It may be advisable to make clean-up amendments to specific sections of Article 8 to clarify whether hearing officer, the agency, or both are intended to exercise particular powers.

Sec. 1-10 Decision-making Authority.

The Model Act makes ALJs' decisions the final decision, not subject to further agency review, for those agencies specifically named under this section of the Act. All other ALJ decisions would be proposed decisions, unless the agency authorizes issuance of a final decision. The Act prohibits agencies who have referred matters to the OAH from taking any further adjudicatory action in a case while it is under OAH's jurisdiction. [An optional provision would allow interlocutory review, termination, or modification of the proceeding by the agency.]

HB 232 makes hearing officers' decisions final decision for all agencies required to submit cases to IDAH. Decisions in voluntary agency referrals can be final decisions if authorized by the referring agency, but otherwise are proposed decisions. Like the Model Act, agencies may not take further action in a proceeding after the matter has been referred to the IDAH.

Sec. 1-11 Proposed Decisions and Orders.

The Model Act provides that agencies reviewing proposed IDAH decisions cannot modify, reverse, or remand the decisions except for specified reasons in accordance with law.

HB 232 requires agencies to specify on the record their reasons for modifying, reversing, remanding, or ordering reconsideration of proposed decisions.

Secs. 1-12 — 1-14 [Optional] State Advisory Council on Administrative Hearings.

The Model Act proposes creation of a nine-member State Advisory Council on Administrative Hearings, consisting of two legislators, the Attorney General, two agency heads, two members of the public, and two representatives of the state bar association. Terms would be for four years, staggered. The Council would advise the CAHO on carrying out the duties of the office; identify important issues to be addressed by the CAHO; review issues and procedures relating to hearings and the administrative process; review and comment on rules of procedure and the IDAH annual report; and study agencies exempted from the Act that employ hearing officers.

HB 232 does not include this provision.

Sec. 1-15 Effective Date.

**Potential benefits of enactment of HB 232**

- Improved impartiality of hearing officers and their decisions
- Improved quality of the hearing process
- Improved management and training programs
- Reduction in staff
- Reduced costs
- Would attract experienced and politically insulated career professionals

**Issues that may need to be addressed in HB 232**

ISSUE: Accountability & independence

Who will review CAHO's performance?

ISSUE: Salary & grade of CAHO

Not specified. Will this be same as a division director? A superior or district judge?

**Technical amendments needed:**

- AS 44.21.520(b)(2) -- delete "and the practice of law in this state" (duplication).
- Change date in Sec. 17 Transitional Provision.
- Change the bill's effective date.

**NOTE: I am the Chief Appeals Officer of the National Marine Fisheries Service for the Alaska Region, and a member of the Alaska Bar Association and the National Association of Administrative Law Judges. This memorandum does not necessarily represent or reflect the views of the Alaska Bar Association, National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, the U.S. Department of Commerce, or the United States Government. The bill is supported by the National Association of Administrative Law Judges, of which I am also a member. Ed Hein**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

April 25, 1997

**SUBJECT:** Sectional Summary of HB 232. (Administrative Hearings)

**TO:** Representative Scott Ogan  
Attn: Dave Stancliff

**FROM:** Terri Lauterbach   
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, let me know.

**Section 1.** Purpose and intent section.

**Section 2.** Amends a general statute that sets out duties of the Department of Administration by adding the duties of the independent division of administrative hearings, which is established in sec. 3.

**Section 3.** Adds a new division to the Department of Administration - the independent division of administrative hearings.

Sec. 44.21.510 creates the division and describes the qualifications of the chief administrative hearing officer who will direct the division.

Sec. 44.21.520 describes the powers and duties of the chief administrative hearing officer.

Sec. 44.21.530 specifies the powers, duties, and qualifications of hearing officers employed by the new division.

Representative Scott Ogan

April 25, 1997

Page 2

Sec. 44.21.540 governs some of the aspects of the relationship between the division and other state agencies.

Sec. 44.21.590 defines "division."

**Section 4.** Provides that hearing officers for cases governed by the contested case procedures of the Administrative Procedure Act (APA) will be assigned by the chief administrative hearing officer, not the governor. Also applies to cases where the agency is not under the APA but voluntarily requests that the chief hearing officer assign a hearing officer.

**Section 5.** Prohibits an agency from assigning an "in-house" hearing officer to a case that is governed by the APA.

**Sections 6 - 8.** Provide that APA hearings will be presided over only by a hearing officer, not the agency.

**Section 9.** Technical amendment corresponding to the new subsection (e), added by sec. 11. Subsection (e) specifies circumstances under which a hearing officer issues a final decision, rather than the proposed decision described in sec. 9.

**Section 10.** Provides that in those cases where a hearing officer issues only a proposed decision, the agency may ask the chief administrative hearing officer to assign the same or another hearing officer to take additional evidence before the agency decides the case.

**Section 11.** Adds a new subsection (d) that limits agency discretion with regard to both proposed and final decisions of administrative hearing officers.

Also adds a new subsection (e) that provides that the decision of a hearing officer in a case that is governed by the APA is the final administrative decision, not subject to agency review, but subject to judicial review under AS 44.62.560 - 44.62.570.

**Section 12.** Amends the statute related to the effective date of decisions to accommodate situations where the hearing officer issues a final decision rather than the agency.

**Section 13.** Amends the statute on reconsideration to accommodate situations where the hearing officer issues a final decision rather than the agency.

**Section 14.** Allows a hearing officer to certify facts to the court.

**Section 15.** Defines "chief administrative hearing officer."

**Section 16.** Repeals a provision made obsolete by the other changes in the bill. APA hearings will no longer be "before an agency." They will be before a hearing officer.

Representative Scott Ogan

April 25, 1997

Page 3

**Section 17.** Permits current "in-house" hearing officers to be hired for positions in the new independent division if the person is qualified.

**Section 18.** Effective date of July 1, 1997.

TML:pl

97-120.plm

# HB-232 / SEPARATION OF POWERS

**QUALIFICATIONS HEARING OFFICERS MUST HAVE IF THE GOALS OF DUE PROCESS AND INDIVIDUAL INTEGRITY FOR CITIZENS IS ACHIEVED UNDER HB-232.** (From Journal of the National Assoc. of Administrative Law Judges, Vol. XIX, '94)

## APPENDIX 2 QUALIFICATION STANDARDS ADMINISTRATIVE LAW JUDGE OFFICE OF ADMINISTRATIVE HEARINGS

The purpose of the Office of Administrative Hearings is to promote administrative justice and to serve the public interest. An Administrative Law Judge shall be distinguished for his or her integrity, wisdom and sound legal knowledge, and shall inspire confidence in his or her personal honesty, fairness and moral courage.

A candidate or incumbent shall possess, at a minimum, the following qualifications in order to obtain an appointment to, or retain the position of, Administrative Law Judge.

### Integrity

An Administrative Law Judge shall possess a high degree of personal integrity, and shall deal with his or her appointments as a public trust. An Administrative Law Judge shall be honest, sincere, upright and principled, and shall exhibit compassion, humility and moral courage. An Administrative Law Judge shall be indifferent to private political or partisan influence. An Administrative Law Judge shall not administer the office for the purpose of advancing his or her personal ambitions, and shall not allow other affairs or private interests to interfere with the proper performance of official duties.

### Impartiality

An Administrative Law Judge shall adhere to a high standard of justice and lawfulness, and shall treat all parties impartially and fairly without reference to his or her own feelings or interests. An Administrative Law Judge shall have the ability to preside justly and without bias. An Administrative Law Judge shall exhibit a willingness to hear and consider what is put forth on all sides of a debatable proposition, and shall have the ability to give genuine consideration to views with which he or she does not personally agree.

## The Central Hearing Agency: Theory And Implementation In Maryland

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### Dedication

An Administrative Law Judge shall conduct his or her duties with industry and application and shall be conscientious, studious, thorough and punctual. An Administrative Law Judge shall not allow other affairs or private interests to interfere with the prompt performance of official duties.

### Ability

An Administrative Law Judge shall possess superior self-discipline and shall exercise sound judgment in presiding, ruling on evidence, making decisions, and writing opinions. An Administrative Law Judge shall have the bearing and personality to allow him or her to deal with parties or counsel with sensitivity and without giving offense. An Administrative Law Judge shall be patient, courteous, attentive, yet shall also be firm and decisive. An Administrative Law Judge shall be mentally fit and alert and capable of performing the duties of office.

#### **Ability to Preside:**

An Administrative Law Judge shall conduct hearings with dignity and decorum and without interference which might detract from the proper atmosphere. An Administrative Law Judge shall so conduct himself or herself during hearings that his or her attitude, manner or tone toward attorneys or witnesses will not prevent the proper presentation of the cause or the ascertainment of truth. He or she shall not make an unnecessary display of learning, express a premature judgment, or add to the embarrassment or timidity of witnesses or attorneys. An Administrative Law Judge shall listen readily to others and be detached, even-handed and decisive.

#### **Ability to Rule on Evidence:**

An Administrative Law Judge shall be able to rule on evidence in accordance with applicable laws, rules, procedural regulations and legal precedent.

#### **Ability to Make a Decision**

An Administrative Law Judge shall possess the ability to decide causes before him or her in a fair, unbiased and impartial manner.

**Ability to Write a Decision**

An Administrative Law Judge shall be able to organize facts and legal opinion in a clear and concise manner.

**Knowledge of Law**

An Administrative Law Judge shall administer justice in accordance with the law and regulations governing the cause before him or her.

**Timeliness**

An Administrative Law Judge shall perform his or her duties in a timely manner as may be required in the particular cause.

**Minimum Experience and Education**

An Administrative Law Judge shall, at minimum, possess a Juris Doctor or equivalent degree from an accredited college or university, and be a member in good standing of the bar of any jurisdiction.

In conjunction with the initial formation of the Office of Administrative Hearings, and in order to grandfather into the Office those Hearing Examiners who performed their prior duties in an exemplary manner, individuals may be appointed to the position of Administrative Law Judge prior to February 1, 1990, without regard to this minimum experience and education requirement.<sup>161</sup>

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<sup>161</sup>The Office of Administrative Hearings Administrative Law Judge Qualification Standards went into effect January 1, 1990. A copy of the signed document is on file with the author.

HB 232

269 5225  
276-3697 Fax

Teresa ~~Williams~~ → Williams  
Sponsors may not realize jobs.

- Final dec. by H.O. - atty.
- rather than an agency
  - { citizen bds.
  - { authority stripped

Citizens bds 50-60

Occ lic

Human Rights

Unemployment

APA - all req attys.

Final policy dec. - should be left to bds.

[ ~~§ 13~~ § 11 - Dec Final agency  
dec. not subject to agency review

Cost savings -

ALT Ed Felter  
avail @ 2pm  
Mon 4/28

# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HB 232

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: Administrative Hearing Officers BRU: Trial Courts  
 Component: \_\_\_\_\_  
 Sponsor: Rep. Ogan  
 Requestor: House Judiciary COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265  
 Agency: Alaska Court System Date: 05/02/97  
 Approved by: Stephanie J. Cole, Acting Administrative Director Date: 05/02/97  
 Agency: Alaska Court System

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# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO.** HB232

Revision Date: \_\_\_\_\_ Dept Affected: Natural Resources  
 Title: An Act establishing the independent division BRU: Management & Administration  
of administrative hearings in the Department of Admin... Component: Commissioner's Office  
 Sponsor: Ogan  
 Requestor: (H)JUD Component Serial No. 423

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY98	FY99	FY00	FY01	FY02	FY03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ none

**POSITIONS**

POSITIONS	FY98	FY99	FY00	FY01	FY02	FY03
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

There is no anticipated fiscal impact to the Department of Natural Resources associated with implementation of this legislation.

Prepared by: Carol Carroll, Director *Carol Carroll* Phone: 465-4730  
 Division: Support Services Date: 5-May-97  
 Approved by Commissioner: *John G. Kelly* Date: 5-5-97  
 Agency: Natural Resources

# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO. HB 232**

Revision Date: \_\_\_\_\_ Dept. Affected: Administration  
 Title: Independent Division of Administrative BRU: Office of the Commissioner  
Hearings Component: Administrative Hearings (new)  
 Sponsor: Rep. Ogan  
 Requestor: H Jud COMPONENT SERIAL NO. \_\_\_\_\_

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITUR	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	*	*	*	*	*	*
TRAVEL	*	*	*	*	*	*
CONTRACTUAL	*	*	*	*	*	*
SUPPLIES	*	*	*	*	*	*
EQUIPMENT	*	*	*	*	*	*
LAND & STRUCTURES	*	*	*	*	*	*
GRANTS, CLAIMS	*	*	*	*	*	*
MISCELLANEOUS	*	*	*	*	*	*
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>Total</b>	*	*	*	*	*	*

Estimate of current year (FY 97) cost: \$ \_\_\_\_\_

**POSITIONS:**

FULL-TIME	*	*	*	*	*	*
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

The bill establishes a new independent Division of Administrative Hearings within the Department of Administration. The new division would consist of a Chief Administrative Hearing Officer (additional staffing needs will later be determined).

In order to accomplish the proposes of this bill it appears that funding will be needed, at a minimum, for the Chief Administrative Hearing Officer. How the program is structured will determine whether there will be additional costs. A more definitive fiscal note will be prepared when we have a better understanding of the changes proposed.

Prepared by: Sharon Barton, Director *[Signature]* Phone: 465-5655  
 Division: Administrative Services Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer *[Signature]* Date: 4/28/97  
 Agency: Department of Administration

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# FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HB 232

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Relating to hearing officers BRU: Medical Assistance Admin  
 Component: Hearings and Appeals  
 Sponsor: Ogan COMPONENT SERIAL NO. 1434  
 Requestor: House Judiciary See also (SN#): \_\_\_\_\_

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY98	FY99	FY00	FY01	FY02	FY03
PERSONAL SERVICES	(98.4)					
TRAVEL						
CONTRACTUAL	98.4					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME	-1					
PART-TIME						
TEMPORARY						

Estimate of any current year (FY97) cost: \$0.0


**ANALYSIS:** (Attach a separate page if necessary)

HB 232 creates a new division in the Department of Administration that contains all hearing officers in the state whose appeal process is governed by the Administrative Procedures Act. The only hearing officer in the Department of Health and Social Services meeting this criteria is the hearing officer responsible for health care facility rate and audit appeals for the Medicaid Rate Advisory Commission. The assumption in preparing this fiscal note is that this position will be transferred to the Department of Administration, and funding will be transferred annually through a Reimbursable Services Agreement.

4/16/97  
 Prepared by: Nancy Weller  
 Division: Medical Assistance  
 Approved by Commissioner: Karen Perdue, Commissioner  
 Agency: Department of Health & Social Services

Phone: 465-3355  
 Date: 04/11/97  
 Date: 4/25/97

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<b>PHONE MESSAGE</b>		DATE <i>4/21</i>	TIME <i>4:10</i> A.M. P.M.
FOR	<i>Lisa</i>		<input type="checkbox"/> URGENT <input checked="" type="checkbox"/> PHONED <input type="checkbox"/> RETURNED YOUR CALL <input checked="" type="checkbox"/> PLEASE CALL BACK <input type="checkbox"/> WILL CALL AGAIN <input type="checkbox"/> WAS IN <input type="checkbox"/> WANTS TO SEE YOU
M	<i>Dave Stancliff</i>		
OF			
PHONE (	<i>12338</i>	EXT.	
<input type="checkbox"/> FAX	<input type="checkbox"/> MOBILE	<input type="checkbox"/> PAGER ( )	
MESSAGE			
		SIGNED <i>kt</i>	

*Bill McDonald*  
*Larry Blackman*

## **WHY ALASKA NEEDS INDEPENDENT HEARING OFFICERS ?**

**TO DELIVER HIGH QUALITY ADJUDICATION SERVICES FOR THE STATE OF ALASKA IN A TIMELY, COST EFFICIENT AND COST EFFECTIVE MANNER, WITH RESPECT FOR THE DIGNITY OF INDIVIDUALS AND THEIR DUE PROCESS RIGHTS.**

*When an administrative hearing process in other states gets extremely high marks from the public, legislature, administration, judiciary, as well as the State Bar Associations, while substantially reducing costs to government, and the private sector, we in Alaska need to give it close scrutiny.*

### **BACKGROUND**

At least 18 states have now adopted the Central Panel approach to handling regulation dispute resolution. While it is not possible to list all the practical and political reasons for such adoptions, the following summary of information from Colorado is a good example of both the mission and results of their administrative hearing process.

#### ***FROM COLORADO.....***

- \* **The model act they have provided for our review has been unanimously adopted by the American Bar Association House of Delegates (1997)**
- \* **The Colorado Division of Independent Hearing Officers (Central Panels) reports the following effects of their efforts:**
  1. *Increases efficiencies in all segments of the hearing process*
  2. *Substantially reduces typical hearing delays*
  3. *Reestablishes public confidence in government*
  4. *Builds a better business and investment climate in state*
  5. *Relieves agencies of a burdensome, unpopular process*
  6. *Provides all segments of government large or small, with same high quality of adjudication services*
  7. *Provides for clean budgeting by legislature and agencies*
  8. *Eliminates undue agency influence*
  9. *Reduces court costs by avoiding protracted litigation*
  10. *Reduces agency costs both internally and externally*
  11. *Encourages less controversial regulation*
  12. *Reduces political bias in hearing process*

## **SPECIFIC FINDINGS BASED ON PUBLIC SURVEYS AND AUDITS**

- \* Worker's comp. Premiums have been reduced by 22%
- \* Prior to establishing the Division the State had 40 Hearing Officers for workers comp. Including full time, part time, and contract personnel. After consolidation there were 12 full time Hearing Officers on state payroll. Backlogs have now been reduced by 95%, with average hearing times of 88 days instead of the previous 263 days.
- \* The Hearing Office functions at a 97% approval rating as indicated by those they serve in the public and government.
- \* The Hearing Office has set a goal to not satisfy, but to delight those they serve.
- \* The Hearing Office staff's mission is to further the goal of quality and timely adjudications.
- \* The Hearing Office constantly attempts to match the delivery of services with client expectations.
- \* The overall approval rating for judges is 97% and 96% for staff.
- \* All complaints filed against the Hearing Office are thoroughly investigated, and the complaint process is well advertised and easy to use.

**The Colorado Hearing Office operates on the premise, "When quality culture exists in an adjudication organization, it's accomplishments can be measured and it's successes proven, the organization will survive and prosper in the 21st. century."**

*Perhaps that is why the private sector development interests, have been the driving force in the adoption of these new adjudication procedures which focus not on what is right for government, but what is fair to the citizen under their rights of "due process".*

**Table 1**  
**Actual Expenditures for Administrative Appeals (see note 1 below)**  
(dollars in thousands)

Department	Fiscal Year 1994	Fiscal Year 1995	Fiscal Year 1996
Administration (a)	727.8	886.6	812.8
Commerce and Economic Development (b)	837.4	928.1	1,056.6
Community and Regional Affairs (c)	0.0	0.0	0.0
Corrections (d)	No Response Yet	No Response Yet	No Response Yet
Education (e)	No Response Yet	No Response Yet	No Response Yet
Environmental Conservation (f)	0.0	5.0	75.0
Fish and Game (g)	629.2	614.5	612.6
Health and Social Services (h)	341.7	296.0	353.4
Labor (i)	1,684.7	1,781.6	2,041.0
Law (j)	0.0	0.0	0.0
Military and Veterans' Affairs (k)	0.0	0.0	0.0
Natural Resources (l)	7.0	7.8	0.8
Public Safety (m)	No Response Yet	No Response Yet	No Response Yet
Revenue (n)	370.7	374.1	352.6
Transportation and Public Facilities (o)	114.7	46.0	137.3
University of Alaska (p)	276.2	192.2	205.6
Alaska Court System (q)	2.9	5.3	12.3
Office of the Governor, Lt. Governor, and Division of Elections (r)	16.8	9.6	46.3
<b>Total</b>	<b>5,014.1</b>	<b>5,149.2</b>	<b>5,706.3</b>

**NOTES:**

- (1) We sent a survey to each department and asked for administrative appeals expenditures for fiscal years 1994 through 1996. We asked for the amounts spent for personal services (hearing officers, persons serving in that capacity, and support personnel); contractual arrangements; and other costs including travel, equipment, and supplies. The request also instructed the departments to exclude costs associated with judicial review of administrative procedure. See Table 2 for a breakdown of department expenses by funding source (general fund, federal funds, and other receipts).
- (a) Administration--most expenditures were for labor relations and procurement related appeals.
- (b) Commerce and Economic Development--most expenditures were for occupational licensing appeals.
- (c) Community and Regional Affairs--no expenditures for administrative appeals during fiscal years 1994 through 1996.
- (d) Corrections--has not yet responded to our request for information.
- (e) Education--has not yet responded to our request for information.
- (f) Environmental Conservation--most expenditures were for permit appeals. Since 1989, the department reports that they issuing over 20,000 permits and receiving only 36 hearing requests. Of the 36 requests, only 12 required a formal hearing.
- (g) Fish and Game--most expenditures were for Commercial Fisheries Entry Commission appeals.
- (h) Health and Social Services--most expenditures were for Medicaid and cash benefit appeals.
- (i) Labor--most expenditures were for Workers Compensation and Unemployment Benefit appeals.
- (j) Law--is responsible for representing the state during the appeal process. The department, therefore, does not incur costs for administrative appeals. If, for example, the Department of Law has a procurement issue requiring an appeal, the Department of Administration is responsible for resolving the issue.
- (k) Military and Veterans' Affairs--no expenditures for administrative appeals during fiscal years 1994 through 1996.
- (l) Natural Resources--most expenditures for procurement and regulatory appeals.
- (m) Public Safety--has not yet responded to our request for information.
- (n) Revenue--most expenditures were for permitting, licensing, eligibility, and compliance appeals. They report the the great number of appeals in the areas of permanent fund eligibility and child support enforcement.
- (o) Transportation and Public Facilities--most expenditures were for construction and lease appeals.
- (p) University of Alaska--most expenditures were for labor relations and procurement related appeals as well as student grievances.
- (q) Alaska Court System--expenditures for procurement related appeals.
- (r) Office of the Governor--expenditures for hearings before the Human Rights Commission.

