

# **HEAR HERE OR HEAR THERE? A REVIEW OF CENTRALIZING ADMINISTRATIVE HEARING FUNCTIONS**

Primary Researchers:

**CHRISTINA ZAHARA NOH**

**PAUL KANOHO**

Research Attorneys

Supervising Researchers:

**LANCE CHING**

Research Attorney

**MATTHEW COKE**

Senior Research Attorney

Report No. 1, 2020

Legislative Reference Bureau

State Capitol

Honolulu, Hawaii

<https://lrb.hawaii.gov>

This report has been cataloged as follows:

Noh, Christina Zahara + Kanoho, Paul + Ching, Lance + Coke, Matthew

Hear here or hear there? : a review of centralizing administrative hearing functions.  
Honolulu, Hawaii: Legislative Reference Bureau, January 2020.

1. Administrative procedure – Hawaii. 2. Administrative law – Hawaii.  
KFH421.5 L35 A25 20-1

## **FOREWORD**

This report was prepared pursuant to Act 110, Session Laws of Hawaii 2019, which required the Legislative Reference Bureau (Bureau) to compile and submit a report to the Legislature regarding contested case hearings in Hawaii and in other states.

The Bureau acknowledges and would like readers to note that this report is a product of the work of not only the Primary Researchers, but of other Bureau research staff such as Matthew Coke, Lance Ching, Jordon Higa, and others.

The Bureau requested information from state executive branch agencies to complete this report. The Bureau extends its appreciation to all those that generously provided information and assistance in the preparation of this report.

Charlotte A. Carter-Yamauchi  
Director

January 2020

# TABLE OF CONTENTS

|  | <i>Page</i> |
|--|-------------|
| FOREWORD .....   | <i>iii</i>  |
| EXECUTIVE SUMMARY .....  | <i>ix</i>   |
| 1. INTRODUCTION .....  | 1           |
| 2. HAWAII AGENCIES THAT CONDUCT CONTESTED<br>CASE HEARINGS .....   | 3           |
| I. Overview.....   | 3           |
| A. What Act 110 Sought from State Agencies .....   | 3           |
| B. The Bureau's Approach to Data Collection .....  | 4           |
| 1. Defining "Contested Case" .....   | 4           |
| 2. Survey of State Agencies .....  | 4           |
| 3. Agencies that Provided Data.....  | 5           |
| II. Agencies, Their Authority, and Reported Data .....   | 6           |
| A. Legal Authority Over Contested Cases.....   | 7           |
| B. Subject Matters .....   | 13          |
| C. Prevalence of Deadline Requirements<br>Upon Agencies.....   | 17          |
| D. Who Presides, and Who Decides .....   | 20          |
| E. Contested Cases Filed, Fiscal Year 2017-2018 .....  | 27          |
| F. Contested Cases Closed, Unrelated to Merits,<br>Fiscal Year 2017-2018.....                                  | 31          |
| G. Contested Case Trial-Type Hearings,<br>Fiscal Year 2017-2018.....   | 36          |
| H. Contested Case Non-Trial-Type Hearings,<br>Fiscal Year 2017-2018.....                                       | 40          |
| I. Court-Reviewable Preliminary Rulings,<br>Fiscal Year 2017-2018.....   | 44          |
| J. Total Contested Cases with Final Decisions on the Merits,<br>Fiscal Year 2017-2018.....                     | 44          |
| 1. Duration of Final Decisions<br>Without Trial-Type Hearings.....   | 48          |
| 2. Duration of Final Decisions<br>With Trial-Type Hearings.....  | 52          |
| K. Appeals of Final Decisions, Fiscal Year 2017-2018 .....   | 59          |
| L. Reimbursement of Persons Associated with Agencies<br>Conducting Contested Cases, Fiscal Year 2017-2018..... | 62          |
| M. Administrative Budget for Contested Cases, Excluding  |             |

|      |  |     |
|------|--|-----|
|      | Data for Salaries, Wages, or Contracted Fees.....                                      | 68  |
| N.   | On Whether Reported Agency Data was Typical<br>of other Fiscal Years .....             | 72  |
| O.   | Agency Use of Case Management Systems<br>to Manage Contested Cases .....               | 72  |
| P.   | Hearings on Non-Contested Cases.....   | 75  |
| III. | Agency Concerns .....  | 75  |
| A.   | Conflicts of Interest.....   | 75  |
| 1.   | Agency Attachments .....   | 75  |
| 2.   | Relational Conflicts .....   | 77  |
| B.   | Other Barriers.....  | 78  |
| 1.   | Vacancies .....  | 79  |
| 2.   | Staffing Challenges .....  | 79  |
| 3.   | Other Logistical Challenges.....   | 79  |
| C.   | Concerns About a Prospective Centralized<br>Administrative Hearings Department .....   | 80  |
| 3.   | CENTRAL PANEL SYSTEMS IN<br>OTHER JURISDICTIONS .....                                  | 83  |
| I.   | History and Overview .....   | 83  |
| II.  | Factors Driving Adoption of State Central Panels.....                                  | 89  |
| A.   | Equity and Impartiality .....  | 89  |
| B.   | Efficiency and Cost-Savings.....   | 90  |
| C.   | Standardization and Professionalization<br>of the Administrative Hearings Process..... | 91  |
| III. | Common Factors Among Central Panels.....   | 92  |
| A.   | Organization.....  | 92  |
| B.   | Jurisdiction.....  | 95  |
| C.   | Administrative Law Judges.....   | 98  |
| 1.   | Position Title.....  | 98  |
| 2.   | Appointment System.....  | 99  |
| 3.   | Qualifications .....   | 106 |
| a.   | Licensure.....   | 106 |
| b.   | Tenure of Licensure .....  | 107 |
| c.   | Subject Matter Expertise.....  | 108 |
| d.   | Residency Requirements.....  | 109 |
| 4.   | Part-Time, Full-Time, Temporary, and<br>Contract Administrative Law Judges.....        | 121 |

|     |  |     |
|-----|--|-----|
| 5.  | Civil Service Versus Exempt Employment<br>of Administrative Law Judges .....     | 122 |
| 6.  | Code of Judicial Conduct.....  | 122 |
| D.  | Final Authority of Contested Case Decisions.....                                 | 123 |
| IV. | Fiscal Matters .....   | 124 |
| A.  | Start-Up Costs.....  | 124 |
| B.  | General Savings Over Time.....   | 125 |
| C.  | Central Panel Funding Methods.....   | 126 |
| 1.  | Funding by General or Special Fund Appropriations .....                          | 127 |
| 2.  | Funding by Assessments.....  | 127 |
| 3.  | Funding by Hourly Billing.....   | 127 |
| V.  | Effectiveness of Central Panels .....  | 130 |
| 4.  | IN CONCLUSION: LIMITATIONS ON DATA<br>AND FACTORS TO CONSIDER.....               | 133 |
| I.  | Findings.....  | 133 |
| A.  | Hawaii State Agency Responses and Limitations<br>on Data Collected.....          | 133 |
| 1.  | Contested Case Subject Matter .....  | 133 |
| 2.  | Caseload Statistics .....  | 134 |
| a.  | Volume of Cases .....  | 134 |
| b.  | Duration of Cases.....   | 134 |
| c.  | Presiding Officers .....   | 134 |
| d.  | Decisions Appealed .....   | 135 |
| 3.  | Agency Concerns .....  | 135 |
| a.  | Preventing Conflicts of Interest .....   | 135 |
| b.  | Barriers to Adjudication.....  | 135 |
| c.  | General Concerns.....  | 136 |
| B.  | Central Panel Systems in Other Jurisdictions .....                               | 136 |
| 1.  | Factors Driving Adoption of State Central Panels.....                            | 136 |
| 2.  | Common Factors Among Central Panels.....   | 137 |
| a.  | Organization.....  | 137 |
| b.  | Jurisdiction.....  | 137 |
| c.  | Administrative Law Judges.....   | 137 |
| 3.  | Fiscal Matters.....  | 139 |
| 4.  | Effectiveness of Central Panels .....  | 139 |
| II. | Further Considerations Regarding<br>Establishment of a State Central Panel ..... | 139 |

## TABLES

|            |  |     |
|------------|--|-----|
| Table 2.1  | Legal Authority Over Contested Cases<br>(Sections, Unless Otherwise Specified) ..... | 8   |
| Table 2.2  | Subject Matters .....  | 14  |
| Table 2.3  | Prevalence of Deadline Requirements .....  | 18  |
| Table 2.4  | Who Presides and Who Decides on a Contested Case .....                               | 21  |
| Table 2.5  | Contested Cases Filed, FY 2017-2018 .....  | 28  |
| Table 2.6  | Contested Cases Closed, Unrelated to Merits, FY 2017-2018 .....                      | 32  |
| Table 2.7  | Contested Case Trial-Type Hearings, FY 2017-2018.....                                | 37  |
| Table 2.8  | Contested Case Non-Trial-Type Hearings, FY 2017-2018 .....                           | 41  |
| Table 2.9  | Total Contested Cases with Final Decisions on the Merits,<br>FY 2017-2018 .....      | 45  |
| Table 2.10 | Final Decisions without Trial-Type Hearings, FY 2017-2018 .....                      | 49  |
| Table 2.11 | Final Decisions with Trial-Type Hearings, FY 2017-2018 .....                         | 53  |
| Table 2.12 | Appeals on Final Decisions, FY 2017-2018.....  | 60  |
| Table 2.13 | Reimbursements for Contested Cases, FY 2017-2018 .....                               | 63  |
| Table 2.14 | Administrative Budget for Contested Cases, FY 2017-2018.....                         | 69  |
| Table 2.15 | Case Management System Use.....  | 73  |
| Table 3.16 | State Adoption of Central Panel by Year.....   | 86  |
| Table 3.17 | Legal Authority Over Central Panels.....   | 87  |
| Table 3.18 | Common Central Panel Subject Matter Jurisdiction by State.....                       | 97  |
| Table 3.19 | Central Panel Adjudicator Designations, Appointments, and Terms .....                | 102 |
| Table 3.20 | Administrative Law Judge Qualifications .....  | 110 |
| Table 3.21 | Central Panel Funding Methods by State.....  | 129 |

## Appendices

|    |   |     |
|----|---|-----|
| A. | Act 110, Session Laws of Hawaii 2019<br>Regular Session of 2019 .....             | 143 |
| B. | Legislative Reference Bureau Survey of State Agencies<br>Regarding Hearings ..... | 151 |

*Page intentionally left blank*



## EXECUTIVE SUMMARY

Act 110, Session Laws of Hawaii 2019 (Act 110), required the Legislative Reference Bureau (Bureau) to submit to the Legislature a report, including findings and recommendations, regarding contested cases in Hawaii and other jurisdictions. Specifically, Act 110 required the study to include:

- (1) A report of the contested case hearings process in Hawaii among all departments and agencies in the State that conduct or delegate contested case hearings, including statistical, non-confidential data for Fiscal Year 2017-2018 regarding:
  - (A) Case type, based on subject matter;
  - (B) Caseload statistics, including the:
    - (i) Number of administrative hearings conducted;
    - (ii) Average duration of administrative hearing matters from filing to disposition;
    - (iii) Number of hearings officers; and
    - (iv) Number of appeals filed for contested case decisions; and
- (2) A summary of the form and function of administrative hearing central panels in other jurisdictions.

### **I. Contested Case Hearings in Hawaii**

Currently, Hawaii has a decentralized administrative hearings system. That is, individual executive branch agencies in the State are authorized to conduct "in house" administrative hearings to adjudicate disputes that involve the authority of those agencies. For example, if an agency issues an application denial for a certain benefit, the individual receiving the denial may have the opportunity to formally dispute the decision through an administrative hearing. These hearings, often called contested case hearings, are presided over either by an employee of the agency that issued the denial or by an adjudicator contracted by that agency.

#### **A. Contested Case Defined**

Act 110 appears to be concerned primarily with contested case matters in which a party may appeal directly to a court after an agency's decision, whether it is a preliminary ruling or final decision. Therefore, for purposes of this report, the Bureau defines "contested case" as a proceeding:

- (1) In which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a hearing; and
- (2) For which, pursuant to section 91-14, Hawaii Revised Statutes, or other applicable law, a party is entitled to judicial review of the agency's preliminary ruling or final decision.

It is significant to note that contested cases under this definition may not ever reach a hearing on the merits. Thus, a case is deemed a contested case for purposes of this report if the agency considering the matter has authority to issue a preliminary ruling or final decision after offering all parties the opportunity to present their respective positions at a hearing, irrespective of whether the contested case ever reaches a hearing.

## **B. Survey Overview and Respondents**

In accordance with Act 110, the Bureau designed and distributed to each executive branch department in the State a survey requesting information about any contested case conducted by each department or by any agency within or administratively attached to each department during FY 2017-2018.

Fifteen of the State's 18 executive branch departments responded to the Bureau's inquiry. Specifically, the Bureau received relevant data from the following departments and agencies:

- Department of Accounting and General Services:
  - Campaign Spending Commission; and
  - Office of Elections;
- Department of Agriculture:
  - Agricultural Resource Management Division;
  - Pesticides Branch;
  - Plant Quarantine Branch; and
  - Quality Assurance Division;
- Department of the Attorney General:
  - Office of Child Support Hearings; and
  - Office of Dispute Resolution;
- Department of Budget and Finance:
  - Employees' Retirement System, Retirement Benefits Branch; and
  - Hawaii Employer-Union Health Benefits Trust Fund;
- Department of Business, Economic Development, and Tourism, Hawaii Community Development Authority;
- Department of Commerce and Consumer Affairs:
  - Office of Administrative Hearings; and
  - Public Utilities Commission;
- Department of Education, Individuals with Disabilities Education Act Complaints Management Program;

## EXECUTIVE SUMMARY

- Department of Hawaiian Home Lands, Hawaiian Homes Commission;
- Department of Health;
- Department of Human Resources, Development Merit Appeals Board;
- Department of Human Services, Administrative Hearings Office;
- Department of Labor and Industrial Relations:
  - Disability Compensation Division;
  - Hawaii Civil Rights Commission;
  - Hawaii Labor Relations Board;
  - Labor and Industrial Relations Appeals Board; and
  - Wage Standards Division, Hearings Branch;
- Department of Land and Natural Resources:
  - Board of Land and Natural Resources; and
  - Commission on Water Resource Management;
- Department of Taxation, Boards of Taxation Review; and
- University of Hawaii.

### **C. Agency Responses and Limitations on Data Collected**

Agencies varied significantly in their responses across all data points required by Act 110. The Bureau's survey included questions to gather the data required in Act 110, as well as additional questions about any barriers to providing timely adjudication and any concerns about the establishment of a centralized administrative hearings system in the State.

A number of agencies faced significant challenges in providing relevant data to the Bureau, often because the data requested was not available. Most notably, data related to the costs of contested cases by subject matter was not available.

#### **1. Contested Case Subject Matter**

During FY 2017-2018, Hawaii's executive branch agencies conducted contested case hearings for subject matters including: campaign and elections laws; agricultural matters involving food, animals, measurements, and other agricultural resources; public benefits claims; special education; child support; health matters including certain mental health, disability, nutrition, and environmental issues; insurance; public utilities; workers' compensation and other labor matters including collective bargaining, discrimination, wages and hours, unlawful suspension or discharge, family leave, and occupation safety and health; certain land and natural resource matters, including civil resource violations, conservation, enforcement, permits, vessels, and water resource management; tax assessments; and certain matters specifically related to the University of Hawaii system.

#### **2. Caseload Statistics**

##### **a. Volume of Cases**

Hawaii state agencies varied significantly with respect to caseload statistics. Of those agencies that reported to have conducted contested cases in FY 2017-2018, the number ranged

from a high of 2,678 cases filed with the Department of the Attorney General's Office of Child Support Hearings to a low of 1 campaign finance case handled by the Campaign Spending Commission.

**b. Duration of Cases**

The data submitted by agencies regarding the average duration of administrative hearing matters from filing to disposition varied widely. For example, among the 85 total workers' compensation cases in FY 2017-2018 that resulted in a final decision after a trial-type hearing, the average total duration of these cases from filing to decision rendered was 1,076 days. In contrast, the Office of Child Support Hearings handled 492 child support contested cases that resulted in a final decision after a trial-type hearing in FY 2017-2018, with the average duration of these cases from filing to disposition totaling 77 days.

**c. Presiding Officers**

With respect to the number of hearing officers employed or retained by the responding agencies, most agencies employed or retained a single individual to preside over contested cases. Numerous agencies have commissioners or board members that participate in contested case matters, and those usually include anywhere from 2 to 10 individuals. In some instances, such as with the Commission on Water Resource Management, the chairperson of a commission or board is required to preside over contested cases. Additionally, other commission or board members may be expected to participate in various aspects of a contested case, usually as a decision-making body to consider a proposed decision and order issued by a hearings officer. For example, the Department of Labor and Industrial Relations' Labor and Industrial Relations Appeals Board conducts contested cases that are presided over by board members or hearings officers, but only the board may issue a final decision in a contested case.

**d. Decisions Appealed**

Considering the overall volume of cases, there were comparatively few appeals of final decisions. Fifteen of the responding agencies that issued a final decision in a contested case matter had one or more decisions appealed in FY 2017-2018, and a total of 78 final decisions were appealed across all responding agencies in FY 2017-2018. The Department of Labor and Industrial Relations' Labor and Industrial Relations Board reported 28 workers' compensation appeals, the most among the responding agencies.

**3. Agency Concerns**

**a. Preventing Conflicts of Interest**

When asked about conflicts of interest that may arise due to an agency adjudicating a dispute that originates from and involves as a party the department to which the agency is attached, most agencies responded with information demonstrating measures that have been taken to insulate contested case proceedings from any undue agency influence. For example, the Department of the Attorney General's Office of Child Support Hearings stated that the Child

Support Enforcement Agency (the arm of the Department of the Attorney General that enforces child support matters) is a separate division that is subject to separate statutes and administrative rules. The Department of Human Services' Administrative Hearings Office noted its physical separation from other agencies within the department and also cited an administrative rule that prohibits departmental *ex parte* communications with the department's hearings officers.

**b. Barriers to Adjudication**

Agencies noted several barriers to providing fair and timely adjudication of contested cases. The agencies surveyed for this report primarily cited challenges with respect to availability of hearing officers as well as other staffing, resource, and logistical obstacles. Meeting board or commission quorum requirements to conduct contested case hearings or issue final decisions was cited as a concern, especially when a board or commission is composed solely of volunteers. Agencies that conduct contested case hearings on a less frequent basis expressed difficulty in procuring and scheduling contract hearing officers. Hawaii's unique geography was also cited as a challenge with respect to conducting and staffing contested case hearings. For example, the Hawaiian Homes Commission travels to the islands of Kauai and Molokai once per year to conduct land lease contested case hearings; the Commission travels to Lanai to conduct these types of contested case hearings once every other year.

**c. General Concerns**

Some agencies also expressed general concerns about the establishment of a central panel in Hawaii. The primary concern was whether adjudicators in a central panel system might possess sufficient specialized subject matter expertise to fairly and efficiently preside over contested cases. The Public Utilities Commission suggested that, should the State adopt a central panel, the central panel should include a sub-department that specializes in public utilities and renewable-energy matters. Other concerns include the employment status of agency staff that currently handle contested case matters as well as adoption of uniform procedures governing contested case matters should a central panel be established.

**II. Central Panel Systems in Other Jurisdictions**

In accordance with Act 110, the Bureau researched and summarized the form and function of centralized administrative hearing offices, referred to as "central panels" both conventionally and for purposes of this report, that have been established in other jurisdictions. Specifically, the Bureau studied 28 jurisdictions: Alaska, Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and the District of Columbia.

**A. Factors Driving Adoption of State Central Panels**

Central panel adoption among the states began with California in 1945 and has continued steadily through the present, with Indiana establishing its Office of Administrative Law

Proceedings in 2019. The factors driving the adoption of a central panel system for administrative hearings vary among the states, but historically, concerns over one or more of the following often serve as the basis for establishing a central panel: impartiality and equity; efficiency and cost-savings; and standardization and professionalization of the administrative hearings process.

## **B. Common Factors Among Central Panels**

No two states have adopted an identical system with respect to central panel organization, jurisdiction, adjudicators, or authority, but there are numerous commonalities among the various central panel systems. While most jurisdictions examined for purposes of this report have established central panels through legislation, no two statutory schemes are identical. Some states enacted comprehensive and specific legislation governing their central panel, while others enacted a central panel through much less detailed legislation. Central panels are considered to be an "organ of the executive branch" and thus, their duties are executive, not judicial, in nature.

### **1. Organization**

Most, though not all, central panels have been established as independent agencies within a state's executive branch. This independence is meant to allow a central panel to operate outside of the influence of any other agency or department. Some states, however, appear to attach a central panel to another agency or department for purposes of cost-savings achieved through the sharing of resources such as office space or certain administrative personnel. Most state central panels have a headquarters office, usually located in the state's capital city, in addition to one or more satellite offices in other locations throughout the state.

### **2. Jurisdiction**

Most states establish a central panel's specific jurisdiction by statute, and currently, none of the central panels examined for purposes of this report has been granted jurisdiction over all of a state's contested cases. Many states enumerate by statute the individual agencies that are within a central panel's jurisdiction for purposes of contested case hearings, while others specify the agencies that are exempt from any such requirement; some do both.

The cases most frequently included in a central panel's jurisdiction include suspensions or revocations (frequently related to motor vehicle licensing or professional licensing), individual benefit claims, disability allowances, child support, and workers' compensation matters. Some jurisdictions, like Michigan and Texas, hear other types of cases, such as tax valuation appeals.

### **3. Administrative Law Judges and Qualifications**

Twenty of the 28 jurisdictions examined for purposes of this report use the term "administrative law judge" for at least some of the presiding officers employed by their central panel. Most states specifically designate the head of a central panel, often using the title "chief administrative law judge." States vary significantly in the number of administrative law judges

employed to conduct hearings in the central panel system, but only Missouri and South Carolina designate a specific number, capping their administrative law judges at 5 and 6, respectively.

The methods by which administrative law judges are hired vary among states as well. Some states require appointment by a state's governor, others require appointment or confirmation by a nominating or selection commission, but most authorize a chief administrative law judge (who is often appointed by a state's governor) to employ other administrative law judges.

The jurisdictions examined for purposes of this report vary in their professional requirements for administrative law judges. Most require by statute that an administrative law judge be a licensed attorney in the state, and some additionally require an administrative law judge to have been a licensed attorney for a certain number of years. Most states employ administrative law judges who are expected to hear contested cases irrespective of subject matter, but some states statutorily designate that only certain trained or experienced administrative law judges may hear specific matters (e.g., special education contested cases or workers' compensation cases). Some states impose by statute a residency requirement on their administrative law judges. Most states examined for this report require their administrative law judges to serve in a full-time capacity, but others specifically allow for the hiring of part-time, temporary, or contract administrative law judges. Many also require that central panel administrative law judges adhere to a code of judicial conduct, either specific to administrative law judges or generally applicable to all judges in the state.

The jurisdictions examined for this report also vary significantly with respect to whether a central panel's adjudicators are granted final decision authority. While some legal scholars point to a trend toward granting this authority to central panels, most states do not grant final decision authority to administrative law judge decisions. Currently, only Georgia, Louisiana, South Carolina, and the District of Columbia establish by statute that all administrative law judge orders are final. Most other jurisdictions provide by statute that an individual agency, by rule, may grant a central panel final decision authority for specific hearings. Unless an agency grants a central panel final decision authority, whether by statute or agency rule, an administrative law judge's decision will be considered an initial or preliminary order or ruling subject to agency review.

### **C. Fiscal Matters and Start-Up Costs**

Several fiscal matters impact the adoption and operation of central panels. These include start-up costs, general savings over time, and methods of funding central panels.

Jurisdictions examined for purposes of this report have devised various strategies to minimize the start-up costs associated with establishing a central panel. For example, some states have co-located their central panel with another state agency or encouraged cost allocation agreements with a larger agency to grant the central panel access to greater range or depth of administrative support services than the central panel would have if it were a completely stand-alone agency.

Data detailing general savings over time is difficult to obtain. Nevertheless, several states have reported that the establishment of a central panel reduced the overall costs of conducting contested case hearings. States differ in their methods of funding central panels, but most use some combination of general fund appropriations, special fund appropriations, assessments to agencies, or funding by hourly billing.

#### **D. Effectiveness of Central Panels**

There is limited quantifiable data regarding the effectiveness of centralized administrative hearings systems, however, it is notable that no state that has adopted a central panel has disbanded it in favor of reverting back to a decentralized system. While not conclusive evidence of central panel efficiency, a general trend toward expanded subject matter jurisdiction among states with established central panels suggests some level of efficiency - and proficiency - in handling contested case matters over time.

### **III. Further Considerations Regarding Establishment of a State Central Panel**

The Bureau suggests several factors to be considered if lawmakers wish to pursue the establishment of a central panel in the State. In light of the limitations on data collected from state agencies for purposes of this report, the Legislature may wish to direct stakeholders (e.g., various entities that conduct contested case hearings) to identify and standardize specific contested case data, which could include case record information or financial cost itemization, to be collected, retained, and reported by all state agencies on an annual basis. This data collection would allow for a standardized and multi-year overview of the current contested case caseloads, processes, and finances among the State's executive branch agencies, providing a baseline from which lawmakers can make future cost and operational efficiency comparisons if implementation of a central panel system in Hawaii is contemplated.

Additionally, lawmakers may wish to consider the following factors when considering the establishment of a central panel in the State:

- Determining rationale for reform: whether it is to improve the State's administrative hearings process by increasing equity and impartiality, efficiency and cost-savings, or standardizing and professionalizing the system;
- Determining central panel form and placement: whether as a principal executive branch department or as an agency within or attached to an existing executive branch department in the State;
- Establishing the subject matter jurisdiction of a central panel;
- Determining central panel structure, including: preferred terminology to be used; qualifications and standards of conduct for central panel adjudicators; and leadership structure for a central panel;



*EXECUTIVE SUMMARY*

- Delegating final decision authority, if at all, to a central panel decisions; and
- Determining funding and fiscal matters, including consideration of initial start-up costs and a method to support ongoing costs of a central panel.

*Page intentionally left blank*

# Chapter 1

## INTRODUCTION

### Scope of the Report

The Legislative Reference Bureau (Bureau) prepared this report pursuant to Act 110, Session Laws of Hawaii 2019 (hereinafter Act 110) (attached as Appendix A).

Act 110 required the Bureau to compile this report, and Act 110 further required the report to cover, in part, "the contested case hearings process conducted or delegated by the various state departments and agencies" of Hawaii. To facilitate this portion of the report, Act 110 also required "all state departments and agencies that conduct or delegate contested case hearings" to provide certain data regarding their contested cases to the Bureau, in an electronic format approved by the Bureau. More specifically, the Act required those agencies to:

- (1) Provide data from 2018 on case types, based on subject matter;
- (2) Provide data from 2018 on caseload statistics, including:
  - (A) Number of administrative hearings conducted;
  - (B) Average duration of cases, from filing to disposition;
  - (C) Number of hearings officers; and
  - (D) Number of contested cases appealed to a court;
- (3) Provide data from 2018 on costs, broken down by case type;
- (4) Specify whether the above data was representative of a typical year; and
- (5) Provide information on any areas of conflicts of interest or other barriers to third party administrative hearings.

Act 110 also required the report to include a summary of research on other jurisdictions that have centralized administrative hearings offices, including summaries of how those systems operate.

## **The Bureau's Approach to this Report**

The Bureau prepared this report in accordance with the scope of Act 110. For the portion of the report that provides data and information from Hawaii state agencies, the Bureau asked the heads of the state executive branch departments to provide lists of the respective contact persons with whom the Bureau could communicate about the contested cases conducted by those departments or by agencies within or administratively attached to those departments. The Bureau subsequently sent a contested case survey form (attached as Appendix B) to each contact person. Because agencies typically budget for the fiscal year instead of the calendar year, the surveys asked for data from fiscal year 2017-2018. The Bureau received survey responses from most of the agencies contacted.<sup>1</sup> Not all of the agencies provided data pursuant to the survey requests, and some agencies could not provide all of the information that Act 110 specified.

For the portion of the report that provides information on other jurisdictions that have established central panels for the adjudication of contested cases, the Bureau identified states that have established such panels. Twenty-seven states, as well as the District of Columbia, have established a central panel. The Bureau did not include any city-level or county-level departments, because it was anticipated that the responsibilities borne by those departments would not be comparable in scope or character to state-level panels.

## **Organization of this Report**

The remaining chapters of this report provide the following:

Chapter 2 summarizes relevant Hawaii contested case statistics and information, to the extent that this information was provided by the agencies surveyed. Chapter 2 also discusses issues regarding data collection and management in agencies that adjudicate contested cases in Hawaii.

Chapter 3 provides a history of other states' central panels, describes different central panels as they currently exist in other states, and highlights common elements among states' central panels.

Chapter 4 summarizes key points and notes factors that policymakers may wish to consider before enacting legislation intended to consolidate administrative hearings functions in a single agency.

---

<sup>1</sup> Survey responses are on file with the Bureau.

## Chapter 2

# HAWAII AGENCIES THAT CONDUCT CONTESTED CASE HEARINGS

### Part I. Overview

Act 110 required the Legislative Reference Bureau (Bureau) to include in this report data from all state agencies that conduct or delegate contested case hearings.<sup>1</sup>

This chapter summarizes the data that the relevant state agencies provided to the Bureau. However, in some instances applicable data are limited or unavailable regarding some aspects of the requested subject matter.

#### A. What Act 110 Sought from State Agencies

Act 110 required "all state agencies that conduct or delegate contested case hearings" to provide the Bureau data from 2018 regarding contested cases.<sup>2</sup> More specifically, Act 110 required those agencies to:

- (1) Provide data on case types, based on subject matter;
- (2) Provide data on caseload statistics, including the:
  - (A) Number of administrative hearings conducted;
  - (B) Average duration of cases, from filing to disposition;
  - (C) Number of hearings officers; and
  - (D) Number of contested cases appealed to a court;
- (3) Provide data on costs, broken down by case type;
- (4) Specify whether the above data was representative of a typical year; and
- (5) Provide information on possible conflicts of interest or other barriers to third party administrative hearings.

---

<sup>1</sup> Act 110, Session Laws of Hawaii 2019 (Act 110).

<sup>2</sup> Due to state agencies' fiscal-year budgeting cycles, the Bureau requested data from fiscal year 2017-2018 instead of calendar year 2018.

