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Sec. 44.62.350. Appointment of hearing officers. (a) The governor shall assign a qualified, unbiased, and impartial hearing officer, with experience in the general practice of law, to conduct hearings under this chapter. The hearing officer may perform other duties in connection with the administration of this chapter and other laws.

(b) An agency with hearing officers may continue their employment as hearing officers on an unbiased and impartial basis within the particular agency and may hire additional officers and prescribe additional qualifications.

(c) A hearing officer hired after April 29, 1959, except to conduct hearings under the Alaska Employment Security Act (AS 23.20), shall have been admitted to practice law for at least two years immediately before his appointment. (§ 3 (ch 2) ch 143 SLA 1959; am § 7 ch 5 SLA 1966)

(1) Proposed Section:

Sec. 44.62.380, Presiding officer; disqualification; powers

(a) One or more qualified members of the agency head, or one or more duly appointed hearing officers may, in the discretion of the agency, be the presiding officer.

(b) Any individual serving or designated to serve alone or with others as presiding officer shall be disqualified from the hearing for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is disqualified.

(c) The presiding officer may:

(1) administer oaths and affirmations;

(2) issue subpoenas authorized by law;

(3) order discovery by the parties as provided in AS 44.62.600 and issue protective orders;

(4) rule on offers of proof and receive relevant evidence;

(5) order depositions or have depositions taken when the ends of justice would be served;

(6) regulate the course of the hearing, including continuances;

(7) hold conferences for the settlement or simplification of the issues by consent of the parties;

(8) dispose of prodecural requests or similar matters;

(9) advise the agency on matters of law; and

(10) exercise other powers necessary for the orderly conduct of the hearing not expressly prohibited by this chapter or reserved to the agency itself.

(2) Current Section:

(None)

(3) Comments:

This section provides for the identification of a presiding officer who will have principal responsibility for the conduct of adjudicative hearings under this draft. The presiding officer may be a member of the agency head or may be a hearing officer; one or more persons may be designated as presiding officer, as would be the case in multiple hearings on discrete aspects of a single proceeding. Presiding officers may be disqualified for bias upon petition of a party and determination by the agency. Should the need arise, additional hearing officers could be sought under the provisions of §.370(c) until an unbiased presiding officer is found.

(4) Source:

Administrative Law Committee Draft (July 1981)

Draft Model APA §4-202

(1) Proposed Section:

Sec. 44.62.390, Power to administer oaths

In an adjudicatory proceeding under this chapter an agency, agency member, hearing officer, presiding officer or other person authorized by law may administer oaths and affirmations and certify official acts.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.620

Sec. 44.62.620. Power to administer oaths. In a proceeding under AS 44.62.330 — 44.62.630 an agency, agency member, secretary of an agency or hearing officer may administer oaths and affirmations and certify official acts. (§ 30 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.400, Accusation

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned is initiated by filing an accusation. The accusation shall (1) be a written statement of charges setting out in ordinary and concise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare his defense; and (2) specify the statute and rule which the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and rule.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.360

Sec. 44.62.360. Accusation. A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned is initiated by filing an accusation. The accusation shall (1) be a written statement of charges setting out in ordinary and concise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare his defense; (2) specify the statute and rule which the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and rule; and (3) be verified, unless made by a public officer acting in his official capacity or by an employee of the agency on whose behalf the proceeding is to be held; the verification may be on information and belief. (§ 4 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.420, Statement of issues

(a) A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed is initiated by filing a statement of issues. The statement of issues is a written statement specifying

(1) the statute and rule with which the respondent must show compliance by producing proof at the hearing, and

(2) particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought.

(b) The statement of issues shall be served in the same manner as an accusation.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.370

Sec. 44.62.370. Statement of issues. (a) A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed is initiated by filing a statement of issues. The statement of issues is a written statement specifying (1) the statute and rule with which the respondent must show compliance by producing proof at the hearing, and (2) particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought.

(b) The statement of issues shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

(c) The statement of issues shall be served in the same manner as an accusation, except that if the hearing is held at the request of the respondent (1) AS 44.62.380 and 44.62.390 do not apply, and (2) the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in § 420 of this chapter. (§ 5 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.420, Limitation on initiation of proceedings

Only a public officer acting in his official capacity or an employee of the agency on whose behalf the proceeding is to be held may file an accusation or statement of issues unless the statute or regulation governing the respondent or his activities expressly confers upon third persons the right to initiate an administrative proceeding, in which case the accusation or statement of issues must be verified. The verification may be on information and belief.

(2) Current Statute:

(None)

(3) Comments:

This section is intended to reflect in statute the decision of the Alaska Supreme Court in Vick v. Board of Electrical Examiners, 626 P.2d 90 (Alaska 1981) to the effect that a private citizen has no legal power to compel agency action by the filing of an accusation or statement of issues.

(4) Source:

Administrative Law Committee Draft (July 1981)

(1) Proposed Section:

Sec. 44.62.430, Service of accusation

(a) Upon filing the accusation, the agency

(1) shall serve a copy of the accusation on the respondent as provided in (c) of this section;

(2) shall include with the accusation a post card or other form entitled "Notice of Defense" which, when signed by or on behalf of the respondent and returned to the agency, acknowledges service of the accusation and constitutes a notice of defense under §44.62.450 of this chapter;

(3) shall include in or with the copy of the accusation a statement that respondent may request a hearing by filing a notice of defense as provided in §44.62.450 of this chapter within 20 days after the accusation is served on him and that failure to do so constitutes a waiver of his right to a hearing;

(4) may include with the accusation any information which it considers appropriate.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days

after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense", or by delivering or mailing a notice of defense as provided by AS 44.62.450 to: (here insert name and address of agency).