**SOURCES:** Personal contacts with officials in each department listed.

**DRAFT**

**DRAFT**

**TABLE 2**  
**Actual Expenditures for Administrative Appeals (see note 1 below)**  
**Fiscal Years 1994-1996**  
**(dollars in thousands)**

Department	Fiscal Year 1994				Fiscal Year 1995				Fiscal Year 1996			
	Federal Receipts	General Fund	Other Receipts	Total	Federal Receipts	General Fund	Other Receipts	Total	Federal Receipts	General Fund	Other Receipts	Total
Administration	0.0	727.8	0.0	727.8	0.0	886.6	0.0	886.6	0.0	812.8	0.0	812.8
Commerce and Economic Development	0.0	820.4	17.0	837.4	0.0	911.1	17.0	928.1	0.0	1,056.6	17.0	1,056.6
Community and Regional Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Corrections												
Education												
Environmental Conservation	0.0	5.0	0.0	5.0	0.0	7.4	0.0	7.4	0.0	75.0	0.0	75.0
Fish and Game	0.0	629.2	0.0	629.2	0.0	614.5	0.0	614.5	0.0	612.6	0.0	612.6
Health and Social Services	170.3	171.4	0.0	341.7	147.3	148.7	0.0	296.0	142.0	162.2	49.2	353.4
Labor	682.7	1,002.0	0.0	1,684.7	735.1	1,046.5	0.0	1,781.6	852.1	1,188.9	0.0	2,041.0
Law	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Military and Veterans' Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Natural Resources	0.0	7.0	0.0	7.0	0.0	7.8	0.0	7.8	0.0	0.8	0.0	0.8
Public Safety												
Revenue	0.0	90.3	280.4	370.7	101.4	39.2	233.5	374.1	123.5	39.5	189.8	352.6
Transportation and Public Facilities	114.7	0.0	0.0	114.7	14.4	9.6	22.0	46.0	112.2	0.7	24.4	137.3
University of Alaska	0.0	276.2	0.0	276.2	0.0	192.2	0.0	192.2	0.0	205.6	0.0	205.6
Alaska Court System	0.0	2.9	0.0	2.9	0.0	5.3	0.0	5.3	0.0	12.3	0.0	12.3
Office of the Governor, Lt. Governor, and Division of Elections	0.0	16.8	0.0	16.8	0.0	9.6	0.0	9.6	0.0	46.3	0.0	46.3
<b>Total</b>	<b>967.7</b>	<b>3,749.0</b>	<b>297.4</b>	<b>5,014.1</b>	<b>998.2</b>	<b>3,878.5</b>	<b>272.5</b>	<b>5,149.2</b>	<b>1,229.8</b>	<b>4,213.3</b>	<b>263.4</b>	<b>5,706.3</b>

**NOTES:**

(1) We sent a survey to each department and asked for administrative appeals expenditures for fiscal years 1994 through 1996. We asked for the amounts spent for personal services (hearing officers, persons serving in that capacity, and support personnel); contractual arrangements; other costs including travel, equipment, and supplies. The request also instructed the departments to exclude costs associated with judicial review of administrative procedures. See Table 1 for additional notes.

**SOURCES:** Personal contacts with officials in each department listed.

**DRAFT**

**DRAFT**

HOUSE BILL NO. 232

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE OGAN

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the independent division of administrative hearings in the  
2 Department of Administration in order to provide a source of independent  
3 administrative hearing officers to preside in contested cases; relating to  
4 administrative hearing officers; relating to contested case proceedings; and  
5 providing for an effective date."

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

7 \* Section 1. PURPOSE AND INTENT. The purpose of this Act is to increase the  
8 separation between the adjudicatory functions of executive branch agencies and the agencies'  
9 investigatory, prosecutory, and policy-making functions. The legislature intends by this Act  
10 to provide for the delivery of high quality adjudication services in a timely, efficient, and cost-  
11 effective manner that will ensure respect for the dignity of the individuals whose cases are  
12 being adjudicated and guarantee protection of their due process rights.

13 \* Sec. 2. AS 44.21.020 is amended to read:

1           **Sec. 44.21.020. Duties of department.** The Department of Administration  
2 shall

3                   (1) make surveys and studies to improve administrative procedures,  
4 methods, and organization;

5                   (2) keep general accounts;

6                   (3) approve vouchers and disburse funds for all purposes;

7                   (4) operate centralized purchasing and supply services, and necessary  
8 storerooms and warehouses;

9                   (5) allot space in state buildings to the various departments according  
10 to need and available space;

11                   (6) supervise telephone, mailing, messenger, duplicating, and similar  
12 services adaptable to centralized management;

13                   (7) administer the public employees' retirement system and teachers'  
14 retirement system;

15                   (8) administer a statewide personnel program, including central  
16 personnel services such as recruitment, examination, position classification, and pay  
17 administration;

18                   (9) administer the Alaska Pioneers' Homes;

19                   (10) administer and supervise a statewide automatic data processing  
20 program;

21                   (11) study, design, implement, and manage the telecommunications  
22 systems and services of the state under AS 44.21.305 - 44.21.330;

23                   (12) [REPEALED

24                   (13)] administer state veterans' home facilities; in carrying out its duties  
25 under this paragraph, the department shall consult with the Department of Military and  
26 Veterans' Affairs;

27                   (13) perform, through the chief administrative hearing officer, the  
28 duties of the independent division of administrative hearings under AS 44.21.510 -  
29 44.21.590 and AS 44.62.330 - 44.62.630.

30 \* Sec. 3. AS 44.21 is amended by adding new sections to read:

31           **Article 9. Independent Division of Administrative Hearings.**

1           **Sec. 44.21.510. Division created.** (a) There is created in the Department of  
2 Administration an independent division of administrative hearings headed by the chief  
3 administrative hearing officer.

4           (b) The chief administrative hearing officer

5                 (1) shall be appointed by the commissioner of administration;

6                 (2) must be licensed to practice law in this state and have been  
7 admitted to practice law for at least five years;

8                 (3) shall devote full time to the duties set out in AS 44.21.520 and may  
9 not engage in the private practice of law for compensation while holding the office of  
10 chief administrative hearing officer;

11                (4) is subject to the code of conduct adopted under AS 44.21.520(a)(8).

12           **Sec. 44.21.520. Powers and duties of chief administrative hearing officer.**

13           (a) The chief administrative hearing officer shall

14                 (1) supervise the independent division of administrative hearings;

15                 (2) employ staff, including hearing officers, who shall be in the  
16 classified service;

17                 (3) assign a hearing officer employed by the division to a contested  
18 case that is governed by AS 44.62.330 - 44.62.630; if there is no qualified employee  
19 of the division available to be assigned to a particular contested case, the chief  
20 administrative hearing officer shall designate in writing an individual to serve on a  
21 temporary contract basis as an administrative hearing officer in that proceeding; a  
22 temporary administrative hearing officer must meet the professional qualifications and  
23 standards applicable to permanent employees of the division who are hearing officers  
24 but need not be on a register maintained under AS 39.25;

25                 (4) protect and ensure the decisional independence of each hearing  
26 officer;

27                 (5) provide materials and establish and implement standards and  
28 specialized training programs for hearing officers;

29                 (6) provide and coordinate continuing education programs and services  
30 for hearing officers, including research, technical assistance, and technical and  
31 professional publications; compile and disseminate information to hearing officers; and

1 advise hearing officers of changes in the law relative to their duties;

2 (7) monitor the quality of state administrative hearings, including  
3 contested case proceedings, whether governed by AS 44.62 (Administrative Procedure  
4 Act) or not, and submit an annual report to the governor that includes a description of  
5 the activities of the division and recommendations for statutory changes, if any, that  
6 may be needed in relation to administrative hearings held by the division or other  
7 agencies;

8 (8) adopt a code of conduct, based on the applicable canons of the code  
9 of judicial conduct, to ensure the integrity and independence of the chief administrative  
10 hearing officer and other hearing officers who are employees or contractors with the  
11 division;

12 (9) adopt regulations under AS 44.62 (Administrative Procedure Act)  
13 to implement AS 44.21.510 - 44.21.590 and the duties of the chief administrative  
14 hearing officer and hearing officers assigned by the chief administrative hearing officer  
15 under AS 44.62.330 - 44.62.630.

16 (b) The chief administrative hearing officer may

17 (1) serve as a hearing officer in a contested case;

18 (2) set the requirements to be used under AS 39.25 to establish a  
19 register of persons qualified to be hearing officers for contested cases governed by  
20 AS 44.62.330 - 44.62.630; the requirements must include admission to the practice of  
21 law in this state and the practice of law in this state for at least five years preceding  
22 employment by the division;

23 (3) on request of a governmental agency, assign a hearing officer to a  
24 contested case that is not governed by AS 44.62.330 - 44.62.630 or to another type of  
25 hearing through a contract with the requesting agency;

26 (4) accept money, grants, bequests, and services that are consistent with  
27 the purpose of the division from any public or private source.

28 **Sec. 44.21.530. Hearing officers.** (a) In addition to the powers and duties  
29 specified in AS 44.62.330 - 44.62.630, a hearing officer who is an employee or  
30 contractor with the division

31 (1) may engage in or encourage the use of alternative dispute resolution

1 methodologies, as appropriate, in a case to which the hearing officer is assigned;

2 (2) may order a party, a party's attorney, or another authorized  
3 representative of a party to pay reasonable expenses, including attorney fees, incurred  
4 by another party as a result of actions done in bad faith or as a result of tactics used  
5 frivolously or solely intended to cause unnecessary delay;

6 (3) may perform other necessary and appropriate acts in the  
7 performance of official duties; and

8 (4) is subject to the code of conduct established under  
9 AS 44.21.520(a)(8).

10 (b) A hearing officer employed by the division

11 (1) may not perform duties inconsistent with the duties and  
12 responsibilities of a hearing officer;

13 (2) shall, unless appointed to a position that is less than full-time,  
14 devote full-time to the duties of the division;

15 (3) may not engage in the private practice of law for compensation  
16 while holding a full-time position with the division.

17 (c) A hearing officer may not be made responsible to, nor be subject to the  
18 supervision, direction, or direct or indirect influence of, an officer, employee, or agent  
19 engaged in the performance of investigatory, prosecutory, or advisory functions for a  
20 state agency.

21 **Sec. 44.21.540. Cooperation of other state agencies.** (a) State agencies shall  
22 cooperate with the chief administrative hearing officer and with other hearing officers  
23 assigned by the chief administrative hearing officer in the discharge of their duties of  
24 office.

25 (b) Except as otherwise provided by law for an arbitration or similar  
26 proceeding or in special circumstances recognized in regulations adopted under this  
27 chapter, an agency may not select or reject a particular administrative hearing officer  
28 who was assigned by the chief administrative hearing officer.

29 (c) After a matter is referred to the division by an agency, the referring agency  
30 may not take further adjudicatory action with respect to the proceeding, except as a  
31 party litigant or to render the final decision in the case under AS 44.62.500, as long

1 as the division has jurisdiction over the proceeding.

2 Sec. 44.21.590. Definition. In AS 44.21.510 - 44.21.590, "division" means  
3 the independent division of administrative hearings.

4 \* Sec. 4. AS 44.62.350(a) is amended to read:

5 (a) The governor shall assign a qualified, unbiased, and impartial hearing  
6 officer, with experience in the general practice of law, to conduct hearings under this  
7 chapter unless the hearings are for contested cases that are governed by  
8 AS 44.62.330 - 44.62.630 or are for cases for which an agency has voluntarily  
9 requested that a hearing officer be assigned by the chief administrative hearing  
10 officer. For a hearing that is a contested case governed by AS 44.62.330 -  
11 44.62.630 or that is a case for which an agency has voluntarily requested that a  
12 hearing officer be assigned by the chief administrative hearing officer, the chief  
13 administrative hearing officer shall assign a hearing officer under regulations  
14 adopted by the chief administrative hearing officer to implement AS 44.21.510 -  
15 44.21.590 and this section. The hearing officer may perform other duties in  
16 connection with the administration of this chapter and other laws.

17 \* Sec. 5. AS 44.62.350(b) is amended to read:

18 (b) An agency with hearing officers may continue their employment as hearing  
19 officers on an unbiased and impartial basis within the particular agency and may hire  
20 additional officers and prescribe additional qualifications. However, a hearing officer  
21 within an agency other than the independent division of administrative hearings  
22 may not be assigned to a contested case that is governed by AS 44.62.330 -  
23 44.62.630.

24 \* Sec. 6. AS 44.62.450(a) is amended to read:

25 (a) A hearing in a contested case shall be presided over by a hearing officer.  
26 [THE AGENCY ITSELF SHALL DETERMINE WHETHER THE HEARING  
27 OFFICER HEARS THE CASE ALONE OR WHETHER THE AGENCY HEARS  
28 THE CASE WITH THE HEARING OFFICER.]

29 \* Sec. 7. AS 44.62.450(b) is amended to read:

30 (b) The [IF THE AGENCY HEARS THE CASE THE HEARING OFFICER  
31 SHALL PRESIDE AT THE HEARING, RULE ON THE ADMISSION AND

1 EXCLUSION OF EVIDENCE, AND ADVISE THE AGENCY ON MATTERS OF  
2 LAW. THE AGENCY SHALL EXERCISE ALL OTHER POWERS RELATING TO  
3 THE CONDUCT OF THE HEARING, BUT MAY DELEGATE ANY OR ALL OF  
4 THESE OTHER POWERS TO THE HEARING OFFICER. IF THE HEARING  
5 OFFICER HEARS A CASE ALONE, THE] hearing officer shall exercise all powers  
6 relating to the conduct of the hearing.

7 \* Sec. 8. AS 44.62.450(c) is amended to read:

8 (c) A hearing officer [OR AGENCY MEMBER] shall voluntarily seek  
9 disqualification and withdraw from a case in which the hearing officer [OR AGENCY  
10 MEMBER] cannot accord a fair and impartial hearing or consideration. A party may  
11 request the disqualification of a hearing officer [OR AGENCY MEMBER] by filing  
12 an affidavit, before the taking of evidence at a hearing, stating with particularity the  
13 grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.  
14 The [IF THE REQUEST CONCERNS AN AGENCY MEMBER THE ISSUE SHALL  
15 BE DETERMINED BY THE OTHER MEMBERS OF THE AGENCY. IF THE  
16 REQUEST CONCERNS THE HEARING OFFICER, THE] issue shall be determined  
17 [BY THE AGENCY WHEN THE AGENCY HEARS THE CASE WITH THE  
18 HEARING OFFICER, AND] by the hearing officer [WHEN THE OFFICER HEARS  
19 THE CASE ALONE. AN AGENCY MEMBER MAY NOT WITHDRAW  
20 VOLUNTARILY OR BE DISQUALIFIED IF THE DISQUALIFICATION WOULD  
21 PREVENT THE EXISTENCE OF A QUORUM QUALIFIED TO ACT IN THE  
22 PARTICULAR CASE].

23 \* Sec. 9. AS 44.62.500(b) is amended to read:

24 (b) Except as provided in (e) of this section [IF A CONTESTED CASE IS  
25 HEARD BY A HEARING OFFICER ALONE], the hearing officer shall prepare a  
26 proposed decision in a form that may be adopted as the decision in the case. A copy  
27 of the proposed decision shall be filed by the agency as a public record with the  
28 lieutenant governor, and a copy of the proposed decision shall be served by the agency  
29 on each party in the case and the party's attorney. Except as provided in (e) of this  
30 section, the [THE] agency itself may adopt the proposed decision in its entirety, or  
31 may reduce the proposed penalty and adopt the balance of the proposed decision.

1 \* Sec. 10. AS 44.62.500(c) is amended to read:

2 (c) If the proposed decision is not adopted as provided in (b) of this section,  
3 the agency may decide the case upon the record, including the transcript, with or  
4 without taking additional evidence, or may refer the case to the chief administrative  
5 [SAME OR ANOTHER] hearing officer with a request to assign the same or  
6 another hearing officer to take additional evidence. If the case is so assigned, the  
7 hearing officer shall prepare a proposed decision as provided in (b) of this section  
8 upon the additional evidence and the transcript and other papers that are part of the  
9 record of the earlier hearing. A copy of the proposed decision shall be furnished to  
10 each party and the party's attorney as prescribed by (b) of this section. The agency  
11 may not decide a case provided for in this subsection without giving the parties the  
12 opportunity to present either oral or written argument before the agency. If additional  
13 oral evidence is introduced before the agency, an agency member may not vote unless  
14 that member has heard the additional oral evidence.

15 \* Sec. 11. AS 44.62.500 is amended by adding new subsections to read:

16 (d) An agency may not

17 (1) modify, reverse, or remand the proposed decision of a hearing  
18 officer unless it specifies on the record the reasons for the modification, reversal, or  
19 remand; this paragraph does not apply to a modification to reduce a proposed penalty;  
20 or

21 (2) modify, reverse, remand, or order reconsideration of the final  
22 decision of a hearing officer in a case governed by (e) of this section.

23 (e) Notwithstanding AS 44.62.340 or any other law, the decision of a hearing  
24 officer in a case that, by law, is governed by the contested case procedures of  
25 AS 44.62.330 - 44.62.630 is the final administrative decision, not subject to agency  
26 review. In addition, an agency that voluntarily uses a hearing officer assigned to a  
27 case by the chief administrative hearing officer may authorize the hearing officer to  
28 make the final administrative decision in the case. A copy of the final administrative  
29 decision in a case governed by this subsection shall be served by the chief  
30 administrative hearing officer on each party in the case and the party's attorney. The  
31 chief administrative hearing officer shall file the decision as a public record with the

1 lieutenant governor. The appeal of a final decision under this subsection is governed  
 2 by AS 44.62.560 - 44.62.570. Reconsideration of the final decision is governed by  
 3 AS 44.62.540.

4 \* Sec. 12. AS 44.62.520(a) is amended to read:

5 (a) A decision becomes effective 30 days after it is delivered or mailed to the  
 6 respondent unless

7 (1) a reconsideration is ordered within that time;

8 (2) the agency itself, or the hearing officer in a case where the final  
 9 decision is made by a hearing officer, orders that the decision become effective  
 10 sooner; or

11 (3) a stay of execution is granted for a particular purpose and not to  
 12 postpone judicial review.

13 \* Sec. 13. AS 44.62.540 is amended to read:

14 Sec. 44.62.540. Reconsideration. (a) Except as provided in  
 15 AS 44.62.500(d), the [THE] agency or the hearing officer who heard the case may  
 16 order a reconsideration of all or part of the case on its own motion or on petition of  
 17 a party. To be considered by the agency or the hearing officer, a petition for  
 18 reconsideration must be filed with the agency or the independent division of  
 19 administrative hearings within 15 days after delivery or mailing of the decision. The  
 20 power to order a reconsideration expires 30 days after the delivery or mailing of a  
 21 decision to the respondent. If no action is taken on a petition within the time allowed  
 22 for ordering reconsideration, the petition is considered denied.

23 (b) In a case where the final decision was rendered by the agency, the  
 24 [THE] case may be reconsidered by the agency on all the pertinent parts of the record  
 25 and the additional evidence and argument that are permitted, or the agency may  
 26 request the chief administrative hearing officer to assign the reconsideration [BE  
 27 ASSIGNED] to a hearing officer. A reconsideration assigned to a hearing officer is  
 28 subject to the procedure provided in AS 44.62.500. If oral evidence is introduced  
 29 before the agency, an agency member may not vote unless that member has heard the  
 30 evidence. In a case where the final decision was rendered by a hearing officer, the  
 31 case may be reconsidered by the hearing officer on all the pertinent parts of the

1        record and the additional evidence and argument that are permitted.

2        \* Sec. 14. AS 44.62.590(a) is amended to read:

3            (a) In a proceeding before an agency or hearing officer, the agency or  
4        hearing officer shall certify the facts to the superior court in the judicial district where  
5        the proceeding is held if a person in the proceeding

6            (1) disobeys or resists a lawful order;

7            (2) refuses to respond to a subpoena;

8            (3) refuses to take oath or affirmation as a witness;

9            (4) refuses to be examined; or

10          (5) is guilty of misconduct at a hearing or so near the hearing as to

11        obstruct the proceeding.

12        \* Sec. 15. AS 44.62.640(b) is amended by adding a new paragraph to read:

13            (6) "chief administrative hearing officer" means the person appointed  
14        under AS 44.21.510 to supervise the independent division of administrative hearings,  
15        Department of Administration.

16        \* Sec. 16. AS 44.62.500(a) is repealed.

17        \* Sec. 17. TRANSITIONAL PROVISION. A hearing officer who is employed by an  
18        agency on July 1, 1997, may be hired as an employee of the independent division of  
19        administrative hearings established under AS 44.21.510, enacted by sec. 3 of this Act, if the  
20        person applies for a position with the division and meets the qualifications established for the  
21        position.

22        \* Sec. 18. This Act takes effect July 1, 1997.

HB- 232      SEPARATION OF POWERS CONTACTS

ED FELTER, CHIEF ADMINISTRATIVE LAW JUDGE (ALJ) COLORADO  
303-894-2500

\*Ed provided the model for the bill. He has indicated a willingness to testify in person or by teleconference as an expert on both the model, and the administration of the act itself. Very very enthusiastic and anxious to assist.