## **B. The Bureau's Approach to Data Collection**

### **1. Defining "Contested Case"**

Act 110 did not specifically define "contested case." However, section 91-1, Hawaii Revised Statutes (HRS), defines "contested case" as "a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing." The same statutory section limits "agency hearing" to "such hearing held by an agency immediately prior to a judicial review of a contested case as provided in section 91-14." Section 91-14(a), HRS, provides in relevant part that "[a]ny person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under [chapter 91]." In light of these statutory provisions, the Bureau interpreted the intent of Act 110 to focus on cases in which a party may appeal directly to a court after an agency's ruling. Therefore, for the purposes of this report, "contested case" refers to a proceeding:

- In which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a hearing; and
- For which a party is entitled to judicial review<sup>3</sup> of the agency's preliminary ruling or final decision.

Readers should note that contested cases may not necessarily result in a trial or any hearing at all. Instead, a case is deemed a contested case if the agency considering the case has the authority to make a preliminary ruling or final decision after offering all parties an opportunity (which the parties may decline) to present their respective positions at a hearing.

### **2. Survey of State Agencies**

In early July 2019, the Bureau emailed a survey form to designated contact persons within each executive branch department. The survey inquired about the contested cases conducted by those departments or by agencies within or administratively attached to those departments.<sup>4</sup> Pursuant to Act 110, agencies were requested to respond no later than August 1, 2019. The survey appears as Appendix B of this report. Most of the agencies surveyed responded and provided the data that the Bureau requested, to the extent that applicable data were available.

---

<sup>3</sup> Section 91-14, Hawaii Revised Statutes (HRS), provides that proceedings for review shall be instituted in circuit court or, if applicable, the environmental court "except where a statute provides for a direct appeal to the supreme court or the intermediate appellate court, subject to chapter 602 [HRS]."

<sup>4</sup> On June 5, 2019, in anticipation of the enactment of House Bill No. 1307, S.D. 2, C.D. 1 (which was enacted as Act 110), the Bureau sent an inquiry letter to the head of each executive department requesting a list of contact persons.

### 3. Agencies that Provided Data

The following agencies responded to the Bureau's survey and provided relevant data for this report:<sup>5</sup>

- Campaign Spending Commission, Department of Accounting and General Services;
- Office of Elections, Department of Accounting and General Services;
- Agricultural Resource Management Division, Department of Agriculture;
- Pesticides Branch, Department of Agriculture;
- Plant Quarantine Branch, Department of Agriculture;
- Quality Assurance Division, Department of Agriculture;
- Office of Child Support Hearings, Department of the Attorney General;
- Office of Dispute Resolution, Department of the Attorney General;
- Employees' Retirement System, Retirement Benefits Branch, Department of Budget and Finance;
- Hawaii Employer-Union Health Benefits Trust Fund, Department of Budget and Finance;
- Hawaii Community Development Authority, Department of Business, Economic Development, and Tourism;
- Office of Administrative Hearings, Department of Commerce and Consumer Affairs;
- Public Utilities Commission, Department of Commerce and Consumer Affairs;

---

<sup>5</sup> Some agencies did not respond to the survey. These agencies were the Land Use Commission, Department of Business, Economic Development, and Tourism; the Employment Security Appeals Referees' Office, Department of Labor and Industrial Relations; and the Section 504 Exceptional Support Branch, Department of Education. The latter agency was aware of a single relevant contested case, but could not readily retrieve the data. Other agencies responded to the survey despite conducting no contested case hearings. Although informative, their responses did not seem relevant to this report. These agencies were the Agribusiness Development Corporation, the Agricultural Development Division, the Agricultural Loan Division, and the Animal Industry Division, Department of Agriculture; the (State) Department of Defense; the Kahoolawe Island Reserve Commission, Department of Land and Natural Resources; the Department of Public Safety; and the Department of Transportation.

- Individuals with Disabilities Education Act Complaints Management Program, Department of Education;
- Hawaiian Homes Commission, Department of Hawaiian Home Lands;<sup>6</sup>
- Department of Health;
- Merit Appeals Board, Department of Human Resources Development;
- Administrative Hearings Office, Department of Human Services;
- Disability Compensation Division, Department of Labor and Industrial Relations;
- Hawaii Civil Rights Commission, Department of Labor and Industrial Relations;
- Hawaii Labor Relations Board, Department of Labor and Industrial Relations;
- Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations;
- Wage Standards Division, Hearings Branch, Department of Labor and Industrial Relations;
- Board of Land and Natural Resources, Department of Land and Natural Resources;
- Commission on Water Resource Management, Department of Land and Natural Resources;
- Boards of Taxation Review, Department of Taxation; and
- The University of Hawaii.<sup>7</sup>

## **Part II. Agencies, Their Authority, and Reported Data**

This section of the report describes the quantitative responses of the agencies covered by Act 110. Due to the volume of data from these agencies, much of the information is summarized in Table 2.1 to Table 2.15.<sup>8</sup> For a complete view of the information provided by the surveyed agencies, the reader may submit a request to the Bureau to review an agency's response.

---

<sup>6</sup> The Department of the Attorney General responded on behalf of the Hawaiian Homes Commission.

<sup>7</sup> The University of Hawaii submitted a draft response to the survey but was not able to provide most of the case-related data in time to be included in this report.

<sup>8</sup> The data from Table 2.1 to Table 2.15 are derived from the surveys completed and e-mailed to the Bureau by the agencies and, in some cases, follow-up e-mails from the agencies.



There was considerable variation in the number of cases handled by the agencies. In some instances, the data tables contain some modifications to the agencies' responses to account for data on matters that were not considered contested cases because they could not be appealed directly to court. Therefore, the tables on contested cases exclude those cases, but where appropriate, these cases are included in a separate discussion on non-contested cases.<sup>9</sup>

The information presented in this section is based on data provided directly by the agencies. Because of the large amount of information collected, the Bureau has not been able to verify the agencies' responses and therefore makes no assurances regarding the accuracy of the data in this section.

### **A. Legal Authority Over Contested Cases**

Each agency that hears contested cases derives its authority from a specific statute or administrative rule. Table 2.1 contains the appropriate statutes or administrative rules under which those agencies were established, as well as other laws relevant to their handling of contested cases. The information is based on agencies' responses to the survey, and in instances where an agency cited to numerous individual sections or chapters of the statutes or administrative rules, Table 2.1 cites to entire chapters, titles, or divisions within the HRS or the Hawaii Administrative Rules (HAR), as appropriate.

---

<sup>9</sup> See note 35 of this chapter and accompanying text.

**Table 2.1 - Legal Authority Over Contested Cases (Sections, Unless Otherwise Specified)**

| Agency  |  | Establishment of Agency |                             |       | Other Provisions                           |                            |                      |
|---|--|-------------------------|-----------------------------|-------|--|----------------------------|----------------------|
|   |  | HRS                     | HAR                         | Other | HRS  | HAR                        | Other                |
| <b>Dept. of Accounting &amp; General Services</b> | Campaign Spending Commission                             | 11-311                  | N/A                         | N/A   | 11-301 to 11-435                           | Ch. 3-160, 3-161           | N/A                  |
|   | Office of Elections                                      | 11-1.5                  | N/A                         | N/A   | 11-62, 11-65, 11-113                       | N/A                        | N/A                  |
| <b>Dept. of Agriculture</b>                       | Agricultural Resource Management Division                | Ch. 166, 166E, & 168    | 4-1-35 to -49, 4-153, 4-158 | N/A   | N/A  | N/A                        | N/A                  |
|   | Pesticides Branch  | Ch. 149A                | Ch. 4-66                    | N/A   | N/A  | 4-1-39 to 4-1-43           | N/A                  |
|   | Plant Quarantine Branch                                  | Ch. 150A                | N/A                         | N/A   | N/A  | Ch. 4-1; 4-71-6.1          | N/A                  |
|   | Quality Assurance Division                               | N/A                     | Title 4 (Various Chapters)  | N/A   | Chs. 145, 147, 157, 486 (Various Sections) | Title 4 (Various Chapters) | N/A                  |
| <b>Dept. of the Attorney General</b>              | Office of Child Support Hearings                         | Ch. 576E                | Ch. 5-34                    | N/A   | N/A  | N/A                        | N/A                  |
|   | Office of Dispute Resolution                             | 302A-443                | Ch. 8-60                    | MOA   | 302A-1112                                  | Ch. 8-19                   | Various Federal Laws |
| <b>Dept. of Budget &amp; Finance</b>              | Employees' Retirement System, Retirement Benefits Branch | Ch. 88                  | Ch. 6-23                    | N/A   | N/A  | N/A                        | N/A                  |
|   | Hawaii Employer-Union Health Benefits Trust Fund         | Ch. 87A                 | EUTF Rules (Generally)      | N/A   | N/A  | N/A                        | Various Federal Laws |

**Table 2.1 (continued) - Legal Authority Over Contested Cases (Sections, Unless Otherwise Specified)**

| Agency   |  | Establishment of Agency               |                                   |       | Other Provisions  |   |   |
|--|--|---------------------------------------|-----------------------------------|-------|---|---|---|
|  |  | HRS                                   | HAR                               | Other | HRS   | HAR   | Other                                     |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority | Ch. 206E                              | N/A                               | N/A   | N/A   | Title 15 (Various Chapters)                       | N/A                                       |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings      | 26-9                                  | N/A                               | N/A   | 26-5, 88-82, 103D-709, 305J-11.5, 414-53, 414D-64, 415A-8.5, 425-196, 425E-108.5, 428-105.5, 436B-26.5, 671-11, 672B-3; Chs. 454F, 482, 485A; Title 24 (Various Sections) | Titles 6, 16 (Various Provisions); EUTF Rule 2.04 | Memoranda of Understanding with ERS, EUTF |
|  | Public Utilities Commission            | Chs. 269, 269E, 271, 271G, 486H, 486J | Title 6 and 16 (Various Chapters) | N/A   | N/A   | N/A   | N/A                                       |

**Table 2.1 (continued) - Legal Authority Over Contested Cases (Sections, Unless Otherwise Specified)**

| Agency                                      |   | Establishment of Agency |                         |  | Other Provisions              |                               |                      |
|---|---|-------------------------|-------------------------|--|-------------------------------|-------------------------------|----------------------|
|   |   | HRS                     | HAR                     | Other  | HRS                           | HAR                           | Other                |
| <b>Dept. of Education</b>                   | Individuals with Disabilities Education Act Complaints Management Program | 302A-443                | 8-60-61 to 8-60-74      | Various Federal Laws   | N/A                           | N/A                           | N/A                  |
| <b>Dept. of Hawaiian Home Lands</b>         | Hawaiian Homes Commission   | 26-17                   | N/A                     | Sec. 202, Hawaiian Homes Commission Act; Art. XII, Sec. 1, Hawaii Constitution | N/A                           | Ch. 10-5                      | N/A                  |
| <b>Dept. of Health</b>                      | (Generally)   | 26-4                    | N/A                     | N/A  | Title 19 (Various Provisions) | Title 11 (Various Provisions) | Various Federal Laws |
| <b>Dept. of Human Resources Development</b> | Merit Appeals Board   | 26-5                    | Chs. 14-21.1 to 14-25.1 | N/A  | N/A                           | N/A                           | N/A                  |

**Table 2.1 (continued) - Legal Authority Over Contested Cases (Sections, Unless Otherwise Specified)**

| Agency   |  | Establishment of Agency           |                               |       | Other Provisions   |                                 |       |
|--|--|-----------------------------------|-------------------------------|-------|--------------------|---------------------------------|-------|
|  |  | HRS                               | HAR                           | Other | HRS                | HAR                             | Other |
| <b>Dept. of Human Services</b>                   | Administrative Hearings Office               | 346-12 to 346-14                  | Title 17 (Various Provisions) | N/A   | N/A                | N/A                             | N/A   |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | Chs. 392, 393                     | N/A                           | N/A   | N/A                | Chs. 11-12, 12-12               | N/A   |
|  | Hawaii Civil Rights Commission               | Ch. 368                           | N/A                           | N/A   | Chs. 378, 489, 515 | Title 12 (Various Provisions)   | N/A   |
|  | Hawaii Labor Relations Board                 | Chs. 89, 377, 396                 | Chs. 12-41, 12-42             | N/A   | N/A                | N/A                             | N/A   |
|  | Labor and Industrial Relations Appeals Board | 371-4                             | N/A                           | N/A   | Chs. 386, 397      | Ch. 12-47                       | N/A   |
|  | Wage Standards Division, Hearings Branch     | Chs. 104, 378, 387, 388, 390, 398 | N/A                           | N/A   | N/A                | Chs. 12-21, 12-22, 12-24, 12-27 | N/A   |

**Table 2.1 (continued) - Legal Authority Over Contested Cases (Sections, Unless Otherwise Specified)**

| Agency                                       |  | Establishment of Agency |          |                                      | Other Provisions       |                                     |       |
|--|--|-------------------------|----------|--------------------------------------|------------------------|-------------------------------------|-------|
|  |  | HRS                     | HAR      | Other                                | HRS                    | HAR                                 | Other |
| <b>Dept. of Land &amp; Natural Resources</b> | Board of Land & Natural Resources                | 26-15                   | N/A      | N/A                                  | 91-1, 183C-6; Ch. 199D | Title 13 (Various Provisions)       | N/A   |
|  | Commission on Water Resource Management          | Ch. 174C                | N/A      | Art. XI, Sec. 7, Hawaii Constitution | N/A                    | HAR Ch. 13-167 (Various Provisions) | N/A   |
| <b>Dept. of Taxation</b>                     | Boards of Taxation Review                        | 26-10, 232-6            | N/A      | N/A                                  | 232-7                  | N/A                                 | N/A   |
| <b>University of Hawaii</b>                  | Parking Board                                    | Ch. 304A                | Title 20 | N/A                                  | N/A                    | N/A                                 | N/A   |
|  | Residency Appeals Board                          | Ch. 304A                | Title 20 | N/A                                  | N/A                    | N/A                                 | N/A   |
|  | State Postsecondary Education Commission         | Ch. 304A                | Title 20 | N/A                                  | N/A                    | N/A                                 | N/A   |
|  | State Board for Vocational Education             | Ch. 304A                | Title 20 | N/A                                  | N/A                    | N/A                                 | N/A   |
|  | University (on Delinquent Financial Obligations) | Ch. 304A                | Title 20 | N/A                                  | 231-53                 | N/A                                 | N/A   |

## **B. Subject Matters**

Table 2.2 broadly describes the subject matters over which the surveyed agencies reported authority to conduct contested case hearings. Many of the subject matters have been simplified for brevity for the purposes of this table.<sup>10</sup> For example, the Quality Assurance Division of the Department of Agriculture stated that it has authority over matters relating to chicken eggs; processed foods; fresh fruits, vegetables, nuts, honey, and coffee; farm produce; and milk.<sup>11</sup> However, for the sake of simplicity, these subjects are categorized under "Certain Specific Foods" in Table 2.2.

---

<sup>10</sup> For a complete view of the information provided by the surveyed agencies, the reader may submit a request to the Bureau to review an agency's response.

<sup>11</sup> Survey Response from Quality Assurance Division, Department of Agriculture, July 26, 2019, at 3.

**Table 2.2 - Subject Matters**

| <b>Agency</b>  |   | <b>Subject Matters</b>                          |
|--|---|---|
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission  | Campaign Finance                                |
|  | Office of Elections   | Political Party Formation                       |
|  |   | Presidential Ballots                            |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                                 | Park Lands                                      |
|  |   | Irrigation and Water Utilization Projects       |
|  | Pesticides Branch   | Pesticides                                      |
|  | Plant Quarantine Branch   | Animal Imports                                  |
|  |   | Prohibited Hybrid Animals                       |
|  | Quality Assurance Division  | Certain Specific Foods<br>Measurement Standards |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings  | Child Support                                   |
|  | Office of Dispute Resolution  | Individuals with Disabilities Education         |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch                  | Administrative Matters                          |
|  |   | Disability Applications                         |
|  | Hawaii Employer-Union Health Benefits Trust Fund                          | Benefits<br>Self-Insurance Claims               |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                                    | Abandoned Property                              |
|  |   | Parking   |
|  |   | Permits   |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings   | Business Name or Mark Infringement              |
|  |   | Conciliation Claims                             |
|  |   | Education                                       |
|  |   | Employee Benefits                               |
|  |   | Insurance                                       |
|  |   | Procurement                                     |
|  |   | Professional Licenses                           |
|  |   | Retirement                                      |
|  | Uniform Securities Act  |   |
| Public Utilities Commission                                  | Public Utilities  |   |
| <b>Dept. of Education</b>                                    | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education         |



**Table 2.2 (continued) - Subject Matters**

| <b>Agency</b>                                    |  | <b>Subject Matters</b>                                 |
|--|--|--|
| <b>Dept. of Hawaiian Home Lands</b>              | Hawaiian Homes Commission                    | Hawaiian Home Lands                                    |
| <b>Dept. of Health</b>                           | (Generally)                                  | Agricultural Burning Permits                           |
|  |  | Developmental Disabilities                             |
|  |  | Early Interventions                                    |
|  |  | Environmental  |
|  |  | Food, Drugs, Cosmetics                                 |
|  |  | Health Care Regulation                                 |
|  |  | Mental Health/Substance Treatment                      |
|  |  | Nuisances  |
|  | Supplemental Nutrition Program               |  |
| <b>Dept. of Human Resources Development</b>      | Merit Appeals Board                          | Actions on Non-Bargaining Unit Civil Service Employees |
| <b>Dept. of Human Services</b>                   | Administrative Hearings Office               | Adult Protective & Community Services                  |
|  |  | Child Care Licensing                                   |
|  |  | Child Welfare Services                                 |
|  |  | Public Benefits  |
|  | Salary Overpayments                          |  |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | Prepaid Health Care                                    |
|  |  | Temporary Disability Insurance                         |
|  | Hawaii Civil Rights Commission               | Discrimination   |
|  | Hawaii Labor Relations Board                 | Collective Bargaining                                  |
|  |  | Occupational Safety & Health                           |
|  | Labor and Industrial Relations Appeals Board | Boiler & Elevator Safety                               |
|  |  | Workers' Compensation                                  |
|  | Wage Standards Division, Hearings Branch     | Family Leave   |
| Unlawful Suspension or Discharge                 |  |  |
|  | Wages and Hours                              |  |

**Table 2.2 (continued) - Subject Matters**

| <b>Agency</b>                                |   | <b>Subject Matters</b>                       |
|--|---|--|
| <b>Dept. of Land &amp; Natural Resources</b> | <b>Board of Land &amp; Natural Resources</b>            | Civil Resource Violations                    |
|  |   | Conservation                                 |
|  |   | Major Enforcement (No Further Specification) |
|  |   | Parking & Towing                             |
|  |   | Permits                                      |
|  | Vessels   |  |
|  | <b>Commission on Water Resource Management</b>          | Water Resource Management                    |
| <b>Dept. of Taxation</b>                     | <b>Boards of Taxation Review</b>                        | Tax Assessments                              |
| <b>University of Hawaii</b>                  | <b>Parking Board</b>                                    | Motor Vehicles                               |
|  | <b>Residency Appeals Board</b>                          | Residency                                    |
|  | <b>State Postsecondary Education Commission</b>         | Financial Aid                                |
|  | <b>State Board for Vocational Education</b>             | Vocational Education                         |
|  | <b>University (on Delinquent Financial Obligations)</b> | Delinquent Financial Obligations             |

**C. Prevalence of Deadline Requirements Upon Agencies**

Table 2.3 provides information on whether the pertinent agencies are required to meet specific deadlines in processing contested cases. Survey responses showed that some agencies are not required to meet any deadlines at all, while others must meet deadlines at certain stages in the contested case process, such as the scheduling of a hearing or the rendering of a decision. In some instances, deadlines appear to apply only to certain types of cases under an agency's jurisdiction.<sup>12</sup>

Due to the varying nature of many deadlines and the variables that often affect whether deadlines actually apply, Table 2.3 summarizes the types of matters subject to a deadline or states whether a deadline does not apply.

---

<sup>12</sup> The deadlines may apply to only certain subject matters. The reasons for these variations are unclear.

**Table 2.3 - Prevalence of Deadline Requirements**

| <b>Agency</b>  |   | <b>Deadlines</b>  |
|--|---|---|
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission  | No  |
|  | Office of Elections   | On Hearing Dates; Decisionmaking                            |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                                 | On Complaint Processing, Decisionmaking                     |
|  | Pesticides Branch   | On Notice, Hearing Officer Recommendation, and Final Action |
|  | Plant Quarantine Branch   | No  |
|  | Quality Assurance Division  | No  |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings  | No  |
|  | Office of Dispute Resolution  | On Complaint Processing, Decisionmaking                     |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch                  | On Recommended and Final Decisions                          |
|  | Hawaii Employer-Union Health Benefits Trust Fund                          | On Decisionmaking; Scheduling of Emergency Appeals          |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                                    | On Permits; Towed Vehicles; Decisionmaking                  |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings   | On Hearing Dates; Decisionmaking (Some Cases)               |
|  | Public Utilities Commission   | On Decisionmaking; On Investigation Completion (Some Cases) |
| <b>Dept. of Education</b>                                    | Individuals with Disabilities Education Act Complaints Management Program | On Decisionmaking; Notice of Decision                       |
| <b>Dept. of Hawaiian Home Lands</b>                          | Hawaiian Homes Commission   | No  |
| <b>Dept. of Health</b>                                       | (Generally)   | No  |
| <b>Dept. of Human Resources Development</b>                  | Merit Appeals Board   | On Notice, Decisionmaking                                   |

**Table 2.3 (continued) - Prevalence of Deadline Requirements Upon Agencies**

| <b>Agency</b>                                    |  | <b>Deadlines</b>   |
|--|--|--|
| <b>Dept. of Human Services</b>                   | Administrative Hearings Office                   | On Decisionmaking  |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division                 | No   |
|  | Hawaii Civil Rights Commission                   | On Appointment of Hearings Examiner; Conferences; Court Filings (Some Cases); Hearings; Decisionmaking |
|  | Hawaii Labor Relations Board                     | On Scheduling of Hearings (Some Cases)   |
|  | Labor and Industrial Relations Appeals Board     | No   |
|  | Wage Standards Division, Hearings Branch         | On Scheduling of Hearings (Some Cases)   |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources                | On Decisionmaking (Some Cases)   |
|  | Commission on Water Resource Management          | No   |
| <b>Dept. of Taxation</b>                         | Boards of Taxation Review                        | No   |
| <b>University of Hawaii</b>                      | Parking Board                                    | No   |
|  | Residency Appeals Board                          | On Scheduling of Hearings, Decisionmaking  |
|  | State Postsecondary Education Commission         | No   |
|  | State Board for Vocational Education             | No   |
|  | University (on Delinquent Financial Obligations) | On Notice Before Hearing   |

**D. Who Presides, and Who Decides**

Among the agencies surveyed, there are differences in the officials who preside over contested case hearings. Table 2.4 describes these variances among agencies and notes the number of decisionmakers and their qualifications. In some instances, the chairperson or members of a board, commission, or other deliberative body preside. In other instances, other individuals, often appointed by the aforementioned bodies, may preside. Often, the titles of the presiding individuals vary, with the most common title being "hearings officer." Additionally, agencies vary in the minimum qualifications required of their hearings officers. Further, some agencies authorize hearings officers (or similarly titled individuals) to issue final agency decisions, while hearings officers in other agencies may make recommended decisions that may be accepted or rejected by a board or another entity in the department.

**Table 2.4 - Who Presides and Who Decides on a Contested Case**

| <b>Agency</b>                                     |   | <b>Who Presides</b>     | <b>How Many</b> | <b>Qualifications</b>   | <b>Final Decisionmakers</b> |
|---|---|-------------------------|-----------------|---|-----------------------------|
| <b>Dept. of Accounting &amp; General Services</b> | Campaign Spending Commission              | Hearings Officer        | 1               | Not Specified   | Commission                  |
|   |   | Commissioners           | 3 to 5          | Based on Position Already Held  |                             |
|   | Office of Elections                       | Chief Elections Officer | 1               | Based on Position Already Held  | Chief Elections Officer     |
| <b>Dept. of Agriculture</b>                       | Agricultural Resource Management Division | Hearings Officer        | 1               | Not Specified   | Board                       |
|   |   | Board Members           | 10              | Based on Position Already Held  |                             |
|   | Pesticides Branch                         | Hearings Officer        | 1               | Appointed by Board of Agriculture   | Chair of Agriculture        |
|   | Plant Quarantine Branch                   | Hearings Officer        | 1               | Appointed by Board of Agriculture   | Not Specified               |
|   | Quality Assurance Division                | Hearings Officer        | 1               | Not Specified   | Hearings Officer            |
| <b>Dept. of the Attorney General</b>              | Office of Child Support Hearings          | Hearings Officer        | 1               | HI Law License; Legal Experience; Appointed by Attorney General             | Hearings Officer            |
|   | Office of Dispute Resolution              | Hearings Officer        | 1               | HI Law License; Not DOE Employee; No Conflicts; Knowledge of Subject Matter | Hearings Officer            |

**Table 2.4 (continued) - Who Presides and Who Decides on a Contested Case**

| <b>Agency</b>  |  | <b>Who Presides</b>  | <b>How Many</b> | <b>Qualifications</b>            | <b>Final Decisionmakers</b>  |
|--|--|--|-----------------|----------------------------------|--|
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch | Hearings Officer   | 1               | Not Specified                    | Board  |
|  |  | Board Members  | 8               | Based on Position Already Held   |  |
|  | Hawaii Employer-Union Health Benefits Trust Fund         | Emergency Appeals Subcommittee (of Board Members)              | 2               | Board Members                    | Emergency Appeals Subcommittee   |
|  |  | Board Members  | 6 to 10         | Based on Position Already Held   | Board  |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                   | Executive Director (Abandoned Property and Parking Cases only) | 1               | Not Specified                    | Executive Director   |
|  |  | Board Members (Who Presides Varies by Topic)                   | 5 to 9          | Based on Position Already Held   | Presiding Board Members  |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings                        | Hearings Officer   | 1               | HI Law License; Legal Experience | By Respective Board or Other Body, or DCCA Director (Exception: Hearings Officer on Certain Procurement Matters) |
|  |  | Conciliation Panels  | 2 to 3          | Not Specified                    |  |
|  | Public Utilities Commission                              | Hearings Officer   | 1               | Appointed by Chairperson         | Commission   |
|  |  | Chairperson of Commission (in Rate Increase and Tariff Cases)  | 1               | Based on Position Already Held   |  |



**Table 2.4 (continued) - Who Presides and Who Decides on a Contested Case**

| Agency                                      |   | Who Presides   | How Many | Qualifications   | Final Decisionmakers  |
|---|---|--|----------|--|---|
| <b>Dept. of Education</b>                   | Individuals with Disabilities Education Act Complaints Management Program | Hearing Officer  | 1        | Knowledge of Act, Legal Matters; No Conflict of Interest             | Hearings Officer  |
| <b>Dept. of Hawaiian Home Lands</b>         | Hawaiian Homes Commission   | Hearings Officer   | 1        | No Conflict of Interest  | Commission  |
|   |   | Commissioners  | 5 to 9   | Based on Position Already Held                                       |   |
| <b>Dept. of Health</b>                      | (Generally)   | Hearings Officer   | 1        | Appointed by Director; Typically Required to be HI Licensed Attorney | Director (Currently Delegated to Hearings Officer, Who Conducts Dept. Hearings) |
|   |   | Unspecified Person Acting on Behalf of Attached Entity (Agency) of Dept. | N/A      | Not Specified  |   |
|   |   | Director   | 1        | Based on Position Already Held                                       |   |
| <b>Dept. of Human Resources Development</b> | Merit Appeals Board   | Board Members  | 3        | Based on Position Already Held                                       | Board Members   |
| <b>Dept. of Human Services</b>              | Administrative Hearings Office  | Administrative Hearing Officer   | 1        | HI Law License; Legal Experience; No Conflict of Interest            | Administrative Hearing Officer  |
|   |   |  |          |  | Director of Human Services (in Certain Medical Provider Cases Only)             |

**Table 2.4 (continued) - Who Presides and Who Decides on a Contested Case**

| <b>Agency</b>                                    |  | <b>Who Presides</b> | <b>How Many</b>                      | <b>Qualifications</b>   | <b>Final Decisionmakers</b> |
|--|--|---------------------|--------------------------------------|---|-----------------------------|
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division   | Hearings Officer    | 1                                    | Bachelor's Degree; Experience in Fields                       | Hearings Officer            |
|  | Hawaii Civil Rights Commission   | Hearings Examiner   | 1                                    | Not Specified, but Commission Hires Retired Judges or Lawyers | Commission                  |
|  | Hawaii Labor Relations Board   | Board Members       | 2 to 3                               | Based on Position Already Held                                | Board                       |
|  | Labor and Industrial Relations Appeals Board                                   | Hearings Officer    | 1                                    | Not Specified   | Board                       |
|  |  | Board Members       | 2 to 3                               | Chairperson Must be HI Licensed Attorney                      |                             |
| Wage Standards Division, Hearings Branch         | Hearings Branch Chief (also intend to hire another Hearings Officer in future) | 1                   | Some Educational and Work Experience | Not Specified   |                             |

**Table 2.4 (continued) - Who Presides and Who Decides on a Contested Case**

| <b>Agency</b>                                |   | <b>Who Presides</b>                               | <b>How Many</b> | <b>Qualifications</b>                  | <b>Final Decisionmakers</b> |
|--|---|---|-----------------|--|-----------------------------|
| <b>Dept. of Land &amp; Natural Resources</b> | Board of Land & Natural Resources       | Hearings Officer                                  | 1               | None                                   | Board (in Most Cases)       |
|  |   | Administrative Proceedings Coordinator            | 1               | None                                   |                             |
|  |   | Board Members                                     | 7               | Based on Position Already Held         |                             |
|  | Commission on Water Resource Management | Presiding Officer/Hearing Officer/Master          | 1               | Appointed by Chairperson or Commission | Commission                  |
|  |   | Chairperson of Commission or Other Commissioners  | 1 to 7          | Based on Position Already Held         |                             |
| <b>Dept. of Taxation</b>                     | Boards of Taxation Review               | Board Members (5 Members on Each of the 4 Boards) | 3 to 5          | Based on Position Already Held         | Board                       |

**Table 2.4 (continued) - Who Presides and Who Decides on a Contested Case**

| Agency                      | Who Presides                                     | How Many        | Qualifications | Final Decisionmakers   |   |
|-----------------------------|--|-----------------|----------------|--|---|
| <b>University of Hawaii</b> | Parking Board                                    | Hearing Officer | 1              | Appointed by Board   | Board   |
|                             | Residency Appeals Board                          | Board Members   | Minimum of 3   | Residency Officers from Campuses   | Board   |
|                             | State Postsecondary Education Commission         | Hearing Officer | 1              | Delegated by Commission or by Administrative Officer (Depending on Case Type); In Some Cases, Chosen from Among University Directors of Financial Aid, but not from Where Student Enrolled | Hearing Officer, but Commission may Review in Certain Cases |
|                             | State Board for Vocational Education             | Hearing Officer | 1              | Delegated by Board   | Hearing Officer, unless Board Reviews                       |
|                             | University (on Delinquent Financial Obligations) | Hearing Officer | 1              | Appointed by Chancellor or President   | Hearing Officer or President (Depending on Case Type)       |

**E. Contested Cases Filed, Fiscal Year 2017-2018**

Table 2.5 shows the number of contested cases filed with each of the surveyed agencies in fiscal year 2017-2018. Survey responses showed that some departments received only a few cases, while others received thousands of cases. In fiscal year 2017-2018, agencies reported that 5,991 contested cases were filed among all the responding agencies. The Office of Child Support Hearings of the Department of the Attorney General received the most contested case filings, with 2,678 cases. The Administrative Hearings Office of the Department of Human Services received the second-highest number of contested case filings, with 2,041 cases filed.