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. However, no order adversely affecting the rights of the respondent may be made by the agency unless the respondent is served personally or by registered mail, files a notice of defense, or otherwise appears. Service may be proved in the manner authorized in civil actions. Service by registered mail is effective if a statute or agency rule requires the respondent to file his address with the agency and to notify the agency of a change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.380

Sec. 44.62.380. Service of accusation. (a) Upon filing the accusation, the agency

(1) shall serve a copy of the accusation on the respondent as provided in (c) of this section;

(2) shall include with the accusation a post card or other form entitled "Notice of Defense" which, when signed by or on behalf of the respondent and returned to the agency, acknowledges service of the accusation and constitutes a notice of defense under AS 44.62.390;

(3) shall include in or with the copy of the accusation a statement that respondent may request a hearing by filing a notice of defense as provided in AS 44.62.390 within 15 days after the accusation is served on him and that failure to do so constitutes a waiver of his right to a hearing;

(4) may include with the accusation any information which it considers appropriate.

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense," or by delivering or mailing a notice of defense as provided by AS 44.62.390 to: (here insert name and address of agency).

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. However, no order adversely affecting the rights of the respondent may be made by the agency unless the respondent is served personally or by registered mail, files a notice of defense, or otherwise appears. Service may be proved in the manner authorized in civil actions. Service by registered mail is effective if a statute or agency rule requires the respondent to file his address with the agency and to notify the agency of a change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency. (§ 6 (ch 2) ch 143 SLA 1959)

but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in (a)(3) of this section, all objections to the form of the accusation are waived.

(d) The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow a particular form.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62

Sec. 44.62.390. Notice of defense. (a) Within 15 days after service upon him of the accusation, the respondent may file with the agency a notice of defense. In the notice he may

(1) request a hearing;

(2) object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;

(3) object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense;

(4) admit the accusation in whole or in part;

(5) present new matter by way of defense.

(b) Within the time specified the respondent may file one or more notices of defense upon any or all of the grounds set out in (a) of this section but all of the notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent is entitled to a hearing on the merits if he files a notice of defense, and the notice of defense is considered a specific denial of all parts of the accusation not expressly admitted. Failure to file the notice constitutes a waiver of the respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in (a) (3) of this section, all objections to the form of the accusation are waived.

(d) The notice of defense shall be in writing, signed by or on behalf of the respondent, and shall state his mailing address. It need not be verified or follow a particular form. (§ 7 ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.450, Amended or supplemental accusation

At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified of the filing. If the amended or supplemental accusation presents new charges the agency shall give the respondent a reasonable opportunity to respond to the new charges, including the right to advice of counsel, presentation of evidence, hearing, cross-examination, discovery and rebuttal. New charges are considered controverted. Objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

The existing statutory provision has been modified to provide a respondent with an opportunity to answer new charges made by amended or supplemental accusation, equal to the opportunity he or she would have had if such new charges had been originally made in the initial accusation. The proposed

section, in effect, balances the right of the agency to alter the accusation with the right of the party affected to respond to such alterations.

(4) Source:

AS 44.62.400

Sec. 44.62.400. Amended or supplemental accusation. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified of the filing. If the amended or supplemental accusation presents new charges the agency shall give the respondent a reasonable opportunity to prepare his defense to it, but he is not entitled to file a further pleading unless the agency in its discretion so orders. New charges are considered controverted. Objections to the amended or supplemental accusation may be made orally and shall be noted in the record. (§ 8 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.460, Representation at hearing

(a) Any party may participate in any hearing under this chapter in person or, if the party is a corporation or other artificial person, by a duly authorized representative.

(b) Whether or not participating in person, any party may be advised and represented at hearing at the party's cost by counsel or, unless prohibited by any provision of law, other representative.

(2) Current Section:

(None)

(3) Comments:

This section makes explicit the general right of a party to be represented by counsel, at that party's expense, or by other representative, at all adjudicatory hearings.

(4) Source:

Revised Model APA, §4-203

(1) Proposed Section:

Sec. 44.62.470, Intervention

(a) The presiding officer shall grant one or more petitions for intervention if

(1) The petition is submitted in writing to the presiding officer, with copies mailed to all parties named in the presiding officer's notice of the hearing, at least 10 days before the hearing;

(2)The petition states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

(3) The presiding officer determines that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention.

(b) The presiding officer may grant one or more petitions for intervention at any time, upon determining that such intervention would be in the interests of justice and would not impair the orderly and prompt conduct of the proceedings.

(c) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's

participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Such conditions may include:

(1) Limitation on the intervenor's participation to designate issues in which the intervenor has a particular interest demonstrated by the petition;

(2) Limitation of the intervenor's use of discovery, cross-examination and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(3) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery and other participation in the proceedings.

(d) The presiding officer shall render an order granting or denying each petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification.

(2) Current Section:

(None)

(3) Comments:

See related Drafter's Comments, Revised Model APA

(4) Source:

Revised Model APA, §4-209

(1) Proposed Section:

Sec. 44.62.480, Informal disposition

Unless precluded by law, informal disposition may be made of any contested cause whether by stipulation, agreed settlement, consent order, default, or other form.

(2) Current Section:

(None)

(3) Comments:

This section is intended to enhance the efficiency of administrative proceedings by fostering the settlement of matters by other than invocation of the full formal hearing process. Such settlement, however, may not occur in contravention of other legal requirements.