JOHN HARDWICKE, CHIEF (ALJ), MARYLAND  
410-229-4100

\* John has also indicated a willingness to provide expert testimony. He is very familiar with all aspects of Administrative law and cutting edge adjudication methods. HB-232 is based most closely on Maryland's Central Panel.

CHUCK TURNER, HEAD OF COLORADO STATE BAR ASSOCIATION  
303-860-1115

\* Chuck has offered to contact our bar association and provide encouragement for establishing central panels in Alaska. He represents both providers and beneficiaries who use the Colorado Division of Hearings and is very happy with the system.

OTHER PERSONS NOT YET CALLED WHO WOULD BE WILLING TO SPEAK FROM THEIR PERSPECTIVE ON THE BENEFITS OF CENTRAL PANELS ARE:

\* BRUCE DOUGLAS, ADMINISTRATOR FROM COLORADO  
303-894-7711

\* FREDERICK MILES, PRIVATE SECTOR ATTORNEY FROM COLORADO  
303-892-9900

William Donald Schaefer  
Governor



John W. Hardwicke  
Chief Administrative Law Judge

James G. Klair  
Deputy Chief Administrative  
Law Judge

## OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW BUILDING  
GREEN SPRING STATION  
10753 FALLS ROAD  
LUTHERVILLE, MARYLAND 21093  
(301) 321-3993  
FAX 301-321-2040

WRITER'S DIRECT DIAL NO.

SUNDAY, JULY 7, 1991

THE SUN

# The Government Has Done Something Right

By BARRY RASCOVAR

has been called "the biggest success story in state government" and "the sleeper of the year." For once, it seems, government has done something right.

The result: a streamlined system, savings to the taxpayer and a quasi-judicial agency praised for its fair-

ness. A few outside of state government have ever heard of the Office of Administrative Hearings. The name smacks of bureaucratic gobble-  
gook. But the job it is doing is important and a vast improvement over the badly flawed system that preceded it.

The way it used to work, each agency had its own set of rules to handle personnel grievances, appeals against employees, motor vehicle violations and hearings over tenants' rights in state institutions. Hearing examiners were housewives — dependent on following their bosses' wishes if they wanted to get ahead.

The result was a system in which workers felt the deck had been stacked against them. Often it had. Objectivity, fairness and qualifications of hearing examiners to pass judgment were open to question. Legislators described the system as a shambles.

A broad coalition of alarmed interest groups — ranging from the bar association to state em-

ployee unions to the Chamber of Commerce — pressed the governor to appoint a study group. It recommended junking the old system and establishing the OAH.

Over strong objections from entrenched bureaucrats, the General Assembly passed the bill, and the governor, despite his initial misgivings, signed it.

In its first year of operation, 1990, OAH proved a smashing success, with some agencies now eager to throw far more civil adjudication cases to these administrative law judges.

Because the OAH examiners are clearly independent of state agencies, workers know they will get an impartial hearing. And because the OAH has enhanced training of these hearing officers, they are far better versed in administrative law. Uniform procedural standards have been set up. Both sides now feel they get a fair shake.

Much of the credit for this turnaround goes to John W. Hardwicke, the veteran Republican who stepped down as president of the Harford County Council to set up the OAH from scratch.

Not only has he whipped the hearing officers into shape with solid

training, but he has also managed to cut the operating budget by \$1 million and reduce the number of hearing examiners from 73 to 68 — even while watching the workload of his office grow.

The Office of Administrative Hearings handled 60,000 cases last year. A centralized OAH meant a more efficient use of personnel, with examiners cross-trained in different areas of administrative law.

Starting this month, the office expects to handle another 1,200 cases a year from prison inmate grievances and forced-medication hearings at state hospitals.

Not all has been upbeat, though. Top officials in the personnel department and in the state licensing agency fought against the OAH from the outset.

Personnel Secretary Hilda Ford, in particular, has been vehement in her opposition, strongly urging the governor to veto the bill creating the OAH (she failed) and another bill this year to broaden the scope of the OAH (she won that fight). Licensing Secretary William Fogle has been hostile, too. Bureaucrats hate to give up any of their fiefdom.

Still, the notion of a consolidated hearing office has worked. The OAH

has become a national model for other states to copy. Many high-ranking officials believe this approach holds vast potential for quick and fair resolution of other non-criminal matters.

Far more motor vehicle cases, for instance, could be shifted to the OAH to help relieve long waits for hearings at the MVA. The Office of Administrative Hearings could also be a way to relieve overcrowded court dockets and cut the backlog of non-criminal hearings at prisons.

If budget problems don't get in the way, Mr. Hardwicke intends to vigorously pursue the cross-training program for hearing examiners.

He hopes, with the help of a computerized hearing schedule, to send one or two examiners out to Western Maryland to conduct a vast array of hearings for state agencies over a short period of time. That could greatly enhance the office's efficiency and speed the resolution of cases.

Too often, all we hear about government are the horror stories. We learn about the mistakes and costly missteps. "News" is usually defined as what's going wrong, not what's going right.

Here's one agency that has gotten it right. Mr. Hardwicke and the OAH deserve a pat on the back.

Barry Rascovar is deputy editor of the editorial pages of The Sun.

MEMO TO: House Judiciary Committee

FROM: Edward H. Hein 

RE: HB 232 -- Independent Division of Administrative Hearings

DATE: January 26, 1998

**NOTE: I am the Chief Appeals Officer of the National Marine Fisheries Service for the Alaska Region, and a member of the Alaska Bar Association. This memorandum does not necessarily represent or reflect the views of the Alaska Bar Association, the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, the U.S. Department of Commerce, or the United States Government. The bill is supported by the National Association of Administrative Law Judges, of which I am also a member.**

**Sectional analysis of HB 232**

Sec. 1. Purpose and Intent is to provide for:

- increased separation of the administrative adjudication function from agencies' investigative, prosecutory, and policy-making functions;
- the rendering of high-quality, timely administrative adjudications;
- respect & dignity of parties and a guarantee of due process protections in administrative hearings.

Sec. 2. Adds responsibility for the Independent Division of Administrative Hearings [IDAH] and Chief Administrative Hearing Officer [CAHO] to the Department of Administration's duties.

Sec. 3. Creates the Independent Division of Administrative Hearings. Adds new Article 9 to AS 44.21. [New sections]:

AS 44.21.510. Division and Chief Administrative Hearing Officer

(a) Places IDAH in Department of Administration, to be headed by a Chief Administrative Hearing Officer [CAHO].

(b) Specifies that CAHO will be appointed by Commissioner of Administration; must be an Alaska licensed attorney, admitted to practice for 5 years; must devote full time to the position and may not practice law privately for compensation while in office.

AS 44.21.520. Powers & duties of CAHO

(a) Mandatory duties: supervise division; hire hearing officers and staff; assign cases for hearings; contract with temporary hearing officers if no qualified hearing officer is available within IDAH to hear particular cases; ensure decisional independence of hearing officers; establish and implement standards and training programs for hearing officers; monitor

qualify of state's administrative hearings; submit annual report to governor; adopt a code of conduct for hearing officers; adopt regulations to implement this legislation.

(b) Discretionary powers: CAHO may serve as a hearing officer in individual cases; set requirements for establishing a register of qualified hearing officers (licensed Alaska attorneys with 5 years' law practice); assign hearing officers to non-Article 8 cases at agencies' request; receive appropriate money, grants, gifts, and services from public and private sources.

AS 44.21.530. Powers of, and restrictions on, hearing officers.

(a) In addition to other specified duties, hearing officers: may engage in alternative dispute resolution (ADR) methods; may order a party to pay reasonable expenses of other side for frivolous or bad-faith actions; is subject to a code of conduct established by CAHO.

(b) Hearing officers: may not perform duties inconsistent with responsibilities; must devote full-time to duties (unless appointed to part-time position); may not engage in private practice of law for compensation.

(c) Hearing officers cannot be subject to supervision or influence by agency employees engaged in investigations, prosecutions, or advisory functions.

AS 44.21.540. Cooperation of other state agencies

(a) Agencies must cooperate with division and chief

(b) Agencies may not select or reject particular hearing officers assigned by CAHO, except as otherwise provided by law for arbitration or similar proceedings or special circumstances recognized in regulations.

(c) Agencies cannot take further action in the proceeding after matter is referred to the division.

AS 44.21.590. Defines "division" as IDAH for purposes of Article 9 of AS 44.21.

Sec. 4. Amends AS 44.62.350(a) to shift authority to appoint hearing officers from governor to CAHO in contested cases governed by APA Article 8 or when an agency has requested CAHO to assign a hearing officer.

Sec. 5. Amends AS 44.62.350(b) to prohibit agency hearing officers from hearing cases governed by IDAH.

Sec. 6. Amends AS 44.62.450(a) by deleting agencies' authority to determine whether agency will hear contested cases along with the hearing officer.

Sec. 7. Amends AS 44.62.450(b) by eliminating agencies' presiding over hearings in contested cases.

Sec. 8. Amends AS 44.62.450(c) by deleting agency members from recusal provision for contested cases.

Sec. 9. Clean-up amendment of AS 44.62.500(b), concerning proposed decisions, reflecting changes in Secs. 6-8, and 11.

Sec. 10. Amends AS 44.62.500(c) [APA] to provide that if the proposed decision in a contested case is not adopted by the agency, the agency may decide the case or refer it to the CAHO for assignment to the same or a different hearing officer.

Sec. 11. Adds new subsections (d) and (e) to AS 44.62.500 [APA] to provide that:

(d) an agency must specify on the record the reasons for modifying, reversing, remanding, or order reconsideration of a proposed decision; and prohibits the agency from taking action to change a hearing officer's final decision.

(e) hearing officers' decisions in adjudications under APA Article 8 are final decisions, not subject to agency review; agencies that voluntarily use IDAH hearing officers may authorize the hearing officer to make the final administrative decision in the case; copies of the decision must be served on the parties and filed with the Lieutenant Governor; provides for judicial review and reconsideration of hearing officers' final decisions.

Sec. 12. Amends AS 44.62.520(a) to allow hearing officers to order an effective date of decision sooner than 30 days.

Sec. 13. Amends AS 44.62.540 to provide for reconsideration of cases by hearing officers.

Sec. 14. Amends AS 44.62.590(a) to add hearing officers to provisions for certifying facts regarding contempt to the superior court.

Sec. 15. Amends AS 44.62.640(b) to add definition of "chief administrative hearing officer."

Sec. 16. Repeals AS 44.62.500(a), which had provided for agencies to hear contested cases, but had required the hearing officer who presided at the hearing to be present during consideration of the case and, if requested, to advise the agency.

Sec. 17. Transitional provision allowing existing state hearing officers to be eligible for hiring as hearing officers with the IDAH.

Sec. 18. Effective date.

## **Comparison of HB 232 with ABA Model Act Creating a State Central Hearing Agency (1997)**

Model Act was originally proposed and drafted by the National Association of Administrative Law Judges [NAALJ] in 1995. It was circulated and discussed among all state central panel chief judges before being approved unanimously by the American Bar Association's House of Delegates on February 3, 1997.

The Model Act, like HB 232, provides for establishment of a professional corps of independent administrative law judges [ALJs] who will, in appearance and in fact, be separated from potential bias, conflicts of interest, and undue influence of the state administrative agencies whose actions the ALJs review in contested cases brought by private parties.

The Model Act provides for the establishment of an Office of Administrative Hearings [OAH], to be headed by a Chief Administrative Law Judge. The Act is set out in 15 sections.

### **Sec. 1-1 Scope.**

The Model Act exempts from coverage all Legislative and Judicial branch agencies, the Governor, and individual executive departments and agencies specified by the Legislature. It allows the Governor to temporarily exempt individual agencies during the first year after the Act takes effect. Within the Executive branch, all non-exempted agencies having hearing officers or ALJs would be covered by the Act.

HB 232 covers only agencies listed in AS 44.62.330, whose administrative adjudications in contested cases are governed by Article 8 of the Administrative Procedure Act. Other Executive branch agencies may request that IDAH hearing officers be assigned to decide their cases on an individual basis.

### **Sec. 1-2 Establishment and Appointment of Administrative Law Judges**

The Model Act creates the Office of Administrative Hearings as an independent agency in the Executive branch. The Act proposes that ALJs would be selected and appointed either by: 1) the Governor, after screening and recommendation by a judicial nominating commission; 2) competitive examination in the classified service; or 3) the CAHO. The Model Act would automatically make all existing state hearing officers employees of the IDAH, and would exempt such grandfathered hearing officers from the qualification requirements of the Act.

HB 232 makes the IDAH an independent Executive branch agency within the Department of Administration. The bill specifies that IDAH hearing officers are to be hired by the CAHO. Existing state hearing officers do not automatically become employees of the IDAH, but all who apply are eligible for such employment under the bill's transitional provision. The bill does not clearly state whether such hearing officers must meet the qualifications specified elsewhere in the bill [Alaska licensed attorneys with 5 years law practice], nor does it require the CAHO to hire any of them.

### Sec. 1-3 Responsibility.

The Model Act provides that the Office of Administrative Hearings shall handle all contested administrative cases, except as otherwise provided in the Act. An optional provision would also exempt cases heard by the heads or governing bodies of individual agencies without a hearing officer.

HB 232 removes the authority of covered agencies to conduct their own hearings in contested cases. Exempted agencies would continue to be able to conduct their own hearings.

### Sec. 1-4 Chief Administrative Law Judge - In General.

The Model Act provides that the Chief Administrative Law Judge would be either: 1) appointed by the Governor, with advice and consent of the Senate for a term of years; or 2) under the classified service and hired through competitive examination. In either event, the Chief ALJ could be removed only for good cause following notice and an opportunity for an administrative hearing. A removed Chief ALJ would continue in office until a successor is appointed.

HB 232 provides that the CAHO is appointed by the Commissioner of Administration. No term of office is specified and no grounds for removal are stated. Presumably the CAHO's term and removal would be governed by the same provisions that govern other division directors appointed by the commissioner.

The Model Act mandates that the Chief Administrative Law Judge must: take an oath of office; devote full time to the duties of the office; be eligible for reappointment; receive the salary provided in the state budget [or the same salary as a state judge]; be currently licensed to practice law in the state and have been licensed for at least 5 years; and be subject to a code of conduct for ALJs. The Chief Administrative Law Judge may employ staff within the state budget.

HB 232 provides that the CAHO must be an Alaska licensed attorney, admitted to practice for 5 years; must devote full time to the position and may not practice law privately for compensation while in office.

### Sec. 1-5 Chief Administrative Law Judge — Powers and Duties.

The Model Act requires the Chief Administrative Law Judge to supervise the Office of Administrative Hearings [OAH]; assign ALJs to cases referred to the OAH; protect and ensure the decisional independence of each ALJ; establish and implement standards and specialized training programs for ALJs; adopt rules to implement the Act; adopt a code of conduct for ALJs; monitor the quality of state administrative hearings; submit an annual report on the OAH to the Governor [and the Legislature]; [cooperate and assist with a State Advisory Council, if any].

The Model Act authorizes the Chief Administrative Law Judge to serve as an ALJ in individual contested cases; [establish qualifications for the selection of ALJs]; furnish ALJs to other agencies by contract; accept funds, grants, gifts, and services related to the purposes of the OAH; enter into contracts with public and private agencies or educational institutions; and [create specialized subject matter divisions within the OAH].

HB 232 provides virtually all the same powers and duties as the Model Act.

#### Sec. 1-6 Administrative Law Judges

The Model Act provides that ALJs shall: take an oath of office; be admitted to law practice [in the state][for at least 5 years]; be subject to the requirements and protections of state employment [classified service employees' protections]; be removed or disciplined only for good cause, after notice and an opportunity to be heard in an APA or statutory-type hearing and a finding of good cause by an impartial hearing officer; be subject to reduction in force only in accordance with established civil service or merit system procedures; be compensated as provided in the state budget [or salary pegged to state judges' salaries]; not perform duties inconsistent with ALJ duties and responsibilities; devote full time to the position of ALJ [unless appointed part-time]; be subject to supervision by the Chief Administrative Law Judge; and be subject to the code of conduct for ALJs.

The Model Act also provides that ALJs are not to be supervised, directed, or influenced by agency officials or employees engaged in investigations, prosecutions, or advisory functions.

HB 232 has a much shorter section on administrative hearing officers. Qualifications for hearing officers are provided elsewhere, but are the same as the Model Act. HB 232 gives hearing officers the same powers and duties already prescribed in Article 8 of the APA. The bill also specifically provides, like the Model Act, that hearing officers: are subject to a code of conduct; may not perform duties inconsistent with their responsibilities as hearing officers; may not engage in private law practice; and cannot be subject to supervision or influence by agency employees engaged in investigations, prosecutions, or advisory functions.

#### Sec. 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.

The Model Act requires all state government agencies to cooperate with the Chief Administrative Law Judge; subjects the OAH to audit by the Legislative audit office; prohibits agencies from selecting or rejecting particular hearing officers of the OAH.

HB 232 likewise requires other state agencies to cooperate with the CAHO and prohibits them from selecting or rejecting hearing officers assigned by the CAHO, except in cases of arbitration or other special circumstances recognized in regulations. HB 232 does not provide for Legislative audit.

#### Sec. 1-8 Designation of Administrative Law Judges.

The Model Act provides that the Chief Administrative Law Judge shall designate in writing an individual to serve as an ALJ in a proceeding before an agency if the OAH does not have an ALJ that can be assigned in response to an agency referral.

HB 232 authorizes the CAHO to contract with suitable individuals to serve as temporary hearing officers within the IDAH if no qualified IDAH hearing officer is available.

#### Sec. 1-9 Powers of Administrative Law Judges.

The Model Act gives ALJs power to: issue subpoenas; administer oaths; control the course of proceedings; use alternative dispute resolution methods; order a party or their attorney to pay reasonable expenses for bad-faith actions or tactics that are frivolous or intended solely to cause unnecessary delay.

HB 232 either provides all these powers or gives hearing officers the powers already listed in Article 8 of the APA. These existing powers include subpoena power, among others. [See new Sec. 44.21.530(a)] It may be advisable to make clean-up amendments to specific sections of Article 8 to clarify whether hearing officer, the agency, or both are intended to exercise particular powers.

Sec. 1-10 Decision-making Authority.

The Model Act makes ALJs' decisions the final decision, not subject to further agency review, for those agencies specifically named under this section of the Act. All other ALJ decisions would be proposed decisions, unless the agency authorizes issuance of a final decision. The Act prohibits agencies who have referred matters to the OAH from taking any further adjudicatory action in a case while it is under OAH's jurisdiction. [An optional provision would allow interlocutory review, termination, or modification of the proceeding by the agency.]

HB 232 makes hearing officers' decisions final decision for all agencies required to submit cases to IDAH. Decisions in voluntary agency referrals can be final decisions if authorized by the referring agency, but otherwise are proposed decisions. Like the Model Act, agencies may not take further action in a proceeding after the matter has been referred to the IDAH.

Sec. 1-11 Proposed Decisions and Orders.

The Model Act provides that agencies reviewing proposed IDAH decisions cannot modify, reverse, or remand the decisions except for specified reasons in accordance with law.

HB 232 requires agencies to specify on the record their reasons for modifying, reversing, remanding, or ordering reconsideration of proposed decisions.

Secs. 1-12 — 1-14 [Optional] State Advisory Council on Administrative Hearings.

The Model Act proposes creation of a nine-member State Advisory Council on Administrative Hearings, consisting of two legislators, the Attorney General, two agency heads, two members of the public, and two representatives of the state bar association. Terms would be for four years, staggered. The Council would advise the CAHO on carrying out the duties of the office; identify important issues to be addressed by the CAHO; review issues and procedures relating to hearings and the administrative process; review and comment on rules of procedure and the IDAH annual report; and study agencies exempted from the Act that employ hearing officers.

HB 232 does not include this provision.

Sec. 1-15 Effective Date.

## Potential benefits of enactment of HB 232

### Improved impartiality of hearing officers and their decisions

- Hearing officers in a central panel will no longer be dependent on the agencies who are parties to administrative adjudications for continued employment, salary, promotions, benefits, and performance evaluations, nor will they be subject to retribution or pressures from the agencies. This will bolster hearing officers' courage to "do the right thing" in adjudications and decisions.
- Hearing officers will be removed from performing duties inconsistent with their role as an impartial judge, thus reducing "hidden" agency bias.
- The bill will result in more public confidence in the fairness and quality of administrative hearings and in state government generally.

### Improved quality of the hearing officers

- All central panel hearing officers will be subject to a Code of Judicial Ethics.
- Centralized, high-quality training and certification would be available in substantive areas of law, administrative law and procedures, elimination of bias, and hearing techniques.
- Supervision would be by impartial hearing officers, including the Chief Administrative Hearing Officer and peer review, rather than by the agencies who are interested parties.
- Performance evaluations would be based on quality of hearings, decisions, and the administrative process, rather than the outcomes of decisions and a hearing officer's "track record" for upholding the agency.
- A central panel provides improved comradarie, collegiality, and association with other hearing officers, which raises professional standards and reduces the isolation of hearing officers who are spread out among numerous agencies.
- A central panel would attract more experienced, highly qualified people to a career as administrative judges. There would be more potential for career development and opportunities for a variety of work. Hearing officers would be more respected by the Bar and the public.