**Table 2.5 - Contested Cases Filed, FY 2017-2018**

| Agency  |  | By Subject Matter                       |          | Total |
|---|--|---|----------|-------|
|   |  | Subject                                 | Subtotal |       |
| Dept. of Accounting & General Services            | Campaign Spending Commission                             | Campaign Finance                        | 1        | 1     |
|   | Office of Elections                                      | N/A                                     | 0        | 0     |
| Dept. of Agriculture                              | Agricultural Resource Management Division                | N/A                                     | 0        | 0     |
|   | Pesticides Branch  | N/A                                     | 0        | 0     |
|   | Plant Quarantine Branch                                  | N/A                                     | 0        | 0     |
|   | Quality Assurance Division                               | N/A                                     | 0        | 0     |
| Dept. of the Attorney General                     | Office of Child Support Hearings                         | Child Support                           | 2,678    | 2,678 |
|   | Office of Dispute Resolution                             | Individuals with Disabilities Education | 43       | 43    |
| Dept. of Budget & Finance                         | Employees' Retirement System, Retirement Benefits Branch | Administrative Matters                  | 6        | 22    |
|   |  | Disability Applications                 | 16       |       |
|   | Hawaii Employer-Union Health Benefits Trust Fund         | Benefits                                | 12       | 12    |
| Dept. of Business, Economic Development & Tourism | Hawaii Community Development Authority                   | Permits                                 | 2        | 2     |

**Table 2.5 (continued) - Contested Cases Filed, FY 2017-2018**

| Agency                                 |   | By Subject Matter                                      |          | Total |
|--|---|--|----------|-------|
|  |   | Subject  | Subtotal |       |
| Dept. of Commerce and Consumer Affairs | Office of Administrative Hearings   | Business Name or Mark Infringement                     | 31       | 355   |
|  |   | Conciliation Claims                                    | 5        |       |
|  |   | Education  | 1        |       |
|  |   | Insurance  | 201      |       |
|  |   | Procurement  | 13       |       |
|  |   | Professional Licenses                                  | 79       |       |
|  |   | Retirement   | 22       |       |
|  | Uniform Securities Act  | 3  |          |       |
|  | Public Utilities Commission   | Public Utilities                                       | 15       | 15    |
| Dept. of Education                     | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education                | 43       | 43    |
| Dept. of Hawaiian Home Lands           | Hawaiian Homes Commission   | Hawaiian Home Lands                                    | 115      | 115   |
| Dept. of Health                        | (Generally)   | Developmental Disabilities                             | 16       | 23    |
|  |   | Environmental  | 4        |       |
|  |   | Food, Drugs, Cosmetics                                 | 1        |       |
|  |   | Health Care Regulation                                 | 2        |       |
| Dept. of Human Resources Development   | Merit Appeals Board   | Actions on Non-Bargaining Unit Civil Service Employees | 27       | 27    |
| Dept. of Human Services                | Administrative Hearings Office  | Adult Protective & Community Services                  | 20       | 2,041 |
|  |   | Child Care Licensing                                   | 12       |       |
|  |   | Child Welfare Services                                 | 60       |       |
|  |   | Public Benefits  | 1,945    |       |
|  |   | Salary Overpayments                                    | 4        |       |

**Table 2.5 (continued) - Contested Cases Filed, FY 2017-2018**

| Agency   |  | By Subject Matter                            |                                 | Total |
|--|--|--|---------------------------------|-------|
|  |  | Subject                                      | Subtotal                        |       |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | Prepaid Health Care                          | 0                               | 85    |
|  |  | Temporary Disability Insurance               | 85                              |       |
|  | Hawaii Civil Rights Commission               | Discrimination                               | 5                               | 5     |
|  | Hawaii Labor Relations Board                 | Collective Bargaining                        | 31                              | 58    |
|  |  | Occupational Safety & Health                 | 27                              |       |
|  | Labor and Industrial Relations Appeals Board | Boiler & Elevator Safety                     | 2                               | 347   |
|  |  | Workers' Compensation                        | 345                             |       |
|  | Wage Standards Division, Hearings Branch     | Unlawful Suspension or Discharge             | 55                              | 65    |
| Wages and Hours                                  |  | 10   |                                 |       |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources            | Civil Resource Violations                    | 11                              | 32    |
|  |  | Major Enforcement (No Further Specification) | 6                               |       |
|  |  | Parking & Towing                             | 7                               |       |
|  |  | Permits                                      | 6                               |       |
|  |  | Vessels                                      | 2                               |       |
|  | Commission on Water Resource Management      | Water Resource Management                    | 2 (1 of these reopened by CWRM) | 2     |
| <b>Dept. of Taxation</b>                         | Boards of Taxation Review                    | Tax Assessments                              | 20                              | 20    |
| <b>University of Hawaii</b>                      | (Generally)                                  | Data Unavailable                             |                                 |       |



**F. Contested Cases Closed, Unrelated to Merits, Fiscal Year 2017-2018**

It is important to note that not all contested cases that are filed are decided on the merits. For example, some matters are closed because the parties withdraw their complaints or because a party may fail to attend a hearing. Table 2.6 shows the number of cases that agencies reported were closed, unrelated to the merits of the case.<sup>13</sup> Table 2.6 also indicated how long, on average, agencies took to close these cases in fiscal year 2017-2018.<sup>14</sup> The Office of Child Support Hearings of the Department of the Attorney General had the highest number of these closed cases, with 2,136 such cases closing 67 days after the cases were filed, on average. The agency with the second-highest number of such closed cases was the Administrative Hearings Office of the Department of Human Services, with 741 such case closings.<sup>15</sup> In total, agencies reported closing 3,639 contested cases for reasons unrelated to the merits of the cases.

---

<sup>13</sup> We note that the number of cases closed in a fiscal year by agency may exceed the number of cases filed during that fiscal year. This is often due to the fact that closed cases may have carried over from prior fiscal years.

<sup>14</sup> Due to the numerous possibilities for closing a case, unrelated to the merits, the survey did not ask agencies to identify specific reasons.

<sup>15</sup> Data regarding the average duration of these cases, from filing to closing, was not available.

**Table 2.6 - Contested Cases Closed, Unrelated to Merits, FY 2017-2018**

| Agency   |  | By Subject Matter                              |          |                         | All Subject Matters |                         |
|--|--|--|----------|-------------------------|---------------------|-------------------------|
|  |  | Subject  | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission                             | Campaign Finance                               | 1        | 296                     | 1                   | 296                     |
|  | Office of Elections                                      | N/A  | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                | N/A  | 0        | N/A                     | 0                   | N/A                     |
|  | Pesticides Branch  | N/A  | 0        | N/A                     | 0                   | N/A                     |
|  | Plant Quarantine Branch                                  | N/A  | 0        | N/A                     | 0                   | N/A                     |
|  | Quality Assurance Division                               | N/A  | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings                         | Child Support                                  | 2,136    | 67                      | 2,136               | 67                      |
|  | Office of Dispute Resolution                             | Individuals with Disabilities Education        | 38       | 102                     | 38                  | 102                     |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch | Various (Statistics Not Segregated by Subject) | 8        | 365                     | 8                   | 365                     |
|  | Hawaii Employer-Union Health Benefits Trust Fund         | Benefits                                       | 1        | 15                      | 1                   | 15                      |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                   | N/A  | 0        | N/A                     | 0                   | N/A                     |

**Table 2.6 (continued) - Contested Cases Closed, Unrelated to Merits, FY 2017-2018**

| Agency                                 |   | By Subject Matter                                      |          |                         | All Subject Matters |                         |
|--|---|--|----------|-------------------------|---------------------|-------------------------|
|  |   | Subject  | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| Dept. of Commerce and Consumer Affairs | Office of Administrative Hearings   | Business Name or Mark Infringement                     | 14       | 96                      | 167                 | 543                     |
|  |   | Conciliation Claims                                    | 1        | Not Specified           |                     |                         |
|  |   | Insurance  | 105      | 150                     |                     |                         |
|  |   | Procurement  | 4        | 19                      |                     |                         |
|  |   | Professional Licenses                                  | 34       | 170                     |                     |                         |
|  | Retirement  | 9  | 231      |                         |                     |                         |
|  | Public Utilities Commission   | Public Utilities                                       | 9        | 1,232                   | 9                   | 1,232                   |
| Dept. of Education                     | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education                | 38       | 145                     | 38                  | 145                     |
| Dept. of Hawaiian Home Lands           | Hawaiian Homes Commission   | Hawaiian Home Lands                                    | 19       | Data Unavailable        | 19                  | Data Unavailable        |
| Dept. of Health                        | (Generally)   | Developmental Disabilities                             | 18       | 149                     | 26                  | 189                     |
|  |   | Environmental  | 7        | 316                     |                     |                         |
|  |   | Food, Drugs, Cosmetics                                 | 1        | 363                     |                     |                         |
| Dept. of Human Resources Development   | Merit Appeals Board   | Actions on Non-Bargaining Unit Civil Service Employees | 4        | 187                     | 4                   | 187                     |

**Table 2.6 (continued) - Contested Cases Closed, Unrelated to Merits, FY 2017-2018**

| Agency   |  | By Subject Matter                            |          |                         | All Subject Matters |                         |
|--|--|--|----------|-------------------------|---------------------|-------------------------|
|  |  | Subject                                      | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| <b>Dept. of Human Services</b>                   | Administrative Hearings Office               | Data Unavailable                             | 741      | Data Unavailable        | 741                 | Data Unavailable        |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | Prepaid Health Care                          | 0        | N/A                     | 25                  | 138                     |
|  |  | Temporary Disability Insurance               | 25       | 138                     |                     |                         |
|  | Hawaii Civil Rights Commission               | Discrimination                               | 3        | 129                     | 3                   | 129                     |
|  | Hawaii Labor Relations Board                 | Collective Bargaining                        | 19       | 1,036                   | 48                  | 523                     |
|  |  | Occupational Safety & Health                 | 29       | 187                     |                     |                         |
|  | Labor and Industrial Relations Appeals Board | Boiler & Elevator Safety                     | 2        | 165                     | 288                 | 548                     |
|  |  | Workers' Compensation                        | 286      | 551                     |                     |                         |
|  | Wage Standards Division, Hearings Branch     | Not Specified                                | 63       | 195                     | 63                  | 195                     |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources            | Major Enforcement (No Further Specification) | 4        | 60                      | 7                   | Unknown                 |
|  |  | Parking & Towing                             | 3        | N/A                     |                     |                         |
|  | Commission on Water Resource Management      | N/A  | 0        | N/A                     | 0                   | N/A                     |

**Table 2.6 (continued) - Contested Cases Closed, Unrelated to Merits, FY 2017-2018**

| Agency                      |                           | By Subject Matter |          |                         | All Subject Matters |                         |
|-----------------------------|---------------------------|-------------------|----------|-------------------------|---------------------|-------------------------|
|                             |                           | Subject           | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| <b>Dept. of Taxation</b>    | Boards of Taxation Review | Tax Assessments   | 17       | 1,142                   | 17                  | 1,142                   |
| <b>University of Hawaii</b> | (Generally)               | Data Unavailable  |          |                         | Data Unavailable    |                         |

**G. Contested Case Trial-Type Hearings, Fiscal Year 2017-2018**

Trial-type hearings refer to hearings in which parties to a contested case may present facts, evidence, and arguments on the merits of the matter, and which are intended to result in a final decision by the agency. Table 2.7 summarizes agency data on the number of trial-type hearings that they conducted in fiscal year 2017-2018. The Administrative Hearings Office of the Department of Human Services conducted approximately 1,500 trial-type hearings, more than any other agency. The Office of Child Support Hearings of the Department of the Attorney General conducted 536 trial-type hearings, the second-highest amount. In total, the surveyed agencies reported that they conducted approximately 2,484 hearings during fiscal year 2017-2018.

**Table 2.7 - Contested Case Trial-Type Hearings, FY 2017-2018**

| Agency   |  | By Subject Matter                       |                   | All Subject Matters |
|--|--|---|-------------------|---------------------|
|  |  | Subject                                 | Subtotal          | Total               |
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission                             | N/A                                     | 0                 | 0                   |
|  | Office of Elections                                      | N/A                                     | 0                 | 0                   |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                | N/A                                     | 0                 | 0                   |
|  | Pesticides Branch  | N/A                                     | 0                 | 0                   |
|  | Plant Quarantine Branch                                  | N/A                                     | 0                 | 0                   |
|  | Quality Assurance Division                               | N/A                                     | 0                 | 0                   |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings                         | Child Support                           | 536               | 536                 |
|  | Office of Dispute Resolution                             | Individuals with Disabilities Education | 5                 | 5                   |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch | Administrative Matters                  | 6                 | 22                  |
|  |  | Disability Applications                 | 16                |                     |
|  | Hawaii Employer-Union Health Benefits Trust Fund         | Benefits                                | 11                | 11                  |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                   | Permits                                 | 5 (On 2 Projects) | 5 (On 2 Projects)   |

**Table 2.7 (continued) - Contested Case Trial-Type Hearings, FY 2017-2018**

| Agency                                 |   | By Subject Matter                                      |                     | All Subject Matters |
|--|---|--|---------------------|---------------------|
|  |   | Subject  | Subtotal            | Total               |
| Dept. of Commerce and Consumer Affairs | Office of Administrative Hearings (Each Day Counted as Separate Hearing)  | Business Name or Mark Infringement                     | 19                  | 129                 |
|  |   | Insurance  | 30                  |                     |
|  |   | Procurement  | 12                  |                     |
|  |   | Professional Licenses                                  | 50                  |                     |
|  |   | Retirement   | 15                  |                     |
|  | Uniform Securities Act  | 3  |                     |                     |
|  | Public Utilities Commission   | Public Utilities                                       | 1                   | 1                   |
| Dept. of Education                     | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education                | 5                   | 5                   |
| Dept. of Hawaiian Home Lands           | Hawaiian Homes Commission   | Hawaiian Home Lands                                    | 97                  | 97                  |
| Dept. of Health                        | (Generally)   | Environmental  | 2                   | 2                   |
| Dept. of Human Resources Development   | Merit Appeals Board   | Actions on Non-Bargaining Unit Civil Service Employees | 14                  | 14                  |
| Dept. of Human Services                | Administrative Hearings Office  | Data Unavailable                                       | 1,500 (Approximate) | 1,500 (Approximate) |



**Table 2.7 (continued) - Contested Case Trial-Type Hearings, FY 2017-2018**

| Agency                                   |  | By Subject Matter              |   | All Subject Matters |
|--|--|--------------------------------|---|---------------------|
|  |  | Subject                        | Subtotal  | Total               |
| Dept. of Labor & Industrial Relations    | Disability Compensation Division             | Prepaid Health Care            | 2   | 39                  |
|  |  | Temporary Disability Insurance | 37  |                     |
|  | Hawaii Civil Rights Commission               | Discrimination                 | 1   | 1                   |
|  | Hawaii Labor Relations Board                 | Collective Bargaining          | 5 (Over 7 days)   | 6                   |
|  |  | Occupational Safety & Health   | 1 (Over 2 days)   |                     |
|  | Labor and Industrial Relations Appeals Board | Workers' Compensation          | 72 (10 Cases Required More Than One Appearance; Each is Considered an Additional Event) | 72                  |
| Wage Standards Division, Hearings Branch | Not Specified                                | 15                             | 15  |                     |
| Dept. of Land & Natural Resources        | Board of Land & Natural Resources            | Major Enforcement or Permits   | 4   | 11                  |
|  |  | Parking & Towing               | 5   |                     |
|  |  | Vessels                        | 2   |                     |
|  | Commission on Water Resource Management      | Water Resource Management      | 3   | 3                   |
| Dept. of Taxation                        | Boards of Taxation Review                    | Tax Assessments                | 10  | 10                  |
| University of Hawaii                     | (Generally)                                  | Data Unavailable               |   | Data Unavailable    |

## **H. Contested Case Non-Trial-Type Hearings, Fiscal Year 2017-2018**

Non-trial-type hearings differ from trial-type hearings in that they are not intended to result in a final decision by the agency on the subject of a contested case. For example, non-trial-type hearings include, but are not limited to, status hearings, pretrial conferences, settlement conferences, and hearings on motions.

Table 2.8 summarizes agency data on the number of non-trial type hearings that they conducted in fiscal year 2017-2018. The Labor and Industrial Relations Appeals Board reported the highest number (902) of such hearings, followed by the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs, with 333 hearings. However, these two agencies noted that hearings conducted on separate days were reported as additional appearances. The agency with highest number of non-trial-type hearings that did not distinguish among hearings held over multiple days was the Department of Health, with 175 hearings.

In total, the surveyed agencies reported that they conducted 1,629 non-trial-type hearings during fiscal year 2017-2018.

**Table 2.8 - Contested Case Non-Trial-Type Hearings, FY 2017-2018**

| Agency  |  | By Subject Matter                       |          | All Subject Matters |
|---|--|---|----------|---------------------|
|   |  | Subject                                 | Subtotal | Total               |
| Dept. of Accounting & General Services            | Campaign Spending Commission                             | Campaign Finance                        | 1        | 1                   |
|   | Office of Elections                                      | N/A                                     | 0        | 0                   |
| Dept. of Agriculture                              | Agricultural Resource Management Division                | N/A                                     | 0        | 0                   |
|   | Pesticides Branch  | N/A                                     | 0        | 0                   |
|   | Plant Quarantine Branch                                  | N/A                                     | 0        | 0                   |
|   | Quality Assurance Division                               | N/A                                     | 0        | 0                   |
| Dept. of the Attorney General                     | Office of Child Support Hearings                         | N/A                                     | 0        | 0                   |
|   | Office of Dispute Resolution                             | Individuals with Disabilities Education | 68       | 68                  |
| Dept. of Budget & Finance                         | Employees' Retirement System, Retirement Benefits Branch | Unable to Determine                     |          | Unable to Determine |
|   | Hawaii Employer-Union Health Benefits Trust Fund         | N/A                                     | 0        | 0                   |
| Dept. of Business, Economic Development & Tourism | Hawaii Community Development Authority                   | Permits                                 | 2        | 2                   |

**Table 2.8 (continued) - Contested Case Non-Trial-Type Hearings, FY 2017-2018**

| Agency  |   | By Subject Matter                                      |          | All Subject Matters |
|---|---|--|----------|---------------------|
|   |   | Subject  | Subtotal | Total               |
| <b>Dept. of Commerce and Consumer Affairs</b> | Office of Administrative Hearings (Each Day Counted as Separate Hearing)  | Business Name or Mark Infringement                     | 37       | 333                 |
|   |   | Insurance  | 165      |                     |
|   |   | Procurement  | 13       |                     |
|   |   | Professional Licenses                                  | 85       |                     |
|   |   | Retirement   | 30       |                     |
|   | Public Utilities Commission   | Public Utilities                                       | 7        | 7                   |
| <b>Dept. of Education</b>                     | Individuals with Disabilities Education Act Complaints Management Program | N/A  | 0        | 0                   |
| <b>Dept. of Hawaiian Home Lands</b>           | Hawaiian Homes Commission   | N/A  | 0        | 0                   |
| <b>Dept. of Health</b>                        | (Generally)   | Developmental Disabilities                             | 42       | 175                 |
|   |   | Environmental  | 100      |                     |
|   |   | Food, Drugs, Cosmetics                                 | 12       |                     |
|   |   | Health Care Regulation                                 | 9        |                     |
|   |   | Supplemental Nutrition Program                         | 12       |                     |
| <b>Dept. of Human Resources Development</b>   | Merit Appeals Board   | Actions on Non-Bargaining Unit Civil Service Employees | 2        | 2                   |

**Table 2.8 (continued) - Contested Case Non-Trial-Type Hearings, FY 2017-2018**

| Agency   |  | By Subject Matter            |          | All Subject Matters |
|--|--|------------------------------|----------|---------------------|
|  |  | Subject                      | Subtotal | Total               |
| <b>Dept. of Human Services</b>                   | Administrative Hearings Office   | Data Unavailable             |          | Data Unavailable    |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division   | N/A                          | 0        | 0                   |
|  | Hawaii Civil Rights Commission   | Discrimination               | 5        | 5                   |
|  | Hawaii Labor Relations Board   | Collective Bargaining        | 59       | 79                  |
|  |  | Occupational Safety & Health | 20       |                     |
|  | Labor and Industrial Relations Appeals Board (Hearings Counted on Separate Days Count as Additional Appearances) | Boiler & Elevator Safety     | 2        | 902                 |
|  |  | Workers' Compensation        | 900      |                     |
| Wage Standards Division, Hearings Branch         | Not Specified  | 55                           | 55       |                     |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources  | Data Unavailable             |          | Data Unavailable    |
|  | Commission on Water Resource Management  | N/A                          | 0        | 0                   |
| <b>Dept. of Taxation</b>                         | Boards of Taxation Review  | N/A                          | 0        | 0                   |
| <b>University of Hawaii</b>                      | (Generally)  | Data Unavailable             |          | Data Unavailable    |

## **I. Court-Reviewable Preliminary Rulings, Fiscal Year 2017-2018**

As noted earlier, a contested case includes proceedings in which a party is entitled to judicial review of the agency's preliminary ruling.<sup>16</sup> For the purposes of this report, a preliminary ruling, much like a final decision, is a ruling that is reviewable by a court.<sup>17</sup> According to the responding agencies, fewer than one-third of those agencies issued preliminary rulings in fiscal year 2017-2018. Those rulings included pretrial orders, decisions on motions, orders to show cause, rulings on discovery motions, and other matters. One agency, the Labor and Industrial Relations Appeals Board, included 1,284 rulings among its reported preliminary rulings.<sup>18</sup> The Office of Administrative Hearings of the Department of Commerce and Consumer Affairs reported the second highest number of preliminary rulings, with 140 such rulings. The remaining 14 rulings that were reported were issued by 4 different agencies.<sup>19</sup>

## **J. Total Contested Cases with Final Decisions on the Merits, Fiscal Year 2017-2018**

Table 2.9 summarizes the total number of contested cases in which an agency issued a final decision on the merits of the contested case.<sup>20</sup> In total, among the agencies that responded to the survey, there were approximately 2,378 final decisions in fiscal year 2017-2018. Of these, the Administrative Hearings Office of the Department of Human Services issued the most final decisions on the merits, approximately 1,500 in fiscal year 2017-2018. The Office of Child Support Hearings of the Department of the Attorney General had the second highest number, at 536.

This section further explores how many of these final decisions on the merits were rendered after trial-type hearings, how many final decisions on the merits were made in the absence of trial-type hearings, and the amount of time that passed between filing of the underlying contested cases and an agency's issuance of a corresponding final decision.

---

<sup>16</sup> See note 3 of this chapter and accompanying text.

<sup>17</sup> See Section 91-14(a), HRS.

<sup>18</sup> The agency commented that most such cases, when appealed, were dismissed by courts for lack of jurisdiction.

<sup>19</sup> The Hawaiian Homes Commission; the Department of Health; the Hawaii Labor Relations Board; and the Wage Standards Division, Hearings Branch each reported issuing a court-reviewable preliminary ruling in fiscal year 2017-2018. Due to the infrequency of the issuance of these rulings, a summary table does not appear in this report.

<sup>20</sup> For the purposes of this report, a contested case is defined as a proceeding:

- In which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a hearing; and
- For which, pursuant to section 91-14, HRS, or other applicable law, a party is entitled to judicial review of the agency's preliminary ruling or final decision.

**Table 2.9 - Total Contested Cases with Final Decisions on the Merits, FY 2017-2018**

| Agency   |   | By Subject Matter                       |          | All Subject Matters |
|--|---|---|----------|---------------------|
|  |   | Subject                                 | Subtotal | Total               |
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission  | N/A                                     | 0        | 0                   |
|  | Office of Elections   | N/A                                     | 0        | 0                   |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                                 | N/A                                     | 0        | 0                   |
|  | Pesticides Branch   | N/A                                     | 0        | 0                   |
|  | Plant Quarantine Branch   | N/A                                     | 0        | 0                   |
|  | Quality Assurance Division  | N/A                                     | 0        | 0                   |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings  | Child Support                           | 536      | 536                 |
|  | Office of Dispute Resolution  | Individuals with Disabilities Education | 5        | 5                   |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch                  | Disability Applications                 | 9        | 10                  |
|  |   | Not Specified                           | 1        |                     |
|  | Hawaii Employer-Union Health Benefits Trust Fund                          | Benefits                                | 11       | 11                  |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                                    | Permits                                 | 1        | 1                   |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings   | Procurement                             | 9        | 9                   |
|  | Public Utilities Commission   | Public Utilities                        | 17       | 17                  |
| <b>Dept. of Education</b>                                    | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education | 5        | 5                   |
| <b>Dept. of Hawaiian Home Lands</b>                          | Hawaiian Homes Commission   | Hawaiian Home Lands                     | 90       | 90                  |

**Table 2.9 (continued) - Total Contested Cases with Final Decisions on the Merits, FY 2017-2018**

| Agency                                   |  | By Subject Matter              |                | All Subject Matters |
|--|--|--------------------------------|----------------|---------------------|
|  |  | Subject                        | Subtotal       | Total               |
| Dept. of Health                          | (Generally)                                  | Developmental Disabilities     | 2              | 7                   |
|  |  | Environmental                  | 2              |                     |
|  |  | Food, Drugs, Cosmetics         | 3              |                     |
| Dept. of Human Resources Development     | Merit Appeals Board                          | Data Unavailable               |                | Data Unavailable    |
| Dept. of Human Services                  | Administrative Hearings Office               | Data Unavailable               | 1,500 (Approx) | 1,500 (Approx)      |
| Dept. of Labor & Industrial Relations    | Disability Compensation Division             | Prepaid Health Care            | 2              | 39                  |
|  |  | Temporary Disability Insurance | 37             |                     |
|  | Hawaii Civil Rights Commission               | Discrimination                 | 4              | 4                   |
|  | Hawaii Labor Relations Board                 | Collective Bargaining          | 2              | 3                   |
|  |  | Occupational Safety & Health   | 1              |                     |
|  | Labor and Industrial Relations Appeals Board | Workers' Compensation          | 106            | 106                 |
| Wage Standards Division, Hearings Branch | N/A  | 0                              | 0              |                     |
| Dept. of Land & Natural Resources        | Board of Land & Natural Resources            | Civil Resource Violations      | 13             | 24                  |
|  |  | Major Enforcement and Permits  | 4              |                     |
|  |  | Parking & Towing               | 5              |                     |
|  |  | Vessels                        | 2              |                     |
|  | Commission on Water Resource Management      | Water Resource Management      | 1              | 1                   |



**Table 2.9 (continued) - Total Contested Cases with Final Decisions on the Merits, FY 2017-2018**

| Agency                      |                           | By Subject Matter |          | All Subject Matters |
|-----------------------------|---------------------------|-------------------|----------|---------------------|
|                             |                           | Subject           | Subtotal | Total               |
| <b>Dept. of Taxation</b>    | Boards of Taxation Review | Tax Assessments   | 10       | 10                  |
| <b>University of Hawaii</b> | (Generally)               | Data Unavailable  |          | Data Unavailable    |

## **1. Duration of Final Decisions Without Trial-Type Hearings**

While contested cases are, by definition, to be determined after an *opportunity* for a hearing, a hearing must not necessarily occur before final decision is rendered. For example, the parties may agree that the agency may proceed on a case without holding a trial-type hearing. Table 2.10 shows instances in which a final decision was rendered on a contested case without a trial-type hearing in fiscal year 2017-2018. Table 2.10 also describes the duration, in days, from filing of a contested case to closing the case. The agency with the highest number of such decisions was the Administrative Hearings Office of the Department of Human Services, with 741 final decisions.<sup>21</sup> Second, the Office of Child Support Hearings of the Department of the Attorney General, issued 44 final decisions, on average within 56 days after the cases were filed.

---

<sup>21</sup> Data regarding the average duration of these cases, from filing to closing, was not available.