(4) Source:

Administrative Law Committee Draft (July 1981)

(1) Proposed Section:

Sec. 44.62.490, Summary proceedings

(a) Summary proceedings may be used in adjudication in lieu of formal hearings if the use of such proceedings in the circumstances does not violate any provision of law, and if the matter is entirely within one or more of the following categories for which the agency has adopted a regulation:

(1) A matter that can be expressed solely in monetary terms and that involves an amount of not more than $100,

(2) A reprimand, warning, disciplinary report or a verbal sanction without continuing impact against a prisoner, student, public employee or licensee,

(3) The denial of an application after the applicant has abandoned the application,

(4) The denial of an application for admission to an educational institution or for employment by an agency,

(5) A matter that is resolved on the sole basis of inspections, examinations or tests, or

(6) Any matter with only trivial potential impact on the affected parties.

(b) The agency head, one or more members of the agency head, or one or more other persons designated by the

agency head may, in the discretion of the agency head, be the presiding officer, subject to the requirements of §.380 of this chapter.

(c) If the proceeding involves a monetary matter or a reprimand, warning, disciplinary report of other sanction:

(1) The presiding officer shall, before taking action, give each party an opportunity to know the agency's view of the matter and to explain the party's view of the matter; and

(2) The presiding officer shall, at the time when any unfavorable action is taken, give each party a brief statement of conclusions of law, the policy reasons therefor, and findings of fact to justify the action and a notice of any available administrative review.

(d) The order rendered in a proceeding that involves a monetary matter must be in writing. Orders in other summary proceedings may be oral or written, unless otherwise prescribed by any provision of law.

(e) If review is available within the agency, the presiding officer for the review shall give each party an opportunity to explain the party's view of the matter unless the party's view is apparent from the written materials in the file submitted to this presiding officer. Action on review must be in writing, including a brief statement of conclusions of law, the policy reasons therefor, and findings of fact to

justify the action and a notice of any further administrative review available. The presiding officer in the initial summary proceeding shall not be the presiding officer for the review.

(f) The record consists of any documents and any oral communications regarding the matter that were considered, prepared by or for, or made to the presiding officer for the summary proceeding and for any review. Oral communications shall be reduced to writing and placed in the record.

(2) Current Section:

(None)

(3) Comments:

This section provides an agency with an alternative, summary means of administrative adjudication in certain factual circumstances set forth in the text. The election of such a procedure resides in the sole discretion of the agency. Such discretion is warranted by the limitations imposed by the section upon the scope of matters subject to summary disposition and by the need for administrative efficiency where relatively minor matters are concerned. Summary proceedings are in place of formal hearing procedures; final decisions resulting from such proceedings, following exhaustion of any available internal agency review, would be subject to further review, if at all, under the provisions of §.700 of this draft.

To avail itself of the procedures set forth in this section, an agency must adopt conforming regulations specifying when and under what conditions such a summary proceeding will be used.

(4) Source:

Revised Model APA, §4-502

Administrative law Committee Draft (July 1981)

(1) Proposed Section:

Sec. 44.62.500, Conference hearing

(a) A conference hearing may be used in adjudication if its use in the circumstances does not violate any provision of law, and if the matter is entirely within one or more categories for which the agency has by rule adopted this section; however, those categories may include only the following:

(1) Adjudication in which no disputed issue of material fact has appeared; or

(2) Adjudication in which a disputed issue of material fact has appeared, and that involves only:

(i) A matter that can be expressed solely in monetary terms and that involves an amount of not more than $1,000;

(ii) A disciplinary sanction against a prisoner;

(iii) A disciplinary sanction against a student that does not involve expulsion from an academic institution or suspension for more than 10 days;

(iv) A disciplinary sanction against a public employee that does not involve discharge from employment or suspension for more than 10 days; or

(v) A disciplinary sanction against a licensee that does not involve revocation, suspension, annulment, withdrawal, or amendment or a license.

(b) The procedures of this Act pertaining to formal hearings apply to a conference hearing, except to the extent otherwise provided in this subsection.

(1) Pre-hearing conference.

If an adjudication is initiated as a conference hearing, no pre-hearing conference may be held.

(2) Subpoenas, discovery and protective orders.

The provisions of §§600-620 do not apply to conference hearings insofar as these provisions authorize the issuance and enforcement of subpoenas and discovery orders, but do apply to conference hearings insofar as these provisions authorize the presiding officer to issue protective orders, at the request of any party or upon the presiding officer's motion.

(3) Procedure at hearing.

(i) The provisions of §44.62.570 shall apply.

(ii) The presiding officer shall regulate the course of the proceedings.

(iii) Only the parties may testify and present written exhibits.

(iv) The parties may offer comments on the issues.

(A) If the presiding officer has reason to believe that material facts are in dispute, the presiding officer may require any party to state the identity of the witnesses or other sources through whom the party would propose to present proof if the proceeding were converted to a formal hearing, except that if disclosure of any fact, allegation or source is privileged or expressly prohibited by any provision of law, the party shall indicate that confidential facts, allegations or sources are involved but shall not disclose the confidential facts, allegations or sources.

(B) If a party has reason to believe that essential facts must be obtained in order to permit an adequate presentation of the case, the party may inform the presiding officer regarding the general nature of the facts and the sources from whom the party would propose to obtain such facts if the proceeding were converted to a formal hearing.

(2) Current Section:

(None)

(3) Comments:

This section provides for a more expeditious form of hearing where no material fact is in issue or in specified factual circumstances. Streamlined hearing procedures are set forth, consistent with the limited scope of the proceeding. Certain matters may fall within the scope of both this section and §.490 of this draft. As with §.490, an agency must adopt conforming regulations to make use of this section; further regulations would appear desirable to distinguish between the use of this section and §.490 in each contest where both might apply.