### Reduction in staff

- Other states using central panels have experience overall reductions in total number of hearing officers.
- Agencies, boards, and departments would rely on central panel instead of their own hearing officers and support staff.
- Central panel hearing officers would devote full time to adjudications and be more fully utilized in the skills for which they are trained.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

P.O. BOX 21149  
JUNEAU ALASKA 99802-1149  
PHONE: (907) 465-2700  
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May 6, 1997

Rep. Joe Green, Chair  
House Judiciary Committee  
Alaska State Legislature

Dear Rep. Green:

I have reviewed an audiotape of the hearing held in your committee on April 28 regarding HB 232 and feel compelled to respond to testimony offered by Mr. Dave Stancliff, aide to Rep. Ogan, who made reference to a "hearing" held by the Department of Labor which he felt demonstrated the need for an "independent" administrative hearing officer system.

The meeting that Mr. Stancliff attended was not a hearing. It was a portion of the "investigation, conference and persuasion" process required under the regulations attached. 8 AAC 30.090 sets out the steps taken in an investigation of alleged violation of AS 36.05, the state's "Little Davis Bacon Act". The proceeding Mr. Stancliffe attended was occurring under 8 AAC 30.090(b)(2) (see italics). Because the matter was ultimately rectified the case was not forwarded to the Director under 8 AAC 30.090(d) for further action.

Neither the Employer, Valley Sawmill, nor the Prime Contractor, Cruz Construction, exercised their appeal rights to request a formal hearing under 8 AAC 30.100, even though they were notified of their rights to do so by the department.

If the matter had been a hearing there would have been formal scheduling and notice under 8 AAC 30.100 (b); an **uninvolved** hearing officer would have been appointed under 8 AAC 30.100 (d); Oaths would have been administered under (g); there would have been examination and cross examination of witnesses and the submission of exhibits under (h); and the matter would have been forwarded to the Director with a written findings of fact and conclusions of law under 8 AAC 30.110 (see regs). The Director would have then reviewed the Hearing Officer's recommendations and accepted or rejected them in a final Decision and Order, appealable in Superior Court.

None of this occurred because this meeting **was not a hearing**, it was a continuation of an ongoing investigation. Mr. Stancliff was advised that this was not a hearing when he requested permission to attend.

As for Mr. Stancliffe's allegation that the "hearing officer"

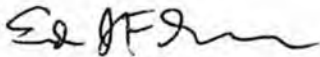
Rep. Joe Green  
May 6, 1997  
Page 2

threatened to look further into the business practices of Valley Sawmill, the Investigator responded to inquiries from Valley Sawmill's representative that the investigation, at that time, was limited to the single complainant but that, depending upon what the investigation revealed, there was a possibility that it could be expanded. That was a truthful statement. In fact, had the Investigator not made that clear he would likely have been subject to complaints about not clarifying the possible scope of the investigation. Nothing occurred here that was inappropriate. How Mr. Stancliff, who was neither a party to the proceeding nor in possession of all the facts, chose to interpret events is out of the department's control.

For the record, the entire process for complaints in prevailing wage cases, including a formal hearing had there been one in this matter, is not covered by the Administrative Procedures Act and would not be impacted by HB 232.

If your committee would like any additional information on this or other procedures in the Department of Labor, please do not hesitate to contact me.

Sincerely,



Ed Flanagan  
Deputy Commissioner

cc: House Judiciary Committee  
Pat Pourchot, Office of the Governor  
Dwight Perkins, DOL

#### ARTICLE 4. INVESTIGATIONS AND HEARINGS

##### Section

- 90. Investigations, conference and persuasion
- 100. Hearings
- 110. Decisions

##### **8 AAC 30.090. INVESTIGATIONS, CONFERENCE AND PERSUASION.**

(a) The wage and hour division will investigate potential violations of AS 36, Public Contracts, on its own motion or on the complaint of any person.

*(b) If the division finds after investigation that probable cause exists for believing that a violation of AS 36.05 or AS 36.10 has occurred, it will attempt to eliminate the unlawful practice by conference and persuasion as follows:*

*(1) the division will provide the person believed to have violated AS 36.05 or AS 36.10 (the respondent), with a copy of the complaint or a description of the alleged violation and inform him of the results of its investigation; and*

*(2) an informal conference with the respondent to discuss the matter and attempt to eliminate the alleged violations will be scheduled.*

(c) Repealed 1/2/91.

(d) If an alleged violation is not rectified by the informal conference or if the respondent fails to attend the conference without good cause, the director will, at his discretion, refer the matter to the attorney general for enforcement under AS 36.05.030(b) or schedule a hearing. (Eff. 12/4/76, Register 60; am 7/30/82, Register 83; am 1/2/91, Register 116)

Authority: AS 23.05.060  
AS 36.05.030  
AS 36.10.075  
AS 36.10.120

**8 AAC 30.100. HEARINGS.** (a) Both respondent and complainant may be represented by counsel. If counsel for a party notifies the division, in writing, that he is appearing in the matter on behalf of the party, service of notices, memoranda, recommendations, etc., will be considered sufficient if made on either, or both, the party and his counsel.

(b) The division will give notice to the respondent and to the complainant, if any, of the time and place of the hearing on an alleged violation of AS 36.05 or AS 36.10 by certified mail, or by personal service at least 15 days before the hearing. Mailing to the last known address or the address listed with the division of occupational licensing for construction contractors

shall be considered valid service. The notice will contain a copy of the complaint and a description of the alleged violation which will be considered at the hearing.

(c) The location of the hearing will be designated by the division with due regard for the convenience of all persons involved. All hearings are public.

(d) The director will appoint a wage and hour investigator as hearing officer to preside over the hearing and to make findings of fact and conclusions of law to be used as a basis for the director's decision. An investigator who has investigated the alleged violations or taken part in the informal conference under 8 AAC 30.090 will not be appointed hearing officer.

(e) The hearing officer has full authority to control the procedure of the hearing and to rule on all motions and objections.

(f) The hearing officer may admit any relevant evidence, regardless of the existence of any common law or statutory or court rule which might make improper the admission of such evidence over objection in civil actions, if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but will not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

(g) Oral evidence must be given under oath or affirmation. A record of the proceedings will be kept.

(h) The hearing officer, respondent, and complainant may

(1) call and examine witnesses;

(2) cross-examine opposing witnesses on any matter relevant to the issue at hand even though that matter was not covered in direct examination; and

(3) introduce exhibits.

(i) If the respondent or complainant does not testify in his own behalf, he may be called and examined as if under cross-examination.

(j) The hearing officer may, for good cause shown, continue a hearing from day to day or recess it to a later date or to a different place by announcement at the hearing or by notice. (Eff. 12/4/76, Register 60; am 1/2/91, Register 116)

Authority: AS 23.05.060  
AS 36.05.030  
AS 36.10.075  
AS 36.10.120

**8 AAC 30.110. DECISIONS.** (a) The hearing officer will prepare a written recommendation to the director containing findings of fact and conclusions of law. A copy of the recommendations will be mailed or otherwise delivered to the respondent and to the complainant, if any. The director will act upon the hearing officer's recommendation and render a final decision within 30 days.

(b) Upon making his decision, the director will serve it upon the respondent and complainant, if any, by personal service or certified mail, return receipt requested. If the director determines that the respondent has violated AS 36.05 or AS 36.10, his decision may contain such cease and desist orders and other orders and relief, including a recommendation that the respondent be placed on a list of violators who are barred from performing public contracts as provided under AS 36.05.090 and AS 36.10.090, as he considers appropriate to correct the unlawful conduct.

(c) If, after the director's decision finding the respondent in violation of AS 36.05 or AS 36.10 is served on him, the director determines that the respondent has not ceased or has failed to correct the unlawful conduct, he will refer the matter to the attorney general for enforcement. (Eff. 12/4/76, Register 60)

Authority: AS 23.05.060  
AS 36.05.030  
AS 36.10.075  
AS 36.10.120  
AS 36.10.125

# LEGAL SERVICES

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Juneau, Alaska 99801-2105

## MEMORANDUM

April 26, 1997

**SUBJECT:** Centralized Hearing Functions (HB 232)

**TO:** Representative Scott Ogan  
Attn: Dave Stancliff

**FROM:** Terri Lauterbach *Terri Lauterbach*  
Legislative Counsel

You have asked whether HB 232 violates the constitutional separation of powers doctrine because administrative hearing officers are empowered to render final administrative decisions in contested cases rather than having the decisions come from the heads of agencies.

\* { HB 232 does not involve a shift of functions from one branch of government to another, so I do not see a constitutional separation of powers problem in HB 232. The independent administrative hearing officers, although not housed throughout the executive branch in individual agencies would still be in the executive branch, and they would be exercising executive branch functions. The bill merely shifts some of the adjudicatory functions currently in the executive branch from one type of executive branch official (agency heads) to another type of executive branch official (hearing officers). As with the decisions of agency heads, the decisions of hearing officers under HB 232 would be appealable to a court in the judicial branch.

The executive function to implement laws would continue, under HB 232, to be carried out by executive branch employees. Agency employees would still be making the initial decisions about licenses and permits. Agency heads and employees would continue to provide invaluable expertise and evidence at the hearings held by the independent hearing officers when a member of the public challenges those initial decisions in a contested case proceeding. Individual agencies would continue to provide much of the legal and policy framework for the contested case hearings through adoption of the regulations that would be applied in the hearings. The change under HB 232 would be that a hearing officer's decision, applying the agency expertise and interpreting the applicable laws and regulations, would be a final decision in a contested case, not just a proposed decision that could be overturned by another executive branch official. It is well within the legislature's prerogative to determine which executive branch official should make the final executive branch decision before the decision can be appealed to the judicial branch. HB 232 represents a policy choice

Representative Scott Ogan

April 26, 1997

Page 2

on decision makers within a branch, not a policy choice between branches. Therefore, the separation of powers doctrine is not involved.

If this memorandum does not fully answer your question or if I can be of other assistance, please let me know.

TML:pl

97-121.plm

## LAW

**14A** CRIMINAL LAW  
Bail Bondsman  
Not Liable for Court  
Clerk's Omission

**17A** CONSTITUTIONAL LAW  
Police Immune  
From Suit Over  
Mistaken Detention

## EDITORIAL

# The Office of Administrative Hearings: A Quiet Success Story

*For Many Marylanders, This 'Workhorse' Of State Agencies Is Where Government Comes to Life*

For many Marylanders, administrative proceedings are where state government comes to life.

Each day, state government makes a myriad of decisions affecting Maryland businesses and its citizens — a driver's license is suspended, a day care provider's license is revoked, a permit is granted, sanctions are imposed, food stamps are issued and child support is collected.

These actions, when properly taken, keep our highways safe from drunk or reckless drivers, protect children, safeguard the Chesapeake Bay, facilitate economic development and support families.

At the same time, however, these actions cause hardship and dissatisfaction for those adversely affected.

Ensuring a balance among these compelling interests is a critical, and often unrecognized, obligation of state government. Fortunately for Maryland, the Office of Administrative Hearings (OAH), under the leadership of Chief Administrative Law Judge John W. Hardwicke, has done a splendid job serving as the workhorse of administrative adjudication in Maryland.

## Recognition well-deserved

Each year, the OAH handles some 50,000 appeals of actions of state agencies. On the eve of the OAH's seventh anniversary and its anticipated move to new headquarters, it is appropriate to recognize and applaud the accomplishments of this agency and its dedicated employees.

The OAH was created in 1989 by the General Assembly and then Gov. William Donald Schaefer. Before this, business and civic leaders had long complained that hearing officers employed by the very state agencies whose actions were being appealed were in an untenable position and, despite their best efforts, unable to render independent and fair decisions concerning the agency's action.

Supporters of a central and independent hearing agency pointed to the need to professionalize the hearing function, provide adequate support, compensation and training for the adjudicators and remove the perception of bias inherent in the old system.

There was opposition within the top levels of some state agencies. Nevertheless, the legislation was enacted and, with few exceptions, agencies have transferred their hearing responsibilities to the OAH.

The OAH consolidated the hearing functions of some 20 different agencies under one roof.

The hearing officers from those agencies who met the OAH's demanding standards were sworn in as Maryland's first administrative law judges (ALJs) on March 19, 1990, in Annapolis.

The OAH cross-trained the ALJs to hear over 200 different types of agency appeals, initiated mandatory monthly training and adopted a Code of Ethics.

ALJs traveled throughout the state presiding over hearings to sanction home improvement contractors for

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poor workmanship, suspend drivers licenses for drinking and driving, resolve disputes between automobile insurance companies and their insured, revoke doctors' licenses or rule on the involuntary admission of a person to a mental health facility.

Employment discrimination, state personnel actions and entitlements to medical assistance and welfare benefits were also handled by the OAH.

Despite some glitches — open hostility from some

SEE EDITORIAL PAGE 17A

*Continued from page 13A*

agency heads, problems with the budgeting methodology and a \$1 million cost containment cut in 1992 — the OAH met or exceeded the expectations of its proponents and won over many of its early opponents.

In 1993, the General Assembly revised Maryland's Administrative Procedure Act to reflect OAH's role as the primary administrative hearing agency of the state.

#### **National support**

Today, the OAH enjoys strong support from both inside and outside of government and stands as a national leader in the field of centralized administrative adjudication.

Judge Hardwicke is completing his term as president of the National Association of Administrative Law Judges. It is routine for other states to call or visit Maryland when considering adopting a centralized hearing system.

Maryland's ALJs are among the finest in the country. Many are invited to speak at national conferences on a variety of issues related to administrative law.

ALJs from the OAH have served as faculty advisers to, and members of, the National Judicial College.

OAH boasts a diverse work force — women and African Americans comprise approximately 60 percent of its judicial staff. Many administrative appeals raise and address issues just as complex as those faced by the district and circuit courts.

OAH judges handle such appeals in a professional and competent manner. OAH recently instituted a system of judicial evaluation, which assists ALJs in improving their performance as adjudicators without impacting their independence.

After seven years of quiet success in Lutherville, the OAH is headed for new offices in Hunt Valley.

In addition to holding hearings at this new location and its satellite offices in Salisbury and Cumberland, ALJs travel throughout the state to conduct hearings. Hearings also are conducted by video or telephone, as appropriate.

Budget constraints, new programs, changes in existing programs and downsizing place additional burdens on all government agencies.

Most have built-in constituencies to advocate for their services. By the very nature of its mission, the OAH must be apolitical.

It cannot align itself too closely with any of its consumers without risking its independence and value to society as a whole. It is up to each of the users of the OAH to be vigilant in supporting the OAH and its mission.

#### **Fair forum**

We salute the OAH as it prepares to enter its eighth year of operation and its first in its new home. Maryland's citizens must have as fair a forum as possible for resolving their differences with state government.

The OAH has provided that forum. We urge the governor and the legislature to recognize the important role OAH plays in Maryland and in the nation.

To continue its efficient and effective performance, OAH needs resources and support commensurate with its broad mission.

Failing to provide those resources would put the OAH at risk of falling behind in handling its caseload and meeting the needs of the individuals, businesses and agencies that appear before it.

That would be a true disservice to the citizens of Maryland.

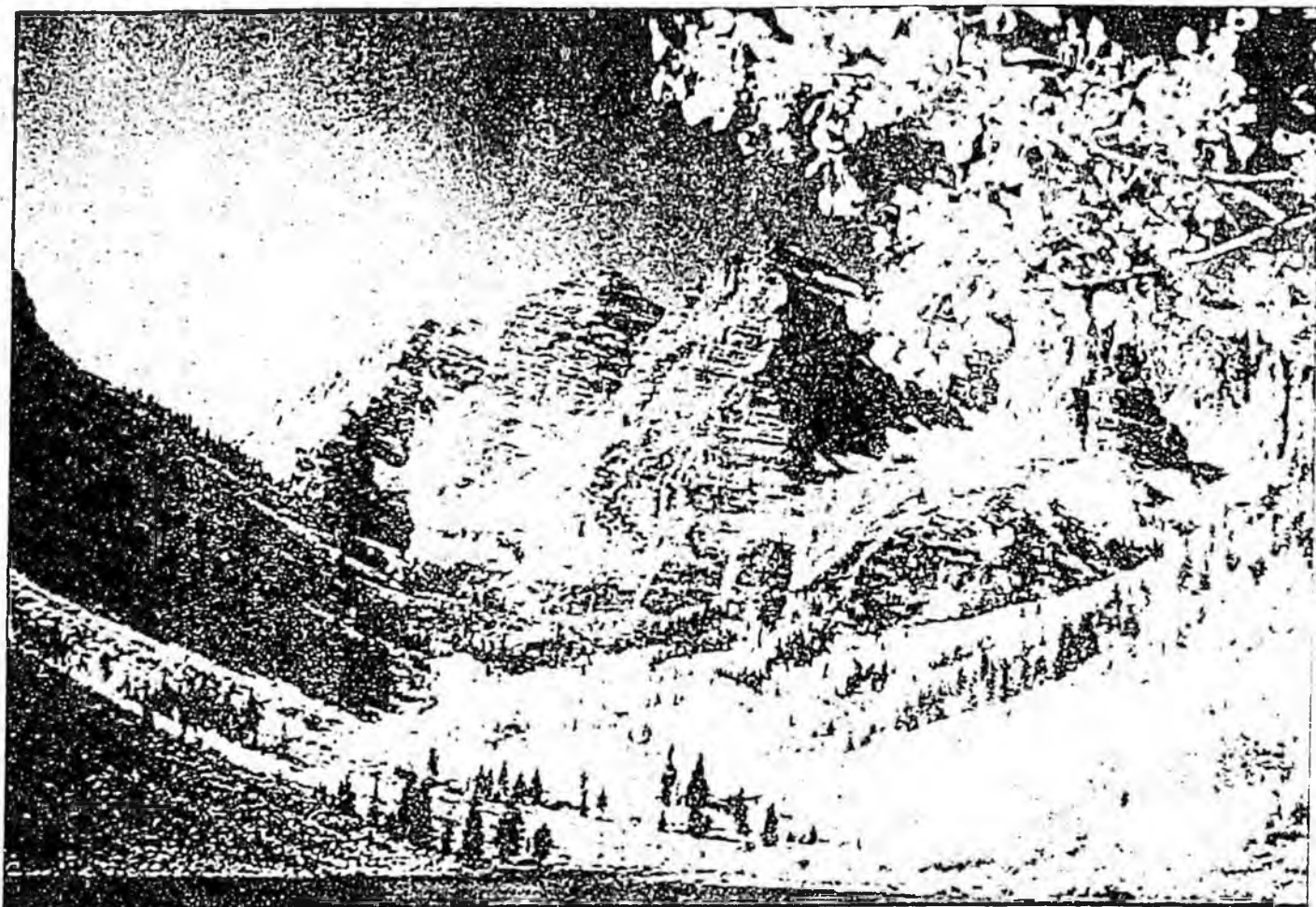
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# Division of Administrative Hearings



**BIENNIAL REPORT**  
to the  
**GOVERNOR**  
and the  
**GENERAL ASSEMBLY**

**June 1996**



Division of Administrative Hearings  
General Support Services  
Department of Personnel



# STATE OF COLORADO

**GENERAL SUPPORT SERVICES  
DIVISION OF ADMINISTRATIVE HEARINGS**

The Chancery  
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Roy Romer  
Governor

Department of Personnel  
André N. Pettigrew  
Executive Director

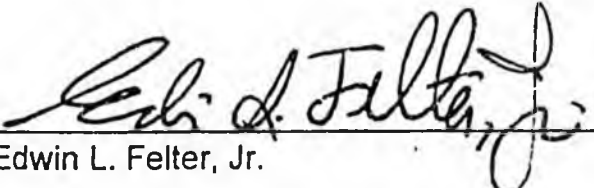
Edwin L. Felter, Jr., Director  
and Chief Administrative Law Judge

THE HONORABLE ROY ROMER  
Governor, State of Colorado  
and  
MEMBERS OF THE GENERAL ASSEMBLY

Dear Governor Romer and Members of the General Assembly:

This document is the fifth periodic report from the Division of Administrative Hearings, General Support Services.

This report describes the operation of the Division, includes accomplishments of the Division; a brief review of similar operations nationwide; an organization chart; customer agencies; budget; case statistics; backlog analyses; the recent judge and support staff evaluation survey conducted by the Office of State Planning and Budget; and, most importantly, a summary of the Division's journey into the world of quality excellence and customer satisfaction.

  
Edwin L. Felter, Jr.

APPROVED:

  
André Pettigrew, Executive Director

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Cover Photo by Sally Brown

# BIENNIAL REPORT TO THE GOVERNOR

## PROFILE

The Division of Administrative Hearings, a Division of General Support Services, was created in 1976, first as the Division of Hearing Officers. Enabling legislation is contained in C.R.S. §24-30-1001 *et seq.* In 1987, House Bill 1049 was signed into law, changing the name of the Division to the Division of Administrative Hearings; and, the designation "Hearing Officer" to "Administrative Law Judge ." Also, H.B. 1049 gave the Executive Director of the then Department of Administration specific authority to promulgate procedural rules for the Division of Administrative Hearings [C.R.S. §24-30-102(2)(h)]. Procedural rules were, in fact, promulgated and became effective on August 1, 1987. *See*, 1 CCR 104-1.

The last major revision of the procedural rules became effective on April 1, 1993. A statute adopts the Code of Judicial Conduct for State Central Panels. H.B. 94-1304 [C.R.S. 24-30-1003(4)(a) through (b) (1995 Cum. Supp.)]. A substantive rule, adopting the Code of Judicial Conduct, took effect on December 30, 1994 [1 CCR 104-2] and it fully sets forth the Code. The Rules of Practice track the Rules of Civil Procedure as much as practicable.

The Colorado Rules of Evidence apply in all proceedings before administrative law judges from the Division. On rare occasions, the administrative law "reasonably trustworthy" hearsay exception may be invoked.