**Table 2.10 - Final Decisions without Trial-Type Hearings, FY 2017-2018**

| Agency  |  | By Subject Matter                       |          |                         | All Subject Matters |                         |
|---|--|---|----------|-------------------------|---------------------|-------------------------|
|   |  | Subject                                 | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| <b>Dept. of Accounting &amp; General Services</b> | Campaign Spending Commission                             | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
|   | Office of Elections                                      | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Agriculture</b>                       | Agricultural Resource Management Division                | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
|   | Pesticides Branch  | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
|   | Plant Quarantine Branch                                  | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
|   | Quality Assurance Division                               | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of the Attorney General</b>              | Office of Child Support Hearings                         | Child Support                           | 44       | 56                      | 44                  | 56                      |
|   | Office of Dispute Resolution                             | Individuals with Disabilities Education | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Budget &amp; Finance</b>              | Employees' Retirement System, Retirement Benefits Branch | N/A                                     | 0        | N/A                     | 0                   | N/A                     |
|   | Hawaii Employer-Union Health Benefits Trust Fund         | N/A                                     | 0        | N/A                     | 0                   | N/A                     |

**Table 2.10 (continued) - Final Decisions without Trial-Type Hearings, FY 2017-2018**

| Agency   |   | By Subject Matter          |          |                         | All Subject Matters |                         |
|--|---|----------------------------|----------|-------------------------|---------------------|-------------------------|
|  |   | Subject                    | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                                    | N/A                        | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings   | Procurement                | 5        | 39                      | 5                   | 39                      |
|  | Public Utilities Commission   | Public Utilities           | 10       | 1,393                   | 10                  | 1,393                   |
| <b>Dept. of Education</b>                                    | Individuals with Disabilities Education Act Complaints Management Program | N/A                        | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Hawaiian Home Lands</b>                          | Hawaiian Homes Commission   | N/A                        | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Health</b>                                       | (Generally)   | Developmental Disabilities | 2        | 15                      | 5                   | 254                     |
|  |   | Food, Drugs, Cosmetics     | 3        | 413                     |                     |                         |
| <b>Dept. of Human Resources Development</b>                  | Merit Appeals Board   | Data Unavailable           |          |                         | Data Unavailable    |                         |
| <b>Dept. of Human Services</b>                               | Administrative Hearings Office  | Data Unavailable           | 741      | Data Unavailable        | 741                 | Data Unavailable        |

**Table 2.10 (continued) - Final Decisions without Trial-Type Hearings, FY 2017-2018**

| Agency   |  | By Subject Matter            |          |                         | All Subject Matters |                         |
|--|--|------------------------------|----------|-------------------------|---------------------|-------------------------|
|  |  | Subject                      | Subtotal | Average Duration (days) | Total               | Average Duration (days) |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | N/A                          | 0        | N/A                     | 0                   | N/A                     |
|  | Hawaii Civil Rights Commission               | Discrimination               | 3        | 129                     | 3                   | 129                     |
|  | Hawaii Labor Relations Board                 | Collective Bargaining        | 1        | 54                      | 2                   | 403                     |
|  |  | Occupational Safety & Health | 1        | 752                     |                     |                         |
|  | Labor and Industrial Relations Appeals Board | Workers' Compensation        | 21       | 967                     | 21                  | 967                     |
|  | Wage Standards Division, Hearings Branch     | N/A                          | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources            | Civil Resource Violations    | 13       | 30                      | 13                  | 30                      |
|  | Commission on Water Resource Management      | N/A                          | 0        | N/A                     | 0                   | N/A                     |
| <b>Dept. of Taxation</b>                         | Boards of Taxation Review                    | N/A                          | 0        | N/A                     | 0                   | N/A                     |
| <b>University of Hawaii</b>                      | Generally                                    | Data Unavailable             |          |                         | Data Unavailable    |                         |

## 2. Duration of Final Decisions With Trial-Type Hearings

Table 2.11 summarizes the reported duration of contested cases, in days, from:

- The dates the cases were filed for the agency's consideration (even if not filed in fiscal year 2017-2018) to the dates the trial-type hearings commenced;<sup>22</sup>
- The dates the trial-type hearings commenced to the dates the hearings were completed;<sup>23</sup> and
- The dates the trial-type hearings were completed to the dates the agency issued final decisions in those cases.

The Administrative Hearings Office of the Department of Human Services made the most final decisions, approximately 1,500, after trial-type hearings.<sup>24</sup> The Office of Child Support Hearings of the Department of the Attorney General made 492 such final decisions. In these cases, on average: 49 days passed from the dates a case was filed to the date that a trial-type hearing commenced; 23 days passed between the date that a trial-type hearing commenced to the date that a hearing was completed; and 5 days passed from the date that a hearing was completed to the date that the final decision was made.

---

<sup>22</sup> Because Table 2.11 focuses on final decisions issued in fiscal year 2017-2018, the corresponding trial-type hearings that led to those decisions may not have necessarily taken place in fiscal year 2017-2018. Therefore, the trial-type hearings listed in Table 2.11 do not necessarily correspond to all of the trial-hearings listed in Table 2.7, which contains trial-type hearing conducted in fiscal year 2017-2018.

<sup>23</sup> Agencies responded that many trial-type-hearings were commenced and completed within 1 day. For purposes of this report, hearings that were completed in under a day were counted as having a duration of 1 day.

<sup>24</sup> Data regarding the average duration of these cases, from filing to closing, was not available.

**Table 2.11 - Final Decisions with Trial-Type Hearings, FY 2017-2018**

| Agency  |   | By Subject Matter |          |                         |                    |                       | All Subject Matters |                         |                    |                       |
|---|---|-------------------|----------|-------------------------|--------------------|-----------------------|---------------------|-------------------------|--------------------|-----------------------|
|   |   | Subject           | Subtotal | Average Duration (days) |                    |                       | Total               | Average Duration (days) |                    |                       |
|   |   |                   |          | Filing to Trial Start   | Trial Start to End | Trial End to Decision |                     | Filing to Trial Start   | Trial Start to End | Trial End to Decision |
| <b>Dept. of Accounting &amp; General Services</b> | Campaign Spending Commission              | N/A               | 0        | N/A                     | N/A                | N/A                   | 0                   | N/A                     | N/A                | N/A                   |
|   | Office of Elections                       | N/A               | 0        | N/A                     | N/A                | N/A                   | 0                   | N/A                     | N/A                | N/A                   |
| <b>Dept. of Agriculture</b>                       | Agricultural Resource Management Division | N/A               | 0        | N/A                     | N/A                | N/A                   | 0                   | N/A                     | N/A                | N/A                   |
|   | Pesticides Branch                         | N/A               | 0        | N/A                     | N/A                | N/A                   | 0                   | N/A                     | N/A                | N/A                   |
|   | Plant Quarantine Branch                   | N/A               | 0        | N/A                     | N/A                | N/A                   | 0                   | N/A                     | N/A                | N/A                   |
|   | Quality Assurance Division                | N/A               | 0        | N/A                     | N/A                | N/A                   | 0                   | N/A                     | N/A                | N/A                   |

**Table 2.11 (continued) - Final Decisions with Trial-Type Hearings, FY 2017-2018**

| Agency   |  | By Subject Matter                       |          |                         |                    |                       | All Subject Matters |                         |                    |                       |
|--|--|---|----------|-------------------------|--------------------|-----------------------|---------------------|-------------------------|--------------------|-----------------------|
|  |  | Subject                                 | Subtotal | Average Duration (days) |                    |                       | Total               | Average Duration (days) |                    |                       |
|  |  |   |          | Filing to Trial Start   | Trial Start to End | Trial End to Decision |                     | Filing to Trial Start   | Trial Start to End | Trial End to Decision |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings                         | Child Support                           | 492      | 49                      | 23                 | 5                     | 492                 | 49                      | 23                 | 5                     |
|  | Office of Dispute Resolution                             | Individuals with Disabilities Education | 5        | 69                      | 3                  | 30                    | 5                   | 69                      | 3                  | 30                    |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch | Disability Applications                 | 9        | 423                     | 1                  | 38                    | 10                  | 425                     | 1                  | 55                    |
|  |  | Not Specified                           | 1        | 446                     | 1                  | 203                   |                     |                         |                    |                       |
|  | Hawaii Employer-Union Health Benefits Trust Fund         | Benefits                                | 11       | 16                      | 1                  | 1                     | 11                  | 16                      | 1                  | 1                     |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                   | Permits                                 | 1        | 52                      | 54                 | 1                     | 1                   | 52                      | 54                 | 1                     |



**Table 2.11 (continued) - Final Decisions with Trial-Type Hearings, FY 2017-2018**

| Agency  |   | By Subject Matter                       |          |                         |                    |  | All Subject Matters |                         |                    |  |
|---|---|---|----------|-------------------------|--------------------|--|---------------------|-------------------------|--------------------|--|
|   |   | Subject                                 | Subtotal | Average Duration (days) |                    |  | Total               | Average Duration (days) |                    |  |
|   |   |   |          | Filing to Trial Start   | Trial Start to End | Trial End to Decision                    |                     | Filing to Trial Start   | Trial Start to End | Trial End to Decision                    |
| <b>Dept. of Commerce and Consumer Affairs</b> | Office of Administrative Hearings   | Procurement                             | 4        | 17                      | 1 to 2             | 21                                       | 4                   | 17                      | 1 to 2             | 21                                       |
|   | Public Utilities Commission   | Public Utilities                        | 6        | 290                     | 1                  | 263                                      | 6                   | 290                     | 1                  | 263                                      |
| <b>Dept. of Education</b>                     | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education | 5        | Not Specified           | 3                  | Not Specified                            | 5                   | Not Specified           | 3                  | Not Specified                            |
| <b>Dept. of Hawaiian Home Lands</b>           | Hawaiian Homes Commission   | Hawaiian Home Lands                     | 90       | Not Specified           | 1                  | 219 (Distorted by Two Non-Typical Cases) | 90                  | Not Specified           | 1                  | 219 (Distorted by Two Non-Typical Cases) |
| <b>Dept. of Health</b>                        | (Generally)   | Environmental                           | 2        | 365                     | 240                | 199                                      | 2                   | 365                     | 240                | 199                                      |

**Table 2.11 (continued) - Final Decisions with Trial-Type Hearings, FY 2017-2018**

| Agency                                      |                                | By Subject Matter |                |                         |                    |                       | All Subject Matters |                         |                    |                       |
|---|--------------------------------|-------------------|----------------|-------------------------|--------------------|-----------------------|---------------------|-------------------------|--------------------|-----------------------|
|   |                                | Subject           | Subtotal       | Average Duration (days) |                    |                       | Total               | Average Duration (days) |                    |                       |
|   |                                |                   |                | Filing to Trial Start   | Trial Start to End | Trial End to Decision |                     | Filing to Trial Start   | Trial Start to End | Trial End to Decision |
| <b>Dept. of Human Resources Development</b> | Merit Appeals Board            | Data Unavailable  |                |                         |                    |                       | Data Unavailable    |                         |                    |                       |
| <b>Dept. of Human Services</b>              | Administrative Hearings Office | Data Unavailable  | 1,500 (Approx) | Data Unavailable        |                    |                       | 1,500 (Approx)      | Data Unavailable        |                    |                       |

**Table 2.11 (continued) - Final Decisions with Trial-Type Hearings, FY 2017-2018**

| Agency   |  | By Subject Matter              |          |                         |                                  |                       | All Subject Matters |                         |                    |                       |
|--|--|--------------------------------|----------|-------------------------|----------------------------------|-----------------------|---------------------|-------------------------|--------------------|-----------------------|
|  |  | Subject                        | Subtotal | Average Duration (days) |                                  |                       | Total               | Average Duration (days) |                    |                       |
|  |  |                                |          | Filing to Trial Start   | Trial Start to End               | Trial End to Decision |                     | Filing to Trial Start   | Trial Start to End | Trial End to Decision |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | Prepaid Health Care            | 2        | 477                     | 1                                | 14                    | 39                  | 342                     | 1                  | 105                   |
|  |  | Temporary Disability Insurance | 37       | 344                     | 1                                | 110                   |                     |                         |                    |                       |
|  | Hawaii Civil Rights Commission               | Discrimination                 | 1        | 162                     | 1                                | 209                   | 1                   | 162                     | 1                  | 209                   |
|  | Hawaii Labor Relations Board                 | Collective Bargaining          | 2        | 355                     | 103                              | 2,282                 | 3                   | 309                     | 69                 | 1,596                 |
|  |  | Occupational Safety & Health   | 1        | 218                     | 1                                | 225                   |                     |                         |                    |                       |
|  | Labor and Industrial Relations Appeals Board | Workers' Compensation          | 85       | 533                     | 7 (76 Trials Completed in 1 Day) | 536                   | 85                  | 533                     | 7                  | 536                   |
|  | Wage Standards Division, Hearings Branch     | N/A                            | 0        | N/A                     | N/A                              | N/A                   | 0                   | N/A                     | N/A                | N/A                   |

**Table 2.11 (continued) - Final Decisions with Trial-Type Hearings, FY 2017-2018**

| Agency                            |   | By Subject Matter            |          |                         |                           |                       | All Subject Matters |                         |                    |                       |
|-----------------------------------|---|------------------------------|----------|-------------------------|---------------------------|-----------------------|---------------------|-------------------------|--------------------|-----------------------|
|                                   |   | Subject                      | Subtotal | Average Duration (days) |                           |                       | Total               | Average Duration (days) |                    |                       |
|                                   |   |                              |          | Filing to Trial Start   | Trial Start to End        | Trial End to Decision |                     | Filing to Trial Start   | Trial Start to End | Trial End to Decision |
| Dept. of Land & Natural Resources | Board of Land & Natural Resources       | Major Enforcement or Permits | 4        | 60 to 300               | 1 to 44 (Most took 1 Day) | 120                   | 11                  | 60 to 300               | 1 to 44            | 30 to 120             |
|                                   |   | Parking & Towing             | 5        | 60 to 300               | 1                         | 30                    |                     |                         |                    |                       |
|                                   |   | Vessels                      | 2        | 60 to 300               | 1                         | 30                    |                     |                         |                    |                       |
|                                   | Commission on Water Resource Management | Water Resource Management    | 1        | 1,680                   | 752                       | 516                   | 1                   | 1,680                   | 752                | 516                   |
| Dept. of Taxation                 | Boards of Taxation Review               | Tax Assessments              | 10       | 1,222                   | 1                         | 4                     | 10                  | 1,222                   | 1                  | 4                     |
| University of Hawaii              | (Generally)                             | Data Unavailable             |          |                         |                           |                       | Data Unavailable    |                         |                    |                       |

## K. Appeals of Final Decisions, Fiscal Year 2017-2018

A party aggrieved by a final decision made by an agency on a contested case is entitled to judicial review.<sup>25</sup> Generally, the court that is to review the case is a state circuit court, and the aggrieved party must appeal the ruling to the court within 30 days after being served with a certified copy of the agency's final decision.<sup>26</sup> The court reviewing the appeal may affirm the agency's decision, remand the case to the agency with instructions for further proceedings, or reverse or modify the agency's decision.<sup>27</sup>

In some circumstances, due to applicable law, an agency's final decision on a contested case must be appealed to another state court, such as the Supreme Court of Hawaii.<sup>28</sup> In rare circumstances, an appeal may be filed in a federal district court, such as in cases involving the Individuals with Disabilities Education Act Compliance Management Program.<sup>29</sup>

Table 2.12 summarizes information on appeals of final decisions from fiscal year 2017-2018. The Labor and Industrial Relations Appeals Board saw the most appeals of its final decisions, with 28 appeals. Roughly half of the agencies that responded to the survey reported an appeal of a final decision, and only 78 total appeals were reported in fiscal year 2017-2018.<sup>30</sup>

---

<sup>25</sup> Section 91-14(a), HRS.

<sup>26</sup> Section 91-14(b), HRS.

<sup>27</sup> *Id.*

<sup>28</sup> *See, e.g.*, Section 205-19, HRS (Land Use Commission cases).

<sup>29</sup> The agency did not cite the specific federal statutory or regulatory section that governed such appeals, but noted that Individuals with Disabilities Education Act is a federal law, not a state law.

<sup>30</sup> Although it is possible for a party to appeal a preliminary ruling, such appeals appear to be infrequent, based on the data received from the responding agencies. In fiscal year 2017-2018, only 16 total appeals were filed for preliminary rulings issued by the Office of Administrative Hearings, Department of Commerce and Consumer Affairs; the Department of Health; the Hawaii Labor Relations Board; and the Labor and Industrial Relations Appeals Board. Due to the infrequency of these appeals, data on these appeals do not appear in a table.

**Table 2.12 - Appeals on Final Decisions, FY 2017-2018**

| Agency   |   | By Subject Matter                       |                   |
|--|---|---|-------------------|
|  |   | Subject                                 | Appeals           |
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission  | N/A                                     | 0                 |
|  | Office of Elections   | N/A                                     | 0                 |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                                 | N/A                                     | 0                 |
|  | Pesticides Branch   | N/A                                     | 0                 |
|  | Plant Quarantine Branch   | N/A                                     | 0                 |
|  | Quality Assurance Division  | N/A                                     | 0                 |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings  | Child Support                           | 20                |
|  | Office of Dispute Resolution  | Individuals with Disabilities Education | 3                 |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch                  | Disability Applications                 | 1                 |
|  | Hawaii Employer-Union Health Benefits Trust Fund                          | N/A                                     | 0                 |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                                    | N/A                                     | 0                 |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings   | Business Name or Mark Infringement      | 0                 |
|  |   | Insurance                               | 0                 |
|  |   | Procurement                             | 3                 |
|  |   | Professional Licenses                   | 0                 |
|  |   | Uniform Securities Act                  | 0                 |
|  | Public Utilities Commission   | Public Utilities                        | 1                 |
| <b>Dept. of Education</b>                                    | Individuals with Disabilities Education Act Complaints Management Program | Individuals with Disabilities Education | 2 (Federal Court) |
| <b>Dept. of Hawaiian Home Lands</b>                          | Hawaiian Homes Commission   | Hawaiian Home Lands                     | 1                 |
| <b>Dept. of Health</b>                                       | (Generally)   | N/A                                     | 0                 |

**Table 2.12 (continued) - Appeals on Final Decisions, FY 2017-2018**

| <b>Agency</b>                                    |  | <b>By Subject Matter</b>              |                |
|--|--|---------------------------------------|----------------|
|  |  | <b>Subject</b>                        | <b>Appeals</b> |
| <b>Dept. of Human Resources Development</b>      | Merit Appeals Board                          | Data Unavailable                      |                |
| <b>Dept. of Human Services</b>                   | Administrative Hearings Office               | Adult Protective & Community Services | 1              |
|  |  | Child Welfare Services                | 1              |
|  |  | Public Benefits                       | 6              |
|  |  | Salary Overpayments                   | 1              |
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | N/A                                   | 0              |
|  | Hawaii Civil Rights Commission               | Discrimination                        | 1              |
|  | Hawaii Labor Relations Board                 | Collective Bargaining                 | 5              |
|  |  | Occupational Safety & Health          | 0              |
|  | Labor and Industrial Relations Appeals Board | Workers' Compensation                 | 28             |
|  | Wage Standards Division, Hearings Branch     | N/A                                   | 0              |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources            | Conservation                          | 4              |
|  | Commission on Water Resource Management      | N/A                                   | 0              |
| <b>Dept. of Taxation</b>                         | Boards of Taxation Review                    | N/A                                   | 0              |
| <b>University of Hawaii</b>                      | (Generally)                                  | Data Unavailable                      |                |

**L. Reimbursement of Persons Associated with  
Agencies Conducting Contested Cases, Fiscal Year  
2017-2018**

Table 2.13 provides a broad summary of the number of individuals who worked for agencies that conducted contested cases in fiscal year 2017-2018, and summarizes to what extent those persons were compensated. The table includes uncompensated volunteers, contracted individuals paid by the hour, part-time employees, and full-time employees. Agencies varied in how they reported salaries, particularly with respect to whether salaries were reported individually or in the aggregate. The table also attempts to summarize the average number of hours typically worked by these various individuals on contested cases.



**Table 2.13 - Reimbursements for Contested Cases, FY 2017-2018**

|  |   | <b>Number of Persons</b>       | <b>Hours per Week, Generally</b> | <b>Hours per week on Contested Cases</b> | <b>Salaries, Wages, or Contracted Fees</b>   | <b>Financing</b>                       |
|--|---|--------------------------------|----------------------------------|--|--|--|
| <b>Dept of Accounting &amp; General Services</b> | Campaign Spending Commission              | 11                             | 0.5 to 40                        | 1 to 3                                   | \$300/hr for Contracted Hearings Officer (\$5,000 Budget per yr); \$447,885/yr Aggregate for Employees | General                                |
|  | Office of Elections                       | 0                              | 0                                | 0  | \$0  | N/A                                    |
| <b>Dept of Agriculture</b>                       | Agricultural Resource Management Division | 0                              | 0                                | 0  | \$0  | N/A                                    |
|  | Pesticides Branch                         | 13 to 24 (changed during year) | 40                               | 0  | \$60,958 to \$118,695/mo Aggregate (changed during yr)   | General and Revolving (State); Federal |
|  | Plant Quarantine Branch                   | 81                             | 40                               | 0  | SR20 (\$59,616) to SR26 (\$78,420)/yr Each (Dollar Amounts at Midrange of SR)                          | General, Special                       |
|  | Quality Assurance Division                | 0                              | 0                                | 0  | \$0  | N/A                                    |
| <b>Dept of the Attorney General</b>              | Office of Child Support Hearings          | 9                              | 40                               | 40                                       | \$645,468/yr Aggregate   | General (State); Federal               |
|  | Office of Dispute Resolution              | 5                              | 40                               | 40                                       | \$36,000 to \$80,000/yr Each   | Interdepartmental or Special           |

**Table 2.13 (continued) - Reimbursements for Contested Cases, FY 2017-2018**

|   |  | <b>Number of Persons</b>   | <b>Hours per Week, Generally</b> | <b>Hours per week on Contested Cases</b> | <b>Salaries, Wages, or Contracted Fees</b>                    | <b>Financing</b>                             |
|---|--|----------------------------|----------------------------------|--|---|--|
| <b>Dept of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch | 16                         | 6                                | 6  | \$70/hr for Hearings Officers (employed by DCCA; paid by ERS) | Special Funds                                |
|   | Hawaii Employer-Union Health Benefits Trust Fund         | 59 (13 on Contested Cases) | 1 to 40                          | 0.25 to 6                                | \$47,868 to \$147,444/yr Each                                 | Trust Funds                                  |
| <b>Dept of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                   | 33 (14 on Contested Cases) | Unclear                          | Small Fraction of Workload               | \$0 to \$10,833/mo Each                                       | General; Revolving                           |
| <b>Dept of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings                        | 7                          | 40 to 50                         | 40 to 45                                 | \$87,936 to \$113,340/yr Each                                 | Special Funds                                |
|   | Public Utilities Commission                              | 63                         | 40 to 70                         | up to 60                                 | \$76,000 to \$128,280/yr Each                                 | Specially Funded through Public Utility Fees |

**Table 2.13 (continued) - Reimbursements for Contested Cases, FY 2017-2018**

|  |   | <b>Number of Persons</b>                    | <b>Hours per Week, Generally</b> | <b>Hours per week on Contested Cases</b> | <b>Salaries, Wages, or Contracted Fees</b> | <b>Financing</b>            |
|--|---|---|----------------------------------|--|--|-----------------------------|
| <b>Dept of Education</b>                   | Individuals with Disabilities Education Act Complaints Management Program | 7   | 5 to 40                          | 5 to 40                                  | \$1,101,000/yr Aggregate                   | Federal                     |
| <b>Dept of Hawaiian Home Lands</b>         | Hawaiian Homes Commission   | 21<br>(Includes 3 Deputy Attorneys General) | 40                               | 15                                       | \$75,000 to \$265,572/yr Each              | General                     |
| <b>Dept of Health</b>                      | (Generally)   | 1   | 40                               | 40                                       | \$70,000/yr Each                           | Federal; State              |
| <b>Dept of Human Resources Development</b> | Merit Appeals Board   | Data Unavailable                            |                                  |  |  |                             |
| <b>Dept of Human Services</b>              | Administrative Hearings Office  | 5   | 40                               | 40                                       | \$340,032/yr Aggregate                     | General (State);<br>Federal |

**Table 2.13 (continued) - Reimbursements for Contested Cases, FY 2017-2018**

|   |  | <b>Number of Persons</b>                   | <b>Hours per Week, Generally</b> | <b>Hours per week on Contested Cases</b> | <b>Salaries, Wages, or Contracted Fees</b>                          | <b>Financing</b> |
|---|--|--|----------------------------------|--|---|------------------|
| <b>Dept of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | 101 (6 on Contested Cases)                 | 40                               | 8  | \$30,468 to \$102,936/yr Each; Aggregate Cost per Hearing: \$278.61 | General          |
|   | Hawaii Civil Rights Commission               | 8  | Not Specified                    | Not Specified                            | \$150/hr for Each Contracted Hearings Officer                       | General          |
|   | Hawaii Labor Relations Board                 | 8  | 40                               | Varies by Caseload                       | \$48,120 to \$124,760/yr Each                                       | General          |
|   | Labor and Industrial Relations Appeals Board | 10   | 40                               | 40 (99.95% on Worker's Comp)             | \$31,056 to \$125,760/yr Each                                       | General          |
|   | Wage Standards Division, Hearings Branch     | 18 in Division (Only 2 in Hearings Branch) | 40                               | 40                                       | SR24 (No Dollar Amount Provided)                                    | General          |

**Table 2.13 (continued) - Reimbursements for Contested Cases, FY 2017-2018**

|   |   | <b>Number of Persons</b>  | <b>Hours per Week, Generally</b> | <b>Hours per week on Contested Cases</b> | <b>Salaries, Wages, or Contracted Fees</b>   | <b>Financing</b> |
|---|---|---------------------------|----------------------------------|--|--|------------------|
| <b>Dept of Land &amp; Natural Resources</b> | Board of Land & Natural Resources       | 6                         | 0 to 40 (Varied Per Person)      | 0 to 10 (Varied Per Person)              | \$72,324 to \$94,380/yr Each   | General; Special |
|   | Commission on Water Resource Management | 32 (4 on Contested Cases) | 40                               | 10                                       | 2 Ad Hoc Hearings Officers: \$56,437 to \$80,456/yr Each; 3 Staffers: \$216,072/yr Aggregate | General; Special |
| <b>Dept of Taxation</b>                     | Boards of Taxation Review               | 12                        | Unknown                          | Unknown                                  | \$10/day per Board Member, plus Travel Expenses  | Not Specified    |
| <b>University of Hawaii</b>                 | (Generally)                             | Data Unavailable          |                                  |  |  |                  |

**M. Administrative Budget for Contested Cases,  
Excluding Data for Salaries, Wages, or Contracted  
Fees**

Table 2.14 summarizes the amount that each agency reported budgeting annually for contested cases, exclusive of salaries, wages, or contracted fees. It should be noted that agencies varied in how they reported this information. For example, several agencies noted that they did not have budgets specifically devoted to contested cases or stated that their contested case budget was \$0. Notably, the Public Utilities Commission cited a budget of over \$7,000,000, but the Commission did not indicate how much of that amount was expended on contested cases.

**Table 2.14 - Administrative Budget for Contested Cases, FY 2017-2018**

| <b>Agency</b>  |  | <b>Budget</b>                           | <b>Notes</b>   | <b>MOF</b>               |
|--|--|---|--|--------------------------|
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission                             | \$0                                     | N/A  | General                  |
|  | Office of Elections                                      | \$0                                     | N/A  | N/A                      |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                | \$0                                     | N/A  | N/A                      |
|  | Pesticides Branch  | \$0                                     | \$1,500 For Informal Meetings (Not Yet Contested Cases)  | W                        |
|  | Plant Quarantine Branch                                  | \$0                                     | \$600 For Ad Hoc Panel (Not Yet Contested Cases)   | B                        |
|  | Quality Assurance Division                               | \$0                                     | N/A  | N/A                      |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings                         | \$15,000                                | None   | General (State); Federal |
|  | Office of Dispute Resolution                             | \$730,000                               | None   | Not Specified            |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch | \$30,000                                | None   | Not Specified            |
|  | Hawaii Employer-Union Health Benefits Trust Fund         | \$176,960                               | Budget for Agency Overall; Supplies and Equipment; Approximately \$60 Specifically for Contested Cases | Trust Funds              |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                   | Contested Cases Not Specified in Budget | N/A  | Revolving Funds          |

**Table 2.14 (continued) - Administrative Budget for Contested Cases, FY 2017-2018**

| <b>Agency</b>                                 |   | <b>Budget</b> | <b>Notes</b>   | <b>MOF</b>                                   |
|---|---|---------------|--|--|
| <b>Dept. of Commerce and Consumer Affairs</b> | Office of Administrative Hearings   | \$56,975      | No Data Available to Breakdown Expenses by Subject   | Special Funds                                |
|   | Public Utilities Commission   | \$7,964,266   | Agency's Overall Non-Payroll Budget, Not Just for Contested Cases. (Difficult to Segregate Amount for Contested Cases) | Specially Funded through Public Utility Fees |
| <b>Dept. of Education</b>                     | Individuals with Disabilities Education Act Complaints Management Program | \$0           | N/A  | Federal Funds                                |
| <b>Dept. of Hawaiian Home Lands</b>           | Hawaiian Homes Commission   | \$25,000      | Public Notices; Postage; Travel  | General                                      |
| <b>Dept. of Health</b>                        | (Generally)   | \$0           | N/A  | N/A  |
| <b>Dept. of Human Resources Development</b>   | Merit Appeals Board   | \$7,069       | Falls Under "Other Current Expenses"   | General                                      |
| <b>Dept. of Human Services</b>                | Administrative Hearings Office  | \$105,128     | None   | Not Specified                                |



**Table 2.14 (continued) - Administrative Budget for Contested Cases, FY 2017-2018**

| <b>Agency</b>                                    |  | <b>Budget</b>                           | <b>Notes</b>  | <b>MOF</b>       |
|--|--|---|---|------------------|
| <b>Dept. of Labor &amp; Industrial Relations</b> | Disability Compensation Division             | \$32,000                                | Unable to Segregate Budget by Subject Matter  | General          |
|  | Hawaii Civil Rights Commission               | Contested Cases Not Specified in Budget | N/A   | N/A              |
|  | Hawaii Labor Relations Board                 | Variable                                | Neighbor Island Cases Require Travel Expenses   | General          |
|  | Labor and Industrial Relations Appeals Board | \$59,177                                | Approximately 99.95%, or \$59,147.41, for Workers' Compensation. \$29.59 for Boiler & Elevator Safety | Not Specified    |
|  | Wage Standards Division, Hearings Branch     | \$65,858.22                             | N/A   | Not Specified    |
| <b>Dept. of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources            | Contested Cases Not Specified in Budget | When Necessary, Uses Funds from Dept.'s General Fund Operating Budget or Special Fund                 | General; Special |
|  | Commission on Water Resource Management      | Contested Cases Not Specified in Budget | When Necessary, Uses Funds from Dept.'s General Fund Operating Budget or Special Fund                 | General; Special |
| <b>Dept. of Taxation</b>                         | Boards of Taxation Review                    | \$0                                     | N/A   | N/A              |
| <b>University of Hawaii</b>                      | (Generally)                                  | Contested Cases Not Specified in Budget | Costs Funded by General Appropriations, Tuition, and other University Revenues                        | Various          |

**N. On Whether Reported Agency Data was Typical of other Fiscal Years**

Most agencies reported that the data they provided for fiscal year 2017-2018 was typical of other fiscal years in general. A few agencies noted that there may be some variations from year-to-year.<sup>31</sup> For example, the Office of Administrative Hearings of the Department of Commerce and Consumer Affairs noted that due to the retirements of 2 hearings officers, the agency only had 3 hearings officers on staff, thus reducing the agency's operations in fiscal year 2017-2018.<sup>32</sup> The Labor and Industrial Relations Appeals Board indicated that its expenditures for fiscal year 2017-2018 were atypical, due to technology expenses.<sup>33</sup>

**O. Agency Use of Case Management Systems to Manage Contested Cases**

Agencies were asked about their use of any case management systems to manage their contested case dockets. In addition, they were asked to report whether others within their respective executive departments had access to the case management systems. Table 2.15 summarizes the agencies' responses. A few agencies disclosed the use of case management systems, but they did not comment on other agencies' access to their systems. Still other agencies, including the Public Utilities Commission and the Department of Health, noted that their case management systems are open to other agencies, as well as to the general public. Many of the agencies reported that they did not use case management systems at all. However, while the Labor and Industrial Relations Appeals Board does not have a case management system, it uses a document management system that it shares with the Disability Compensation Division to help administer workers' compensation cases.<sup>34</sup>

---

<sup>31</sup> See survey Response from the Department of the Attorney General (on Behalf of the Hawaiian Homes Commission, Department of Hawaiian Home Lands), July 30, 2019, at 10-11; Survey Response from Department of Health, August 9, 2019, at 14-15; Survey Response from Wage Standards Division, Hearings Branch, Department of Labor and Industrial Relations, July 9, 2019, at 8; Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 10; Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 13. (Indicating some variation in caseloads or operations.)