(4) Source:

Revised model APA, §4-401

(1) Proposed Section:

Sec. 44.62.510, Emergency adjudication

(a) Emergency adjudication may be used in situations involving an immediate danger to the public health, safety or welfare requiring agency action without waiting for any other proceeding that might otherwise be available.

(b) The agency may take only that action necessary to prevent or to avoid the immediate danger to the public health, safety or welfare that justifies use of an emergency adjudication.

(c) An initial emergency order may be issued by an agency under this section and shall be effective for no more than 10 days. The order shall provide for commencement of a hearing within 10 days of issuance. The procedure for such a hearing shall be specified by rule adopted by the agency..

(d) The agency shall give such notice as is practicable to persons who are required to comply with the order. The order is effective when rendered.

(e) If a hearing has been commenced within 10 days of the issuance of an initial emergency order under this section, the agency may extend the order for one additional 10-day-period to enable the agency to decide the matter and to issue a final emergency order. A final emergency order issued pursuant to the provisions of this section shall be effective

for no more than 160 days, may not be renewed or extended, and is subject to the further provisions of this chapter, including §§.640, .680 and.700.

(f) After issuing a final emergency order under this section, the agency shall proceed as quickly as feasible to initiate any proceedings that would be required if the matter did not involve an immediate danger.

(g) The agency shall modify or rescind the final emergency order when the magnitude of the danger lessens or when the danger is dissipated.

(h) It is the policy of the state that emergencies are held to a minimum and are rarely found to exist.

(2) Current Section:

(None)

(3) Comments:

This section provides for a separate category of adjudicative proceedings to be employed in the context of an emergency situation. Under such circumstances, an agency may issue an initial order without prior notice or hearing. Such an order is limited to 10 days duration, during which time a hearing must be commenced. The form of that hearing, however, need not be that provided for in this draft, but may be tailored by any agency to fit the particular emergency circumstnces likely to be faced by such agency. Such hearings

may incorporate provisions accelerating, restricting, or reducing various procedural aspects of the more formal hearing process. An agency must adopt conforming regulations specifying the nature of such proceedings.

If such a hearing is held, the initial order may be extended once for an additional 10 days to permit the agency to issue a final emergency order. Such an order may have a maximum duration of 160 days, the entire emergency cycle thus extending 180 days. Final emergency orders cannot be renewed or extended. Further, although the hearing prescribed by this section is exempted from the provision of the draft, the final emergency order is not. Thus, such an order must be in appropriate form (§.640) and is subject to reconsideration (§.650) and judicial review (§.700), the same as any other final order.

(4) Source:

Administrative Law committee Draft (July 1981)

Revised Model APA, §4-501

AS 42.07.181

(1) Proposed Section:

Sec. 44.62.520, Availability of pre-hearing conference

(a) The presiding officer may determine whether a pre-hearing conference shall be conducted. If a conference is conducted, this section applies.

(b) The presiding officer shall set the time and place of the pre-hearing conference and shall give reasonable written notice to all parties of record and to all persons who have filed written petitions to intervene in the matter. The agency shall promptly give notice to other categories of persons to whom notice is required by any provision of law.

(c) The notice must include:

(1) The names and addresses of all parties and other persons to whom notice is being given by the hearing officer;

(2) The name, official title, mailing address and telephone number of any counsel or agency employee who has been designated to appear for the agency;

(3) The official title or other reference number, the name of the proceeding, and a general description of the subject-matter;

(4) A statement of the time, place, and nature of the pre-hearing conference including the issues to be addressed at the conference;

(5) The name, official title, mailing address and telephone number of the hearing officer for the pre-hearing conference; and

(6) A short and plain statement that at the pre-hearing conference the proceeding may, without further notice, be converted into a conference hearing or summary proceeding for disposition of the matter as provided by this chapter.

(d) The notice may include any other matters that the hearing officer considers desirable to expedite the proceedings.

(2) Current Section:

(None)

(3) Comments:

See related Drafter's Comments, Revised Model APA

(4) Source:

Revised Model APA, §4-204

(1) Proposed Section:

Sec. 44.62.530, Pre-hearing conference procedure and pre-hearing order

(a) At the discretion of the presiding officer, all or part of the pre-hearing conference may be conducted by telephone, television, or other electronic means, if each participant in the pre-hearing conference has an opportunity to participate in, to hear and, except when telephone is used, to see the entire proceeding while it is taking place.

(b) The presiding officer shall conduct the pre-hearing conference to discuss where applicable, such matters as conversion of the proceeding to another type, exploration of settlement possibilities, preparation of stipulations, simplification of issues, rulings on identity and limitation of the number of witnesses objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence or cross-examination will be presented in written form and the extent to which telephone, television or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders and protective orders, and other matters that will promote the orderly and prompt conduct of the hearing. The presiding officer shall issue a pre-hearing order incorporating the matters determined at the pre-hearing conference.

(c) If a pre-hearing conference is not held, the presiding officer for the formal hearing may issue a pre-hearing order, based on the pleadings, to regulate the conduct of the proceedings.

(2) Current Section:

(None)

(3) Comments:

See Drafter's Comments, Revised Model APA

(4) Source:

Revised Model APA, §4-205

(1) Proposed Section:

Sec. 44.62.540, Pleadings, briefs, motions, service

(a) The presiding officer shall give all parties full opportunity, at appropriate stages of the proceedings, to file pleadings, motions, objections and offers of settlement.