In workers' compensation cases, Division of Workers' Compensation Rules of Procedure, Rule VIII, covers most workers' compensation adjudication situations. Workers' compensation adjudication rules are presently being prepared by the Division of Administrative Hearings. S.B. 94-193, effective July 1, 1994, gave the workers' compensation adjudication program, lock, stock and barrel to the Division of Administrative Hearings, General Support Services. Administrative Hearings does not act on behalf of the Division of Workers' Compensation in workers' compensation adjudications. It has original concurrent jurisdiction with the Director of the Division of Workers' Compensation. As a practical matter, the public requests a hearing directly from the Division of Administrative Hearings. [See, C.R.S. 8-43-103, 202 & 209 (1995 Cum. Supp.)]

In the 1995 Session of the General Assembly, a provision providing for the transfer of administrative law judges, who handle workers' compensation matters, to the Department of Labor and Employment in 1997 was repealed [S.B. 95-199, C.R.S. 8-47-101(3)(b)(i)], thus, securing the judicial independence of Colorado's Central Panel.

The Division of Administrative Hearings (DOAH) provides adjudication services for various state agencies, *e.g.*, Division of Workers' Compensation, Department of Labor of Employment, Human Services, Regulatory Agencies, Secretary of State, Insurance Division, Banking Division, Adult and Juvenile Parole, and Teacher dismissal cases. The Division is cash-funded and operates on a break-even basis. Small agencies that use this service infrequently have access to professional adjudication services on an as-needed basis and at a low cost. The mission statement of the Division is: **TO DELIVER HIGH QUALITY ADJUDICATION SERVICES FOR THE STATE OF COLORADO IN A TIMELY, EFFICIENT AND COST-EFFECTIVE MANNER, WITH RESPECT FOR THE DIGNITY OF INDIVIDUALS AND THEIR DUE PROCESS RIGHTS.** }

Administrative Law Judges ("A.L.J.s") in the Division are required to be licensed to practice law in the State of Colorado and have five years experience as a lawyer or a judge. [C.R.S. 24-30-1003(2)] The average experience of an A.L.J. in the Division is ten years or more. Recent judge evaluation surveys, sent to attorneys who practice before the Division, reveal that the A.L.J.s function at an overall high approval

HISTORY, ACCOMPLISHMENTS  
and BASIC FACTS CONCERNING  
THE DIVISION OF ADMINISTRATIVE HEARINGS

The Division of Administrative Hearings began operations in 1976 (as the Division of Hearing Officers). At that time, the Division became an independent central panel of administrative law judges. Shortly thereafter, in April 1977, a study done by the Division of Management Services, Department of Administration, revealed that cases were handled more efficiently by the new Central Panel (or Corps) than by previously decentralized Hearing Officers. The report specifically noted as follows: "The Hearing Officers as a group are dedicated and methodical in the hearing process. No instances of undue delay were observed due to Hearing Officer quandary or indecisiveness." The report recommended as follows: "The identification of a Division of Hearing Officers, together with a defined relationship with client agencies, represents a first step in conceptualizing a consolidated system of hearing services. This general direction is advocated."

In 1980, statistical research revealed that the centralized Division was able to handle workers' compensation cases more economically than the Division of Labor's Hearing Officers prior to the consolidation of 1976. Prior to the centralization in 1976, there were approximately 40 Hearing Officers -- some full time on the state payroll, some part time on the state payroll and some under contract with the various agencies. After the consolidation in 1976, there were 12 full time Hearing Officers on the state payroll. \*

Immediately after the consolidation of 1976, there was a sparsity of financial data to compare "before and after" costs. However, the second Director of the Division,\* in 1979, compared the average cost of handling an average workers' compensation case before the 1976 consolidation, as referenced above, and two years later, in 1978; and, the data revealed that the cost of handling an average workers' compensation case two years after the consolidation, was \$2 less. Although there is a paucity of empirical financial data from the mid-1970s, certain probabilities emerge. When a specific agency has a Hearing Officer on the payroll, the Hearing Officer is sometimes redeployed into positions such as serving as informal house counsel during down times. There have even been instances in the past where a Hearing Officer was placed in charge of a minor construction project during a cyclical down time in the hearing business. Contract Hearing Officers must be paid a fairly high hourly rate, although much less than prevailing legal fees, and someone must administer the contracts. The Division of Administrative Hearings did a privatization study in 1990 and found it would cost almost twice as much to have contract Hearing Officers serve the same function as staff administrative law judges, including administration of the program.

A centralized panel of judges achieves an efficiency of scale; cross-training whereby all of the administrative law judges are generalists; and, efficient case distribution whereby all of the judges are busy, all of the time, hearing and deciding cases, which is the principal and only function of a centralized panel. \*

In 1982, the Governor's Management and Efficiency Committee noted as follows: "The current M&E Committee notes that in 1976, the Workmen's Compensation referees of the Department of Labor and Employment were transferred to the newly created Division of Hearing Officers in the Department of Administration. The legislative intent for such a transfer was to avoid the appearance of conflict of interest within the Department of Labor and Employment and to create a separate State Administrative Law system to decide administrative cases. The Hearing Officers were to be independent of the agencies over whose claims they had jurisdiction." \*

"The Committee urges the State to consider the establishment of an administrative law court. While this recommendation may go beyond the scope of the Committee's charge and clearly affects other agencies not investigated by this Committee, a study may indicate significant advantages to the State in creating an administrative law court."

\* Suzanne Harvey Lynch

rate. The Division has regional offices in Colorado Springs, Grand Junction, and Ft. Collins. The Pueblo regional office was consolidated into the Colorado Springs office in early 1994.

Recent case statistics reveal that each individual A.L.J. is able to work more efficiently by producing more decisions in less time than in the past. Also, each individual A.L.J. spends more time in the hearing room now than in the past, without any decrease in his or her ability to produce decisions. Overall decisions increased by 10% from FY 93/94 to FY 94/95. Overall decisions per A.L.J. increased from 918 per A.L.J. in FY 93/94 to 1018 in FY 94/95.

On July 16, 1992, the report of the State Auditor, concerning a performance audit of the Division as a whole, was released by the Legislative Audit Committee, General Assembly. The Division took a total quality management approach to implementing all of the audit recommendations and it used teams of A.L.J.s and support staff to implement each recommendation. As a result of the audit, the Division developed tightened time standards for providing hearings in regulatory agency cases (cases are now ordinarily set within 90 days from the setting date), enhanced communication with client agencies including town meetings with client agency program administrators. The recommendation of the State Auditor for the Division to develop a computerized case tracking system for regulatory agency and social services cases has been implemented and will be fully operational in July 1996. Overall, the Legislative Audit Committee of the General Assembly was highly complimentary of the Division's performance and progress in implementing audit recommendations by the date of the audit hearing.

\* { Effective January 1, 1995, the Colorado Division of Insurance dropped workers' compensation premiums 9.6%. This was for one fiscal year. Prior to Senate Bill 218 (the Workers' Compensation Reform Package of 1991), workers' compensation insurance premiums regularly went up in double digits. Since the effective date of S.B. 218 (July 1, 1991), the Division of Administrative Hearings has played a substantial role in decreased premiums by administering a streamlined adjudication system without sacrificing due process (premiums have gone down 22% since the effective date of S.B. 218).

\* { On February 9, 1993, the Division underwent a Legislative Audit Committee hearing on its worker's compensation adjudication program. The Committee was highly complimentary of the Division's performance under S.B. 218. Senator Tilman Bishop, President *Pro Tem* of the Senate, invoked a personal privilege on the floor of the Colorado Senate on Wednesday, February 10, 1993, praising the Division for its outstanding performance in reducing the backlog in workers' compensation cases by 95%; by providing hearings in 1/3rd the time it provided them before July 1, 1991 (within an average of 88.2 days as opposed to the previous 263.8 days); and, in rendering decisions in 1/5th of the time utilized prior to July 1, 1991 (9.6 days as opposed to 49.1 days). The Legislative Audit Committee praised the Division for doing more with less. The tight time lines continue to be met today.

In 1984, the Division pioneered telephone hearings, by consent, in social services cases, thus, effecting substantial savings to the Department of Human Services.

In 1995, the Division implemented a mediation pilot program for regulatory agency cases. The program is well underway and many licensing board cases have been successfully mediated. Mediation of licensing board cases is a cutting-edge concept in the United States. Arizona first pioneered the concept.

\* { In addition to adjudications, the Division conducts agency training programs on an as-needed basis. As a matter of fact, the Division trains agency personnel to conduct less complicated hearings where it would not be cost-effective for the Division to conduct these hearings for the agency.

Since 1991, the Division has become more and more deeply involved in the total quality concept, applying the principles of total quality to adjudications in legitimate areas of expectation. In 1994, the Division received two Governor's Total Quality citations: (1) one of nine organizational citations for the Division ( among over 100 state government organizations); and, (2) one team citation for the workers' compensation team that streamlined docketing processes.

In 1983, the Division of Administrative Hearings implemented word processing. At the present time, there are five full time word processors doing all of the word processing work for the Division. Also, each administrative law judge has a computer terminal for the purposes of doing some word processing of decisions and case management. Increases in billing rates, from year-to-year, have occurred to help fund salary survey increases, merit increases and increases in operating expenses. In the fall of 1989, the Division converted its computer system from a WANG system to an IBM system. The Division set up a computer case tracking system, with local area network (LAN), in FY 94/95.

In 1988, John H. Lewis, at the request of the General Assembly and the Colorado Division of Labor, did a study of the workers' compensation system in Colorado and found that the administrative law judges, doing workers' compensation cases, worked well, in fashioning remedies, with, according to Mr. Lewis, a poorly worded Workers' Compensation Act. Mr. Lewis had considerable praise for the administrative law judges, indicating that they had been required to perform many tasks other than adjudication in order to continue to make this system function. He recommended a stronger administration-based system whereby the administrative law judges would be liberated to perform their principal function, i.e., to hear and decide cases involving genuine controversies incapable of mediation or settlement. As of this report, Mr. Lewis' recommendation has become a reality with the newly created Division of Workers' Compensation running an administration-based system with prehearing procedures, including settlement conferences; and, the administrative law judges of the Division of Administrative Hearings confining their activities to stricter adjudication functions.

A recent informal survey of client agencies revealed that the agencies, in legitimate areas of expectation, believe the centralized panel takes them out of conflict of interest situations and provides a highly professional, impartial adjudication mechanism that is well-received by attorneys who practice before the Division; also, that the Division provides quality hearings and renders high quality decisions. Most agencies' concerns (in the negative sense) involve outcomes. More specifically, some agency personnel have indicated preferences that the administrative law judges be more agency-oriented in thinking although these agency personnel understand and accept that this is not appropriate for Central Panel administrative law judges. This sentiment is understandable, since the agencies have an investigation and prosecution function. \*

A periodic judge evaluation survey was first implemented in 1982 and has been continued, the most recent having been released by the Office of State Planning and Budgeting on April 8, 1996. The 1996 survey results demonstrate the A.L.J.s have performed at a high professional level and have earned the respect of practitioners on both sides of the aisle. The survey reflects that A.L.J.s tend toward the middle-of-the-road in their decisions. As a matter of fact, between the last survey (December 31, 1992) and the most recent survey (April 8, 1996), overall performance of all administrative law judges in the Division went up from 88% to 97%. For workers' compensation judges, the approval rate went up from 85% to 91%. In the 1996 survey, the support staff was surveyed, for the first time, and received an overall 96% approval rate.

Beginning in 1983, the Division commenced agency training programs for Social Services; sponsored continuing legal education programs and administrative law seminars for practitioners; and, contributed significantly to numerous workers' compensation and licensing seminars. In November 1990, the Division moved to The Chancery, 1120 Lincoln Street, Suite 900 and the Department of Labor and Employment provided facilities for the workers' compensation operation in Suite 1405 through July 1, 1995. On July 1, 1995, the Division of Workers' Compensation, Department of Labor and Employment, having moved to 1515 Arapahoe in lower downtown, discontinued, per agreement, financial support for the Division of Administrative Hearings' Workers' Compensation Adjudication Program and the entire operation of the Division of Administrative Hearings, including workers' compensation adjudication, consolidated on the 14th floor of the Chancery on July 1, 1995. The additional rental expenses were to be captured by a \$12 an hour increase in the billing rate (from \$77 an hour to \$89 an hour). At present, there are five hearing rooms for all administrative law cases handled by the Division in Denver, plus three conference rooms. These physical plant accomplishments add to the overall decorum of the administrative law system in the State of Colorado.

In 1988, with no fanfare whatsoever, all A.L.J.s began wearing robes in formal courtroom settings. Philosophically, the robe sends a message to those not familiar with administrative law that a fair and

impartial judge, who is not connected with the agency, will exercise control over the proceedings and render a fair and impartial decision.

In conjunction with the Workers' Compensation Section of the Colorado Bar Association, the Division began a "Settlement Week" project, in 1990, to alleviate the hearings backlog. The settlement week occurred in December 1990 and 40% of all targeted cases were settled. After the adoption of S.B. 218 (July 1, 1991), the new Division of Workers' Compensation created a pre-hearing program, making future "Settlement Week" projects unnecessary. In 1994, the General Assembly gave specific statutory authority to the Division of Workers' Compensation to employ pre-hearing administrative law judges to streamline issues for hearing (C.R.S. 8-43-207.5). This system has worked in the same fashion that a system of magistrates and judges work.

The A.L.J.s in the Division have endeavored to maintain a leadership role in the field of administrative law. One A.L.J. has taught administrative law at the University of Denver College of Law. Another A.L.J. has been the column editor for the Administrative Law Column of *The Colorado Lawyer*, the official publication of the Colorado Bar Association. He also is President-elect of the Rocky Mountain Chapter of the Industrial Relations Research Association in 1995/96 and will be President in 1996/97; Chair of the Administrative Law Committee of the Colorado Bar Association from July 1993 to June 1995; and, presently, Chair of the Colorado Bar Association Alternative Dispute Resolution Committee's Subcommittee on Alternative Dispute Resolution in Government. This administrative law judge, Marshall A. Snider, has written numerous articles for the Administrative Law column of the *Colorado Lawyer*, and was Chair of the Denver Bar Association Docket Committee in 1992/93. He presently teaches a course in commercial and labor arbitration at University College at the University of Denver.

Each administrative law judge, who handles workers' compensation matters, has taught extensively in workers' compensation continuing legal education programs and served as a judge for the National High School Mock Trial Championships in May 1995. One administrative law judge, Martin D. Stuber, who handles workers' compensation matters, is writing a chapter for a volume on Workers' Compensation for the Colorado Practice Series. Another administrative law judge, who handles workers' compensation cases, Morgan Rumler, taught at the University of Denver Law School's "Legal Process" class for one year.

Relevant representative articles published by Division administrative law judges, in scholarly journals, include:

"Professional Responsibility Issues in Administrative Adjudication: A Colorado Perspective", Schulman, Judith F; 2 *B.Y.U. Journal of Public Law* 269 (No. 2, 1988); "How to Lose an Administrative Law Case," Snider, Marshall A.; 19 *Colorado Lawyer* 2037 (No. 10, 1990); "Understanding Administrative Fact-Finding," Snider, Marshall A.; 20 *Colorado Lawyer* 1607 (No. 20, 1991); "Work Related Heart Attacks and Mental Illness: Medico-Legal Implications," Felter, Edwin L., Jr.; 31 *Trauma* 23 (No. 3, Oct., 1989); "Workers' Compensation Claims for Heart Attack and Mental Illness," Felter, Edwin L., Jr.; 33 *Medical Trial Technique Quarterly* 308 (No. 3, 1987); "An ALJ's View: the New Unified Hearings in Workers' Comp Cases," Felter, Edwin L., Jr.; 18 *Colorado Lawyer* 2327 (No. 12, Dec., 1989); "Colorado's Central Panel of Administrative Law Judges: The Hidden Executive Branch Judiciary," Felter, Edwin L., Jr.; 19 *Colorado Lawyer* 1307 (July 1990); updated in 14 *Journal of the National Ass'n of Administrative Law Judges* 95 (No. 1 Spring, 1994); "Workers' Compensation Fraud: Trashing the System," Felter, Edwin L., Jr.; 20 *Colorado Lawyer* 1219 (No. 6, June, 1991); "Salvaging the Impaired Physician," Felter, Edwin L., Jr.; 34 *Trauma* 55 (No. 1, June, 1992); "The Physician's Duty to Assist Patients in the Legal Process," 35 *Trauma* 81 (No. 5, Feb. 1994); Felter, Edwin L., Jr.; "The Physician's Duty to Testify," Felter, Edwin L., Jr.; 36 *Trauma* 69 (No. 5, Feb. 1995); "Life After S.B. 218," Felter, Edwin L., Jr.; 21 *Colorado Lawyer* 1425 (No. 7, July, 1992); "Administrative Law Adjudication For the Twenty-First Century," Felter, Edwin L., Jr.; 24 *Colorado Lawyer* 993 (No. 5, May 1995); and, "Litigants Without Lawyers" Felter, Edwin L. Jr.; which will appear in *The Colorado Lawyer* in June, 1996.

In 1995, Chief Judge Felter was elected as a member of the Executive Committee of the National Conference of Administrative Law Judges, American Bar Association. Judge Felter is the winner of the 1994 Fellowship in Administrative Law, National Association of Administrative Law Judges, for his paper, "Adjudication Quality: The Only Way to Reduce Costs in Delays," 15 *Journal of the National Association*

of *Administrative Law Judges 5* (No. 1, Spring 1995). Judge Felter developed a Model Code of Judicial Conduct for State A.L.J.s, endorsed by the National Conference of Administrative Law Judges, A.B.A., in August 1995.

On balance, the centralized panel in Colorado has developed administrative law judges with more expertise in certain areas, e.g., medical board matters, than state district judges or federal district judges; and, the Central Panel, because of its independence, has created a high degree of professionalism which, in turn, has fostered considerable respect for the Division among members of the Bar. As mentioned earlier, the most recent Administrative Law Judge Evaluation Survey reveals that the Division of Administrative Hearings, as whole, functions at a 97% approval rate, as opposed to 88% at the end of 1992. Besides speaking and publishing extensively, the administrative law judges are recognized experts in their fields. \*

The Central Panel system has had an enormously positive effect on the State of Colorado. The old perception (involving agency Hearing Officers) that the outcome of a case would be agency-oriented, since the agency Hearing Officer generally reported to the same agency director who supervised the investigation and prosecution of the case, no longer exists in Colorado. Citizens and attorneys have a strong perception they will receive a fair, professional, efficient and impartial hearing from the Division of Administrative Hearings. The most compelling evidence of this is that the organized Bar is consistently advancing initiatives to strengthen the Central Panel system in Colorado. One specific example involves an initiative of the Colorado Bar Association Administrative Law Committee in 1994, to make the use of the Division of Administrative Hearings, by agencies, mandatory without exception. The same committee also advanced an initiative to give the administrative law judges in the Division final agency action authority in all cases. The Division of Administrative Hearings resisted these initiatives because the initiative involving "mandatory use" is politically unrealistic; and, the initiative involving "final agency action authority" is not appropriate since agencies should maintain control over final agency action authority because of their specific expertise.

## PERFORMANCE MEASUREMENTS OUTCOMES AND PROGRAM EFFECTIVENESS

### Determining Customer Requirements and Expectations

#### How the Division Determines Current and Future Customer Requests and Expectations.

Determining customer requirements and expectations involves three critical performance measurements: (1) direct solicitation of customer requirements and expectations up front; (2) specific customer surveys concerning requirements and expectations; and (3) an objective assessment of customer praises and customer complaints followed by implementation of improvements based upon customer complaints and continuation of actions, based upon customer praises. \*

Formal data collection entails the use of judge evaluation surveys and client evaluation surveys. The information sought involves timeliness of hearings and decisions; quality of adjudications regardless of whether or not the survey respondent won or lost the case; and, satisfaction with the way individuals were treated, in the process, by all Division of Administrative Hearings' personnel. Client surveys are designed to measure overall client satisfaction in legitimate areas of expectation, e.g., timeliness and quality of adjudications (regardless of whether or not the party won or lost) with some control questions to rule out the "sour grapes" or "walk-on-water" factors. At a more informal level, a detailed system of handling complaints is in place to the end of assessing these complaints and using legitimate customer complaints to improve the procedures, processes and performance of the Division. The underlying philosophy of complaint resolution in the Division is that the Division takes all complaints very seriously. So seriously that the "CEO of the Division" personally resolves these complaints. Complaints pointing to the need for improvement in the delivery of services are discussed by action teams in the Division and result in recommended and implemented improvements in policies and procedures involving the delivery of services.

The Division strives to communicate realistic, but effective, time expectations to clients; while, at the same time, maintaining much tighter internal standards concerning timeliness so that users of the Division's adjudication services will have their expectations concerning timeliness, as a rule, met ahead of time to further the "delight" factor as opposed to the mere "satisfaction" factor. \*

At an informal level, supervisory personnel maintain weekly, and sometimes daily, contact with client agency personnel, generally by telephone, concerning the quality of services being provided (contacts with a representative sample from the public sector are less frequent than agency contacts; however, these are done on approximately a weekly basis and the Division is constantly striving to open channels of communication between members of the public and Division staff in order to spot any problems with the delivery of services). The Division strives to correct problem areas in a timely fashion and communicate this to clients of the Division in a timely fashion in order to maintain a high confidence level among members of the public.

