



# *South Dakota Legislative Research Council*

## *Issue Memorandum 94-20*

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### **SOUTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS**

The Office of Administrative Hearings was created by the 1993 Legislature to provide impartial administrative hearings for state agencies in South Dakota. This memorandum provides background information on the agency and its creation and compares it with similar agencies in other states which have central panels for conducting administrative hearings.

#### ***Historical Background***

In November, 1981, Judicature, the Journal of the American Judicature Society, published several articles on central panels of administrative law judges. Seven states had implemented central panels by that time (1), starting with California in 1945. In a central panel system, a single state agency employs administrative law judges to hear administrative law cases for state agencies instead of having each agency employ its own judges to hear its cases. The system is intended to provide fair and impartial hearings by judges who are independent of the agencies who are parties to the cases and to do so more efficiently and at less cost.

By 1990, the subject was one of the highlights of the American Bar Association/Judicial Administration Division Annual Meeting in Chicago (2). The Administrative Law Committee of the South Dakota State Bar showed an interest that year in collecting information on the central panel system. In 1991, HB 1005 was

houghoused in the Senate to create the Office of Administrative Law Judge. The bill, however, failed to come out of the conference committee.

The State Bar continued to support the concept of a central panel. Representative Rex Hagg introduced HB 1216 in the 1993 Legislature to provide for an Office of Administrative Hearings and to appropriate money for it. Again the bill went to a conference committee, but this time the bill passed and was signed by the Governor.

#### ***Office of Administrative Hearings***

The Office of Administrative Hearings (OAH), as created by the 1993 Legislature, is independent of other state agencies, but it is attached to the Bureau of Administration for reporting and budgetary purposes. The agency is responsible for conducting impartial administrative hearings for all state agencies except the Department of Labor. That department may contract, however, with the Office of Administrative Hearings for use of its services. According to the chief administrative law judge, the Department of Labor has contracted with the OAH to conduct hearings in unemployment compensation cases. Hearings in workers' compensation cases will remain with the Department of Labor.

The chief administrative law judge is appointed by the Governor for a term of five

years and confirmed by the Senate. The person appointed to the position must be a member of the South Dakota Bar. The chief administrative law judge appoints administrative law judges and the necessary support staff.

Administrative law judges are required by law to have a demonstrated knowledge of administrative law and procedures, and the chief judge may establish different levels of administrative law judges. The chief judge appointed lawyers with experience to these positions. The chief judge also has the authority to contract with other qualified individuals to serve as administrative law judges in specific cases. Whenever practicable, judges are to be assigned to cases according to their experience and are expected to be assigned to the hearings of particular agencies on a long-term basis.

Chapter 1-26C required state agencies to transfer hearing officers and support staff and the equipment and property used by such personnel to the Office of Administrative Hearings by July 1, 1994. Chapter 1-26C allowed other agencies to elect to exempt themselves from the requirements of the chapter with the approval of the Governor if they did so before January 1, 1994. The Governor did not approve any of the elections for exemption. A new section added to chapter 1-26C by the 1994 Legislature required the State Board of Equalization to transfer all of its pending appeals to the Office of Administrative Hearings by June 30, 1994.

The office was originally authorized to conduct hearings beginning July 1, 1994, but, with the permission of the 1994 Legislature, has been conducting hearings since March 4, 1994. By June 1994, the office was conducting sixty-five hearings a week.

Administrative law judges may administer oaths and affirmations, and they have

subpoena powers. The judges have all of the powers conferred on agencies and agency hearing officers by SDCL 1-26, the Administrative Procedures Act (APA). They may apply to the circuit court for orders to enforce these powers. Judges are to conduct hearings in conformance with the contested case procedure outlined in the APA. The new law also allows the chief judge to promulgate rules governing the procedural conduct of the hearings.

The administrative law judges provide final decisions in cases involving the State Board of Equalization and unemployment insurance. Equalization cases may be appealed to the circuit court, and unemployment insurance cases may be appealed to the Secretary of Labor. The administrative law judges provide proposed findings of fact, conclusions of law, and decisions to other agencies, which may accept, reject, or modify them. An agency may provide by rule that the decisions of the administrative law judges become final without further action by the agency unless a party to a proceeding petitions for an administrative review. As yet, no agencies have adopted such rules. At the present time, the agency enters the final decision. It may choose to remand the decision to the administrative law judge for further proceedings. Final decisions are appealable to circuit court.

### *Comparison with Other States*

By the summer of 1994, thirteen states, including South Dakota, had enacted legislation establishing central panels of administrative law judges. Three other states have provisions which share some of the characteristics of a central panel but are not true central panels. Iowa and Wisconsin use pools of agency in-house hearing officers but are only quasi-central panel systems. Maine has an Administrative Court for licensing proceedings, but the court is not a true central panel. The states with central

panels are compared in the following chart  
(3):



## *Conclusion*

From its beginning in 1945 with the state of California, the movement by the states toward central panels of administrative law judges has slowly grown. Today there are thirteen states with central panels and three additional states with some characteristics of a central panel, for a total of sixteen. If the central panel continues to show that it can provide impartial hearings at less cost to states, the number of states with central panels can be expected to continue to grow.

## **Notes:**

1. "The Central Panel System: A Framework that Separates ALJs from Administrative Agencies," Judicature, the Journal of the American Judicature Society, Volume 65/No. 5, November, 1981, L. Harold Levinson.
2. "Unification of the Administrative Adjudicatory Process, An Emerging Framework to Increase its 'Judicialization,'" paper prepared by Gerald E. Ruth, Chief Administrative Law Judge, Pennsylvania Liquor Control Board, June 1991.
3. Information contained in the chart was published in the "Annual Report to the Governor and to the Legislature," January, 1990, Division of Administrative Hearings, Department of Administration, State of Colorado, and was updated and expanded for this memorandum.

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**This issue memorandum was written by Rosemary F. Quigley, Administrative Rules Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.**

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