(b) The presiding officer may give all parties full opportunity, at appropriate stages of the proceedings, to file briefs, proposed findings of fact and conclusions of law and proposed initial or final orders.

(c) A party who files any papers shall simultaneously serve copies on all parties.

(2) Current Section:

(None)

(3) Comments:

See Drafter's Comments, Revised Model APA

(4) Source:

Revised Model APA, §4-207

(1) Proposed Section:

Sec. 44.62.550, Time and place of hearing

(a) The hearing shall be held in the community:

(1) Nearest to where the transaction occurred or where the respondent resides; and

(2) Which has a district or superior court.

(b) The agency may select a place different from that prescribed in (a) of this section for either of the following reasons:

(1) When the convenience of witnesses and the ends of justice would be promoted by the change;

(2) If the agency finds that the respondent otherwise would be put to unnecessary inconvenience.

(c) Notwithstanding (a) or (b) of this section, the parties by agreement may select any place in the state.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

Administrative Law Committee Draft (July 1981)

AS 44.62.410

Sec. 44.62.410. Time and place of hearing. The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Southeastern Senate District; in Anchorage if the transaction occurred or the respondent resides within the South Central Senate District; in Fairbanks or Nome, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Central or Northwestern Senate Districts. The agency may, if the transaction occurred in a senate district other than that of respondent's residence, select the place of hearing appropriate for either district. The agency may select a different place nearer the place where the transaction occurred or where the respondent resides, or the parties by agreement may select any place in the state. (§ 9 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.560, Notice of hearing

(a) The presiding officer for the hearing shall set the time and place of the hearing and shall give reasonable written notice to all parties of record and to all persons who have filed written petitions to intervene in the matter.

(b) To the extent not included in a pre-hearing order accompanying it, the notice must include:

(1) The names and addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) The name, official title, mailing address and telephone number of any counsel or agency employee who has been designated to appear for the agency;

(3) The official file or other reference number, the name of the proceeding, and a general description of the subject-matter;

(4) A statement of the time, place and nature of the hearing;

(5) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(6) The name, official title, mailing address and telephone number of the presiding officer;

(7) A short and plain statement of the issues involved and to the extent known to the presiding officer, of the matters asserted by the parties; and

(c) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

(d) The agency shall promptly give notice to categories of persons to whom notice is required by any provision of law but has not been given by the presiding officer. Notice under this subsection may include all types of information provided in subsections (a)-(c), or may consist of a brief statement indicating the subject matter, parties, time, place and nature of the hearing, manner in which copies of the notice to the parties may be inspected and copied, and name and telephone number of the presiding officer.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

See Drafter's Comments, Revised Model APA

(4) Source:

Revised Model APA, §4-206

Sec. 44.62.420. Form of notice of hearing. (a) The agency shall deliver or mail a notice of hearing to all parties at least 10 days before the hearing. The hearing shall not be held before the expiration of the time within which the respondent is entitled to file a notice of defense.

(b) The notice to respondent shall be substantially in the following form but may include other information:

You are notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the ..... day of ....., 19 ..., at the hour of ....., upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may have subpoenas issued to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office or agency). (§ 19 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.570, Conduct of the hearing

(a) At the discretion of the presiding officer, all or part of the hearing may be conducted by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear and, except when telephone is used, to see the entire proceeding while it is taking place.

(b) The presiding officer shall cause the hearing to be recorded by tape recording or stenographic notes or symbols at the agency's expense. The agency is not required, at its expense, to prepare a transcript, unless such a requirement is imposed by law. Any party may, at the party's expense, cause a transcript to be prepared by a reporter approved by the agency from the agency's tape recording or stenographic notes or symbols, or cause additional recordings to be made during the hearing, if the making of the recording does not cause distraction or disruption.

(c) The hearing is open to public observation, except for the parts that the presiding officer states to be closed pursuant to a statute expressly authorizing that closure. To the extent that a hearing is conducted by telephone, television, or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear the tape

recordings and inspect any transcript prepared from the recordings, except for those portions of the hearing that are closed by the presiding officers.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

See Drafter's Comments, Revised Model APA

(4) Source:

Revised Model APA, §4-211

(1) Proposed Section:

Sec. 44.62.580, Evidence rules generally

(a) Oral evidence may be taken only on oath or affirmation.

(b) Each party may:

(1) Call and examine witnesses;

(2) Introduce exhibits;

(3) Cross-examine opposing witnesses on matters relevant to the issues, even though that matter was not covered in the direct examination;

(4) Impeach a witness regardless of which party first called the witness to testify; and

(5) Rebut the evidence against himself.

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

(d) The hearing need not be conducted according to technical rules related to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not

Sec. 44.62.450. Hearings. (a) A hearing in a contested case shall be presided over by a hearing officer. The agency itself shall determine whether the hearing officer hears the case alone or whether the agency hears the case with the hearing officer.

(b) If the agency hears the case the hearing officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law. The agency shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of these other powers to the hearing officer. If the hearing officer hears a case alone, he shall exercise all powers relating to the conduct of the hearing.

(c) A hearing officer or agency member shall voluntarily disqualify himself and withdraw from a case in which he cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the request concerns an agency member the issue shall be determined by the other members of the agency. If the request concerns the hearing officer, the issue shall be determined by the agency when the agency hears the case with the hearing officer, and by the hearing officer when he hears the case alone. No agency member may withdraw voluntarily or be disqualified if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

(d) The proceedings at the hearing shall be reported by a phonographic reporter or recorder, or other adequate means of assuring an accurate record. (§ 13 (ch 2) ch 143 SLA 1959)

(3) Comments:

(4) Source:

Administrative Law Committee Draft (July 1981)

AS 44.62.460

sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repititious evidence shall be excluded.