All data from the formal surveys, the complaint-praise process and person-to-person contact with clients are compared in order to detect any trends in customer dissatisfaction, further investigate the same, and promptly correct areas of dissatisfaction in order to maintain a high level of customer satisfaction and, preferably, to achieve customer "delight."

a. Each market segment (of Division clients) has a set of different expectations and requirements. Therefore, customer satisfaction in workers' compensation cases is gauged differently from customer satisfaction in social services' cases; and, it is gauged entirely differently in regulatory law and other-type cases. The Division has adopted a flexible approach to meet different customer expectations requirements. The Division's approach is "tell us what you need in terms of turnaround time and we will meet it one way or another." Time lines have been met in all but the rarest of exceptions. Besides telephonic contacts with agency personnel, the Division conducts "town meetings" with key agency personnel to give the agencies a forum to air, and in many cases have resolved, their concerns about the delivery of adjudication services by the Division.

b. **Process for determining product and service features and relative importance of these features to customers and/or customer groups.**

The critical features of adjudication services involve quality and timely adjudications that are designed to be respected by the parties and appellate tribunals. Realistic expectations concerning timeliness of hearings and decisions are communicated to clients while, at the same time, the Division maintains tighter internal timeliness standards in order to frequently meet client expectations ahead of time, thus, striving to achieve the "delight" factor as opposed to the mere "satisfaction" factor. An analysis of appellate decisions, dealing with Division decisions at the lower level, is made and communicated to clients, first, by the appellate tribunals themselves and, second, through contact with clients of the Division.

The support staff of the Division exists to further the goal of quality and timely adjudications. The product feature of the support services involves courteous, prompt and helpful dealings with all clients of the Division's adjudication services. This is measured through surveys, contacts and an analysis of communications (from clients) of praise and complaint.

Public clients and client agencies expect timely resolutions of disputes, regardless of outcome, that will generally stand up on appeal. An analysis of the Division's timeliness and quality of adjudications is matched with these client expectations; and, the matching is communicated to client agencies and feedback is received from them concerning areas for improvement. The feedback is analyzed, reported and reproduced, in objective form, in reports issued by the Division in order to measure outcomes and program effectiveness.

c. **How the Division evaluates and improves its processes for determining customer requirements and expectations as well as the key product and service features.**

The data collected above is analyzed by Division teams and recommendations for the implementation of improvement steps are made. Thereafter, the teams embark on implementing the improvement of processes to meet customer requirements and expectations in the delivery of adjudication services.

## ACCOUNTABILITY OF CENTRAL PANELS

"Accountability" of adjudication organizations is the byword of the 1990s; no doubt, it will also be the byword of the early part of the 21st century. "Accountability" of administrative law adjudication organizations is a reality. In the judicial branch in Colorado, there are now judicial performance commissions whose mission is to evaluate the performance of State District Judges. In 1994, one District Judge was voted out of office because the regional Judicial Performance Commission issued a negative report on the judge. The Judicial Branch will be seeing more of judicial performance commissions, or their counterparts, as the 21st Century approaches. Since administrative law adjudication organizations are not constitutional organizations, insulated from accountability measures demanded of other governmental organizations and private businesses, they are challenged to constantly meet customer demands. If they are not accountable, they will disappear from the legal landscape and fade back into the agencies from which they came. Also, if they do not develop better performance measurements, a combination of non-lawyer interest groups and non-lawyer legislative analysts may make these determinations in the future.

### Measurements

Courts have traditionally measured output of processes; for example, the number of cases handled or referred and the turn around time when the case is handled. To prove they are, in fact, "accountable," adjudication organizations must concentrate more on measuring program effectiveness. This concerns the level of customer satisfaction with quality of adjudication and policy effectiveness: "Would customers want a higher volume of adjudications turned around in a more timely fashion?; or, would they want more alternative dispute resolution activities?"

For years, the Colorado Division of Administrative Hearings was measured by the number of cases referred by the agencies (docketed). Subsequently, the cost per case referred was added as a measurement. Both measurements are not relevant to the amount of work done by any administrative law judge. In fact, these measurements have a tendency to misstate the actual work load and to not be that helpful to client agencies when they plan their own adjudication needs.

The Division considers the most relevant measurement factor to be "cost per decision issued". When carefully analyzed, cases referred may never be seen by a judge, much less handled. "Cases heard" as a measurement factor is better, but not the best reflection of all the work done by an administrative law judge. On the other hand a "decisions rendered" measurement reflects the ultimate product of cases heard, substantial motions handled and settlement conferences conducted. Decisions are the end product of an adjudication organization. They are the ultimate reflection of the work actually done by the judges from which quality and quantity can be most objectively measured.

In fiscal year 1992/93, the overall average cost per decision rendered by the Division was \$170. For fiscal year 1993/94, the average cost per decision rendered dropped to \$160. This occurred at a time when the hourly billing rate went up from \$67 an hour in 1992/93 to \$77 an hour in 1993/94. In fiscal year 1994/95, the cost per decision rendered dropped to \$153. These figures establish substantially increased efficiency by Colorado's Central Panel, and there is not the slightest hint of improper incursion on judicial independence.

A most effective indicator of "accountability" involves a measurement of public perceptions by the knowledgeable principal players in the system. As indicated earlier, the OSP & B Judge and Support Staff Evaluation Survey for 1996 reflected an overall approval rate of 97% for judges and 96% for support staff. The approval rate for judges went up nine points since December 31, 1992, when it was 88%. \*

Another way the Division measures customer satisfaction, in addition to the Judge Evaluation Survey, is the use of appropriately designed surveys of parties and members of the public, using relevant control questions. It is important for an adjudication organization to know how it is perceived by non-lawyer

customers. To wait for the non-lawyer customer to find out the name of the Chief Judge and write a letter of complaint, after suffering an indignity, will give a lop-sided view of customer perceptions.

It does not take a lengthy litany of questions to survey effectively. Without effective instruments to receive anonymous feedback, it would be difficult for an adjudication organization of the future to know whether it is continuing to do the right thing. It would even be difficult for it to realize whether or not it was doing things right.

## Total Quality Management or Citizen Focused Quality – Where We Are

Judge Jerome Frank, who first published *Courts on Trial* 50 years ago, observed that courts often do their jobs, with tragic results, in ways that need reform. This is no less true today. Judge Frank's philosophy of judicial realism involves a simple proposition "Let's not kid ourselves about what we really do." He makes it clear that judges are not involved in mystically ascertaining the divine will concerning justice. Judges are involved with processes, the most important of which is resolving disputes. Processes can be continuously improved, or even re-engineered, if they are not meeting current market demands. This includes current market demands by the consumers of judicial products. \*

Administrative law is in the beginning stages of embracing total quality management. Other central panels have shown a keen interest in TQM and many have embarked on full-blown programs. What is TQM? Perhaps a better way to describe it is citizen-focused-quality or CFQ.

CFQ involves a shift in the way we think about things. It involves a "paradigm shift." Businesses and government agencies have been changing processes for a long time -- to meet their internal needs. In the 1980s, businesses began undergoing significant paradigm shifts to deal with processes to meet their customers' needs and demands. By the late 1980s and early 1990s, government agencies began undergoing the same paradigm shift, with the customer being the paramount consideration. \*

Central panel adjudication organizations are ideal laboratories for the development of CFQ. If anything, an administrative law adjudication organization is stocked with numerous processes. The primary focus of a quality approach is to attack the processes and not the people in the organization. After attacking the processes, the focus shifts to improving those processes continuously and to being able to measure the improvements objectively. The purpose for doing all of this is to deliver greater customer satisfaction. Underlying all quality efforts is the philosophy that all is for naught unless the customer is fully satisfied.

Adjudication organizations of the 21st Century must be proactive in developing full blown quality programs. It is no longer merely nice to anticipate the needs of tomorrow's litigant, it is indispensable for survival. Administrative law adjudication organizations are in the forefront to implement quality programs. \*

## Leadership and Empowered Support Staffs

Once launched, leaders of a quality organization must not only believe in a quality program but must "walk-the-talk" (do as they say). If leaders do not walk-the-talk, the organization might as well forget about a quality program and concentrate on refining the 19th Century Frederick Taylor-style assembly line. According to Peter F. Drucker, one of the management gurus of our times, "Management's job is not to command . . . it is to direct." True leaders do not make people do what they want them to do. True leaders are those who make people want what they want. \*

Regardless of the terminology, what counts with empowered support staffs is how members of the organization are treated. Are they treated as servants or as associates who carry out their respective missions for the greater good of the organization so that they can deliver value to the customers. The real key to empowerment is the leader *letting go!* Leadership must proceed from the premise that it can \*

trust at least 90% of those in the work force. If it cannot, leadership has a serious judgmental problem stemming back to the hiring process. \*

Some factors have been developed to distinguish genuine teams from task forces: (1) shared leadership roles rather than a single leader; (2) individual and mutual accountability rather than individual accountability; (3) a team purpose that the team delivers rather than a group purpose which is the same as the organization mission; (4) collective rather than individual work products; (5) open-ended discussion and active problem solving meetings rather than "efficient" meetings; (6) performance measurements that assess collective work products rather than to concern themselves with influencing the larger organization; and, (7) discussions, decisions and real teamwork rather than delegating to others. Effective teams develop a strong commitment to a common approach. \*

Privatization of adjudications is a real possibility. Rent-a-Judge organizations are cropping up throughout the United States. If prisons can be privatized, one might argue why can't courts be privatized. Administrative law adjudication organizations are constantly under scrutiny for fairness, cost-effectiveness and speedy resolution of disputes. It is legitimate to consider that privatization may be a way to accomplish these objectives. From a philosophical standpoint, privatization of adjudication services would appear to be contraindicated to the need for an established, experienced and centralized group of decision makers which, among other things, has established credibility in the community. The Colorado Division of Administrative Hearings is constantly benchmarking its activities to other Central Panel adjudication organizations, to the courts and to imagined competitors. When quality culture exists in an adjudication organization, its accomplishments can be measured and its successes proven, the organization will survive and prosper in the 21st Century. All of this is based on the assumption that the changing demands of the market place will continue to be met. At present, a demand for alternative dispute resolution is paramount. Those organizations that do not offer a meaningful ADR program will "eat dust." Those that do, will "make dust." \*

	Docketed	Hearings		Merits	Decisions		Mediations
		Merits	Procedure		Procedure	Mediations	
Accountancy Bd.	2	0	0	3	11	0	
Adult Parole	63	19	0	0	0	0	
Agriculture	1	4	3	1	7	0	
Anti-CC. Bd.	1	0	4	0	9	0	
Architect Bd.	1	0	1	0	3	0	
Barber/Cosmet. Bd.	4	0	0	3	8	0	
Chiropractic Bd.	3	0	8	0	17	0	
Civil Rights	7	0	3	2	22	0	
Collection Agency Bd.	5	0	0	1	6	0	
DBE	12	1	1	2	12	0	
Dental Bd.	5	0	5	2	16	2	
Education	13	0	3	3	14	0	
Electrical Bd.	3	2	0	1	5	0	
Enginrs/Land Sur. Bd.	6	0	0	2	12	0	
GJTO	0	1	0	1	0	?	
Grievance Bd.	1	0	0	0	8	0	
Health Dept.	1	1	3	1	6	0	
Highways	3	1	2	0	9	0	
Insurance Div.	79	2	10	19	90	0	
Labor Relations	1	0	0	0	1	0	
Lottery	2	1	0	0	2	0	
Medical Bd.	19	3	15	9	59	0	
Midwives Bd.	1	0	1	0	1	0	
Nursing Bd.	82	11	19	64	175	0	
NH Administrator Bd.	3	0	0	0	3	0	
Optometric Bd.	1	0	0	0	0	0	
Outfitters & Guides	6	1	2	2	1	0	
Pharmacy Bd.	5	1	2	2	13	0	
Physical Therapy Bd.	4	0	2	1	7	0	
Podiatry Bd.	2	1	3	0	3	0	
Psychology Bd.	5	4	2	2	13	0	
Real Estate Apprs. Bd.	3	1	1	2	11	0	
Real Estate Div.	18	3	7	8	24	0	
Securities Div.	2	0	2	1	9	0	
Teacher Tenure	1	2	0	1	3	0	
UCCC	1	0	0	0	1	0	
<b>TOTALS</b>	<b>375</b>	<b>62</b>	<b>106</b>	<b>139</b>	<b>605</b>	<b>2</b>	

**DIV. OF ADMINISTRATIVE HEARINGS  
SOCIAL SERVICES CASE COUNTS  
FY 94/95**

	DOCKETED		HEARINGS		DECISIONS	
		MERITS	PROC.	MERITS	PROC.	
AFDC - FRAUD	197	97	18	106	25	
AFDC	217	84	33	123	105	
Aid to the Blind	0	0	0	0	0	
AND	94	31	12	50	67	
ChildCare/DayCare	13	10	1	11	6	
C.R.S.P.	6	2	0	2	2	
Day Care Licensing	41	10	4	11	31	
Expungement	65	17	38	40	73	
Food Stamp Fraud	468	274	41	318	124	
Food Stamp	285	76	73	124	127	
Foster Care Lic.	5	2	0	2	0	
Foster Care Fee	2	8	3	10	17	
Funeral/Burial	0	0	0	0	0	
HCA	13	11	4	10	16	
HCBS (PRO)	43	20	10	20	15	
LEAP	25	13	11	18	4	
Medicaid	157	89	33	134	98	
Merit System	33	19	6	13	16	
Old Age Pension	58	24	11	34	35	
Provider - Appeals	80	3	11	4	35	
Subsidized Adoption	20	3	0	2	0	
Tax Intercept/State	102	28	16	30	23	
Tax Intercept/Fed.	0	0	0	0	0	
<b>DOCKETED                      HEARINGS                      DECISIONS</b>						
<b>TOTALS</b>	<b>1924</b>	<b>1146</b>	<b>1881</b>			

**Division of Administrative Hearings  
FY 95/96**

**APPROPRIATION BY JBC**

AGENCY	APPROPRIATED HOURS	RATE - ALJ PARALEGAL	APPROPRIATED
PUBLIC HEALTH	170	\$89.35/ \$35.27	\$15,189
HCP & F	1,993	"	\$178,075
HUMAN SVCS.	6,983	"	\$557,088
WORKERS' COMPENSATION	17,037	"	\$1,430,104.
LABOR RELATIONS	108	"	9,650
REGULATORY AGENCIES	5,318	"	417,622
SECY. OF STATE	611	"	54,593
<b>TOTALS</b>	<b>32,220</b>		<b>2,662,321</b>

# DIVISION OF ADMINISTRATIVE HEARINGS

## STAFFING SUMMARY COMPARISONS

	91/92	95/96
ALJ IV (Director)	1.0	1.0
ALJ III (Supervisory)	2.0	2.5
ALJ II (Grand Junction)	0	1.0
ALJ I	12.0	10.5
Adm. Prog. Specialist IV	1.0	1.0
Legal Assistant II	2.0	2.0
Legal Assistant I	1.0	1.0
Hearings Reporters	5.0	5.0
Program Assistants	1.0	4.0
Adm. Assistant II	0	3.75
Adm. Assistant III	0	3.6
Word Processors	5.0	0
Sr. Secretary	1.0	0
Secretary	1.0	0
Sr. Adm. Clerk	3.0	0
Clerical Assistant	1.0	0
Adm. Asst. Intern	0	1.0
<b>TOTALS</b>	<b>36.0</b>	<b>36.35</b>

Note: Forty-one individuals, statewide, equal 36.35 FTEs. In Denver, there are 30 individuals who equal 27.0 FTEs. 17 A.L.J.s equal 15.0 FTEs. Workers' compensation is handled by 12 individual A.L.J.s who equal 8.7 FTEs. 7 Hearings Reporters equal 5.0 FTEs.

## ANALYSIS OF WORKERS' COMPENSATION ADJUDICATION STATISTICS FOR LAST THREE FISCAL YEARS

- Attached are adjudication statistics for workers' compensation, social services and all other (including regulatory law) cases for the last three fiscal years. In fiscal year 92/93, 9.0 judges rendered 11,265 decisions for a cost of \$112 per decision. The hourly billing rate in FY 92/93 was approximately \$67 per hour for judge services.
- In FY 93/94, 21% of all workers' compensation cases docketed with the Division of Administrative Hearings resulted in hearings on the merits. 8.2 judges rendered 11,408 decisions for a cost of \$113 per decision. In FY 93/94, it was approximately \$77 per hour for judge services.
- In FY 94/95 19% of all workers' compensation cases docketed with the Division of Administrative Hearings resulted in hearings on the merits. 8.7 judges rendered 12,211 decisions. The cost per decision in FY 94/95 was \$112. The hourly billing rate in FY 94/95 was approximately \$76 per hour for judge services.
- The decreasing ratio of hearings held to cases docketed indicates that the Division of Workers' Compensation prehearing mechanism has been successful in streamlining cases, and catalyzing some settlements, thus, a lower percentage of cases docketed result in hearings.
- In FY 93/94, there was a 14% decrease in the number of hearings on the merits held. In FY 94/95, there was a 1% increase (from FY 93/94) in the number of hearings on the merits held. The number of cases docketed has not risen dramatically. In FY 93/94, there was a 4.5% decrease in the number of cases docketed (from the previous year, FY 92/93), however, there was only a 4% increase in the number of cases docketed over three fiscal years. Considering Colorado's increasingly full employment picture and escalating economic prosperity from three years ago, increase in cases docketed is very low and can be attributed, in part, to an increase in the number of cases being resolved before hearing.
- In FY 92/93, 23% of cases docketed resulted in merits hearings and 27% resulted in merits decisions. In FY 94/95, 19% of cases docketed resulted in merits hearings and 26% of cases docketed resulted in merits decisions.

FY 92/93 (ACTUAL)

CASES DOCKETED	HEARINGS HELD	DECISIONS RENDERED	#OF FTE ALJs HEARING CASES	HEARINGS PER FTE	DECISIONS PER FTE	DOCKETED PER FTE	COST PER DECISION
11,211 (WC)	5,213 (WC)	11,265 (WC)	9.0 (W.C.)	580 (W.C.)	1,252 (W.C.)	1,246 (W.C.)	\$112
1,252 (S)	784 (S)	784 (S)	3.7 (S)	212 (S)	212 (S)	338 (S)	\$621
348 (O)	154 (O)	160 (O)	2.25 (O)	68 (O)	71 (O)	155 (O)	\$2,064
Totals:12,811	6,151	12,209	14.95	411	816	857	\$170

W.C. MERITS HEARINGS	W.C. MERITS DECISIONS	# OF FTE ALJs HEARING WC CASES	MERITS HEARINGS PER A.L.J.	MERITS DECISIONS PER A.L.J.
2,598	3,049	9.0	289	339

Note: WC = Workers' Comp. 23 % OF W.C. CASES DOCKETED HEARD ON MERITS IN FY 92/93  
 S = Social Services  
 O = All Other

FY 93/94 (ACTUAL)

CASES DOCKETED	HEARINGS HELD	DECISIONS RENDERED	#OF FTE ALJs HEARING CASES	HEARINGS PER FTE	DECISIONS PER FTE	DOCKETED PER FTE	COST PER DECISION
10,600 (WC)	5,410 (WC)	11,408 (WC)	8.2 (W.C.)	660 (W.C.)	1,391 (W.C.)	1,293 (W.C.)	\$113
1,578 (S)	754 (S)	1,440 (S)	3.8 (S)	198 (S)	379 (S)	415 (S)	\$357
275 (O)	148 (O)	548 (O)	2.6 (O)	57 (O)	211 (O)	106 (O)	\$644
Totals:12,453	6,312	13,396	14.6	432	918	853	\$161

W.C. MERITS HEARINGS	W.C. MERITS DECISIONS	# OF FTE ALJs HEARING WC CASES	MERITS HEARINGS PER A.L.J.	MERITS DECISIONS PER A.L.J.
2,224	2,297	8.2	271	280

21 % OF W.C. CASES DOCKETED HEARD ON MERITS IN FY 93/94

FY 94/95 (ACTUAL)

CASES DOCKETED	HEARINGS HELD	DECISIONS RENDERED	#OF FTE ALJs HEARING CASES	HEARINGS PER FTE	DECISIONS PER FTE	DOCKETED PER FTE	COST PER DECISION
11,662 (WC)	6,035 (WC)	12,211 (WC)	8.7 (W.C.)	694 (W.C.)	1,444 (W.C.)	1,300 (W.C.)	\$112
1,924 (S)	1,146 (S)	1,881 (S)	3.8 (S)	302 (S)	495 (S)	302 (S)	\$311
327 (O)	170 (O)	778 (O)	2.6 (O)	65 (O)	299 (O)	126 (O)	\$410
<b>Totals:13,913</b>	<b>7,351</b>	<b>14,870</b>	<b>14.6</b>	<b>503</b>	<b>1,018</b>	<b>953</b>	<b>\$153</b>

W.C. MERITS HEARINGS	W.C. MERITS DECISIONS	# OF FTE ALJs HEARING WC CASES	MERITS HEARINGS PER A.L.J.	MERITS DECISIONS PER A.L.J.
2,250	3,052	8.7	259	351

19 % OF W.C. CASES DOCKETED HEARD ON MERITS IN FY 94/95

FY 95/96 (PROJECTED, Based on 3/4 of Fiscal Year)

CASES DOCKETED	HEARINGS HELD	W.C. MERITS HEARINGS HELD	DECISIONS RENDERED	#OF FTE ALJs HEARING CASES	HEARINGS PER FTE	DECISION S PER FTE	W.C. MERITS HEARINGS PER ALJ	DOCKETED PER FTE	COST PER DECISION
11,556 (WC)	5,659 (WC)	2,025 (WC)	11,403 (WC)	8.7 (WC)	650	1311	233	1328	\$125**
1,692 (S)	1,164 (S)		1,728 (S)	3.8 (S)	306	455		445	\$425**
348 (O)	144 (O)		708 (O)	2.6 (O)	55	272		134	\$702**
<b>Totals:13,596</b>	<b>6,967</b>		<b>13,839</b>	<b>14.6</b>	<b>477</b>	<b>948</b>		<b>931</b>	<b>\$192**</b>

W.C. MERITS HEARINGS	W.C. MERITS DECISIONS	# OF FTE ALJs HEARING WC CASES	MERITS HEARINGS PER A.L.J.	MERITS DECISIONS PER A.L.J.
2,025	4,141	8.7	233	476

\*\* Beginning on July 1, 1995, Division of Administrative Hearings assumed full costs of rent and operating costs for W.C. adjudications - before, Division of Labor and Employment bore these costs - an increase of \$175,000 per year took effect

# WORKERS' COMPENSATION BACKLOG COMPARISON

6-30-91

UNDER 20 DAYS	100
20-30 DAYS	37
30-60 DAYS	9
60-90 DAYS	0
OVER 90 DAYS	1
TOTAL	147

12-31-92

## SUMMARY ORDERS

UNDER 15 WORKING DAYS	21
OVER 15 WORKING DAYS	0

## SPECIFIC FINDINGS

UNDER 25 CALENDAR DAYS	14
OVER 25 CALENDAR DAYS	0
GRAND TOTAL	35

6-30-95

SUMMARY ORDERS

UNDER 15 WORKING DAYS	29
OVER 15 WORKING DAYS	0

SPECIFIC FINDINGS

UNDER 25 CALENDAR DAYS	13
OVER 25 CALENDAR DAYS	0

GRAND TOTAL	42
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3-31-96

SUMMARY ORDERS

UNDER 15 WORKING DAYS	24
OVER 15 WORKING DAYS	0

SPECIFIC FINDINGS

UNDER 25 CALENDAR DAYS	14
OVER 25 CALENDAR DAYS	0

GRAND TOTAL	38
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## COURT REPORTER TRANSCRIPTS

The 1988 John Lewis study of the workers' compensation system noted that court reporter transcripts, in workers' compensation cases, were lodged, on the average, within 99 days from the date of request for transcript. The Division of Administrative Hearings has 5.0 FTE staff court reporters. All of the staff court reporters exclusively serve the workers' compensation adjudication system. [The Division contracts court reporter services in regulatory law cases and electronically records most social services cases]. As of October 20, 1992, court reporters were lodging transcripts, on the average, within 35 days from the date of request for transcript. As of March 31, 1996, the court reporters were lodging their transcripts, on the average, within 68 days from the request for transcripts. The explanation for the increased transcript backlog is that the A.L.J.s are spending much more time in the hearing room now, as opposed to 1992, thus, longer transcripts. Average time for lodging transcripts, by anonymous court reporter, is as follows:

COURT REPORTER #1 -	39 DAYS
COURT REPORTER #2 -	107 DAYS
COURT REPORTER #3 -	45 DAYS
COURT REPORTER #4 -	28 DAYS
COURT REPORTER #5 -	105 DAYS
COURT REPORTER #6 -	85 DAYS
COURT REPORTER #7 --	Inadequate Information available.
<b>OVERALL AVERAGE</b>	<b>68 DAYS</b>

NOTE: Included in the average time for lodging transcripts are requests for extension of time, made by the court reporters to the merits Administrative Law Judge.