<sup>32</sup> Survey Response from Office of Administrative Hearings, Department of Commerce and Consumer Affairs, July 31, 2019, at 12. (The Office of Administrative Hearings of the Department of Commerce and Consumer Affairs currently employs five hearings officers.)

<sup>33</sup> Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 11.

<sup>34</sup> Parties may appeal Workers Compensation decisions made by the Disability Compensation Division to the Labor and Industrial Relations Appeals Board. See Section 386-87, HRS.

**Table 2.15 - Case Management System Use**

| <b>Agency</b>  |   | <b>System in Use?</b>               | <b>Other Agency Access?</b> |
|--|---|-------------------------------------|-----------------------------|
| <b>Dept. of Accounting &amp; General Services</b>            | Campaign Spending Commission  | No                                  | N/A                         |
|  | Office of Elections   | No                                  | N/A                         |
| <b>Dept. of Agriculture</b>                                  | Agricultural Resource Management Division                                 | No                                  | N/A                         |
|  | Pesticides Branch   | No                                  | N/A                         |
|  | Plant Quarantine Branch   | No                                  | N/A                         |
|  | Quality Assurance Division  | No                                  | N/A                         |
| <b>Dept. of the Attorney General</b>                         | Office of Child Support Hearings  | Unspecified Database Program        | No                          |
|  | Office of Dispute Resolution  | Microsoft Excel                     | No                          |
| <b>Dept. of Budget &amp; Finance</b>                         | Employees' Retirement System, Retirement Benefits Branch                  | No                                  | N/A                         |
|  | Hawaii Employer-Union Health Benefits Trust Fund                          | No                                  | N/A                         |
| <b>Dept. of Business, Economic Development &amp; Tourism</b> | Hawaii Community Development Authority                                    | No                                  | N/A                         |
| <b>Dept. of Commerce and Consumer Affairs</b>                | Office of Administrative Hearings   | Microsoft Excel                     | No                          |
|  | Public Utilities Commission   | Document Management System Website  | Yes (and General Public)    |
| <b>Dept. of Education</b>                                    | Individuals with Disabilities Education Act Complaints Management Program | Unspecified System; Microsoft Excel | Not Specified               |
| <b>Dept. of Hawaiian Home Lands</b>                          | Hawaiian Homes Commission   | No                                  | N/A                         |
| <b>Dept. of Health</b>                                       | (Generally)   | Unspecified System of Case Lists    | Yes (and General Public)    |
| <b>Dept. of Human Resources Development</b>                  | Merit Appeals Board   | No                                  | N/A                         |
| <b>Dept of Human Services</b>                                | Administrative Hearings Office  | Unspecified System                  | No                          |

**Table 2.15 (continued) - Case Management System Use**

| <b>Agency</b>                                   |  | <b>System in Use?</b>                             | <b>Other Agency Access?</b>  |
|---|--|---|--|
| <b>Dept of Labor &amp; Industrial Relations</b> | Disability Compensation Division                 | No  | N/A  |
|   | Hawaii Civil Rights Commission                   | No  | N/A  |
|   | Hawaii Labor Relations Board                     | Microsoft Excel                                   | No   |
|   | Labor and Industrial Relations Appeals Board     | No; But Docushare is Used for Document Management | Shared with Disability Compensation Division for Workers' Compensation Cases |
|   | Wage Standards Division, Hearings Branch         | Access  | Not Specified  |
| <b>Dept of Land &amp; Natural Resources</b>     | Board of Land & Natural Resources                | Internet-Based System for Certain Violations      | Yes (and Parties of the Case)  |
|   |  | Other Unspecified System for Certain Cases        | Not Specified  |
|   | Commission on Water Resource Management          | No  | N/A  |
| <b>Dept of Taxation</b>                         | Boards of Taxation Review                        | No  | N/A  |
| <b>University of Hawaii</b>                     | Parking Board                                    | No  | N/A  |
|   | Residency Appeals Board                          | No  | N/A  |
|   | State Postsecondary Education Commission         | No  | N/A  |
|   | State Board for Vocational Education             | No  | N/A  |
|   | University (on Delinquent Financial Obligations) | No  | N/A  |

## **P. Hearings on Non-Contested Cases**

The vast majority of agencies reported that they did not conduct hearings on non-contested cases in fiscal year 2017-2018. The only agency that reported a significant number of non-contested case hearings was the Disability Compensation Division, which held 1,776 such hearings on workers' compensation cases.<sup>35</sup>

## **Part III. Agency Concerns**

This section addresses qualitative issues raised by the surveyed agencies, as opposed to quantitative issues relating to a prospective centralized state hearings department. Specifically, where applicable, agencies addressed conflicts of interest, other barriers to the administration of contested case hearings, and other miscellaneous concerns. This section highlights some of the more salient or common points raised.

### **A. Conflicts of Interest**

Each agency was surveyed as to the how the agency would address potential conflicts of interest, based on: (1) the agency's administrative attachment to the same executive department that is a party to a contested case; and (2) any relationship (working, familial, or otherwise) that one or more of the parties to a contested case may have with a person who presides over the contested case hearing or other agency employee. Agency responses are summarized below.

#### **1. Agency Attachments**

Surveyed agencies responded that they maintain independent judgment from the departments to which they are attached in matters in which the attached department may be a party to a contested case. For example, the Office of Child Support Hearings noted that it and the Child Support Enforcement Agency (which enforces child support laws) are separate divisions within the Department of the Attorney General, with separate statutes and administrative rules governing their conduct.<sup>36</sup> The Office of Administrative Hearings (OAH) of the Department of Commerce and Consumer Affairs (DCCA) noted that many of its cases (such as procurement matters, retirement matters, certain insurance matters, and trademarks) did not involve parties attached to DCCA.<sup>37</sup> However, the OAH suggested that in any case in which the OAH issues a preliminary or recommended decision that is not adopted by the respective state department or agency with

---

<sup>35</sup> A total of 37 non-contested case hearings were conducted by 6 other agencies during fiscal year 2017-2018. These agencies were the: Campaign Spending Commission, Department of Accounting and General Services; Pesticides Branch and the Plant Quarantine Branch, Department of Agriculture; Public Utilities Commission, Department of Commerce and Consumer Affairs; Hawaii Labor Relations Board, Department of Labor and Industrial Relations; and Commission on Water Resource Management, Department of Land and Natural Resources. Because so few of the responding agencies conducted non-contested case hearings in fiscal year 2017-2018, a table for these hearing does not appear in this report.

<sup>36</sup> Survey Response from Office of Child Support Hearings, Department of the Attorney General, July 29, 2019, at 9.

<sup>37</sup> Survey Response from Office of Administrative Hearings, Department of Commerce and Consumer Affairs, July 31, 2019, at 13.

ultimate decisionmaking authority, that department or agency should be required to provide specific reasons for its decision. The OAH suggested that such a requirement would ensure accountability and the integrity of the hearings process.<sup>38</sup>

For cases involving other DCCA agencies, the OAH pointed to its physical separation from those agencies – on a separate floor of the agency offices<sup>39</sup> – and its administrative attachment to the DCCA director's office (as opposed to other subsidiary agencies within the DCCA) as some of the safeguards against perceptions of bias.<sup>40</sup> The Administrative Hearings Office of the Department of Human Services raised a similar point, and also noted an administrative rule prohibition on departmental *ex parte* communications with hearing officers.<sup>41</sup>

The Individuals with Disabilities Education Act (IDEA) Complaints Management Program of the Department of Education (DOE) acknowledged that its hearing officers are employed by the Department of the Attorney General, which also represents the DOE in cases before those same hearing officers.<sup>42</sup> The IDEA Complaints Management Program believed that a separate hearings department would "fortify" impartiality.<sup>43</sup>

The Office of Dispute Resolution noted that it is attached to the Department of the Attorney General for administrative purposes only.<sup>44</sup> Other agencies made similar comments about their relationships to their respective attached departments.<sup>45</sup> The Bureau notes that when an agency is administratively attached to a department, the attachment is intended to exist for the purpose of providing salaries, office space, or other related purposes. However, the department is not intended to have oversight or control over the attached agency's decisionmaking authority.

Several agencies noted that within their agency, contested cases may be decided by board members, gubernatorially-appointed staff, or independent private citizens.<sup>46</sup> A few agencies noted that the departments to which they are attached often are not among the parties to contested case proceedings conducted by those agencies.<sup>47</sup>

---

<sup>38</sup> *Id.* at 15.

<sup>39</sup> *Id.* at 13.

<sup>40</sup> *Id.*

<sup>41</sup> Survey Response from Administrative Hearings Office, Department of Human Services, August 2, 2019, at 12-13. *See also* section 17-2-15, HAR.

<sup>42</sup> Survey Response from Individuals with Disabilities Education Act Complaints Management Program, Department of Education, July 30, 2019, at 11.

<sup>43</sup> *Id.*

<sup>44</sup> Survey Response from Office of Dispute Resolution, Department of the Attorney General, July 29, 2019, at 10.

<sup>45</sup> *See, e.g.*, Survey Response from Hawaii Labor Relations Board, Department of Labor and Industrial Relations, August 13, 2019, at 10; Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 12.

<sup>46</sup> Generally, the referenced individuals preside over hearings or serve as decisionmakers on cases. *See, e.g.*, Survey Response from Merit Appeals Board, Department of Human Resources Development, August 21, 2019, at 8; Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 11; Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 13-14; Survey Response from Boards of Taxation Review, Department of Taxation, July 31, 2019, at 8.

<sup>47</sup> *See, e.g.*, Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 14.

Several boards acknowledged that they are advised by a Deputy Attorney General, and that an attorney representing a party agency in a contested case may also be a Deputy Attorney General.<sup>48</sup> The boards saw no conflict, because the Deputy Attorneys General advising the boards do not work in the same division of the Department of the Attorney General as the Deputy Attorneys General who are representing party agencies.<sup>49</sup>

However, the Campaign Spending Commission noted that the commission makes a preliminary determination on matters concerning campaign finance violations, and if a party wishes to file a contested case proceeding, the proceeding will occur before the same commission.<sup>50</sup> The Campaign Spending Commission recognized that some past respondents - often non-attorneys representing themselves - have maintained that the commission was biased in the contested case proceeding because it initially ruled against them. The Campaign Spending Commission acknowledged that a centralized hearings department may "defuse this concern" but anticipated that the commission "would still be required to finalize any proposed findings of fact, conclusions of law, and order issued by the administrative hearings officer."<sup>51</sup>

## 2. Relational Conflicts

A number of agencies, including the Office of Child Support Hearings, noted that cases may be reassigned when a presiding officer or agency employee may have a potential conflict of interest based on a relationship with a party to a contested case.<sup>52</sup> In agencies in which a group of several persons, such as a board or a commission, hears a contested case, a member of the board or commission with a conflict of interest may be recused, leaving the remaining members to preside over or decide on the case.<sup>53</sup> The Hawaii Employer-Union Health Benefits Trust Fund, whose board is made up of an equal number of employer and employee trustees, expressed its

---

<sup>48</sup> Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 11; Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 14.

<sup>49</sup> *Id.*

<sup>50</sup> Survey Response from Campaign Spending Commission, Department of Accounting and General Services, July 5, 2019, at 3.

<sup>51</sup> *Id.* at 8.

<sup>52</sup> *See, e.g.*, Survey Response from Office of Child Support Hearings, Department of the Attorney General, July 29, 2019, at 9; Survey Response from Office of Dispute Resolution, Department of the Attorney General, July 29, 2019, at 10; Survey Response from Employees' Retirement System, Department of Budget and Finance, July 31, 2019, at 8; Survey Response from Office of Administrative Hearings, Department of Commerce and Consumer Affairs, July 31, 2019, at 14; Survey Response from Individuals with Disabilities Education Act Complaints Management Program, Department of Education, July 30, 2019, at 10; Survey Response from Disability Compensation Division, Department of Labor and Industrial Relations, July 29, 2019, at 9; Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 11.

<sup>53</sup> *See, e.g.*, Survey Response from the Department of the Attorney General (on Behalf of the Hawaiian Homes Commission, Department of Hawaiian Home Lands), July 30, 2019, at 11-12; Survey Response from Hawaii Employer-Union Health Benefits Trust Fund, Department of Budget and Finance, July 30, 2019, at 9; Survey Response from Hawaii Community Development Authority, Department of Business, Economic Development, and Tourism, August 7, 2019, at 9; Survey Response from Hawaii Labor Relations Board, Department of Labor and Industrial Relations, August 13, 2019, at 10; Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 11; Survey Response from Boards of Taxation Review, Department of Taxation, July 31, 2019, at 8.

belief that the unique makeup of its board of trustees ensured fair and balanced reviews over the contested cases that it hears.<sup>54</sup> In a notable example, the Pesticides Branch of the Department of Agriculture explained that, in a specific case where a conflict of interest arose and could not be avoided, the matter was referred to the federal Environmental Protection Agency for review.<sup>55</sup>

The Public Utilities Commission noted that chairperson-appointed hearings officers are typically commission counsels, who are required to disclose their working or personal relationships to parties and note their objections on the record.<sup>56</sup>

Few agencies reported that conflicts of interest were raised, and it would appear that, generally, conflicts of interest seldom arise.<sup>57</sup> To illustrate, members of the Labor and Industrial Relations Appeals Board issued approximately 10 notices of recusals in fiscal year 2017-2018,<sup>58</sup> and 2 recent potential conflicts of interest were raised before the Board of Land and Natural Resources.<sup>59</sup>

## **B. Other Barriers**

Agencies were asked what barriers, if any, they faced in the fair and timely adjudication of cases, and what steps would be necessary to remove or minimize the impact of those barriers. The agencies were also asked for information that would provide context for their responses, explain any extenuating circumstances, or help the Legislature better understand how they conduct hearings on contested cases.

---

<sup>54</sup> Survey Response from Hawaii Employer-Union Health Benefits Trust Fund, Department of Budget and Finance, July 30, 2019, at 9.

<sup>55</sup> Based on the response of the Pesticides Branch, it is not clear what action, if any, the Environmental Protection Agency took on the referred case. *See* Survey Response from Pesticides Branch, Department of Agriculture, July 26, 2019, at 9.

<sup>56</sup> Survey Response from Public Utilities Commission, Department of Commerce and Consumer Affairs, August 1, 2019, at 12.

<sup>57</sup> *See* Survey Response from Office of Elections, Department of Accounting and General Services, July 29, 2019, at 9; Survey Response from Office of Child Support Hearings, Department of the Attorney General, July 29, 2019, at 9; Survey Response from Hawaii Employer-Union Health Benefits Trust Fund, Department of Budget and Finance, July 30, 2019, at 9; Survey Response from Office of Administrative Hearings, Department of Commerce and Consumer Affairs, July 31, 2019, at 14; Survey Response from Public Utilities Commission, Department of Commerce and Consumer Affairs, August 1, 2019, at 12; Survey Response from Department of Health, August 9, 2019, at 16; Survey Response from Merit Appeals Board, Department of Human Resources Development, August 21, 2019, at 8; Survey Response from Disability Compensation Division, Department of Labor and Industrial Relations, July 29, 2019, at 9; Survey Response from Hawaii Civil Rights Commission, Department of Labor and Industrial Relations, August 2, 2019, at 9; Survey Response from Hawaii Labor Relations Board, Department of Labor and Industrial Relations, August 13, 2019, at 10; Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 13.

<sup>58</sup> Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 12.

<sup>59</sup> Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 11-12.



## 1. Vacancies

In several instances, an agency noted difficulties that arise because its adjudicatory body is a board or commission that consists entirely, or in part, of volunteers.<sup>60</sup> Because the board members and commissioners have other, full-time jobs, it is often difficult for them to attend to matters on contested cases, therefore, an agency must rely on hearings officers instead.<sup>61</sup> Further, if a board vacancy leaves an even number of remaining board members, it may be difficult for a majority of those remaining members to conclusively decide a matter.<sup>62</sup> Vacancies may also affect the ability of boards to meet quorum requirements.<sup>63</sup>

## 2. Staffing Challenges

A few agencies cited a lack of resources or personnel as a barrier to their operations<sup>64</sup> and stated that hiring, training, and retaining knowledgeable staff can be a challenge.<sup>65</sup> Increased caseloads may add to the burden of staffing shortages.<sup>66</sup>

Agencies like the Hawaii Community Development Authority (HCDA) that do not employ hearings officers may have difficulty procuring the services of contract hearings officers and scheduling them for hearings.<sup>67</sup> Thus, the HCDA opined that it might be easier to schedule hearings in a timely manner if a centralized hearings department existed.<sup>68</sup>

## 3. Other Logistical Challenges

Hearings may be delayed when the contested case involves parties or property on a neighbor island. For example, the Hawaiian Homes Commission staff travel to Molokai and Kauai only once each year to conduct contested case hearings on lands leased there, and staff travel to the island of Lanai only once every *other* year for such hearings.<sup>69</sup>

---

<sup>60</sup> This includes the Campaign Spending Commission. Survey Response from Campaign Spending Commission, Department of Accounting and General Services, July 5, 2019, at 9.

<sup>61</sup> *Id.*

<sup>62</sup> See Survey Response from Merit Appeals Board, Department of Human Resources Development, August 21, 2019, at 8.

<sup>63</sup> See Survey Response from Boards of Taxation Review, Department of Taxation, July 31, 2019, at 8.

<sup>64</sup> See, e.g., Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 15-16; Survey Response from Wage Standards Division, Hearings Branch, Department of Labor and Industrial Relations, July 9, 2019, at 9.

<sup>65</sup> Survey Response from Public Utilities Commission, Department of Commerce and Consumer Affairs, August 1, 2019, at 12.

<sup>66</sup> *Id.*

<sup>67</sup> See, e.g., Survey Response from Hawaii Community Development Authority, Department of Business, Economic Development, and Tourism, August 7, 2019, at 10.

<sup>68</sup> *Id.*

<sup>69</sup> Survey Response from the Department of the Attorney General (on Behalf of the Hawaiian Homes Commission, Department of Hawaiian Home Lands), July 30, 2019, at 9.

Agencies may also have difficulty scheduling cases for specialized matters in which there are few qualified attorneys available to represent parties in hearings before the agencies.<sup>70</sup>

### **C. Concerns About a Prospective Centralized Administrative Hearings Department**

Agencies expressed multiple concerns about the potential transfer of responsibility over contested cases to a centralized administrative hearings department.

Most commonly, agencies questioned whether the individuals within a centralized department would have sufficient specialized subject matter expertise to preside over or decide cases.<sup>71</sup> For example, the IDEA Complaints Management Program of the DOE noted that its hearings are conducted according to federal regulations, and adjudicating cases requires significant background knowledge, including familiarity with a 600-page manual.<sup>72</sup> Further, if hearings are not conducted in compliance with federal law, the Department of Education could risk the loss of certain federal funding.<sup>73</sup> The Office of Elections also expressed concerns regarding whether hearings officers in a centralized system would have the subject matter expertise to conduct hearings and issue decisions in an expedited manner.<sup>74</sup> The Public Utilities Commission (PUC) commented that many of its hearings procedures are based on prior commission decisions, and that conducting proceedings requires knowledge that cannot be learned quickly, or even from a review of the case records.<sup>75</sup> The PUC suggested that any centralized hearings department should include a sub-department that specializes in public utilities and renewable energy-related issues.<sup>76</sup>

---

<sup>70</sup> See Survey Response from Office of Dispute Resolution, Department of the Attorney General, July 29, 2019, at 11.

<sup>71</sup> E.g., Survey Response from Office of Elections, Department of Accounting and General Services, July 29, 2019, at 9; Survey Response from Plant Quarantine Branch, Department of Agriculture, July 26, 2019, at 8; Survey Response from the Department of the Attorney General (on Behalf of the Hawaiian Homes Commission, Department of Hawaiian Home Lands), July 30, 2019, at 12; Survey Response from Employees' Retirement System, Department of Budget and Finance, July 31, 2019, at 9; Survey Response from Public Utilities Commission, Department of Commerce and Consumer Affairs, August 1, 2019, at 12; Survey Response from Individuals with Disabilities Education Act Complaints Management Program, Department of Education, July 30, 2019, at 10; Survey Response from Department of Health, August 9, 2019, at 17-18; Survey Response from Hawaii Civil Rights Commission, Department of Labor and Industrial Relations, August 2, 2019, at 9-10; Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 15; Survey Response from Wage Standards Division, Hearings Branch, Department of Labor and Industrial Relations, July 9, 2019, at 9; Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 12; Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 14-15; Survey Response from Boards of Taxation Review, Department of Taxation, July 31, 2019, at 8.

<sup>72</sup> The nature of the referenced manual is unclear. See Survey Response from Individuals with Disabilities Education Act Complaints Management Program, Department of Education, July 30, 2019, at 11.

<sup>73</sup> *Id.*

<sup>74</sup> Survey Response from Office of Elections, Department of Accounting and General Services, July 29, 2019, at 9.

<sup>75</sup> Survey Response from Public Utilities Commission, Department of Commerce and Consumer Affairs, August 1, 2019, at 12.

<sup>76</sup> *Id.* at 12-13.

Agencies also expressed concerns regarding the employment status of their current hearings officers or employees if contested cases were assigned to another department.<sup>77</sup> The Disability Compensation Division (DCD) of the Department of Labor and Industrial Relations expressed concerns that its current administrative staff could be transferred to a centralized department without regard to the impact on the transferred staff's other responsibilities that support the DCD.<sup>78</sup>

Practical concerns were also raised over whether existing agency procedures would be adopted by a new central department, such as hearings officers traveling to conduct hearings (i.e., when indigent parties cannot afford to travel),<sup>79</sup> the ability of parties to represent themselves *pro se* or to appear remotely by telephone,<sup>80</sup> or processes that allow expedited appeals in certain circumstances.<sup>81</sup>

The Hawaiian Homes Commission noted that, even if a centralized hearings department were to conduct hearings, the department would only be able to make recommendations to the commission. Unique to the Hawaiian Homes Commission, the Hawaiian Homes Commission Act establishes the commission's authority of its cases, and this authority cannot be amended by statute.<sup>82</sup> The Board of Land and Natural Resources (BLNR) expressed concerns that if contested case hearings are transferred to a new centralized department, the process under the new department would deprive the BLNR of its duties under existing statutory law.<sup>83</sup> The BLNR asserted that it should retain the power to make final decisions in matters under the BLNR's current jurisdiction, and that no other agency or hearing officer should issue applicable permits, assess fines, or order special performance on behalf of the BLNR.<sup>84</sup> The Commission on Water Resource Management which is attached to the Department of Land and Natural Resources, made similar comments.<sup>85</sup>

The OAH expressed concerns about the funding method for a centralized department. It noted that conflicts of interest could arise if the agencies whose actions are being reviewed provide

---

<sup>77</sup> See e.g., Survey Response from Office of Dispute Resolution, Department of the Attorney General, July 29, 2019, at 11; Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 15.

<sup>78</sup> Survey Response from Disability Compensation Division, Department of Labor and Industrial Relations, July 29, 2019, at 10.

<sup>79</sup> Survey Response from Administrative Hearings Office, Department of Human Services, August 2, 2019, at 14.

<sup>80</sup> Survey Response from Office of Child Support Hearings, Department of the Attorney General, July 29, 2019, at 10.

<sup>81</sup> Survey Response from Hawaii Employer-Union Health Benefits Trust Fund, Department of Budget and Finance, July 30, 2019, at 10.

<sup>82</sup> Survey Response from the Department of the Attorney General (on Behalf of the Hawaiian Homes Commission, Department of Hawaiian Home Lands), July 30, 2019, at 12. The survey response did not explain why Hawaiian Homes Commission's responsibilities may not be amended by statute. It is possible that such an amendment may need to be proposed for inclusion in the Hawaiian Homes Commission Act and then approved by an Act of Congress, pursuant to article XII, section 3, of the Hawaii State Constitution.

<sup>83</sup> Survey Response from Board of Land and Natural Resources, Department of Land and Natural Resources, July 31, 2019, at 12.

<sup>84</sup> *Id.* at 12.

<sup>85</sup> Survey Response from Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 14.

funding to the new department. Therefore, the OAH suggested that any centralized hearings department should be funded through general funds.<sup>86</sup>

---

<sup>86</sup> Survey Response from Office of Administrative Hearings, Department of Commerce and Consumer Affairs, July 31, 2019, at 16-17.

## Chapter 3

### CENTRAL PANEL SYSTEMS IN OTHER JURISDICTIONS

#### Part I. History and Overview

In the United States, increased government regulation at the federal, state, and local levels, particularly during the New Deal era of the 1930s,<sup>1</sup> resulted in a greatly expanded system of governance via administrative agencies. Concomitant with this expansion, the practice of administrative adjudication, or the ability of a government agency to resolve matters involving roles specifically delegated to that agency, proliferated. American legislators and legal scholars have long debated whether the quasi-judicial practice of decentralized administrative adjudication complies with the constitutional right to due process,<sup>2</sup> which includes "the right to a fair hearing[,]"<sup>3</sup> when agencies themselves are in the position of adjudicating disputes arising from matters that the agency investigates and prosecutes, sometimes even based on policies the agency itself promulgated.

At the federal level, adoption of the Administrative Procedure Act<sup>4</sup> resolved some of these debates by establishing, in part, uniform standards for federal administrative adjudication.<sup>5</sup> These standards include a system of administrative law judges who preside over trial-type hearings for a variety of federal departments, agencies, boards, and commissions.<sup>6</sup>

At the state level, political debates regarding uniform standards for administrative adjudication largely focused on the adoption of statewide central panels, or "panels of administrative law judges who, instead of being attached to a single administrative agency, are assigned to a 'central,' 'independent' panel that supplies administrative law judges to conduct contested case hearings for a variety of agencies."<sup>7</sup> California's exploration of administrative

---

<sup>1</sup> See MALCOM C. RICH, J.D. & ALISON C. GOLDSTEIN, MPH, *THE NEED FOR A CENTRAL PANEL APPROACH TO ADMINISTRATIVE ADJUDICATION: PROS, CONS, AND SELECTED PRACTICES* 7 (Chicago Appleseed Fund for Justice and the Chicago Council of Lawyers, February 2019); see also Michael Asimow, *The Administrative Judiciary: ALJ's in Historical Perspective*, 20 J. Nat'l Ass'n Admin. L. Judges 157, 159-64 (2000), available at <http://digitalcommons.pepperdine.edu/naalj/vol20/iss1/6>.

<sup>2</sup> See Rich, *supra* note 1, at 7-8.

<sup>3</sup> DUE PROCESS, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "due process" as "[t]he conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case").

<sup>4</sup> Administrative Procedure Act, 5 U.S.C. §500 *et seq.* The Administrative Procedure Act is a "quasi-constitutional" document that "emerged in 1946 as a 'fierce compromise' after a decade-long battle between those in favor of and those against the rise of the New Deal administrative state." Christopher J. Walker, *Modernizing the Administrative Procedure Act*, 69:3 ADMIN. L. REV. 629, 630-33 (2017).

<sup>5</sup> See United States Department of Justice, *Attorney General's Manual on the Administrative Procedure Act*, I(a)(3) (1947), available at <https://web.archive.org/web/20060915202809/http://www.law.fsu.edu/library/admin/1947i.html>.

<sup>6</sup> See James G. Gilbert and Robert S. Cohen, *Administrative Adjudication in the United States*, 37 J. Nat'l Ass'n Admin. L. Judiciary 222, 228 (2017).

<sup>7</sup> W. Michael Gillette, *ALJ Central Panels: How is it Going Out There?*, 36 J. Nat'l Ass'n Admin. L. Judiciary 320 (2016), available at <http://digitalcommons.pepperdine.edu/naalj/vol36/iss1/6>.

reform, particularly reform that would clearly separate the prosecutorial and adjudicatory functions of state agencies, began in the 1930s.<sup>8</sup> When its General Assembly created the Office of Administrative Hearings in 1945, California became the first state to establish a central panel.<sup>9</sup> A full twenty years later, in 1965, Missouri became the second state to adopt a central panel system when it established the state's Administrative Hearing Commission.<sup>10</sup> Adoption of central panels among the states began slowly but increased dramatically in the 1970s,<sup>11</sup> peaking in the 1990s with 11 states establishing a state central panel during that decade.<sup>12</sup>

Currently, 27 states<sup>13</sup> and the District of Columbia have established a centralized administrative hearings agency:<sup>14</sup> Alaska, Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and the District of Columbia.<sup>15</sup> Indiana is

<sup>8</sup> See Rich, *supra* note 1, at 16.

<sup>9</sup> See Allen Hoberg, *Administrative Hearings: State Central Panels in the 1990s*, 14 J. Nat'l Ass'n Admin. L. Judges 107, 110 (1994), available at <http://digitalcommons.pepperdine.edu/naalj/vol14/iss1/5>.

<sup>10</sup> See *Fair Treatment for the Licensed Professional: The Missouri Administrative Hearing Commission*, 37 MO. L. REV. 410, 411-12 (1972), available at <http://scholarship.law.missouri.edu/mlr/vol37/iss3/3>.

<sup>11</sup> After California in 1945 and Missouri in 1965, Florida, Massachusetts, and Tennessee became the next 3 states to adopt a state central panel system, all doing so in 1974. Minnesota, Colorado, Wisconsin, and New Jersey adopted a central panel in 1975, 1976, 1978, and 1979, respectively. Three states adopted a central panel in the 1980s: Washington (1981), North Carolina (1985), and Maryland (1989).