(e) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(f) In the discretion of the presiding officer, non-parties may be given an opportunity to present oral or written statements. If the presiding officer proposes to consider such a statement, all parties shall be given an opportunity to challenge, cross examine or rebut it, and on motion of any party the presiding officer shall require the oral or written statement of a non-party to be given under oath or affirmation.

(g) In a statement-of-issues proceeding, the respondent must establish by a preponderance of the evidence that he is entitled to the agency action which he seeks. In an accusation proceeding, the agency must establish by a preponderance of the evidence that it is entitled to the action it seeks.

(2) Current Section:

(Attached at end of this draft section)

Sec. 44.62.460. Evidence rules. (a) Oral evidence may be taken only on oath or affirmation.

(b) Each party may (1) call and examine witnesses; (2) introduce exhibits; (3) cross-examine opposing witnesses on matter relevant to the issues, even though that matter was not covered in the direct examination; (4) impeach a witness regardless of which party first called the witness to testify; and (5) rebut the evidence against himself.

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

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

(e) Nothing in this chapter may be construed to alter the ordinary rules of burden of proof of judicial proceedings in the state. (§ 14 (ch 2) ch 143 SLA 1959; am § 8 ch 5 SLA 1966)

(1) Proposed Section:

Sec. 44.62.590, Official notice

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of a generally accepted technical or scientific matter within the agency's special field, and of a fact which may be judicially noticed by the courts of the state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to it. A party present at the hearing shall, upon request, be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority. The agency shall determine the manner of this refutation by appropriate rule.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.480

Sec. 44.62.480. Official notice. In reaching a decision official notice may be taken, either before or after submission of the case for decision, of a generally accepted tech .cal or scientific matter within the agency's special field, and of a fact which is judicially noticed by the courts of the state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to it. A party present at the hearing shall, upon request, be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority. The agency shall determine the manner of this refutation. (§ 16 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.600, Discovery rights and procedure

(a) After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, before the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after service of an additional pleading, is entitled to:

(1) obtain the names and addresses of witnesses to the extent known to the other party, including but not limited to those intended to be called to testify at the hearing; and

(2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(i) a statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to that person is the basis for the administrative proceeding;

(ii) a statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(iii) statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions, or events which are the basis for the proceeding, not included in (A) or (B) of this paragraph;

(iv) all writings, including but not limited to reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(v) any other writing or thing which is relevant and which would be admissible in evidence in such proceeding;

(vi) investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that the reports

(A) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or

(B) reflect matters noted by the investigator in the course of his investigation, or

(C) contain or include by attachment any statement or writing described in (i) - (v).

(b) For the purpose of this section, "statement" includes written statements by the person, signed or otherwise authenticated by him, stenographic, mechanical, electrical or other records, or transcripts of oral statements by the person, and written reports or summaries of those oral statements.

(c) Nothing in this section authorizes the inspection or copying of any writing or thing which is privileged from disclosure by statute or court rule or otherwise made confidential or protected as the attorney's work product.

(d) In his discretion, the presiding officer may order additional discovery, including but not limited to the following: interrogatories, requests for admissions and depositions.

(2) Current Section:

(None)

(3) Comments:

(4) Source:

Administrative Law Committee Draft (July 1981)

Civil Rule 26

(1) Proposed Section:

Sec. 44.62.610, Depositions

(a) On petition of a party, an agency may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out

(1) the nature of the pending proceeding;

(2) the name and address of the witness whose testimony is desired;

(3) a showing of the materiality of his testimony; and

(4) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) If the witness resides outside the state and if the agency orders the taking of his testimony by deposition, the party shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court. The proceedings on the order shall be in accordance with provisions governing the taking of depositions in the superior court in a civil action.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.440

Sec. 44.62.440. Depositions. (a) On verified petition of a party, an agency may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the nature of the pending proceeding; (2) the name and address of the witness whose testimony is desired; (3) a showing of the materiality of his testimony; (4) a showing that the witness will be unable or cannot be compelled to attend; and (5) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) If the witness resides outside the state and if the agency orders the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court nearest to the principal office of the agency. The proceedings on this order shall be in accordance with provisions governing the taking of depositions in the superior court in a civil action. (§ 12 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.620, Subpoena

(a) At the request of a party, subpoenas may be issued by (1) the agency before whom a hearing is or will be held, or its designee, or (2) a presiding officer before whom a hearing is or will be held, if one has been appointed.

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served by the party or his designee in accordance with the rules of civil procedure. No witness is obliged to attend a place out of the election district in which he resides if the distance is more than 100 miles from his place of residence, except that the agency, upon affidavit of a party showing that the testimony of a witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

(c) A witness who is not a party and who appears under a subpoena is entitled to receive fees and mileage in the same amount and under the same circumstances as prescribed by court rule for a witness in a civil action in a superior court.

(d) Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

(e) A person served with a subpoena shall comply with the terms of the subpoena unless he timely files a motion to quash before the agency or the presiding officer. A person who

refuses to respond to a subpoena may be found in contempt upon certification in accordance with section 730 of this chapter.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.430

Sec. 44.62.430. Subpoena. (a) Before the hearing begins the agency shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the rules of civil procedure. After the hearing begins the agency hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. No witness is obliged to attend at a place out of the election district in which he resides unless the distance is less than 100 miles from his place of residence, except that the agency, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

(c) A witness who is not a party and who appears under a subpoena is entitled to receive

(1) fees, except a witness who is an officer or employee of the state or a political subdivision of the state;

(2) mileage in the same amount and under the same circumstances as prescribed by law for a witness in a civil action in a superior court;

(3) an additional fee and mileage to a per diem compensation of $15 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing, if the witness attends a hearing at a point so far removed from his residence as to prohibit return to his residence from day to day.