## COMPLAINT HANDLING SYSTEM/ DOCUMENTED COMPLAINTS AND PRAISES IN FY 94/95 AND 95/96

### Complaints:

The complaint handling system of the Division of Administrative Hearings is designed to encourage formal written complaints when serious allegations are made. The Division Director either personally handles formal written complaints or is involved in the handling of a complaint by a supervisor in the Division. A telephone complaint log is maintained by the Division Director; a written workers' compensation complaint file is maintained; a written regulatory agency and social services complaint file is maintained; and, in cases of serious complaints, a separate file, concerning the specific complaint, is maintained by the Division Director.

The public is made aware of the complaint handling system through trade news releases, posting on Division bulletin boards, speaking engagements by administrative law judges and other support personnel and customer satisfaction postcards available at the Division counters where the public comes for service.

All formal complaints are investigated thoroughly. Complainants are kept posted concerning the progress of the investigation and a written response resolving the complaint is sent to the complainant. The Division Director or a supervisor handles formal complaints. At the outset, the complainant is specifically advised that a full investigation will be done and the complainant will be notified of the resolution in 30 days. If a complainant is not satisfied with the Division Director's resolution of the complaint, the complainant is advised that this may be appealed to the Executive Director of General Support Services. In a case of an ethics complaint against an administrative law judge, the complainant is advised that the provisions of the Division of Administrative Hearings' statute, C.R.S. 24-30-1001 *et seq.*, provide that the Executive Director's disposition of a complaint may be appealed to the Governor's Ethics Commission.

There were 14 written complaints against administrative law judges in FY 94/95: 12 in workers' compensation; 1 in social services; and, 1 involving regulatory agencies. There was one telephone complaint which was not followed up by a written complaint. This was satisfactorily resolved by expediting a decision that had "fallen in the cracks." Of the 14 complaints filed, two were meritorious and two others had enough merit to warrant cautioning and counseling the A.L.J.s.

The two meritorious complaints involved timeliness of decisions. One involved a workers' compensation case wherein the file "fell in the cracks" between the Division of Workers' Compensation and the Division of Administrative Hearings. The fact that the matter was ready for an order in late July 1995 and was not brought to the attention to the administrative law judge until late September, 1995, involved a process problem of movement of files between the Division of Workers' Compensation and the Division of Administrative Hearings. The Division of Administrative Hearings accepted full responsibility for the problem and resolved the matter with a sincere apology to the party and the prompt issuance of an order within a week from the time the problem was first discovered. The other complaint involved a regulatory law matter; specifically, two securities cases wherein decisions were rendered in excess of the Division's internal 60 day standard (as well as in excess of the Division's internal 90-day standard for complex cases). The judge against whom the complaint was made has a solid record of extremely high quality and conscientious decisions. The complaint was resolved by the Chief Judge cautioning the A.L.J. in question and counseling the A.L.J. to strike a better balance between quality and timeliness in order that internal time standards not be exceeded.

Representative unmeritorious complaints, generally, involve outcomes. In many instances, the Division Director must counsel the complainant that the proper recourse involves an appeal. In one workers' compensation case, the complainant, a former police officer, concerning whom the Division received information indicating a security risk, complained that the administrative law judge had a police officer in the courtroom (for courtroom security), thus, prejudicing the complainant's case. The matter was thoroughly investigated, appropriate security was warranted under the circumstances, and the Chief Judge found no prejudice to the complainant by virtue of an armed police officer being present in the courtroom.

Another workers' compensation complaint involved an injured worker who complained that the judge was prejudiced against him because the judge denied his claim for permanent total disability benefits. Complainant further complained because the judge refused to reopen his case, indicating that a "reopening" in workers' compensation cannot be used as a substitute for an appeal on the merits. The complaint was resolved by the Chief Administrative Law Judge advising the complainant that his only legal recourse, under the circumstances, would have been a timely appeal; also, that there was no evidence the judge was prejudiced against him.

One workers' compensation complaint involved an injured worker who complained that the judge only awarded him three months of temporary total disability when, in fact, "the complainant was severely disabled." At the time of the complaint, the case was pending before the Colorado Court of Appeals. The matter was resolved by the Chief Administrative Law Judge advising the complainant that he (the Chief Judge) could not comment on the case because it was pending before the Court of Appeals. One workers' compensation case, referred by the Judicial Discipline Commission to the Chief Judge of the Division of Administrative Hearings was that an A.L.J. ruled against the injured worker based on nonexistent medical reports and subsequently dismissed his petition to review because the same was not timely (not received in 20 days). The complainant complained that he had timely mailed the petition and the judge must have misplaced it. The Chief Judge discussed this with the judge in question and, ultimately, determined that the petition to review was not timely. Also, the Chief Judge determined that there was an adequate legal basis for the judge's determination against the complainant. The matter was resolved by the Chief Judge writing the complainant and informing him that a timely appeal would have been the only legal recourse for the complainant.

Another workers' compensation complainant complained that all of the witnesses had perjured themselves in her hearing and the Division's paralegal would not let the complainant communicate *ex parte* with the merits judge. The paralegal resolved the matter with a letter to the complainant outlining the legal and ethical implications of *ex parte* communication and the necessity for the complainant to file a timely appeal. Another complainant, in another workers' compensation case, complained that the A.L.J. was conducting unlawful hearings and she expected the Director of the Division of Workers' Compensation and the Chief Judge to intervene and prohibit that judge from continuing to conduct unlawful hearings. Since the hearings were allegedly unlawful, the complainant refused to appear at these hearings and the judge proceeded to take evidence and make a ruling despite the complainant's nonappearance. The issue involved the insurance carrier's motion to change the complainant's physician. The matter was resolved by a letter to the complainant advising her that if she chose not to appear at a hearing, she would have to be prepared to accept the legal consequences of that nonappearance.

Another workers' compensation complaint, by a losing party, was that the A.L.J. showed bias against the party. After a thorough investigation, including discussion with attorneys and parties present in the courtroom during the hearing plus a review of the transcripts, the Chief Judge determined that the A.L.J. had made an adverse credibility determination against the complainant. One small part of the complaint was that the judge tolerated the opposing party's attorney snickering in court. The complaint was resolved with a letter to the complainant advising of the investigation, the facts discovered and the resolution of the matter. The complaint was dismissed but the A.L.J. was cautioned not to tolerate any party's snickering in the courtroom and the complainant was so advised.

Another representative workers' compensation complaint involved judicial demeanor. Specifically, the attorney complainant alleged that the judge was "arrogant, rude, condescending, overly critical, mean spirited and impatient. . . ." The attorney complainant indicated that he had no problem with the judge's rulings or legal skills. The Chief Judge checked with other lawyers present in the courtroom at the time and these lawyers did not corroborate the complainant's complaint. As a matter of fact, the lawyers questioned felt the judge had been courteous and patient but hurried because of the enormous caseload at the time in question. The matter was resolved with a letter to the complainant advising of the resolution of the matter, specifically, that the judge had been cautioned about exhibiting greater temperance and more patience. The judge had also been cautioned to take extra pains to exhibit courtesy to attorneys even if the attorneys appear to be using courtroom time inappropriately.

Another representative workers' compensation complaint by an attorney was that the judge was disruptive and insulting to the attorney to the point that the judge was so intimidating, the attorney chose not to put on rebuttal evidence. The Chief Judge thoroughly investigated this complaint and learned that the complaining attorney rarely, if ever, appeared in workers' compensation cases and was not aware of the short time limits available for proceeding in these cases. In any event, the complaining attorney offered the complaint in a developmental sense, not in a punitive sense. The complaint was resolved by the Chief Judge counseling the A.L.J. in question to show greater patience with lawyers who do not frequently try workers' compensation cases and to be more judicious in interruptions of counsel.

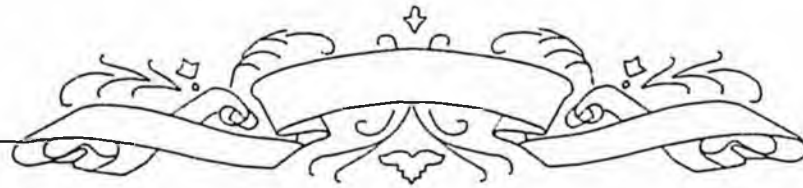
One social services complaint, which was determined to be without merit, involved a complainant "who asked the Chief Judge to disqualify the social services judge because he was "rude, obnoxious and bias (*sic*)."

The investigation revealed that the judge had ruled against the complainant on credibility, the complainant was somewhat disruptive in the hearing and the judge was required to exhibit more firmness than normal in order to maintain control of the hearing room. The matter was resolved with a letter to the complainant, outlining the appropriate legal recusal procedures (a motion for recusal should be addressed to the judge sought to be recused) and politely indicating that the complaint was without merit.

## Praises:

Representative communications of praise involve a returned service questionnaire, postmarked April 22, 1996, wherein the respondent, to the question "Were you treated courteously?" responded "Very much so." To the question, "Were your questions satisfactorily answered?" the response was "And then some." A letter of August 1994 from a lawyer, ruled against by a judge, stated "I applaud your excellent decision . . . even though you ruled against my claim for costs. It is nice to see truth and justice in the area of workers' compensation law. . ."

A letter of May 1995, involving support staff of the Division, reads as follows: "Thank you for continually providing attention to service above and beyond the call of duty. On May 3, 1995, it came to my attention that a deposition which was supposed to have been filed in Colorado Springs for use in an immediate hearing was delivered to Denver and vice-a-versa. I greatly appreciate your efforts to swap these depositions. This constitutes exemplary service on the part of yourselves and the Division of Administrative Hearings." This letter was signed by an insurance defense lawyer, commending the paralegal in Denver and the program assistant in Colorado Springs for swapping the depositions half-way between Colorado Springs and Denver, after business hours.



## 1996 ADMINISTRATIVE LAW JUDGE AND SUPPORT STAFF EVALUATION SURVEY

The Governor's Office of State Planning and Budgeting, the executive branch oversight agency, conducted the 1996 Survey. The overall approval rate for A.L.J.s was 97%, 9 points higher than the 88% reflected in the 1992 survey results. For A.L.J.s handling workers' compensation cases, the 1995 approval rate was 91%, 6 points higher than the 1992 survey results. The support staff, surveyed for the first time in 1996 functions at a 96% approval rate.

Reported in full is the April 8, 1996 report of Marcelo Kort,  
Deputy Director of the OSP&B.



# STATE OF COLORADO

## OFFICE OF STATE PLANNING AND BUDGETING

114 State Capitol Building  
Denver, CO 80203  
Phone (303) 866-3117



### MEMORANDUM

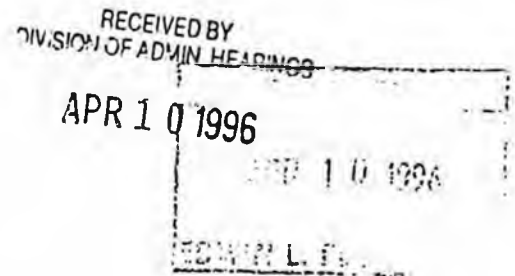
Roy Romer  
Governor  
George H. Deery  
Director

**TO:** Edwin L. Felter  
Chief Administrative Law Judge

**FROM:** Marcelo Kort *MK*  
Deputy Director

**DATE:** April 8, 1996

**SUBJECT:** Administrative Law Judge Evaluation Survey



The Governor's Office of State Planning and Budgeting (OSPB) has analyzed the results of the 1996 Administrative Law Judge Evaluation Survey. OSPB acted as an objective third party in implementing this year's survey by verifying the random selection of respondents and collecting and analyzing all surveys independent of the Division of Administrative Hearings.

This year's survey examined the performance of 17 Administrative Law Judges. Overall the judges in the division are functioning at a 97% approval rate as shown in Table 1. Those administrative law judges assigned to workers' compensation cases functioned at a 91% approval rate, as shown in Table 2.

In addition to the administrative law judge survey, a support staff survey was also sent. The results of this survey show that overall, the support staff is functioning at over a 96% approval rate. The categories and results for each area are shown on Table 3.

The individual performance of judges, in terms of approval rate, ranged from 74% to 100%.

The 1996 survey was returned by 355 attorneys, randomly chosen, who had some contact with at least one of the judges being surveyed within the last year. The approval rate encompasses both the "Outstanding" and "Satisfactory" ratings for 14 different categories shown on the accompanying tables.

The support staff survey was returned by 149 attorneys. The approval rate encompasses both the "Outstanding" and "Satisfactory" ratings for four different offices (Denver, Colorado Springs, Grand Junction, and Fort Collins) and four categories.

TABLE 1

	Outstanding	Satisfactory	Unsatisfactory
1. Promptness in Appearing for Hearing	86%	13%	0
2. Attentiveness to the Proceedings	81%	19%	0
3. Courtesy to Witness and Unrepresented Parties	76%	21%	3%
4. Courtesy to Counsel	70%	25%	5%
5. Familiarity with the File and Adequacy of Preparation	65%	34%	1%
6. Ability to Preside, that is, Control the Hearing Process in a Firm but Fair Manner	59%	38%	3%
7. Ability to Conduct Prehearing Conferences	44%	53%	3%
8. Ability to Conduct Settlement Conferences	45%	50%	5%
9. Ability to Conduct Mediations	39%	56%	5%
10. Knowledge of General Areas of the Law, Rules of Evidence, and Procedure	52%	46%	2%
11. Knowledge of Specific Areas of Law Applicable to the Hearing	58%	41%	1%
12. Promptness in Deciding Cases	45%	41%	14%
13. Completeness and Clarity of Decisions: Legal Reasoning	49%	48%	2%
14. Conscientiousness in Finding Facts and Interpreting the Law Without Regard to Possible Public Criticism	61%	34%	5%
<b>OVERALL</b>	<b>62%</b>	<b>35%</b>	<b>3%</b>

TABLE 2

	Outstanding	Satisfactory	Unsatisfactory
1. Promptness in Appearing for Hearing	67%	30%	3%
2. Attentiveness to the Proceedings	64%	28%	8%
3. Courtesy to Witness and Unrepresented Parties	61%	32%	7%
4. Courtesy to Counsel	56%	30%	14%
5. Familiarity with the File and Adequacy of Preparation	56%	35%	9%
6. Ability to Preside, that is, Control the Hearing Process in a Firm but Fair Manner	56%	32%	12%
7. Ability to Conduct Prehearing Conferences	56%	42%	2%
8. Ability to Conduct Settlement Conferences	59%	38%	3%
9. Ability to Conduct Mediations	53%	40%	7%
10. Knowledge of General Areas of the Law, Rules of Evidence, and Procedure	51%	40%	9%
11. Knowledge of Specific Areas of Law Applicable to the Hearing	54%	38%	8%
12. Promptness in Deciding Cases	65%	30%	5%
13. Completeness and Clarity of Decisions: Legal Reasoning	47%	40%	13%
14. Conscientiousness in Finding Facts and Interpreting the Law Without Regard to Possible Public Criticism	<u>62%</u>	<u>24%</u>	<u>14%</u>
<b>OVERALL</b>	<b>58%</b>	<b>33%</b>	<b>9%</b>

TABLE 3

	Outstanding	Satisfactory	Unsatisfactory
<b>1. COURTESY</b>			
<b>Denver</b>			
Legal Assistants	60%	39%	1%
Admin. Officer	41%	52%	7%
Secretarial Support	47%	52%	1%
Court Reporters (WC Only)	59%	40%	1%
<b>Colorado Springs</b>			
Secretarial Support	71%	26%	3%
Court Reporters	77%	20%	3%
<b>Grand Junction</b>			
Secretarial Support	67%	26%	7%
Court Reporters	76%	22%	2%
<b>Fort Collins</b>			
Secretarial Support	74%	26%	---
Court Reporters	76%	24%	---
<b>2. RESPONSIVENESS</b>			
<b>Denver</b>			
Legal Assistants	57%	38%	5%
Admin. Officer	39%	56%	5%
Secretarial Support	46%	51%	3%
Court Reporters (WC Only)	48%	44%	8%
<b>Colorado Springs</b>			
Secretarial Support	69%	29%	2%
Court Reporters	65%	26%	9%
<b>Grand Junction</b>			
Secretarial Support	72%	22%	6%
Court Reporters	72%	24%	4%
<b>Fort Collins</b>			
Secretarial Support	64%	36%	---
Court Reporters	67%	33%	---
<b>3. SERVICE DELIVERY</b>			
Denver	37%	58%	5%
Colorado Springs	58%	38%	4%
Grand Junction	61%	39%	---
Fort Collins	37%	57%	6%
<b>4. TIMELINESS OF CASE PROCESSING</b>			
Denver	41%	54%	5%
Colorado Springs	42%	48%	10%
Grand Junction	66%	31%	3%
Fort Collins	51%	43%	6%
<b>OVERALL</b>	55%	41%	4%

# ORGANIZATION CHART

Division of Administrative Hearings -- Denver, Colorado (303) 894-2500

Edwin L. Felter, Jr.