<sup>12</sup> Texas and North Dakota each established a state central panel in 1991. Wyoming, South Carolina, and Georgia established central panels in 1992, 1993, and 1994, respectively. South Dakota, Arizona, and Iowa each established a central panel in 1995. Louisiana established its central panel in 1995, while Kansas did so in 1996. Oregon was the last state to establish a central panel in the 1990s, doing so in 1999.

<sup>13</sup> Virginia does not have a central panel system, *per se*, but requires by statute that when conducting a contested case hearing, certain agencies must select a hearing officer "from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court." VA. CODE ANN. §2.2-4024(A). These hearing officers preside over cases according to section 2.2-4020(C) of the Code of Virginia. However, for purposes of this report, Virginia is not considered to have a central panel system in place since it does not operate a central panel as an executive branch agency. Additionally, several large metropolitan jurisdictions, including New York City and Cook County, Illinois, have implemented a centralized administrative hearing system, but are not examined in this report.

<sup>14</sup> For purposes of this report, the jurisdictions examined are limited to those states (and the District of Columbia) that have established a central panel as an independent executive branch agency or a division within an executive branch agency.

<sup>15</sup> ALASKA STAT. §§44.64.010 to 44.64.200; ARIZ. REV. STAT. §§41-1092 to 41-1092.12; CAL. GOV'T CODE §§11370 to 11529; COLO. REV. STAT. §§24-30-1001 to 24-30-1003; FLA. STAT. §§120.50 to 120.81, 440.33, 440.45; GA. CODE ANN. §§50-13-40 to 50-13-44; Ill. Exec. Order No. 2016-06 (establishing a Pilot Bureau of Administrative Hearings within the Illinois Department of Central Management Services); Ill. Exec. Order No. 2017-04 (making permanent the Bureau of Administrative Hearings within the Illinois Central Management Services); IND. CODE §§4-15-10.5-1 to 4-15-10.5-16; IOWA CODE §§10A.801 to §10A.802; KAN. STAT. ANN. §§75-37,121; LA. REV. STAT. ANN. §§49:991 to 49:999.25; MD. CODE, STATE GOV'T §§9-1601 to 9-1610; MASS. GEN. LAWS ch. 7, §4H and ch. 71B, §2A; Mich. Exec. Order No. 2019-06(3) (establishing the Michigan Office of Administrative Hearings and Rules); Mich. Exec. Order No. 2019-13 (modifying the jurisdiction of the Michigan Office of Administrative Hearings and Rules); MINN. STAT. §§14.48 to 14.69; MO. REV. STAT. §§621.015 to 621.275; N.J. STAT. ANN. §§52:14F-1 to 52:14F-23; N.C. GEN. STAT. §§7A-750 to 7A-769; N.D. CENT. CODE §§54-57-01 to 54-57-09; OR. REV. STAT. §§183.600 to 183.690; S.C. CODE ANN. §§1-23-500 to 1-23-680; S.D. CODIFIED LAWS §§1-26D-1 to 1-26D-12; TENN. CODE ANN. §§4-5-301 to 4-5-325; TEX. GOV'T CODE ANN. §§2003.001 to

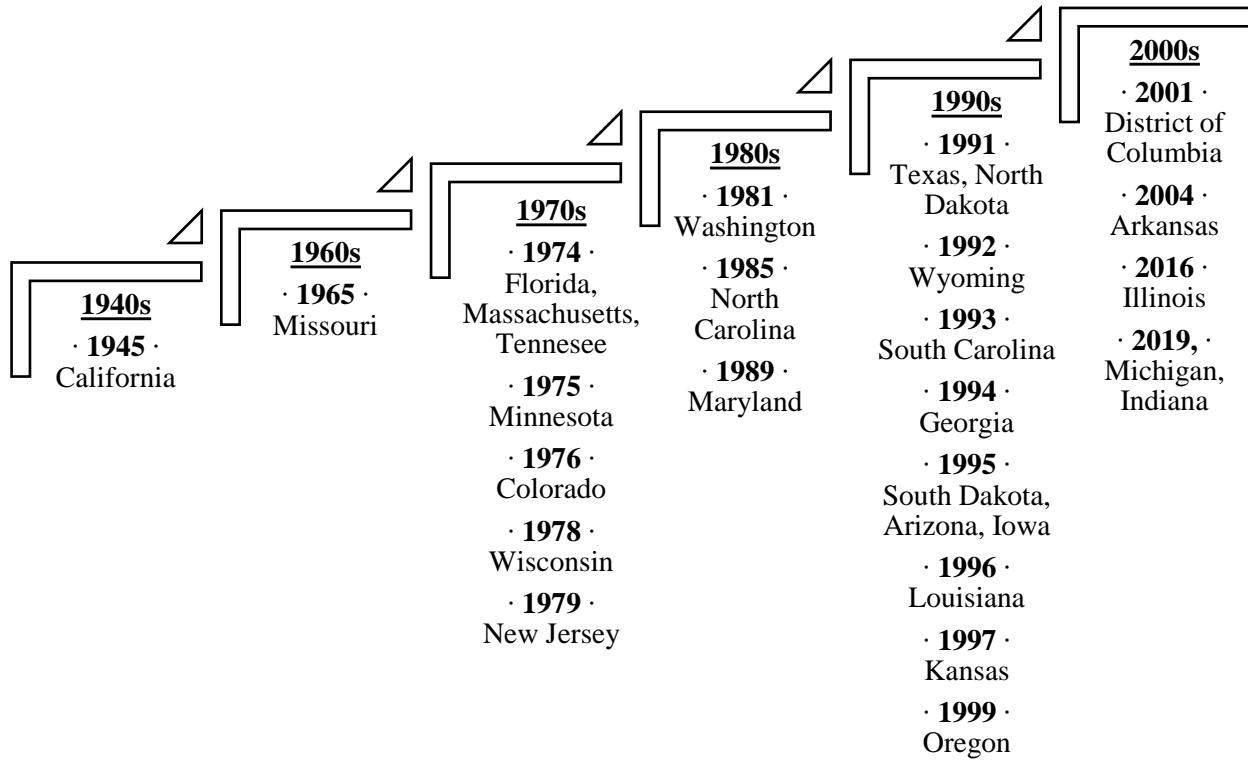
the most recent state to adopt a central panel system, having established its Office of Administrative Law Proceedings in 2019.<sup>16</sup>

---

2003.916; WASH. REV. CODE §§34.12.010 to 34.12.160; WIS. STAT. §§227.43 to 227.60; WYO. STAT. ANN. §§9-2-2201 to 9-2-2203; *and* D.C. CODE §§2-1831.01 to 2-1831.19.

<sup>16</sup> The Indiana Office of Administrative Law Proceedings will begin hearing contested cases on July 1, 2020. *See* IND. CODE §4-15-10.5-1(a).

**Table 3.16 - State Adoption of Central Panels by Year**





**Table 3.17 - Legal Authority Over Central Panels**

| State and Agency Name                                   | Establishment of Agency                       |   |  | Website URL   |
|---|---|---|--|---|
|   | Statute                                       | Rules   | Other                                    |   |
| <b>Alaska Office of Administrative Hearings</b>         | ALASKA STAT. §§44.64.010 to 44.64.200         | ALASKA ADMIN. CODE tit. 2 ch. 64  | N/A                                      | <a href="https://doa.alaska.gov/oah/">https://doa.alaska.gov/oah/</a>   |
| <b>Arizona Office of Administrative Hearings</b>        | ARIZ. REV. STAT. §§41-1092 to 41-1092.12      | ARIZ. ADMIN. CODE §§R2-19-101 to R2-19-122                                      | N/A                                      | <a href="https://www.azoah.com/">https://www.azoah.com/</a>   |
| <b>California Office of Administrative Hearings</b>     | CAL. GOV'T CODE §§11370 to 11529              | CAL. CODE REGS. tit. 1, §§1000 to 1440  | N/A                                      | <a href="https://www.dgs.ca.gov/OAH">https://www.dgs.ca.gov/OAH</a>   |
| <b>Colorado Office of Administrative Courts</b>         | COLO. REV. STAT. §§24-30-1001 to 24-30-1003   | COLO. CODE REGS. §§104-1:1 to 104-3:28  | N/A                                      | <a href="https://www.colorado.gov/oac">https://www.colorado.gov/oac</a>   |
| <b>Florida Division of Administrative Hearings</b>      | FLA. STAT. §§120.50 to 120.81; 440.33, 440.45 | FLA. ADMIN. CODE ANN. Title 20 Subtitle 60Q                                     | N/A                                      | <a href="https://www.doah.state.fl.us/ALJ/">https://www.doah.state.fl.us/ALJ/</a>   |
| <b>Georgia Office of State Administrative Hearings</b>  | GA. CODE ANN. §§50-13-40 to 50-13-44          | GA. COMP. R. & REG. 616-1-1-.01 to 616-1-3-.31                                  | N/A                                      | <a href="https://osah.ga.gov/">https://osah.ga.gov/</a>   |
| <b>Illinois Bureau of Administrative Hearings</b>       | <i>None at the time of this report.</i>       | <i>None at the time of this report.</i>   | Executive Order Nos. 2016-06 and 2017-04 | <a href="https://www2.illinois.gov/sites/AdministrativeHearings">https://www2.illinois.gov/sites/AdministrativeHearings</a> |
| <b>Indiana Office of Administrative Law Proceedings</b> | IND. CODE §§4-15-10.5-1 to 4-15-10.5-16       | <i>None at the time of this report.</i>   | N/A                                      | <i>No public website at the time of this report.</i>  |
| <b>Iowa Administrative Hearings Division</b>            | IOWA CODE §§10A.801 to §10A.801               | IOWA ADMIN. CODE r. 481-10.1(10A) to 481-10.29(10A)                             | N/A                                      | <a href="https://dia.iowa.gov/ahd">https://dia.iowa.gov/ahd</a>   |
| <b>Kansas Office of Administrative Hearings</b>         | KAN. STAT. ANN. §75-37,121                    | KAN. ADMIN. REGS. §1-39-1 to 1-39-4 (eff. Nov. 20, 1998; revoked Jan. 20, 2017) | N/A                                      | <a href="https://www.oah.ks.gov/">https://www.oah.ks.gov/</a>   |
| <b>Louisiana Division of Administrative Law</b>         | LA. REV. STAT. ANN. §§ 49:991 to 49:999.25    | LA. ADMIN. CODE tit. 1, Part III §§101 to 807                                   | N/A                                      | <a href="https://www.adminlaw.state.la.us/">https://www.adminlaw.state.la.us/</a>   |
| <b>Maryland Office of Administrative Hearings</b>       | MD. CODE, STATE GOV'T §§9-1601 to 9-1610      | MD. CODE REGS., Title 28  | N/A                                      | <a href="http://oah.maryland.gov/">http://oah.maryland.gov/</a>   |

**Table 3.17 (continued) - Legal Authority Over Central Panels**

| State and Agency Name  | Establishment of Agency  |  |  | Website URL   |
|--|--|--|--|---|
|  | Statute  | Rules  | Other                                    |   |
| <b>Massachusetts Division of Administrative Law Appeals</b>                          | MASS. GEN. LAWS ch. 7, §4H; ch. 71B, §2A   | 603 MASS. CODE REGS. 28:08                                 | N/A                                      | <a href="https://www.mass.gov/orgs/division-of-administrative-law-appeals">https://www.mass.gov/orgs/division-of-administrative-law-appeals</a>   |
| <b>Michigan Office of Administrative Hearings and Rules</b>                          | <i>None at the time of this report.</i>  | <i>None at the time of this report.</i>                    | Executive Order Nos. 2019-06 and 2019-13 | <a href="https://www.michigan.gov/lara/0,4601,7-154-89334_10576---,00.html">https://www.michigan.gov/lara/0,4601,7-154-89334_10576---,00.html</a> |
| <b>Minnesota Office of Administrative Hearings</b>                                   | MINN. STAT. §§14.48 to 14.69   | MINN. R. 1400.2000 to 1400.8613                            | N/A                                      | <a href="https://mn.gov/oah/">https://mn.gov/oah/</a>   |
| <b>Missouri Administrative Hearing Commission</b>                                    | MO. REV. STAT. §§621.015 to 621.275  | MO. CODE REGS. ANN. tit. 1 §§15-1.010 to 15-1.207          | N/A                                      | <a href="https://ahc.mo.gov/">https://ahc.mo.gov/</a>   |
| <b>New Jersey Office of Administrative Law</b>                                       | N.J. STAT. ANN. §§52:14F-1 to 52:14F-23; <i>see also</i> N.J. STAT. ANN. §§52:14B-1 to 52:14B-31 | N.J. ADMIN. CODE §§1:1-1.1 <i>et seq.</i>                  | N/A                                      | <a href="https://www.nj.gov/oal/index.shtml">https://www.nj.gov/oal/index.shtml</a>   |
| <b>North Carolina Office of Administrative Hearings</b>                              | N.C. GEN. STAT. §§7A-750 to 7A-769   | 26 N.C. ADMIN. CODE 03.0101 to 03.0504                     | N/A                                      | <a href="https://www.oah.nc.gov/">https://www.oah.nc.gov/</a>   |
| <b>North Dakota Office of Administrative Hearings</b>                                | N.D. CENT. CODE §§54-57-01 to 54-57-09   | N.D. ADMIN. CODE Title 98                                  | N/A                                      | <a href="https://www.nd.gov/oah/">https://www.nd.gov/oah/</a>   |
| <b>Oregon Office of Administrative Hearings</b>                                      | OR. REV. STAT. §§183.600 to 183.690  | OR. ADMIN. R. §§137-003-0000, 137-003-0501 to 137-003-0700 | N/A                                      | <a href="https://www.oregon.gov/oah/Pages/index.aspx">https://www.oregon.gov/oah/Pages/index.aspx</a>   |
| <b>South Carolina Administrative Law Court</b>                                       | S.C. CODE ANN. §§1-23-500 to 1-23-680  | <i>None appear to exist at the time of this report.</i>    | N/A                                      | <a href="https://www.scalc.net/default.aspx">https://www.scalc.net/default.aspx</a>   |
| <b>South Dakota Office of Hearing Examiners</b>                                      | S.D. CODIFIED LAWS §§1-26D-1 to 1-26D-12   | <i>None appear to exist at the time of this report.</i>    | N/A                                      | <a href="https://boa.sd.gov/ohe/default.aspx">https://boa.sd.gov/ohe/default.aspx</a>   |
| <b>Tennessee Administrative Procedure Division, Office of the Secretary of State</b> | TENN. CODE ANN. §§4-5-301 to 4-5-325   | TENN. COMP. R. & REGS. 1360-04-01-.01 to 1360-04-01-.20    | N/A                                      | <a href="https://sos.tn.gov/apd">https://sos.tn.gov/apd</a>   |
| <b>Texas State Office of Administrative Hearings</b>                                 | TEX. GOV'T CODE ANN. §§2003.001 to 2003.916  | 1 TEX. ADMIN. CODE §§155.1 to 155.509                      | N/A                                      | <a href="http://www.soah.texas.gov/">http://www.soah.texas.gov/</a>   |

**Table 3.17 (continued) - Legal Authority Over Central Panels**

| State and Agency Name                                  | Establishment of Agency                  |  |       | Website URL   |
|--|--|--|-------|---|
|  | Statute                                  | Rules  | Other |   |
| Washington State Office of Administrative Hearings     | WASH. REV. CODE §§34.12.010 to 34.12.160 | WASH. ADMIN. CODE Title 10                               | N/A   | <a href="http://oah.wa.gov/">http://oah.wa.gov/</a>   |
| Wisconsin Division of Hearings and Appeals             | WIS. STAT. §§227.43 to 227.60            | WIS. ADMIN. CODE HA Chapters 1-3; and WFSB Chapters 1-12 | N/A   | <a href="https://doa.wi.gov/Pages/AboutDOA/HearingsAndAppeals.aspx">https://doa.wi.gov/Pages/AboutDOA/HearingsAndAppeals.aspx</a> |
| Wyoming Office of Administrative Hearings              | WYO. STAT. ANN. §§9-2-2201 to 9-2-2203   | WYO. R. & REGS. 270.0001.1 §1 to 270.0001.7 §3           | N/A   | <a href="http://oah.wyo.gov/">http://oah.wyo.gov/</a>   |
| District of Columbia Office of Administrative Hearings | D.C. CODE §§2-1831.01 to 2-1831.19       | D.C. Code Mun. Regs. tit. 1 ch. 28                       | N/A   | <a href="https://oah.dc.gov/">https://oah.dc.gov/</a>   |

**Part II. Factors Driving Adoption of State Central Panels**

The factors driving the adoption of a central panel system for administrative hearings vary among the states, but historically, concerns over one or more of the following often serve as the basis for establishing a central panel: impartiality and equity; efficiency and cost-savings; and standardization and professionalization of the administrative hearings process.

**A. Equity and Impartiality**

An administrative law judge's ability to exercise impartiality when adjudicating a matter that involves the administrative law judge's own agency has long been a criticism of the decentralized administrative hearings process, a process by which agencies conduct contested case hearings "in house" with their own employees presiding over the hearings. Numerous states have justified a central panel system on the theory that central panel judges are both "free -- and perceived to be free -- of undue interference from the agencies for which they work[], thereby promoting confidence in [their] decisions[.]"<sup>17</sup> Further, proponents of central panel systems argue that by removing the adjudication of contested case matters from an agency with a direct interest

<sup>17</sup> Gillette, *supra* note 7, at 320.

in determining the legal rights, duties, or privileges of the specific parties involved, central panels may "provide fair and unbiased adjudications and due process to both the agency involved in the litigation and the public."<sup>18</sup>

Whether implementation of central panels actually results in a cadre of adjudicators who are truly independent of agency influence is subject to debate. Anecdotally, at least some administrative law judges who preside over central panel hearings have expressed "feel[ing] pressure[] to rule in favor of the agencies, at least in part because the central panel's budget is made up of incremental 'payments' for the central panel's services by the agencies they serve."<sup>19</sup> If an agency is dissatisfied by the result of a contested case decided by a central panel, the agency, if not required by statute to utilize the central panel, may decide to revert to an in-agency administrative hearings process or to contract the services of another adjudicator to hear the agency's contested cases.<sup>20</sup> In either instance, an agency's decision to turn away from a central panel may result in a loss of revenue for the central panel; to avoid this, an administrative law judge may feel pressure to rule in favor of an agency not on merit, but instead on a desire to retain that agency's "business."<sup>21</sup>

## B. Efficiency and Cost-Savings

Proponents of central panels emphasize the potential cost savings and increased efficiencies that may result from consolidating resources (including personnel) through a centralized administrative hearings system.<sup>22</sup> A central panel is often considered a cost-effective and more efficient choice for two main reasons: "economies of scale and flexibility in case assignment."<sup>23</sup>

Proponents suggest that the central panel model embodies the concept of economies of scale, or the notion that the cost to produce something is reduced when resources are shared and production facilities are increased.<sup>24</sup> Rather than each agency retaining its own specialized employees to preside over and administer contested cases in separate, independent hearing units,

---

<sup>18</sup> Gilbert, *supra* note 6, at 246 (citation omitted); *see also* Ann Wise, *Louisiana's Division of Administrative Law: An Independent Administrative Hearings Tribunal*, 30 J. Nat'l Ass'n Admin. L. Judiciary, Iss. 1, 2010, at 95, 96, available at <http://digitalcommons.pepperdine.edu/naalj/vol30/iss1/4> ("The justification for an independent central panel is basic fairness; it is not fair to combine into one person or political entity all of these powers: to investigate (like police), to decide whether to bring charges (like grand juries), to prosecute (like district attorneys), and to decide guilt or innocence (like judges and juries)."); and Bob Boerner, *Centralized Administrative Law Judge Panels*, THE LEGISLATIVE LAWYER (National Conference of State Legislatures Legal Services Staff Section), Summer 2003, at 1.

<sup>19</sup> Gillette, *supra* note 7, at 321 (citation omitted).

<sup>20</sup> *See id.* at 321-22.

<sup>21</sup> *See id.*

<sup>22</sup> *See, e.g.*, Julian Mann III, *Striving for Efficiency in Administrative Litigation: North Carolina's Office of Administrative Hearings*, 15 J. Nat'l Ass'n Admin. L. Judges 151, 156 (1995), available at <http://digitalcommons.pepperdine.edu/naalj/vol15/iss2/3>.

<sup>23</sup> John Hardwicke and Thomas E. Ewing, *The Central Panel: A Response to Critics*, 24 J. Nat'l Ass'n Admin. L. Judges 231, 233-34 (2004), available at <http://digitalcommons.pepperdine.edu/naalj/vol24/iss2/3>.

<sup>24</sup> *See id.* ("Just as an automobile plant can produce 1000 cars more efficiently than one producing 100, a hearings unit issuing 1000 orders a month can do so more efficiently than one issuing 100."). For a more detailed discussion of central panel cost savings over time, *see* discussion *infra* Chapter 3, Part IV.B., at 125-26.

a central panel creates a single agency that can handle a variety of contested case matters. The resources shared in a central panel agency, including "case management systems, operational staff, vehicles, office space," and administrative law judges, can make a central panel extremely efficient.<sup>25</sup> This is especially evident in central panels with higher caseloads, as "a larger hearing unit has the capacity, simply by virtue of its size, to absorb a greater amount of additional work than does a smaller one."<sup>26</sup> Consolidated and shared resources may result in efficiencies such as expanded caseload capacity, but some central panel directors have expressed concern that any efficiency gained may be diminished if new jurisdictions are added to a central panel either too rapidly or without a sufficient increase in funding.<sup>27</sup>

The flexibility in case assignments offered by a central panel system is an efficiency most clearly visible where there is a low volume of administrative hearings. In a decentralized administrative hearings system, where agencies are responsible for conducting and adjudicating any administrative hearing arising out of their own office, an agency with a lower volume of contested cases has greater volatility with respect to the work to be done versus the number of qualified people available to do the work.<sup>28</sup> "When cases decline, the agency has capacity; when they increase, either the agency suffers a backlog or it hires new staff. But, when cases decline again, as they surely will, there is capacity once more."<sup>29</sup> A central panel can protect against this volatility by cross-training some or all of its administrative law judges, thereby allowing flexibility in case assignments in order to more efficiently meet adjudicatory needs.

### **C. Standardization and Professionalization of the Administrative Hearings Process**

Another significant factor driving the adoption of central panel systems among the states is the desire for standardization and professionalization of the administrative hearings process. In states that have a decentralized administrative hearings system, there may be no uniform standard for conducting contested case hearings.<sup>30</sup> Thus, if the contested case procedure is not prescribed by statute or if agencies are not explicitly under the jurisdiction of a central panel, individual agencies may establish those procedures by rule, based on the criteria that an individual agency

---

<sup>25</sup> See Hardwicke, *supra* note 23, at 234.

<sup>26</sup> *Id.*

<sup>27</sup> See Rich, *supra* note 1, at 69.

<sup>28</sup> See discussion regarding the barriers, including staffing challenges, related to administrative hearings, *supra* Chapter 2, Part III.B., at 78-80.

<sup>29</sup> Hardwicke, *supra* note 23, at 235.

<sup>30</sup> For example, in Hawaii, contested cases are governed generally by the Administrative Procedure Act, as set forth in Chapter 91, Hawaii Revised Statutes. Some agencies in the State have adopted further regulations for contested case proceedings specific to the cases handled by those agencies. See, e.g., 5-34-1 *et seq.*, Hawaii Administrative Rules (HAR) (Department of the Attorney General Child Support Enforcement Practice and Procedure for Administrative Process); 17-2-1 *et seq.*, HAR (Department of Human Services General Provisions for Administrative Relief); and 16-201-1 *et seq.*, HAR (Department of Commerce and Consumer Affairs Administrative Practice and Procedure Rules). While these administrative rules adopted by various agencies may share similarities (e.g., rules governing *ex parte* communications, disqualification of a hearings officer), the scope and specificity of the administrative rules governing contested case hearings varies among the agencies.

chooses.<sup>31</sup> Proponents of central panels argue that the standardization of contested case procedures is an inherent benefit of central panels, in that procedural standardization creates "a level playing field between the agency and the respondent as policy-driven issues are litigated."<sup>32</sup>

In addition to nonuniform contested case procedures, agencies in a decentralized administrative hearings system may vary with respect to the qualifications required of administrative adjudicators. In contrast, a central panel generally establishes specific, standardized professional requirements for administrative law judges. The most common qualification for an administrative adjudicator is licensure as an attorney, but other qualifications may include a residency requirement or certain relevant professional experience. Even wide adoption of the title "administrative law judge" (rather than titles like "hearing officer," "referee," or any of a number of other descriptors) reflects the move toward professionalization and standardization of the administrative hearings process.<sup>33</sup>

### Part III. Common Factors Among Central Panels

Just as the primary factors driving adoption of a central panel system vary among the 28 jurisdictions examined for purposes of this report, the jurisdictions also differ with respect to central panel organization, jurisdiction, adjudicators, and authority. An examination of commonalities and differences between state central panels follows.

#### A. Organization

In an overwhelming majority of states with a central panel, the state legislature established the central panel; only Illinois and Michigan created their state central panels by executive order.<sup>34</sup> Despite the fact that nearly all states codified their central panels in statute, there is no uniformity with respect to the statutory schemes adopted among the states. Some states, most notably Maryland and Texas,<sup>35</sup> enacted comprehensive and specific legislation governing their state

---

<sup>31</sup> See, e.g., Edward A. Tomlinson, *The Maryland Administrative Procedure Act: Forty Years Old in 1997*, 56 Md. L. Rev. 196, 196-97 (1997), available at <http://digitalcommons.law.umaryland.edu/mlr/vol56/iss1/7> (noting that agencies "have come to legislate more than legislatures and to adjudicate more than courts.") (citation omitted); see also discussion regarding contested case procedures in Hawaii, *supra* note 30.

<sup>32</sup> Christopher B. McNeil, *The Model Act Creating a State Central Hearing Agency: Promises, Practical Problems, and a Proposal for Change*, 53 ADMIN. L. REV. 475, 478-79 (2001), available at <https://works.bepress.com/cbmcneil/7/>; see also Thomas E. Ewing, *Oregon's Hearing Officer Panel*, 23 J. Nat'l Ass'n Admin. L. Judiciary 57, 70-71 (2003).

<sup>33</sup> At the federal level, the term "administrative law judge" was codified in the 1978 amendments to the Administrative Procedure Act (replacing the term "hearing officer"). See Rich, *supra* note 1, at 7.

<sup>34</sup> See Ill. Exec. Order No. 2016-06 (establishing a Pilot Bureau of Administrative Hearings within the Illinois Department of Central Management Services); Ill. Exec. Order No. 2017-04 (making permanent the Bureau of Administrative Hearings within the Illinois Department of Central Management Services); Mich. Exec. Order No. 2019-06 (establishing, in Section 3, the Michigan Office of Administrative Hearings and Rules); and Mich. Exec. Order No. 2019-13 (modifying the jurisdiction of the Michigan Office of Administrative Hearings and Rules).

<sup>35</sup> See MD. CODE, STATE GOV'T §§9-1601 to 9-1610; and TEX. GOV'T CODE ANN. §§2003.001 to 2003.916.

central panel. Others, like Colorado<sup>36</sup> and Wyoming,<sup>37</sup> enacted a central panel through much less detailed legislation.

Central panels are considered to be "an organ of the executive branch" and thus, their duties are executive, not judicial, in nature.<sup>38</sup> Some state central panels closely mirror an arm of the judicial branch, but even in those instances, the central panels remain executive, not judicial, in both function and form. For example, South Carolina's central panel, designated the Administrative Law Court, requires its administrative law judges to meet the same qualifications required of the state's justices and judges "as set forth in Article V of the Constitution of this State[.]"<sup>39</sup> but South Carolina's central panel remains an executive, not judicial, agency.<sup>40</sup>

With the exceptions of Colorado, Kansas, and Tennessee,<sup>41</sup> state central panels are nearly always "independent" agencies within a state's executive branch. This independence is meant to

---

<sup>36</sup> In the case of Colorado, there are 3 brief statutory sections that specifically establish the Office of Administrative Courts. See COLO. REV. STAT. §§24-30-1001 to 24-30-1003. As a division within Colorado's Department of Personnel, the Office of Administrative Courts was established as a "type 2 transfer." See COLO. REV. STAT. §24-30-1001(1) ("[T]here is hereby created the office of administrative courts in the department of personnel, the head of which shall be the executive director of the department of personnel. The office of administrative courts shall exercise its powers, duties, and functions as a type 2 agency"). As a type 2 transfer, the Office of Administrative Courts is *not* independent from the Department of Personnel and therefore retains no independent powers or authority. See Rebecca Hausmann, Powers, Duties, and Functions of Executive Branch Agencies (Type 1, type 2, and type 3 transfers), Colorado LegiSource (April 5, 2012), <https://legisource.net/2012/04/05/powers-duties-and-functions-of-executive-branch-agencies-type-1-type-2-and-type-3-transfers/> (last visited October 30, 2019) ("In a type 2 transfer, all or part of an existing department or agency is transferred to another principal department. Under a type 2 transfer . . . the agency being transferred does not retain any independent powers."). The principal department holds "all statutory authority, powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including functions of budgeting, purchasing, and planning[.]" See *id.* In Colorado, only a type 1 transfer would preserve the independence of any agency transferred to a principal department. See *id.*

<sup>37</sup> Similar to Colorado, Wyoming established its Office of Administrative Hearings in 3 brief statutory sections. See WYO. STAT. ANN. §§9-2-2201 to 9-2-2203. In contrast to Colorado, Wyoming's Office of Administrative Hearings is a wholly independent executive branch agency. WYO. STAT. ANN. §9-2-2201(a). The Wyoming Office of Administrative Hearings was established to consolidate 2 administrative hearings offices: the Office of Independent Hearing Examiners and the Office of Hearing Examiners. See WYO. STAT. ANN. §9-2-2202(a). The former was responsible for administrative hearings related to workers compensation, and the latter was responsible for administrative hearings related to driver licenses. See WYO. STAT. ANN. §§27-14-602 and 31-7-105. While most of its caseload appears to involve workers compensation and driver license matters, the Wyoming Office of Administrative Hearings also conducts contested case hearings on various other matters, including those involving state employee personnel and child abuse and neglect central registry cases. See FY2017 WYOMING OFFICE OF ADMINISTRATIVE HEARINGS ANNUAL REPORT, available at <http://oah.wyo.gov> (last visited December 23, 2019). The Director of the Wyoming Office of Administrative Hearings is authorized to promulgate further "reasonable rules and regulations necessary to carry out the functions and responsibilities assigned to the office." WYO. STAT. ANN. §9-2-2203; see also WYO. R. & REGS. 270.0001.1 §1 to 270.0001.7 §3 (the administrative rules governing the Wyoming Office of Administrative Hearings).