(d) Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed. (§ 11 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.630, Decisions and Orders

(a) Every agency decision in an adjudicative proceeding governed by this chapter must be reduced to a written order.

(b) In a case heard before an agency where a hearing officer presided at the hearing, that hearing officer shall be present during the consideration of the case and, if requested, shall assist and advise the agency. A member of the agency who has not heard the evidence may not vote on the decision.

(c) If a case is heard by a hearing officer alone he shall prepare a proposed order in a form which may be adopted as the decision in the case. A copy of the proposed order shall be filed by the agency as a public record with the Lieutenant Governor and a copy of the proposed order shall be served by the agency on each party in the case and his attorney. The agency itself may adopt the proposed order in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed order.

(c) If the porposed order is not adopted as provided in (b) of this section the agency may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another presiding officer to take additional evidence. If the case is so assigned to a presiding officer he shall prepare a proposed order as provided in (b) of this section upon the additional evidence and the transcript and other papers which are part of the record of the earlier hearing. A copy of the proposed order shall be furnished to each party and his attorney as prescribed by (b) of this section. The agency may not decide a case provided for in this subsection without giving the parties the opportunity to present either oral or written argument before the agency. If additional oral evidence is introduced before the agency, no agency member may vote unless he has heard the additional oral evidence.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.500

Sec. 44.62.500. Decision in a contested case. (a) If a contested case is heard before an agency (1) the hearing officer who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency; and (2) a member of the agency who has not heard the evidence may not vote on the decision.

(b) If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in a form which may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record with the lieutenant governor and a copy of the proposed decision shall be served by the agency on each party in the case and his attorney. The agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(c) If the proposed decision is not adopted as provided in (b) of this section the agency may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in (b) of this section upon the additional evidence and the transcript and other papers which are part of the record of the earlier hearing. A copy of the proposed decision shall be furnished to each party and his attorney as prescribed by (b) of this section. The agency may not decide a case provided for in this subsection without giving the parties the opportunity to present either oral or written argument before the agency. If additional oral evidence is introduced before the agency, no agency member may vote unless he has heard the additional oral evidence. (§ 18 ch 2) ch 143 SLA 1959)

Sec. 44.62.500. Decision in a contested case. (a) If a contested case is heard before an agency (1) the hearing officer who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency; and (2) a member of the agency who has not heard the evidence may not vote on the decision.

(b) If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in a form which may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record with the lieutenant governor and a copy of the proposed decision shall be served by the agency on each party in the case and his attorney. The agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(c) If the proposed decision is not adopted as provided in (b) of this section the agency may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in (b) of this section upon the additional evidence and the transcript and other papers which are part of the record of the earlier hearing. A copy of the proposed decision shall be furnished to each party and his attorney as prescribed by (b) of this section. The agency may not decide a case provided for in this subsection without giving the parties the opportunity to present either oral or written argument before the agency. If additional oral evidence is introduced before the agency, no agency member may vote unless he has heard the additional oral evidence. (§ 18 ch 2) ch 143 SLA 1959

(c) The presiding officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(d) A final order pursuant to this section shall be rendered in writing within 90 days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (c), unless this period is waived or extended with the written consent of all parties or for good cause shown.

(e) The presiding officer shall cause copies of the final order or initial order to be handed or mailed to each party and to the agency head.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

This section sets forth specific requirements for the material to be contained in the final orders issued by agencies following hearing. By means of such specificity, inadvertent agency omissions and insufficiencies in such orders can be avoided, thus reducing sources of potential litigation over technical, as opposed to substantive, issues.

(4) Source:

Revised Model APA, §4-215

Sec. 44.62.510. Form and effect of decision. (a) A decision shall be written and shall contain findings of fact, a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference to them. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

(b) A decision in a primarily judicial proceeding has retroactive effect in the same manner as a decision of a state court. (§ 19 ch 2 ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.660, Default

If the respondent does not file a notice of defense or does not appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without notice to the respondent. If the burden of proof is on the respondent to establish that he is entitled to the agency action sought, the agency may act without taking evidence. Nothing in this chapter may be construed to deprive the respondent of the right to make a showing by way of mitigation.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.530

Sec. 44.62.530. Default. If the respondent does not file a notice of defense or does not appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without notice to the respondent. If the burden of proof is on the respondent to establish that he is entitled to the agency action sought, the agency may act without taking evidence. Nothing in this chapter may be construed to deprive the respondent of the right to make a showing by way of mitigation. (§ 21 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.670, Mail vote

A member of an agency qualified to vote on a question may vote by mail.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.600

Sec. 44.62.600. Mail vote. A member of an agency qualified to vote on a question may vote by mail. (§ 23 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.680, Reconsideration

(a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. A petition for reconsideration must be filed with the agency within ten (10) days after the decision has been rendered and shall state specific grounds upon which relief is requested. The power to order a reconsideration expires thirty (30) days after the issuance of the decision. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied. The filing of such a petition is not a prerequisite for seeking administrative or judicial review.