Director & Chief Administrative Law Judge IV -- Pos. No. 14

J. Schulman A.L.J. * I #40	M. Rumler A.L.J. III #3 (W.C.) (See Pg. 2 For Details)	J. Wells A.L.J. III #51 (Colorado Springs)	J. Heitzmann Admn. Prog Spec. IV #20	D. Sorenson A L J III #45 (Soc. Serv.)	E. Martinez A L J II #4 (Grand Junction)
M. Snider A.L.J. I #36		C. Wheelock A.L.J. I #10	S. Brown Admn. Asst III #39	D. Stimmel A L J I #2	M. A. Williams Prog Asst I #94
N. Connick A.L.J. I #35	E. Hudson Admn. Asst. III #108	M. Goodenough Hrgs. Rptr. #93	P. Buyaki Program Asst. I #66	T. Moeller A L J I #19	R. E. Chenoweth Hrgs Rptr #87
N. Hopf A.L.J. I #16		C.A. Newton Prog. Asst. I #95	P. Lopez Admn Asst III #38		
H. Conway Gandy A.L.J. I #34 (Fort Collins)		B. Henk A.L.J. I #44	D. Garcia Admn. Asst. III #24		
R. Walker Leg. Asst. II #70		S. Baldwin Admn. Asst. II #102	D. Smith Leg. Asst. I #107		
D. Chenoweth Hrgs. Rptr. #83					
N. Dorland Hrgs. Rptr. #96					
T.E. McGinn Hrgs. Rptr. #81					
P. Nye Hrgs. Rptr. #88					
T. Koehler Hrgs. Rptr. #110					

\* A L J = Administrative Law Judge

(Cont on Pg 2)

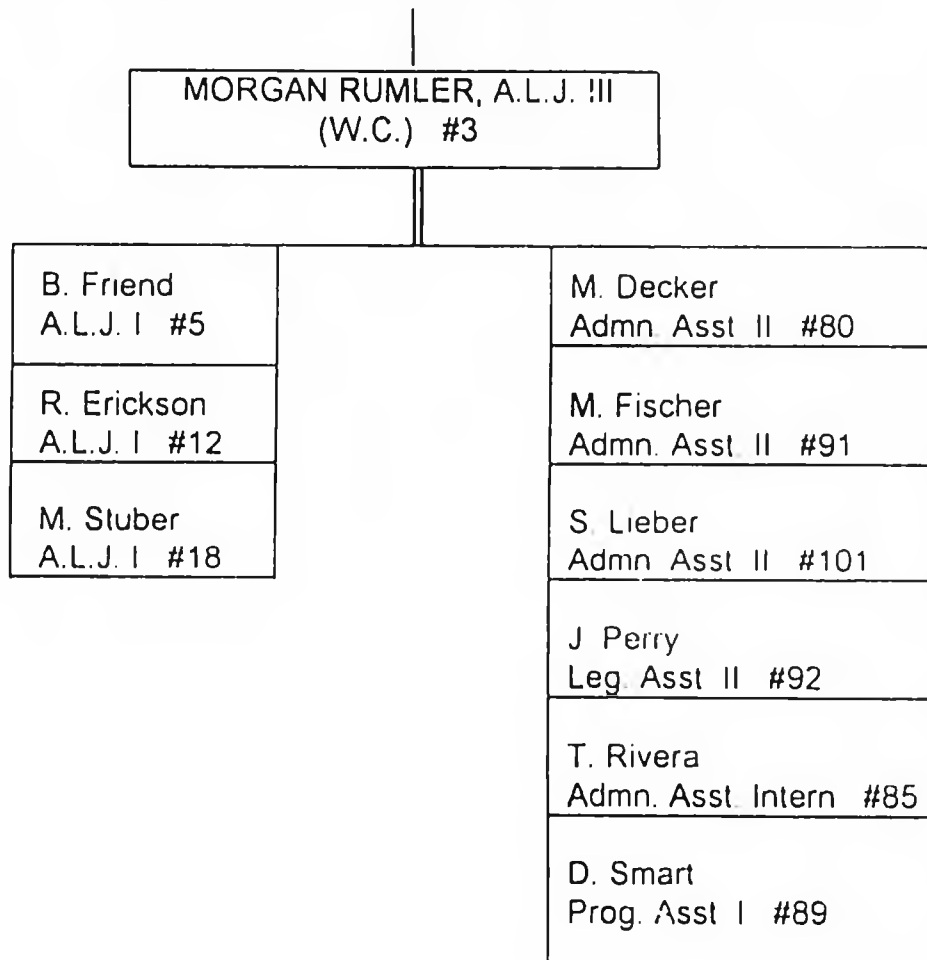
(Rev Eff 2/96)

### ORGANIZATION CHART

Division of Administrative Hearings -- Denver, Colorado (303) 894-2500

Edwin L. Felter, Jr.

Director & Chief Administrative Law Judge IV -- Pos No 14



## CENTRAL HEARING AGENCY STATES BY YEAR CREATED

State	Year Created	Name	Appointing Authority	Jurisdiction	ALJs
CA	1945	Office of Admin. Hearings w/i Dept. of General Services	Governor 4 years coterminous	List in	38 & 20 Cont.
FL	1974	Div. of Admin. Hearings w/i Dept. of Administration	Governor & Cabinet as Admin. Commission	Exclude	32
MA	1974	Admin. Law Appeals Div.	Sec. of Admin. & Finance	Exclude	8
TN	1974	Admin. Procedures Div.	Sec. of State	List in	10
CO	1976	Div. of Admin. Hearings w/i General Support Services	Exec. Director of GSS/ Personnel	Exclude	17
MN	1976	Office of Admin. Hearings	Governor - 6 years	List in	67
MO	1978	Admin. Hearings Commission	Governor - 6 years	Tax, Medicaid Licensing, Insurance	2
NJ	1978 - 79	Office of Admin. Law	Governor - 6 years	Exceptions	45
WA	1981 - 82	Office of Admin. Hearings	Governor - 5 years	Exceptions	64
WI	1983	Div. of Hearings & Appeals w/i Dept. of Administration	Governor	List in	15
IA	1986	Appeals & Fair Hearings Div w/i Dept. of Inspect's & Appeals	Governor - 4 years	List in	16
NC	1988	Office of Admin. Hearings	Chief Justice - 4 years	Exceptions	9
MD	1989	Office of Admin. Hearings	Governor - 6 years	List in	55
HI	1990	Office of Admin. Hearings	Governor	List in	4
ND	1991	Office of Admin. Hearings	Governor - 6 years	Exceptions	4
TX	1991	Office of Admin. Hearings	Governor - 2 years	Originally all agencies w/o fulltime ALJs, others added	70
WY	1992	Office of Admin. Hearings	Governor - 4 years coterminous	List in	11
SC	1993 - 94	Office of Admin. Hearings	Legislature	List in	6
SD	1993 - 94	Office of Admin. Hearings	Governor	Opt out, but none did	12
GA	1994	Office of State Admin. Hearings	Governor	All w/i APA except Labor & Workers' Compensation	33 + 25 on Contract
KY	1994	Div. of Admin. Hearings w/i Office of Attorney General	Attorney General	Exceptions	4
LA	1995	Div. of Admin. Hearings w/i Dept. of State Civil Service	Governor	Exceptions	

Chart prepared by Administrative Law Judge Edward J. Schoenbaum, Editor-in Chief, *Journal of the National Association of Administrative Law Judges*, 1108 South Grand West, Springfield, Illinois 62704 (217) 524-7836 or fax 524-7824 for updates.

Legislation has also been introduced in: Illinois, Indiana, Ohio, New York, Arizona, Connecticut, and the District of Columbia.

STATE CENTRAL HEARING AGENCY JURISDICTION

Jurisdiction	CA	CO	FL	GA	IA	KY	LA	MD	MA	MN
Agriculture			P F	PP	P			F		P
Alcohol	Lic P		P F	Lic P	P			F	Lic. P.	Lic.
Audit/Pensions				P				F		
Child Support										P
Commerce/Ins.	Lic P	P	P F		P			F		P
Comm. Affairs			P F							
Comm. Colleges			P F	Grants						Pro
Consumer Affairs				P				P	Lic. P.	
Contracts	Lic P		P F	P						
Corrections			P F	Griev P						
Crime Vict Comp.				P P						P
Education	T F	P	P F	C F	P			F		P
Education/Special		P	F					F		
Empl. Security								F		
Environmental	P		Perm. P	Perm. P	Perm. P			P F		P
Fair Empl. Housg	Emp. P		P F		P					
Health		P	P F		P			P P		P
Human Relations			P F		P			Discrim		P F
Justice	Lic. P		P F	Lic P	P					
Labor		P	P F	Lic. P	P					
Motor Vehicles	Lic. P		P F	P	P			P		
Natrl. Resources			P F		P			Lic. P.		
Pension			P F		P			F		
Person Disab & Retire	P			P				P F	Ben. P	
Pers. Discipline		Pro		P	P			P F		
Police Discip & Disabl			F		P					
Professional Registr.	Lic. P	Lic. P	Lic. P		P			P		
Probation & Parole			P F							
Public Utilities			P F							P
Rule Challenges			F							
Saftey Proper. y Forfeit										
Social Servs. Benefit		P F		P	P			F		P
Social Servs. License	Lic. P	P		P	P			P		P
Tax	F		P F							
Taxi-Limo										
Transit Authority					P					
Transport. Contract					P					P
Veterans										P
Workers' Comp.		P								F

P = Proposed Decision F = Final Decision Lic. = Licensing Griev. = Grievance Bene = Benefits

## STATE CENTRAL HEARING AGENCY JURISDICTION

Jurisdiction	MO	NJ	NYC	NC	ND	SC	SD	TN	TX	WA	WI	WY
Agriculture		P		P	P			P	P	P		
Alcohol		Lic.		Lic. P.	P	Lic.&Vio.		P	Lic. P.	Lic.		
Audit/Pensions		P		P								
Child Support				P						P		
Commerce/Insur.	In				P	Ins & Lic		P	P	P		
Comm. Affairs		Lic.						Lic.	P			
Comm. Colleges				Grant				P		P		
Consumer Affairs		Lic.		P				P	Lic.P			
Contracts		Lic.	Deb	P								
Corrections			D P	Griev.								
CrimeVict.Comp.				P							F	
Education		P P		C F	P			P		F		
Education/Spec.		F			F					F		
Empl. Security										Ben	F	
Environmental		Lic.		P		Lic.		P F	P			
Feir Empl.Housg												
Health					P	Coj		P F	P	P		
Human Relations								P				
Justice				Lic. P.								
Labor			P	Lic. P.	P	Lic. W.				P		
Motor Vehicles		Lic.		P	P							
Natrl. Resources				P		Lic.			P	P	F	
Pension		Ben		P						P		
PersonDisab&Retire				P					Ben.P	P		
Pers. Discipline		Pro	P	P	P			P				
Police Discip&Disabl			P									
Professional Registr.	F		P	P	P				P			
Probation & Parole					P							
Public Utilities					P				P		F	
Rule Challenges												
SaftyPropertyForfeit								P		F		
Social Servs. Benefit	F	P		P	P	Limited				P		
Social Servs License	F			P	P	Lic Appeal				P		
Tax	F				P	Tax&Proprty						
Taxi-Limo			Lic.		P							
Transit Authority			P									
Transport. Contract			P	P							F	
Veterans					P					P		
Workers' Comp.					P							

## Article 7. Legislative Review of Rules.

### Section

320. Legislative annulment of regulations and review

**Sec. 44.62.320. Legislative annulment of regulations and review.** (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978; am § 3 ch 16 SLA 1980)

### NOTES TO DECISIONS

**Legislative veto unconstitutional.** — The legislative veto contained in subsection (a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department," violates art. II of the state constitution. *State v. A.L.I.V.E. Volun-*

*tary*, 606 P.2d 769 (Alaska 1980).

No implied general power to veto agency regulations by informal legislative action exists. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

Cited in *Wickersham v. State, Com. Fisheries Entry Comm'n*, 680 P.2d 1135 (Alaska 1984).

## Article 8. Administrative Adjudication.

### Section

330. Application of AS 44.62.330 — 44.62.630  
 340. Delegation of power by agencies  
 350. Appointment of hearing officers  
 360. Accusation  
 370. Statement of issues  
 380. Service of accusation  
 390. Notice of defense  
 400. Amended or supplemental accusation  
 410. Time and place of hearing  
 420. Form of notice of hearing  
 430. Subpoenas; witness fees  
 440. Depositions  
 450. Hearings  
 460. Evidence rules  
 470. Evidence by affidavit  
 480. Official notice

### Section

490. Amendment of accusation after submission  
 500. Decision in a contested case  
 510. Form and retroactivity of decision  
 520. Effective date of decision; stay  
 530. Default  
 540. Reconsideration  
 550. Petition for reinstatement or reduction of penalty  
 560. Judicial review  
 570. Scope of review  
 580. Continuances  
 590. Contempt  
 600. Voting procedure  
 610. Charge  
 620. Power to administer oaths  
 630. Impartiality

### NOTES TO DECISIONS

**Applicability to university pre-termination hearings.** — This chapter governs the process to be employed by a university in the conduct of pre-termination hearings, permitting the parties to be represented by counsel who can question witnesses

and make arguments. *Odum v. University of Alaska*, 845 P.2d 432 (Alaska 1993) (decided before the 1993 repeal of AS 44.62.330(a)(45).

Applied in *Schnabel v. State*, 663 P.2d 960 (Alaska Ct. App. 1983).

**Sec. 44.62.330. Application of AS 44.62.330 — 44.62.630.** (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 — 44.62.630. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty,

contempt, mail vote, oaths, chapter, notwithstanding similar commissions, and officers listed under AS 44.62.330 — 44.62

- (1) [Repealed, § 5 ch 159]
- (2) Board of Chiropractic
- (3) Board of Dental Exam
- (4) State Board of Registr
- (5) [Repealed, § 13 ch 211]
- (6) Board of Examiners in
- (7) [Repealed, § 5 ch 159]
- (8) State Medical Board;
- (9) Division of Lands und
- (10) Board of Nursing;
- (11) Board of Pharmacy;
- (12) Board of Public Acco
- (13) Department of Labo
- provided in (c) of this sectio
- (14) Real Estate Commis
- (15) Alaska Workers' Co
- expressly provided by the A
- (16) Department of Tran
- aeronautics and communica
- (17) [Repealed, § 12 ch 1.
- (18) [Repealed, § 49 ch 9
- (19) [Repealed, § 54 ch 1
- (20) [Repealed, § 16 ch 8
- (21) [Repealed, § 54 ch 1
- (22) [Repealed, § 11 ch 1.
- (23) Department of Publi
- license under AS 18.65.400
- (24) Department of Heal
- tioning, or revocation of a l
- admissions or assessment c
- (25) [Repealed, § 60 ch 9
- (26) [Repealed, § 4 ch 12
- (27) Department of Hea
- Conservation under AS 17.5
- Commerce and Economic D
- funeral directors under AS
- (28) Department of Hea
- under AS 18.20.010 — 18.2
- (29) [Repealed, § 4 ch 12
- (30) Department of Env
- concerning the regulation o
- (31) [Repealed, § 40 ch 1
- (32) [Repealed, § 4 ch 1
- (33) Board of Marine Pi
- (34) Alaska Police Stand
- (35) Department of Cor
- licensing and related func
- (36) Board of Dispensin
- (37) [Repealed, § 20 ch

contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 — 44.62.630 is limited to named functions of the agency.

- (1) *[Repealed, § 5 ch 159 SLA 1980.]*
- (2) Board of Chiropractic Examiners;
- (3) Board of Dental Examiners;
- (4) State Board of Registration for Architects, Engineers, and Land Surveyors;
- (5) *[Repealed, § 13 ch 218 SLA 1976.]*
- (6) Board of Examiners in Optometry;
- (7) *[Repealed, § 5 ch 159 SLA 1980.]*
- (8) State Medical Board;
- (9) Division of Lands under Alaska Land Act where applicable;
- (10) Board of Nursing;
- (11) Board of Pharmacy;
- (12) Board of Public Accountancy;
- (13) Department of Labor as to functions relating to employment security only as provided in (c) of this section;
- (14) Real Estate Commission;
- (15) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act;
- (16) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications;
- (17) *[Repealed, § 12 ch 131 SLA 1980.]*
- (18) *[Repealed, § 49 ch 94 SLA 1980.]*
- (19) *[Repealed, § 54 ch 169 SLA 1978.]*
- (20) *[Repealed, § 16 ch 82 SLA 1982.]*
- (21) *[Repealed, § 54 ch 169 SLA 1978.]*
- (22) *[Repealed, § 11 ch 181 SLA 1976.]*
- (23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 — 18.65.490;
- (24) Department of Health and Social Services, relating to denial, involuntary conditioning, or revocation of a license issued under AS 47.35, or suspension of operations or admissions or assessment of an administrative fine under AS 47.35;
- (25) *[Repealed, § 60 ch 98 SLA 1966.]*
- (26) *[Repealed, § 4 ch 120 SLA 1971.]*
- (27) Department of Health and Social Services and Department of Environmental Conservation under AS 17.20 (Alaska Food, Drug, and Cosmetic Act), and Department of Commerce and Economic Development in connection with the licensing of embalmers and funeral directors under AS 08.42;
- (28) Department of Health and Social Services and the Hospital Advisory Council, under AS 18.20.010 — 18.20.130;
- (29) *[Repealed, § 4 ch 120 SLA 1971.]*
- (30) Department of Environmental Conservation, under AS 18.35.010 — 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels;
- (31) *[Repealed, § 40 ch 206 SLA 1975.]*
- (32) *[Repealed, § 4 ch 106 SLA 1970.]*
- (33) Board of Marine Pilots;
- (34) Alaska Police Standards Council;
- (35) Department of Commerce and Economic Development under AS 08.54 as to licensing and related functions for big game guides and transporters;
- (36) Board of Dispensing Opticians;
- (37) *[Repealed, § 20 ch 110 SLA 1981.]*

(38) [Expired pursuant to § 3 ch 128 SLA 1974; am § 7 ch 108 SLA 1975.]

(39) Alaska Public Offices Commission;

(40) Board of Fisheries;

(41) Board of Game;

(42) the Department of Education and the Professional Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 — 14.20.040 and AS 14.20.470(a)(4);

(43) Alaska Commission on Postsecondary Education under AS 14.48 as to denial of applications and revocation of authorizations and permits;

(44) Department of Environmental Conservation, except to the extent that AS 44.62.360 — 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03 and AS 46.14;

(45) [Repealed, § 1 ch 30 SLA 1993.]

(46) [Repealed, § 77 ch 14 SLA 1987.]

(47) Board of Psychologist and Psychological Associate Examiners;

(48) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.870;

(49) Board of Veterinary Examiners;

(50) Department of Commerce and Economic Development concerning the licensing and regulation of nursing home administrators;

(51) Board of Barbers and Hairdressers;

(52) Department of Natural Resources concerning the Alaska grain reserve program under former AS 03.12;

(53) Department of Commerce and Economic Development concerning the licensing and regulation of audiologists under AS 08.11;

(54) Department of Commerce and Economic Development concerning the licensing and regulation of hearing aid dealers under AS 08.55;

(55) Board of Certified Real Estate Appraisers;

(56) Department of Labor as to functions related to employment rights of the organized militia under AS 26.05.075;

(57) Board of Certified Direct-Entry Midwives;

(58) Board of Marital and Family Therapy;

(59) the Department of Health and Social Services and the Department of Administration as to the licensing and regulation of assisted living homes under AS 47.33.

(b) The procedure of an agency not listed in (a) of this section shall be conducted under AS 44.62.330 — 44.62.630 only as to those functions to which AS 44.62.330 — 44.62.630 are made applicable by the statutes relating to that agency.

(c) Judicial review and scope of judicial review of all final decisions of the commissioner of labor on an appeal relating to employment security shall be in accord with this chapter notwithstanding anything to the contrary in AS 23.20 (Alaska Employment Security Act). All other procedures of the Department of Labor relating to employment security shall be as provided in AS 23.20 and the regulations under AS 23.20.

(d) Except in a case of reinstatement or reduction of penalty, the provisions of this chapter do not affect statutory provisions concerning

(1) civil or criminal penalties;

(2) additional relief by injunction or restraining order;

(3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;

(4) related matters that in their context do not relate to procedure. (§ 2 (ch 2) ch 143 SLA 1959; am § 14 ch 2 SLA 1964; am § 60 ch 98 SLA 1966; am § 2 ch 120 SLA 1966; am § 1 ch 58 SLA 1967; am § 18 ch 143 SLA 1968; am § 2 ch 83 SLA 1969; am § 2 ch 118 SLA 1969; am §§ 3, 4 ch 106 SLA 1970; am § 6 ch 104 SLA 1971; am § 4 ch 120 SLA 1971; am § 2 ch 178 SLA 1972; am § 5 ch 179 SLA 1972; am § 2 ch 17 SLA 1973; am § 3

ch 45 SLA 1973; am § 2 ch 128 SLA 1974; am § 2 ch 128 SLA §§ 39, 40 ch 206 SLA 1975 181 SLA 1976; am §§ 13, 1 SLA 1977; am § 3 ch 140 SLA am § 23 ch 58 SLA 1980; am ch 130 SLA 1980; am § 12 SLA 1980; am § 20 ch 110 SLA 1982; am § 2 ch 100 SLA am § 77 ch 14 SLA 1987; 177 SLA 1990; am § 8 ch 1 SLA am § 14 ch 74 SLA 1993; am 91 SLA 1995; am § 12 ch

**Cross references.** — For cross amendments, see § 15, ch. 33 Temporary and Special Acts. For provisions relating to the 1996 amendment 14, ch. 33, SLA 1996 in the Temp Acts.

**Effect of amendments.** — This section effective May 12, 1989, substituted "Commercial Services Board" for "Control Board" in paragraph (a)(5).

The first 1990 amendment added paragraph (a)(55).

The second 1990 amendment, effective May 12, 1989, added paragraph (a)(58).

The second 1992 amendment, effective May 12, 1989, added paragraph (a)(57).

The first 1993 amendment, effective May 12, 1989, repealed paragraph (a)(45).

The second 1993 amendment, effective May 12, 1989, added a section reference in paragraph (a)(59).

The first 1994 amendment, effective May 12, 1989, in paragraph (a)(24), inserted "voluntary conditioning, license issued" and substituted "admissions or admissions or administrative fine under AS 47.33" for "boarding and foster homes for children."

The second 1994 amendment, effective May 12, 1989, added paragraph (a)(59).

The 1995 amendment, effective May 12, 1989, substituted present paragraph (a)(59) for paragraph, which read "Board of Administrators."

The 1996 amendment, effective May 12, 1989, substituted present paragraph (a)(59) for paragraph (a)(35), which read "Board of Commercial Services Board."

**Editor's notes.** — Section provides that "[a] university shall not be subject to the procedures being followed before the Board of Administrators."

**Opinions of attorney general.** — The adjudication procedure is the same as for determinations of fact in paragraph (d)(4), which excepts

**Board of Governors of Alaska.** — The legislature expressly

*Lisa,*  
Lisa,

We have a judge standing by in Colorado, testifiers in Anchorage, and Mat-Su, as well as people here in Juneau....

Do I let them go or can you give me a time when they might be able to testify today ??

Because of the late start and the conferee ahead of us we did not put the ALJ on line. He was to call when Scott began testimony.

Mr. Felter needs to be released if there is not intention of taking up HB-232 in a reasonable period of time.

Thanks for your assistance-

Dave