<sup>38</sup> McNeil, *supra* note 32, at 476.

<sup>39</sup> S.C. CODE ANN. §1-23-520.

<sup>40</sup> S.C. CODE ANN. §1-23-500 ("There is created the South Carolina Administrative Law Court, which is an agency and a court of record *within the executive branch* of the government of this State." (emphasis added)).

<sup>41</sup> The central panels in Colorado, Kansas, and Tennessee are *not* independent agencies. Colorado's Office of Administrative Courts, a division within the Department of Personnel, is not an independent agency; the Department of Personnel has control over all aspects and functions of the Office of Administrative Courts. See discussion, *supra* note 36. In Kansas, the Office of Administrative Hearings was established within the Department of Administration.

allow the central panel to operate outside of the influence of any other agency or department.<sup>42</sup> Some states, however, appear to attach the central panel to another agency or department for purposes of sharing resources such as office space. For example, Florida's central panel is a division within the Department of Management Services, but the Division of Administrative Hearings is "not [] subject to control, supervision, or direction" by the Department.<sup>43</sup> While not associated with one another with respect to agency mission or function, the Minnesota Office of Administrative Hearings is physically co-located and administratively merged, to some degree, with the Minnesota Department of Revenue.<sup>44</sup> Similarly, New Jersey's Office of Administrative Law is located "in but not of the Department of Treasury[.]"<sup>45</sup> States that attach a central panel to another agency merely for administrative purposes often make clear, whether through statute, rule, or other public materials,<sup>46</sup> that any association with another state agency or department does not impact the central panel's independence.<sup>47</sup>

Most state central panels have a headquarters office, usually located in the capital city of the state, in addition to one or more satellite offices in other locations throughout the state.<sup>48</sup> Other

---

KAN. STAT. ANN. §75-37,121(a). While the Office of Administrative Hearings has its own director, the director is appointed by the Secretary of Administration, and it is the Secretary of Administration, not the director, who is authorized to adopt rules and regulations with respect to the procedures and performance of the Office of Administrative Hearings. KAN. STAT. ANN. §75-37,121(e). Tennessee's Administrative Procedures Division is housed within the Office of the Secretary of State, and the Secretary of State has authority to adopt rules governing the policies and procedures of the division. *See* TENN. CODE ANN. §4-5-321. It should be noted that, while the Michigan Office of Administrative Hearings and Rules was established as an agency within the extant Department of Licensing and Regulatory Affairs, it was established as a type 1 agency, which means that the Michigan Office of Administrative Hearings and Rules operates independently of the principal department. *See* Mich. Exec. Order No. 2019-06, Sec. 3.

<sup>42</sup> *See generally* discussion regarding equity and impartiality *supra* Chapter 3, Part II.A., at 89-90.

<sup>43</sup> FLA. STAT. §120.65(1) (also specifying that the Department of Management Services "shall provide administrative support and service to the division *to the extent requested by the director*" (emphasis added)).

<sup>44</sup> *See* MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS: ABOUT US: LOCATIONS AND CONTACT INFORMATION, <https://mn.gov/oah/about-us/contact-us/> (last visited September 20, 2019); *see also* Bruce H. Johnson, *A History of Minnesota Administrative Procedure and the Office of Administrative Hearings* 53 (2011), [https://mn.gov/oah/assets/APAHistoryJohnson\\_tcm19-81576.pdf](https://mn.gov/oah/assets/APAHistoryJohnson_tcm19-81576.pdf) (noting the significant financial and administrative benefit gained by both Minnesota's Office of Administrative Hearings and Department of Revenue through sharing a physical building in addition to resources including a library, security, reception, and cashier services).

<sup>45</sup> STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW: ABOUT OAL, <https://www.state.nj.us/oal/about/about/index.html> (last visited November 12, 2019).

<sup>46</sup> Public materials can include a central panel's website or printed informational material.

<sup>47</sup> *See, e.g.,* CALIFORNIA OFFICE OF ADMINISTRATIVE HEARINGS: ABOUT THE OFFICE OF ADMINISTRATIVE HEARINGS, <https://www.dgs.ca.gov/OAH/About> (last visited November 12, 2019) ("The Office of Administrative Hearings (OAH) is an independent office housed within the Department of General Services for administrative purposes."); Johnson, *supra* note 44, at 52-53 (discussing the mutually beneficial circumstances that led the Minnesota Office of Administrative Hearings to agree in 2005 to co-locate in a government building with the Minnesota Department of Revenue while remaining independent government agencies); and STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW, *supra* note 45 (specifying that the Office of Administrative Law "is independent of supervision or control by the Department of Treasury").

<sup>48</sup> *See, e.g.,* Mann, *supra* note 22, at 166 ("Administrative Law Judges conduct administrative hearings in all of North Carolina's one hundred counties[,] but "litigants are routinely directed to regionally convenient cities" in the State.); MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS, *supra* note 44 (specifying a main office in St. Paul, a second office in Duluth, and four "hub city locations," but providing further that the office "conducts hearings in locations across Minnesota - including Duluth, Walker, Alexandria, Mankato, and Rochester."); STATE OF NEW JERSEY OFFICE OF ADMINISTRATIVE LAW: THE GUIDE TO REPRESENTING YOURSELF AT AN ADMINISTRATIVE HEARING, LOCATION OF HEARING, <https://www.nj.gov/oal/hearings/guide/#nbr12> (last visited November 14, 2019)



states may have only a single office, but may conduct hearings at various locations throughout the state.<sup>49</sup> For example, Texas has a headquarters office in Austin, 7 satellite offices,<sup>50</sup> and additionally conducts contested case hearings in more remote areas of the state, nearly always in public buildings that are made available for the hearings as needed.<sup>51</sup> To increase the accessibility of the administrative hearings process, Louisiana, Minnesota, and Missouri, upon request, allow hearings to be conducted via video conferencing.<sup>52</sup> Additionally, Louisiana specifically authorizes telephonic conferencing for contested case hearings.<sup>53</sup>

## B. Jurisdiction

Most states establish a central panel's specific jurisdiction by statute,<sup>54</sup> and currently, none of the central panels examined for purposes of this report has been granted jurisdiction over the entirety of a state's administrative hearings. Many states enumerate by statute the individual agencies that are required to use the central panel to conduct administrative hearings.<sup>55</sup> Other states specify the agencies that are exempt from any requirement to utilize the central panel for administrative hearings.<sup>56</sup> It appears that these exemptions, whether specific or general, are often

---

(specifying a headquarters office in Trenton, with satellite offices in Newark and Atlantic City); *and* Ewing, *supra* note 32, at 83.

<sup>49</sup> See, e.g., OFFICIAL MISSOURI STATE WEBSITE: OFFICE OF ADMINISTRATION, ADMINISTRATIVE HEARING COMMISSION, <https://www.mo.gov/government/guide-to-missouris-government/office-of-administration/> (last visited November 12, 2019) (specifying a single office for the Administrative Hearing Commission, but noting that the Commission "conducts prehearing conferences and full evidentiary hearings throughout Missouri, making findings of fact and conclusions of law relating to licensing, tax, and medical provider disputes").

<sup>50</sup> TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS: CONTACT US, <http://www.soah.texas.gov/Agency/contactUs.html> (last visited November 6, 2019) (specifying 8 office locations, including a headquarters in Austin and satellite offices in Corpus Christi, Dallas, El Paso, Fort Worth, Houston, Lubbock, and San Antonio).

<sup>51</sup> See Allen C. Hoberg, *Ten Years Later: The Progress of State Central Panels*, 21 J. Nat'l Ass'n of Admin. L. Judges 235, 242 (2001). See also TEXAS STATE OFFICE OF ADMINISTRATIVE HEARINGS: HISTORY, <http://www.soah.texas.gov/Agency/history.html> (last visited November 13, 2019).

<sup>52</sup> See LA. REV. STAT. ANN. §49:994(D)(4) (authorizing administrative law judges to "conduct adjudications or conferences in person or by . . . video conference, or similar communication equipment, and administer oaths in such proceedings"); MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS: SELF HELP, <https://mn.gov/oah/self-help/contact-us/> (last visited September 20, 2019) ("OAH also conducts hearings via video conferencing upon request."); and MO. REV. STAT. §621.150 ("Any party to a case before the administrative hearing commission may request that the hearing be held via videoconferencing").

<sup>53</sup> See LA. REV. STAT. ANN. §49:994(D)(4) (authorizing administrative law judges to "conduct adjudications or conferences in person or by telephone . . . or similar communication equipment, and administer oaths in such proceedings").

<sup>54</sup> Colorado and Tennessee appear statutorily silent with respect to the central panel jurisdiction. See COLO. REV. STAT. §§24-30-1001 to 24-30-1003; and TENN. CODE ANN. §§4-5-301 to 4-5-325.

<sup>55</sup> See, e.g., ALASKA STAT. §44.64.030(a); CAL. GOV'T CODE §§11372 and 11501; Ill. Exec. Order 2017-04 ("The Bureau shall enter into interagency contracts for purposes of providing consolidated administrative hearing functions with up to 25 State agencies, as authorized by the Intergovernmental Cooperation Act and other applicable law."); KAN. STAT. ANN. §75-37,121(h); MASS. GEN. LAWS ch. 7, §4H; MO. REV. STAT. §§621.045, 621.047(1), 621.050(1), 621.052(1), and 621.055; N.C. GEN. STAT. §§7A-750 and -759; OR. REV. STAT. §183.635; S.D. CODIFIED LAWS §1-26D-4; TEX. GOV'T CODE ANN. §§2003.047(a), 2003.049(a), 2003.101(a), and 2003.901; WASH. REV. CODE §§34.12.034 to 34.12.038; and D.C. CODE §2-1831.03(a).

<sup>56</sup> See, e.g., ARIZ. REV. STAT. § 41-1092.02(A); FLA. STAT. §120.80 and 120.81; GA. CODE ANN. §50-13-42; IND. CODE §4-15-10.5-1(c); LA. REV. STAT. ANN. §49:992(D); MD. CODE, STATE GOV'T §9-1601(a); MINN. STAT.

a legislative compromise agreed upon during debates over the establishment of a central panel "in order to avoid a potentially deadly political battle."<sup>57</sup> When establishing a statutory scheme for a central panel, states often include a provision allowing any exempt agency to contract for the central panel's administrative hearings services for all or some of the agency's administrative hearing needs.<sup>58</sup>

The cases most frequently included in a central panel's jurisdiction include suspensions or revocations (frequently related to motor vehicle licensing or professional licensing), individual benefit claims, disability allowances, child support, and workers compensation matters.<sup>59</sup> Some, though not many, hear ratemaking or valuation cases and rulemaking or regulations cases.<sup>60</sup> The most common types of cases within the jurisdiction of an individual state's central panel can be found in Table 3.18.

---

§14.03(2); N.J. STAT. ANN. §52:14F-8; N.C. GEN. STAT. §150B-1; N.D. CENT. CODE §28-32-01(2); OR. REV. STAT. §183.635; S.C. CODE ANN. §1-23-600(A)(1)-(5); and WASH. REV. CODE §34.12.020(4).

<sup>57</sup> Rich, *supra* note 1, at 11.

<sup>58</sup> See ALASKA STAT. § 44.64.030(b) ("An agency may request the office to conduct an administrative hearing or other proceeding of that agency[.]"); ARIZ. REV. STAT. §41-1092.01(J) ("The office may provide administrative law judges on a contract basis to *any* governmental entity to conduct any hearing not covered by this article." (emphasis added)); GA. CODE ANN. §50-13-42(a) (specifying that any office may contract for the services of the Office of State Administrative Hearings "on a case-by-case basis."); Ill. Exec. Order No. 2017-04 (authorizing the Bureau of Administrative Hearings to enter into contracts for administrative hearing functions for entities outside the 25 agencies in the Bureau's jurisdiction); IOWA CODE §10A.801(5) ("The division may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding."); and N.C. GEN. STAT. §7A-758.

<sup>59</sup> See Rich, *supra* note 1, at 64.

<sup>60</sup> See *id.*

**Table 3.18 - Common Central Panel Subject Matter Jurisdiction by State**

| State                 | Child Support | Medicaid | Motor Vehicle Licensing | Special Education | Professional Licensing | Public Benefits/ Assistance | Public Utilities | Workers Compensation |
|-----------------------|---------------|----------|-------------------------|-------------------|------------------------|-----------------------------|------------------|----------------------|
| Alaska                | x             | x        | x                       |                   | x                      | x                           | x                | x                    |
| Arizona               | x             | x        | x                       | x                 | x                      |                             |                  | x                    |
| California            | x             |          |                         | x                 | x                      |                             |                  |                      |
| Colorado              |               | x        |                         |                   | x                      | x                           |                  | x                    |
| Florida               | x             | x        |                         | x                 |                        |                             |                  | x                    |
| Georgia               | x             | x        |                         | x                 | x                      | x                           |                  |                      |
| Illinois              | x             |          | x                       |                   | x                      | x                           |                  | x                    |
| Indiana <sup>61</sup> |               |          |                         |                   |                        |                             |                  |                      |
| Iowa                  | x             | x        |                         |                   | x                      | x                           |                  |                      |
| Kansas                |               | x        |                         | x                 | x                      | x                           |                  |                      |
| Louisiana             | x             | x        |                         | x                 | x                      | x                           |                  |                      |
| Maryland              | x             | x        |                         | x                 | x                      | x                           |                  |                      |
| Massachusetts         |               |          |                         | x                 | x                      | x                           |                  |                      |
| Michigan              | x             | x        |                         | x                 | x                      | x                           |                  |                      |
| Minnesota             |               |          |                         | x                 | x                      | x                           | x                | x                    |
| Missouri              |               |          |                         | x                 | x                      | x                           |                  |                      |
| New Jersey            |               |          | x                       | x                 | x                      | x                           | x                |                      |
| North Carolina        | x             | x        | x                       | x                 | x                      | x                           |                  |                      |
| North Dakota          |               | x        | x                       | x                 | x                      | x                           |                  |                      |
| Oregon                | x             | x        |                         | x                 | x                      |                             |                  |                      |
| South Carolina        |               | x        | x                       |                   |                        | x                           |                  |                      |
| South Dakota          | x             | x        |                         |                   |                        | x                           |                  |                      |
| Tennessee             |               |          |                         | x                 |                        |                             |                  |                      |
| Texas                 | x             |          | x                       | x                 | x                      |                             | x                |                      |
| Washington            | x             | x        |                         | x                 | x                      | x                           |                  |                      |
| Wisconsin             |               | x        |                         | x                 | x                      | x                           |                  | x                    |
| Wyoming               |               | x        | x                       |                   | x                      | x                           |                  | x                    |
| District of Columbia  | x             | x        |                         | x                 |                        | x                           |                  |                      |

<sup>61</sup> Indiana's Office of Administrative Law Proceedings will open its doors in January 2020 and, therefore, is not included in this table. See IND. CODE §4-15-10.5-1(a).

## C. Administrative Law Judges

### 1. Position Title

Twenty of the 28 jurisdictions examined for purposes of this report use the term "administrative law judge" for at least some of the presiding officers employed by their central panel.<sup>62</sup> The remaining states refer to this individual as a "hearing officer,"<sup>63</sup> "presiding officer,"<sup>64</sup> "commissioner,"<sup>65</sup> "administrative magistrate,"<sup>66</sup> "adjudicator,"<sup>67</sup> or "hearing examiner."<sup>68</sup> For purposes of this chapter, however, the term "administrative law judge" will be used for general references to individuals who preside over contested case hearings in a central panel system.

While many state central panels use only a single primary designation for those who preside over contested case matters, Massachusetts<sup>69</sup> and Tennessee<sup>70</sup> are unique in employing both administrative law judges and hearing officers in their central panels. In Massachusetts, the separate designations are distinct roles requiring different qualifications: hearing officers preside over special education appeals only and must meet specific federal qualifications and criteria to do so, while administrative law judges (called "administrative magistrates") preside over a wider range of other contested case matters.<sup>71</sup> In Tennessee, the separate designations appear to relate specifically to qualifications of the adjudicators: administrative law judges are required to be licensed attorneys, but by definition, hearing officers are "not licensed to practice law."<sup>72</sup> There appears to be no distinction in statute with respect to the particular contested case matters over which Tennessee's administrative law judges and hearing officers may preside.<sup>73</sup>

---

<sup>62</sup> See, e.g., ALASKA STAT. § 44.64.040; ARIZ. REV. STAT. §41-1092.01(C)(3); CAL. GOV'T CODE §11502; COLO. REV. STAT. §24-30-1003; FLA. STAT. §120.65; GA. CODE ANN. §50-13-40(e)(1); IND. CODE §4-15-10.5-10(1); IOWA CODE §10A.801(3)(a); LA. REV. STAT. ANN. §49:994; MD. CODE, STATE GOV'T §9-1604; MINN. STAT. §14.48(3); N.J. STAT. ANN. §52:14F-4; N.C. GEN. STAT. §7A-752; N.D. CENT. CODE §54-57-01(3); OR. REV. STAT. §183.605; S.C. CODE ANN. §1-23-510; TENN. CODE ANN. §4-5-102(1) (called "administrative judge"); TEX. GOV'T CODE ANN. §2003.041(a); WASH. REV. CODE §34.12.030; and D.C. CODE §2-1831.08.

<sup>63</sup> See TENN. CODE ANN. §4-5-102(4).

<sup>64</sup> See KAN. STAT. ANN. §75-37,121.

<sup>65</sup> See MO. REV. STAT. §621.015.

<sup>66</sup> See MASS. GEN. LAWS ch. 7, §4H.

<sup>67</sup> See Ill. Exec. Order No. 2017-04(I).

<sup>68</sup> See S.D. CODIFIED LAWS §1-26D-3; WIS. STAT. §227.43(1)(a); and WYO. STAT. ANN. §9-2-2201(c).

<sup>69</sup> See MASS. GEN. LAWS ch 7, §4H and ch. 71B, §2A.

<sup>70</sup> See TENN. CODE ANN. §4-5-102(1) and (4).

<sup>71</sup> Massachusetts receives federal assistance for the education of children with disabilities, which is why its hearing officers are required to meet certain qualifications and criteria set forth in related federal regulations regarding the provision of impartial due process hearings. See MASS. GEN. LAWS ch. 71B, §2A. In contrast, administrative law judges in Massachusetts are governed only by state statute; they are required to have trial experience and, for those "responsible for adjudicating public construction contract disputes[, they] must have had prior experience in construction law[.]" See MASS. GEN. LAWS ch. 7, §4H.

<sup>72</sup> See TENN. CODE ANN. §4-5-102(1) and (4).

<sup>73</sup> See *id.* See also TENN. CODE ANN. §4-5-301.

Half of the jurisdictions examined for purposes of this report statutorily designate the head of a central panel as the "chief administrative law judge."<sup>74</sup> In other jurisdictions, this individual is referred to as "director,"<sup>75</sup> "bureau chief,"<sup>76</sup> "administrator,"<sup>77</sup> "chief hearing examiner,"<sup>78</sup> or "chief administrative magistrate."<sup>79</sup> Neither Missouri nor Tennessee make a separate statutory designation for the head of the state central panel.<sup>80</sup> For purposes of this report, "chief administrative law judge" will encompass all of these terms. Table 3.19, *infra* at pages 102 to 106, includes the various titles that each state uses for all adjudicators in their central panel agency.

## 2. Appointment System

States vary significantly in the number of administrative law judges employed to conduct hearings in the central panel system,<sup>81</sup> but only 2 states designate the specific number of administrative law judges that may be employed by the central panel: Missouri has a statutory maximum of 5 administrative law judges (called "commissioners")<sup>82</sup> and South Carolina caps their administrative law judge count at 6.<sup>83</sup> North Carolina's General Assembly is required by statute to establish the number of administrative law judges and employees of the Office of Administrative

<sup>74</sup> See ALASKA STAT. §44.64.010(a); ARIZ. REV. STAT. §41-1092.01(B) and (C)(1); FLA. STAT. §120.65(1) (designated as "director" and "chief administrative law judge"); GA. CODE ANN. §50-13-40 (designated as "chief state administrative law judge"); IOWA CODE §10A.801 (designated as "administrator" and "chief administrative law judge"); MD. CODE, STATE GOV'T §9-1603; MINN. STAT. §14.48(2); N.J. STAT. ANN. §52:14F-3; N.C. GEN. STAT. §7A-752; OR. REV. STAT. §183.610; S.C. CODE ANN. §1-23-510(D); TEX. GOV'T CODE ANN. §2003.022; WASH. REV. CODE §34.12.010; and D.C. CODE §2-1831.02(b).

<sup>75</sup> See CAL. GOV'T CODE § 11370.2(a); COLO. REV. STAT. §24-30-1003(1.5); IND. CODE §4-15-10.5-8; KAN. STAT. ANN. §75-37,121(a); LA. REV. STAT. ANN. §49:995(A); Mich. Exec. Order No. 2019-06(3) (referred to as "executive director"); N.D. CENT. CODE §54-57-01(2); and WYO. STAT. ANN. §9-2-2201(b) (referred to as "director" and "chief hearing examiner").

<sup>76</sup> See Ill. Exec. Order No. 2017-04(II).

<sup>77</sup> See IOWA CODE §10A.801(1)(a) and (2) (the head of the Administrative Hearings Division of the Iowa Department of Inspections and Appeals is designated the "Administrator" and "Chief Administrative Law Judge"); and WIS. STAT. §227.43(1).

<sup>78</sup> See S.D. CODIFIED LAWS §1-26D-2.

<sup>79</sup> See MASS. GEN. LAWS ch. 7, §4H.

<sup>80</sup> See generally MO. REV. STAT. §§621.015 to 621.275; and TENN. CODE ANN. §§4-5-301 to 4-5-325.

<sup>81</sup> For example, Washington employs over 100 administrative law judges in its central panel. See OFFICE OF ADMINISTRATIVE HEARINGS: OAH ADMINISTRATIVE LAW JUDGES, <http://oah.wa.gov/Content-Area-Management/All-About-OAH-Hub/OAH-Judges> (last visited December 10, 2019). Minnesota currently employs 15 administrative law judges (including the chief administrative law judge) and 16 workers' compensation judges. See MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS: ABOUT US - JUDGE AND ATTORNEY PROFILES, <https://mn.gov/oah/about-us/judge-profiles/> (last visited November 12, 2019).

<sup>82</sup> See MO. REV. STAT. §621.015 (establishing a maximum of 5 commissioners and requiring that all are appointed by the governor with the advice and consent of the Missouri state senate).

<sup>83</sup> See S.C. CODE ANN. §1-23-510(A) (specifying 6 administrative law judge positions and requiring that all are to be elected by the South Carolina General Assembly in a joint legislative session).

Hearings.<sup>84</sup> Most other states authorize the chief administrative law judge, as head of the central panel, to hire all other administrative law judges as "necessary."<sup>85</sup>

Chief administrative law judges are most often appointed by a state's governor.<sup>86</sup> Eight states and the District of Columbia add an additional requirement that the governor's appointment must be either confirmed by, or made with the advice and consent of, the state senate.<sup>87</sup> Alaska's governor appoints that state's chief administrative law judge, and the appointment is to be confirmed by the state legislature as a whole.<sup>88</sup> Three states (Florida, Kansas, and Massachusetts) empower certain administrative authorities to appoint the chief administrative law judge.<sup>89</sup> The Chief Justice of the North Carolina Supreme Court appoints that state's chief administrative law

---

<sup>84</sup> See N.C. GEN. STAT. §7A-760(a) ("The number of administrative law judges and employees of the Office of Administrative Hearings shall be established by the General Assembly."). It is not clear how the North Carolina General Assembly establishes the number of administrative law judges and employees of the North Carolina Office of Administrative Hearings (e.g., through session law or fiscal appropriation for specified numbers and categories of Office of Administrative Hearing employees). Currently, there appear to be 58 total employees, including administrative law judges and other employees, on staff at the North Carolina Office of Administrative Hearings. See NORTH CAROLINA OFFICE OF ADMINISTRATIVE HEARINGS: STAFF, <https://www.oah.nc.gov/contact/staff> (last visited November 12, 2019).

<sup>85</sup> See, e.g., ALASKA STAT. §44.64.020(a)(3); ARIZ. REV. STAT. §41-1092.01(C)(3) (authorizing the director of the Arizona Office of Administrative Hearings to "hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out" the requirements of the office); CAL. GOV'T CODE §11502(b); GA. CODE ANN. §50-13-40(e); IND. CODE §4-15-10.5-10(1) (authorizing the director of the Office of Administrative Law Proceedings to "[h]ire or contract with administrative law judges and other employees as necessary"); IOWA CODE §10A.801(3)(a) ("The department shall employ a sufficient number of administrative law judges to conduct proceedings for which agencies are required[.]"); LA. REV. STAT. ANN. §49:994(A); MD. CODE, STATE GOV'T §9-1604(a)(3); MASS. GEN. LAWS ch. 7, §4H and ch. 71B, §2A ("Subject to appropriation [the chief administrative magistrate] may employ such persons as may be required to discharge the responsibilities of the division, including administrative magistrates[.]"); MINN. STAT. §14.48(2) (authorizing the chief administrative law judge to "appoint additional administrative law judges and compensation judges to serve in the office as necessary"); N.D. CENT. CODE §54-57-01(3) (authorizing the director of administrative hearings to "employ or appoint additional administrative law judges to serve in the office as necessary"); OR. REV. STAT. §183.610(1) and (2) (authorizing the chief administrative law judge to "employ all persons necessary for the administration of the office"); S.D. CODIFIED LAWS §1-26D-3 ("The chief hearing examiner may appoint such other hearing examiners and other staff as are necessary to carry out the provisions of this chapter[.]"); TEX. GOV'T CODE ANN. §§2003.041(a) and 2003.0411(a); WASH. REV. CODE §34.12.030(1); WIS. STAT. §227.43(1)(a); and WYO. STAT. ANN. §9-2-2201(c).

<sup>86</sup> While a total of 15 states, by statute, include the governor in the appointment process for the chief administrative law judge, only 6 states authorize the state's governor, alone, to appoint the chief administrative law judge: Arizona, Georgia, Indiana, Oregon, South Dakota, and Texas. See ARIZ. REV. STAT. §41-1092.01(B); GA. CODE ANN. §50-13-40(b); IND. CODE §4-15-10.5-8; OR. REV. STAT. §183.610(1); S.D. CODIFIED LAWS §1-26D-2; and TEX. GOV'T CODE ANN. §2003.022(a).

<sup>87</sup> The jurisdictions requiring the governor's appointment to either be confirmed by or made with the advice and consent of the state senate are: California, Louisiana, Maryland, Minnesota, New Jersey, North Dakota, Washington, and Wyoming. See CAL. GOV'T CODE §11370.2(b); LA. REV. STAT. ANN. §49:995(A); MD. CODE, STATE GOV'T §9-1603(a); MINN. STAT. §14.48(2); N.J. STAT. ANN. §52:14F-3; N.D. CENT. CODE §54-57-01(2); WASH. REV. CODE §§34.12.010 and 34.12.120; and WYO. STAT. ANN. §9-2-2201(b). The chief administrative law judge in the District of Columbia is appointed by the mayor with the advice and consent of the District of Columbia Council. See D.C. CODE §2-1831.04(b)(1).

<sup>88</sup> See ALASKA STAT. §44.64.010(c).

<sup>89</sup> See FLA. STAT. §120.65(1) (requiring appointment of the chief administrative law judge by the Administration Commission, to be confirmed by the state senate); KAN. STAT. ANN. §75-37,121(a) (requiring appointment by the Kansas Secretary of Administration); and MASS. GEN. LAWS ch. 7, §4H (appointed by the Secretary of the Executive Office for Administration and Finance with the approval of the Massachusetts governor).

judge.<sup>90</sup> South Carolina's chief administrative law judge is elected by the South Carolina General Assembly.<sup>91</sup> Colorado, Iowa, and Wisconsin are statutorily silent with respect to who appoints the chief administrative law judge,<sup>92</sup> and Missouri and Tennessee make no statutory provision at all for a chief administrative law judge.<sup>93</sup> It is worthwhile to note that some states designate by statute a term limit for the chief administrative law judge, but there is no consistency among states with respect to these limits.<sup>94</sup>

In nearly all states, the chief administrative law judge is authorized to hire other administrative law judges. Six jurisdictions, however, adopt a different process for this type of hiring. Colorado authorizes the Executive Director of the Department of Personnel to hire administrative law judges.<sup>95</sup> In both Florida and Missouri, the governor appoints all of the state's administrative law judges.<sup>96</sup> New Jersey also requires that the governor appoint all of the state's administrative law judges, but the governor must do so with the advice and consent of the state senate.<sup>97</sup> All of South Carolina's administrative law judges, including the chief judge, are elected by the South Carolina General Assembly.<sup>98</sup> The District of Columbia appoints all of their administrative law judges by majority vote of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings.<sup>99</sup>

---

<sup>90</sup> See N.C. GEN. STAT. §7A-752.

<sup>91</sup> See S.C. CODE ANN. §1-23-510(A). It should be noted that since the members of South Carolina's General Assembly are so closely tied to the appointment process for the state's administrative law judges, a member of the General Assembly is disqualified from being elected an administrative law judge at the time of legislative service and for 4 years after the member ceases to be a member of the General Assembly. See S.C. CODE ANN. §1-23-525.

<sup>92</sup> See COLO. REV. STAT. §24-30-1003(1.5) (referencing the director of the office of administrative courts, but silent regarding the director's appointment); IOWA CODE §10A.801(1)-(2) (defining the role of administrator of the administrative hearings division, but silent regarding the administrator's appointment); and WIS. STAT. §227.43 (defining the role of administrator of the division of hearings and appeals generally, but silent regarding the administrator's appointment).

<sup>93</sup> See generally MO. REV. STAT. §§621.015 to 621.275; and TENN. CODE ANN. §§4-5-301 to 4-5-325.