(b) The case shall be reconsidered by the agency on all pertinent parts of the record and any additional evidence and argument that are authorized by the agency. The case may be assigned to a presiding officer. A reconsideration assigned to a presiding officer is subject to the procedure provided in AS 44.62.560, et seq. No agency member may take part in the final decision following reconsideration, unless he has participated in the original decision and has heard the additional evidence presented.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.540

Sec. 44.62.540. Reconsideration. (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

(b) The case may be reconsidered by the agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in AS 44.62.500. If oral evidence is introduced before the agency, no agency member may vote unless he has heard the evidence. (§ 22 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.690, Petition for reinstatement or reduction of penalty

A person whose license is revoked or suspended may petition the agency for reinstatement or reduction of penalty after one year from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the attorney general of the filing of the petition, and the attorney general and the petitioner shall be given an opportunity to present either oral or written argument before the agency. The agency shall decide the petition, and the decision shall include the reasons for the decision. This section does not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.550

Sec. 44.62.550. Petition for reinstatement or reduction of penalty. A person whose license is revoked or suspended may petition the agency for reinstatement or reduction of penalty after one year from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the attorney general of the filing of the petition, and the attorney general and the petitioner shall be given an opportunity to present either oral or written argument before the agency. The agency shall decide the petition, and the decision shall include the reasons for the decision. This section does not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (§ 23 ch 2) ch 143 SLA 1959)

(1) Proposed Section:

AS 44.62.700, Judicial Review

Judicial review by the superior court of a final administrative order may be had by filing a Notice of Appeal in accordance with the applicable Rules of Court governing appeals in civil matters.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

This section codifies the effects of the decisions of the Supreme Court of Alaska in Owsichek v. State [No. 2328 - April 24, 1981] and Wise Mechanical Contractors, et al. v. Bignell [No. 2329 - April 24, 1981] and avoids potentially misleading inconsistencies between statutory provisions which may be subsequently supreceded by controlling changes in court rules.

(4) Source:

Administrative Law Committee Draft (July 1981)

Sec. 44.62.560. Judicial review. (a) Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

(b) The complete record of the proceedings, or the parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in the superior court within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a corporate surety bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court may compel the agency to initiate action. (§ 24 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.720, Scope of review

(a) An appeal shall be heard by the superior court sitting without a jury.

(b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without, or in excess of jurisdiction; (2) whether there was a fair hearing; and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.570

Sec. 44.62.570. Scope of review. (a) An appeal shall be heard by the superior court sitting without a jury.

(b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without, or in excess of jurisdiction; (2) whether there was a fair hearing; and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

(d) The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may (1) enter judgment as provided in (e) of this section and remand the case to be reconsidered in the light of that evidence; or (2) admit the evidence at the appellate hearing without remanding the case.

(e) The court shall enter judgment setting aside, modifying, remanding, or affirming the order or decision, without limiting or controlling in any way the discretion legally vested in the agency.

(f) The court in which proceedings under this section are started may stay the operation of the administrative order or decision until (1) the court enters judgment, (2) a notice of further appeal from the judgment is filed, or (3) the time for filing the notice of appeal expires.

(g) No stay may be imposed or continued if the court is satisfied that it is against the public interest.

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court judgment or agency order.

(i) If a final administrative order or decision is the subject of a proceeding under this section, and the appeal is filed while the penalty imposed is in effect, finishing or complying with the penalty imposed by the administrative agency during the pendency of the proceeding does not make the determination moot. (§ 25 ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.730, Contempt

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

(1) disobeys or resists a lawful order;

(2) refuses to respond to a subpoena;

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

(4) refuses to be examined; or

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

(b) Upon certification under (a) of this section, the court shall issue an order directing the person to appear before the court and show cause why he should not be punished for contempt. The order and a copy of the certified statement shall be served on the person.

(c) After service under (b) of this section, the court has jurisdiction of the matter.

(d) The law applicable to contempt committed by a person in the trial of a civil action before the superior court applies to contempt under this section as to

(1) the proceeding taken;

(2) the penalties imposed; and

(3) the way the person charged may purge himself of the contempt.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

(4) Source:

AS 44.62.590

Sec. 44.62.590. Contempt. (a) In a proceeding before an agency, the agency shall certify the facts to the superior court in the judicial district where the proceeding is held if a person in the proceeding

(1) disobeys or resists a lawful order;

(2) refuses to respond to a subpoena;

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

(4) refuses to be examined; or

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

(b) Upon certification under (a) of this section, the court shall issue an order directing the person to appear before the court and show cause why he should not be punished for contempt. The order and a copy of the certified statement shall be served on the person.

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(d) The law applicable to contempt committed by a person in the trial of a civil action before the superior court applies to contempt under this section as to

(1) the proceeding taken;

(2) the penalties imposed; and

(3) the way the person charged may purge himself of the contempt.

(§ 27 (ch 2) ch 143 SLA 1959)

(1) Proposed Section:

Sec. 44.62.740, Disqualification

(a) A presiding officer, hearing officer, or agency member shall voluntarily disqualify himself and withdraw from a case in which he cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a presiding officer, hearing officer, or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the request concerns an agency member the issue shall be determined by the other members of the agency. If the request concerns a presiding officer or a hearing officer, the issue shall be determined by the agency.

(b) If there is no longer a quorum qualified to act in the particular case because of a withdrawal or disqualification, a substitute shall be appointed

(1) by the governor, if the unavailable individual is an elected official or

(2) by the appointing authority, if the unavailable individual is an appointed official.

(c) Any action taken by a properly appointed substitute for an unavailable individual shall be as effective as if taken by the unavailable individual if that person had been available.

(2) Current Section:

(Attached at end of this draft section)

(3) Comments:

See related Drafter's Comments, Revised Model APA

(4) Source:

Administrative Law Committee Draft (July 1981)

Revised Model APA, §4-202