<sup>94</sup> Georgia, Louisiana, Maryland, Minnesota, New Jersey, North Dakota, and the District of Columbia each establish a 6-year appointment term for their state's chief administrative law judge. See GA. CODE ANN. §50-13-40(b); LA. REV. STAT. ANN. §49:995(B)(1) (also authorizing reappointment and confirmation to subsequent 6-year terms without limit); MD. CODE, STATE GOV'T §9-1603(b)(1); MINN. STAT. §14.48(2); N.J. STAT. ANN. §52:14F-3; N.D. CENT. CODE §54-57-01(2); and D.C. CODE §2-1831.04(b)(2). Alaska, South Carolina, and Washington limit their chief administrative law judges to appointment terms of 5 years. See ALASKA STAT. §44.64.010(c) (also prohibiting any chief administrative law judge from serving more than 3 full or partial terms); S.C. CODE ANN. §1-23-510(A); and WASH. REV. CODE §34.12.010. Florida and North Carolina establish 4-year appointment terms for their chief administrative law judges. FLA. STAT. §440.45(1)(a) (establishing the office of deputy chief judge of compensation claims as a 4-year appointment); and N.C. GEN. STAT. §7A-752 (establishing a 4-year appointment term for the chief administrative law judge). Texas authorizes its chief administrative law judge to serve only 2-year appointment terms. See TEX. GOV'T CODE ANN. §2003.022(a). Wyoming designates that the term of its chief administrative law judge (called "director" and "chief hearing examiner") expires at the end of the term of office of the governor that made the appointment. See WYO. STAT. ANN. §9-2-2201(b).

<sup>95</sup> See COLO. REV. STAT. §24-30-1003(1).

<sup>96</sup> See FLA. STAT. §440.45(2)(a); and MO. REV. STAT. §621.015.

<sup>97</sup> See N.J. STAT. ANN. §52:14F-4.

<sup>98</sup> See S.C. CODE ANN. §1-23-510.

<sup>99</sup> See D.C. CODE §2-1831.08(b).

**Table 3.19 - Central Panel Adjudicator Designations, Appointments, and Terms**

| State      | Title   | Appointment System   | Term (Years)  |
|------------|---|--|---|
| Alaska     | Chief Administrative Law Judge                        | Appointed by Governor, confirmed by the Alaska Legislature   | 5-year term of office; may serve no more than 3 full or partial terms |
|            | Administrative Law Judge                              | Hired by the Chief Administrative Law Judge  | <i>Silent</i>   |
|            | Hearing Officer                                       | Works within an established state agency   | <i>Silent</i>   |
| Arizona    | Chief Administrative Law Judge                        | Appointed by Governor  | <i>Silent</i>   |
|            | Administrative Law Judge                              | Hired by Chief Administrative Law Judge  | <i>Silent</i>   |
| California | Director  | Appointed by Governor, confirmed by the California State Senate  | <i>Silent</i>   |
|            | Administrative Law Judge                              | Appointed by the Director of the Office of Administrative Hearings   | <i>Silent</i>   |
| Colorado   | Director  | <i>Silent</i>  | <i>Silent</i>   |
|            | Administrative Law Judge                              | Hired by the Executive Director of the Department of Personnel   | <i>Silent</i>   |
| Florida    | Director and Chief Administrative Law Judge           | Appointed by the Administration Commission and confirmed by the Florida State Senate   | <i>Silent</i>   |
|            | Administrative Law Judge                              | "The division shall employ administrative law judges..." FLA. STAT. §120.65(4)   | <i>Silent</i>   |
|            | Department of Health Administrative Law Judge         | Designated by the Division of Administrative Hearings  | <i>Silent</i>   |
|            | Deputy Chief Judge of Compensation Claims             | Appointed by the Governor from a list of 3 names submitted by the statewide nominating commission  | 4-year appointment  |
|            | Judge of Compensation Claims                          | Appointed by the Governor  | 4-year appointment  |
| Georgia    | Chief State Administrative Law Judge                  | Appointed by Governor  | 6-year appointment  |
|            | Assistant Administrative Law Judge                    | Hired by the Chief Administrative Law Judge  | <i>Silent</i>   |
|            | Special Assistant Administrative Law Judge            | Appointed by the Chief Administrative Law Judge  | Temporary or single case basis  |
|            | Special Designated Assistant Administrative Law Judge | Full-time employee of another agency who, with prior consent of the employee's agency, is appointed by the Chief Administrative Law Judge for the purposes of a specific hearing | Appointed to serve for a specific hearing                             |



**Table 3.19 (continued) - Central Panel Adjudicator Designations, Appointments, and Terms**

| State                  | Title  | Appointment System   | Term (Years)  |
|------------------------|--|--|---|
| Georgia<br>(continued) | Special Lay Assistant Administrative Law Judge   | Appointed by the Chief Administrative Law Judge  | N/A   |
|                        | Associate Administrative Law Judge               | Hired by the Chief Administrative Law Judge  | <i>Silent</i>   |
| Illinois               | Bureau Chief                                     | Appointed by the Director of the Illinois Department of Central Management Services "from existing legal staff"  | <i>Silent</i>   |
|                        | Adjudicators                                     | Administrative Law Judges, hearing officers, hearing referees, or other state employees who conduct hearings on behalf of a state agency that are subject to the consolidated administrative hearings requirements of Ill. Exec. Order No. 2017-04 | <i>Silent</i>   |
| Indiana                | Director   | Appointed by Governor  | <i>Silent</i>   |
|                        | Administrative Law Judge                         | Hired by the Director of the Office of Administrative Law Proceedings  | <i>Silent</i>   |
| Iowa                   | Administrator and Chief Administrative Law Judge | <i>Silent</i> (the role is generally defined in IOWA CODE §10A.801(1)(a))  | <i>Silent</i>   |
|                        | Administrative Law Judge                         | "The department [of inspections and appeals] shall employ a sufficient number of administrative law judges..." IOWA CODE §10A.801(3)(a)  | <i>Silent</i>   |
| Kansas                 | Director   | Appointed by the Kansas Secretary of Administration  | <i>Silent</i>   |
|                        | Presiding Officer                                | Employed or contracted by the Office of Administrative Hearings  | <i>Silent</i>   |
| Louisiana              | Director   | Appointed by Governor, confirmed by the Louisiana State Senate   | 6-year appointment; may be reappointed and confirmed to subsequent 6-year terms without limit |
|                        | Administrative Law Judge                         | Employed by the Director of the Division of Administrative Law   | <i>Silent</i>   |
| Maryland               | Chief Administrative Law Judge                   | Appointed by Governor with the advice and consent of the Maryland State Senate   | 6-year appointment  |
|                        | Administrative Law Judge                         | Appointed by the Chief Administrative Law Judge  | <i>Silent</i>   |

**Table 3.19 (continued) - Central Panel Adjudicator Designations, Appointments, and Terms**

| State          | Title                                       | Appointment System  | Term (Years)   |
|----------------|---|---|--|
| Massachusetts  | Chief Administrative Magistrate             | Appointed by the Secretary of the Executive Office for Administration and Finance with the approval of the Governor           | <i>Silent</i>  |
|                | Administrative Magistrate                   | Hired by Chief Administrative Magistrate  | <i>Silent</i>  |
|                | Director of Special Education Appeals       | Appointed by the Chief Administrative Magistrate  | <i>Silent</i>  |
|                | Hearing Officer                             | Hired by the Director of Special Education Appeals under the direction and supervision of the Chief Administrative Magistrate | <i>Silent</i>  |
| Michigan       | Executive Director                          | Appointed by the Director of the Department of Licensing and Regulatory Affairs   | <i>Silent</i>  |
|                | Administrative Law Judge                    | Appointed by the Executive Director   | <i>Silent</i>  |
| Minnesota      | Chief Administrative Law Judge              | Appointed by Governor with the advice and consent of the Minnesota state senate   | 6-year appointment   |
|                | Administrative Law Judge                    | Appointed by Chief Administrative Law Judge   | <i>Silent</i>  |
|                | Compensation Judge                          | Appointed by Chief Administrative Law Judge   | <i>Silent</i>  |
| Missouri       | Commissioner                                | A maximum of 5 commissioners to be appointed by the Governor with the advice and consent of the Missouri state senate         | 6 years and until successor is appointed, qualified, and sworn in  |
| New Jersey     | Director and Chief Administrative Law Judge | Appointed by Governor with the advice and consent of the New Jersey state senate  | 6-year term  |
|                | Administrative Law Judge                    | Appointed by the Governor with the advice and consent of the New Jersey state senate  | Initial term is 1 year; first reappointment is for a 4-year term; subsequent reappointments are for 5-year terms |
| North Carolina | Chief Administrative Law Judge              | Appointed by the Chief Justice of the North Carolina Supreme Court  | 4-year appointment   |
|                | Senior Administrative Law Judge             | Designated by the Chief Administrative Law Judge  | <i>Silent</i>  |
|                | Administrative Law Judge                    | Appointed by the Chief Administrative Law Judge   | <i>Silent</i>  |
| North Dakota   | Director of Administrative Hearings         | Appointed by Governor, confirmed by the North Dakota state senate   | 6-year appointment   |

**Table 3.19 (continued) - Central Panel Adjudicator Designations, Appointments, and Terms**

| State                       | Title   | Appointment System  | Term (Years)  |
|-----------------------------|---|---|---|
| North Dakota<br>(continued) | Administrative Law Judge                              | Hired or appointed by the Director of Administrative Hearings   | <i>Silent</i>   |
| Oregon                      | Chief Administrative Law Judge                        | Appointed by Governor   | 4-year appointment  |
|                             | Administrative Law Judge                              | Hired by Chief Administrative Law Judge   | <i>Silent</i>   |
| South Carolina              | Chief Judge of the Administrative Law Judge Division  | Elected by the South Carolina General Assembly  | 5-year term   |
|                             | Administrative Law Judge                              | Elected by the South Carolina General Assembly  | 5-year term   |
| South Dakota                | Chief Hearing Examiner                                | Appointed by Governor   | <i>Silent</i>   |
|                             | Hearing Examiner                                      | Appointed by Chief Hearing Examiner   | <i>Silent</i>   |
| Tennessee                   | Administrative Judge                                  | Administrative judge is an agency member, agency employee or employee or official of the office of the secretary of state | <i>Silent</i>   |
|                             | Hearing Officer                                       | Hearing officer is an agency member, agency employee, or employee or official of the office of the secretary of state     | <i>Silent</i>   |
| Texas                       | Chief Administrative Law Judge                        | Appointed by Governor   | 2-year appointment  |
|                             | Senior Administrative Law Judge                       | Appointed by Chief Administrative Law Judge   | <i>Silent</i>   |
|                             | Master Administrative Law Judge                       | Appointed by Chief Administrative Law Judge   | <i>Silent</i>   |
|                             | Administrative Law Judge                              | Hired by Chief Administrative Law Judge   | <i>Silent</i>   |
| Washington                  | Chief Administrative Law Judge                        | Appointed by Governor with advice and consent of the Washington state senate  | 5-year appointment  |
|                             | Administrative Law Judge                              | Appointed by Chief Administrative Law Judge   | <i>Silent</i>   |
| Wisconsin                   | Administrator of the Division of Hearings and Appeals | <i>Silent</i>   | <i>Silent</i>   |
|                             | Hearing Examiner                                      | Appointed by Administrator of the Division of Hearings and Appeals  | <i>Silent</i>   |
| Wyoming                     | Director and Chief Hearing Examiner                   | Appointed by Governor with the advice and consent of the Wyoming state senate   | Term expires at the end of the term of office of the governor during which the Director was appointed |
|                             | Hearing Examiner                                      | Appointed by Director and Chief Hearing Examiner  | <i>Silent</i>   |

**Table 3.19 (continued) - Central Panel Adjudicator Designations, Appointments, and Terms**

| State                | Title                          | Appointment System  | Term (Years)   |
|----------------------|--------------------------------|---|--|
| District of Columbia | Chief Administrative Law Judge | Appointed by the Mayor with the advice and consent of the District of Columbia Council  | 6-year appointment   |
|                      | Administrative Law Judge       | Appointed upon the affirmative vote of a majority of the voting members of the Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings | Initial appointment is to a 2-year term; reappointment is for 6-year terms |

### 3. Qualifications

#### a. Licensure

In most instances, a state administrative law judge is statutorily required to be licensed as an attorney in good standing with the state bar.<sup>100</sup> However, a number of states specifically exempt certain administrative law judges from this requirement.<sup>101</sup> Georgia has a number of administrative law judge designations, each with differing professional requirements. Most of Georgia's administrative law judges are required to be licensed attorneys, but the state's associate administrative law judges, for example, are not so required.<sup>102</sup> Kansas requires that an administrative law judge, if not an attorney, must be "directly supervised by a person admitted to

<sup>100</sup> Twenty-three of the 28 jurisdictions examined in this report require law licensure for at least some of the administrative law judges in their central panels. *See, e.g.*, ALASKA STAT. §§44.64.010(b)(3) and 44.64.040(a); CAL. GOV'T CODE §11502(b); COLO. REV. STAT. §24-30-1003(2); FLA. STAT. §§120.65(4), 120.651, and 440.45(1)(b); GA. CODE ANN. §50-13-40; IND. CODE §4-15-10.5-15(a)(2) and (b); IOWA CODE §10A.801(6); KAN. STAT. ANN. §75-37,121(b); LA. REV. STAT. ANN. §49:994(A)(2); MD. CODE, STATE GOV'T §9-1603(c)(2); MASS. GEN. LAWS ch. 7, §4H and ch. 71B, §2A; MO. REV. STAT. §621.015; N.J. STAT. ANN. §§52:14F-3 and 52:14F-5; N.C. GEN. STAT. §7A-754; N.D. CENT. CODE §54-57-01; OR. REV. STAT. §183.610(1); S.C. CODE ANN. §1-23-520; S.D. CODIFIED LAWS §1-26D-2; TENN. CODE ANN. §4-5-102(1); TEX. GOV'T CODE ANN. §§2003.022(b), 2003.041(b), and 2003.041(c); WASH. REV. CODE §34.12.010; WYO. STAT. ANN. §9-2-2201; and D.C. CODE §§2-1831.04(b)(5) and 2-1831.08(d)(1).

<sup>101</sup> These states are Arizona, Georgia, Kansas, Oregon, Tennessee, and Washington. Arizona requires that the state's administrative law judges "shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section[.]" ARIZ. REV. STAT. §41-1092.01(C)(3). Kansas requires that any administrative law judge who is not a member in good standing of the state bar must be "directly supervised by a person admitted to practice law" in the state. KAN. STAT. ANN. §75-37,121(b). Oregon requires its administrative law judges to have "knowledge of administrative law and procedure" but does not explicitly require licensure as an attorney. OR. REV. STAT. §183.615(2). Tennessee's administrative law judges are required to be licensed attorneys, but Tennessee hearing officers, by definition, are "not licensed to practice law[.]" TENN. CODE ANN. §4-5-102(4). Washington's administrative law judges "shall have a demonstrated knowledge of administrative law and procedures[.]" but are not explicitly required to be licensed attorneys. WASH. REV. CODE §34.12.030(a). *See also* GA. CODE ANN. §50-13-40(e)(5).

<sup>102</sup> Individuals serving as associate administrative law judges in Georgia are required to possess "the necessary skill and training" required to preside over certain classes of hearings, but do not need to meet any other requirements of administrative law judges. GA. CODE ANN. §50-13-40(e)(5).

practice law in this state[.]"<sup>103</sup> Indiana and New Jersey have statutory provisions requiring an administrative law judge to be an attorney licensed to practice in the state, but any administrative law judge who served in this role prior to a certain date is exempt from this requirement.<sup>104</sup> Illinois, Maryland, Massachusetts, South Dakota, and Wisconsin are statutorily silent regarding law licensure for some, but not all, administrative law judges.<sup>105</sup> In some instances, statutory silence regarding law licensure or other qualifications for administrative law judges is not conclusive, as states may have established further requirements by administrative rule or by authorizing a related entity to establish additional qualifications.<sup>106</sup>

## b. Tenure of Licensure

Many states are statutorily silent regarding a required minimum number of years of law licensure.<sup>107</sup> However, of the states that require administrative law judges to be licensed attorneys, there is significant variation regarding the specific number of years of licensure required. The most common minimum requirement is 5 years of licensure as an attorney, required by California, Colorado, Florida, Louisiana, New Jersey, and the District of Columbia.<sup>108</sup> Alaska and Georgia each require their chief administrative law judge to have been licensed as an attorney in their respective states for at least 5 years, but both states require fewer years of licensure for the

---

<sup>103</sup> KAN. STAT. ANN. §75-37,121(b).

<sup>104</sup> See IND. CODE §4-15-10.5-15(a)(2) and (b); and N.J. STAT. ANN. §52:14F-5(1) ("Administrative law judges appointed after the effective date of this amendatory act shall have been attorneys-at-law of this State for a minimum of 5 years. An administrative law judge appointed prior to the effective date of this amendatory act shall not be required to be an attorney or, if an attorney, shall not be required to have been an attorney-at-law for 5 years in order to be reappointed").

<sup>105</sup> See Ill. Exec. Order No. 2017-04 (requiring the Bureau Chief to be appointed from "existing legal staff" but not so specifying for regular administrative law judges); MD. CODE, STATE GOV'T §9-1603(c)(2) (requiring the chief administrative law judge to be a licensed attorney; Maryland statutes are silent with respect to whether regular administrative law judges must have an active law license); MASS. GEN. LAWS ch. 7 §4H (requires the chief administrative magistrate to "be a person with substantial experience as a trial attorney" but does not specifically require licensure as an attorney for administrative magistrates generally); and S.D. CODIFIED LAWS §1-26D-2 (requires the chief hearing examiner to be licensed to practice law, but is statutorily silent regarding "regular" hearing examiners).

<sup>106</sup> The clearest example of this is the statutes governing Maryland's Office of Administrative Hearings, in which there are no qualification requirements specified for administrative law judges. See MD. CODE, STATE GOV'T §§9-1601 to 9-1610. Rather, Maryland's Chief Administrative Law Judge is authorized to "establish qualifications for administrative law judges" and "appoint and remove administrative law judges[.]" MD. CODE, STATE GOV'T §9-1604(a)(2) and (3). In California, administrative law judges are required to be admitted to practice law in the state "for at least five years immediately preceding" the administrative law judge's appointment, but the State Personnel Board is authorized to establish "any additional qualifications" for administrative law judges. CAL. GOV'T CODE §11502(b). In Georgia, the director of the Office of State Administrative Hearings is authorized to both "establish different levels of administrative law judge positions" and to "promulgate rules and regulations and establish procedures to carry out" the director's statutory mandates. GA. CODE ANN. §50-13-40(c) and (e). Similarly, Texas authorizes the chief administrative law judge to prescribe additional employment qualifications for administrative law judges. See TEX. GOV'T CODE ANN. §2003.041(b).

<sup>107</sup> These states are Arizona, Indiana, Iowa, Kansas, Maryland, Massachusetts, Minnesota, Missouri, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Washington, and Wyoming.

<sup>108</sup> See CAL. GOV'T CODE §11502(b); COLO. REV. STAT. §24-30-1003(2); FLA. STAT. §§120.65(4) and 440.45(2)(a); LA. REV. STAT. ANN. §§49:994(A)(3) and 49:995(A)(3); N.J. STAT. ANN. §§52:14F-3 and 52:14F-5(1); and D.C. CODE §2-1831.08(d)(4).

appointment of other administrative law judges.<sup>109</sup> South Carolina requires each administrative law judge to have been an attorney licensed in South Carolina for a minimum of 8 years.<sup>110</sup> Texas requires its chief administrative law judge to have been a licensed attorney in Texas for a minimum of 5 years, but has no statutory minimum licensure requirement for its regular administrative law judges.<sup>111</sup> Further, Texas statute requires the state's senior administrative law judges and master administrative law judges to be licensed for a minimum of 6 and 10 years, respectively.<sup>112</sup>

### c. Subject Matter Expertise

While nearly all states employ administrative law judges who hear contested cases irrespective of subject matter, some states statutorily designate that only certain administrative law judges may hear specific matters.<sup>113</sup> For example, an individual within the Minnesota Office of Administrative Hearings who presides over a contested case is either an "administrative law judge" or a "workers' compensation judge."<sup>114</sup> The former is required to "have demonstrated knowledge of administrative procedures[,] and the latter is required to "have demonstrated knowledge of workers' compensation laws."<sup>115</sup> Similarly, Florida separates general administrative law judges from workers' compensation judges, but additionally designates that at least 2 administrative law judges who "must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from The Florida Bar."<sup>116</sup> Only administrative

---

<sup>109</sup> See ALASKA STAT. §44.64.010(b)(3) (requiring a minimum of 5 years of law licensure for the chief administrative law judge); ALASKA STAT. §44.64.040(a) (requiring regular administrative law judges to be licensed as attorneys for a minimum of 2 years prior to serving in the position); GA. CODE ANN. §50-13-40(b) (requiring a minimum of 5 years of law licensure for the chief administrative law judge); and GA. CODE ANN. §50-13-40(e)(1) and (2) (requiring a minimum of 3 years of licensure as an attorney for assistant and special assistant administrative law judges).

<sup>110</sup> See S.C. CODE ANN. §1-23-520 (requiring that administrative law judges meet the qualifications of justices and judges set forth in article V, section 15, of the South Carolina state constitution).

<sup>111</sup> See TEX. GOV'T CODE ANN. §§2003.022(b) and 2003.041.

<sup>112</sup> See TEX. GOV'T CODE ANN. §2003.0411(b) and (c). For "regular" administrative law judges, or those that are not chief, senior, or master administrative law judges, Texas has no statutory minimum year requirement for bar membership. See TEX. GOV'T CODE ANN. §2003.041(b).

<sup>113</sup> These states include California, Florida, Massachusetts, Minnesota, and New Jersey. See CAL. GOV'T CODE §§11371 and 11372; FLA. STAT. §120.651; MA. GEN. LAWS ch. 7, §4H and ch. 71B, §2A; MINN. STAT. §14.48(3)(b); and N.J. STAT. ANN. §§52:14F-16 and 52:27D-10.2 *et seq.* North Carolina, North Dakota, and Oregon do not specify in statute any particular subject matter to which only certain administrative judges may be assigned, but these states authorize the head of the central panel to designate an administrative law judge to a contested case based on the administrative law judge's particular subject matter experience or expertise. See N.C. GEN. STAT. §7A-753 ("The Chief Administrative Law Judge may designate certain administrative law judges as having the experience and expertise to preside at specific types of contested cases and assign only these designated administrative law judges to preside at those cases."); N.D. CENT. CODE §54-57-03(5) ("When designating administrative law judges to preside in an administrative proceeding or adjudicative proceeding, the director shall attempt to assign an administrative law judge having expertise in the subject matter to be dealt with."); and OR. REV. STAT. §183.625(1) ("In assigning an administrative law judge to conduct hearings on behalf of an agency, the chief administrative law judge shall, whenever practicable, assign an administrative law judge that has expertise in the legal issues or general subject matter of the proceeding."). Tennessee requires that any administrative law judge (called "administrative judge" or "hearing officer") who hears contested case matters involving certain allegations in the education context must participate in annual Title IX training. See TENN. CODE ANN. §4-5-324(b).

<sup>114</sup> See MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS: ABOUT US: WHAT WE DO, <https://mn.gov/oah/about-us/overall/> (last visited November 12, 2019).

<sup>115</sup> MINN. STAT. §14.48(3)(b).

<sup>116</sup> See FLA. STAT. §120.651.

law judges with this special designation are authorized to preside over contested case matters arising out of the Florida Department of Health.<sup>117</sup> California takes a similar tact with its Medical Quality Hearing Panel,<sup>118</sup> a panel of administrative law judges specifically and solely authorized to preside over "all adjudicative hearings and proceedings relating to the discipline or reinstatement of licenses of the Medical Board of California[.]"<sup>119</sup> Another example, New Jersey's Smart Growth Unit consists of "administrative law judges having expertise in the matters heard pursuant to" certain New Jersey statutes regarding urban planning matters, including permitting.<sup>120</sup> Similarly, Massachusetts requires any administrative law judge who presides over public construction contract disputes to have prior experience in construction law.<sup>121</sup> A Massachusetts administrative law judge who presides over special education hearings must meet specific qualifications and is specially designated to hear only those types of contested case matters.<sup>122</sup>

#### d. Residency Requirements

Six states and the District of Columbia require state residency for certain administrative law judges. Alaska and Massachusetts only impose a residency requirement on the chief administrative law judge,<sup>123</sup> while Colorado, Indiana, Louisiana, South Carolina, and the District of Columbia impose a residency requirement on *all* administrative law judges.<sup>124</sup> South Carolina further specifies that each administrative law judge shall have resided in the state for 5 years immediately preceding their election as an administrative law judge.<sup>125</sup> The District of Columbia requires its administrative law judges, if not already a resident of the District, to establish residency within 180 days of assuming the role of administrative law judge.<sup>126</sup>

---

<sup>117</sup> See *id.*

<sup>118</sup> See CAL. GOV'T CODE §11371.

<sup>119</sup> See CAL. GOV'T CODE §11372.

<sup>120</sup> See N.J. STAT. ANN. §§52:14F-16 and 52:27D-10.2 *et seq.*

<sup>121</sup> See MA. GEN. LAWS ch. 7, §4H.

<sup>122</sup> See MA. GEN. LAWS ch. 71B, §2A.

<sup>123</sup> See ALASKA STAT. §44.64.010(b)(1); and MASS. GEN. LAWS ch. 7, §4H.

<sup>124</sup> See COLO. REV. STAT. §24-30-1003(2) (requiring any administrative law judge to meet the same qualifications required of district court judges in the State) and COLO. CONST. art. VI, §11 (requiring, *inter alia*, that "[e]ach judge of the district court shall be a resident of his district during his term of office"); IND. CODE §4-15-10.5-15(a)(1) (requiring that any administrative law judge employed by the Office of administrative Law Proceedings must be "a citizen of Indiana"); S.C. CODE ANN. §1-23-520 (requiring that all judges within the South Carolina Administrative Law Court must "meet the qualification for justices and judges as set forth in Article V" of the South Carolina Constitution at the time of election) and S.C. CONST. art. V, §15 (requiring all justices and judges to have been a South Carolina resident for the 5 years preceding election as judge); and D.C. CODE §2-1831.08(d-1) (requiring that "[a]n Administrative Law Judge shall become a District resident within 180 days after appointment or reappointment").

<sup>125</sup> See S.C. CODE ANN. §1-23-520 (requiring that administrative law judges meet the qualifications of justices and judges set forth in article V, section 15 of the South Carolina Constitution).

<sup>126</sup> See D.C. CODE §§2-1831.04(b)(6) and 2-1831.08(d-1).

**Table 3.20 - Administrative Law Judge Qualifications**

| State   | Title                          | State Law License | Minimum Licensure Years Required | Reside in State | Specialized Experience  |
|---------|--------------------------------|-------------------|----------------------------------|-----------------|---|
| Alaska  | Chief Administrative Law Judge | Yes               | At least 5 years                 | Yes             | Experience representing clients in administrative or judicial proceedings   |
|         | Administrative Law Judge       | Yes               | At least 2 years                 | <i>Silent</i>   | Chief Administrative Law Judge may require additional qualifications for Administrative Law Judges, including specialized experience for those assigned to particular cases   |
|         | Hearing Officer <sup>127</sup> | <i>Silent</i>     | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
| Arizona | Chief Administrative Law Judge | Not required      | None                             | <i>Silent</i>   | Supervisory, management, and administrative skills, as well as knowledge and experience relating to administrative law  |
|         | Administrative Law Judge       | Not required      | None                             | <i>Silent</i>   | If the Administrative Law Judge has not graduated from an accredited college of law, the Administrative Law Judge must have at least 2 years of administrative or managerial experience in the subject matter or agency section the Administrative Law Judge is assigned to in the office |

<sup>127</sup> A "hearing officer" is defined in Alaska statute as "an individual who presides over the conduct of an administrative hearing and who is retained or employed by an agency for that purpose[.]" ALASKA STAT. §44.64.200(4).



**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State      | Title   | State Law License | Minimum Licensure Years Required                    | Reside in State | Specialized Experience  |
|------------|---|-------------------|---|-----------------|---|
| California | Director                                      | Yes               | At least 5 years immediately preceding" appointment | <i>Silent</i>   | <i>Silent</i>   |
|            | Administrative Law Judge                      | Yes               | At least 5 years immediately preceding" appointment | <i>Silent</i>   | <i>Silent</i>   |
| Colorado   | Director                                      | <i>Silent</i>     | <i>Silent</i>                                       | <i>Silent</i>   | <i>Silent</i>   |
|            | Administrative Law Judge                      | Yes               | At least 5 years                                    | Yes             | <i>Silent</i>   |
| Florida    | Director and Chief Administrative Law Judge   | Yes               | At least 5 years preceding appointment              | <i>Silent</i>   | <i>Silent</i>   |
|            | Administrative Law Judge                      | Yes               | At least 5 years preceding appointment              | <i>Silent</i>   | <i>Silent</i>   |
|            | Department of Health Administrative Law Judge | Yes               | At least 5 years preceding appointment              | <i>Silent</i>   | Must have legal, managerial, or clinical experience in issues related to health care or have attained board certification in health care law from the Florida Bar |
|            | Deputy Chief Judge of Compensation Claims     | Yes               | At least 5 years preceding appointment              | <i>Silent</i>   | Must demonstrate prior administrative experience and must be experienced in the practice of law of workers' compensation  |
|            | Judge of Compensation Claims                  | Yes               | At least 5 years preceding appointment              | <i>Silent</i>   | Must be experienced in the practice of law of workers' compensation   |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State    | Title   | State Law License   | Minimum Licensure Years Required | Reside in State | Specialized Experience  |
|----------|---|---|----------------------------------|-----------------|---|
| Georgia  | Chief State Administrative Law Judge                  | Yes   | At least 5 years                 | <i>Silent</i>   | <i>Silent</i>   |
|          | Assistant Administrative Law Judge                    | Yes   | At least 3 years                 | <i>Silent</i>   | <i>Silent</i>   |
|          | Special Assistant Administrative Law Judge            | Yes   | At least 3 years                 | <i>Silent</i>   | <i>Silent</i>   |
|          | Special Designated Assistant Administrative Law Judge | N/A   | N/A                              | N/A             | <i>Silent</i>   |
|          | Special Lay Assistant Administrative Law Judge        | No  | No                               | N/A             | Appointees possess special skill and technical expertise in the field required by the hearing   |
|          | Associate Administrative Law Judge                    | No  | No                               | N/A             | Individuals must possess the necessary skill and training but do not need to otherwise meet requirements for Administrative Law Judges. |
| Illinois | Bureau Chief  | <i>Silent</i>   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|          | Adjudicators  | <i>Silent</i>   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
| Indiana  | Director  | <i>Silent</i>   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|          | Administrative Law Judge                              | Yes, but exempt from this requirement is any Administrative Law Judge who served as an Administrative Law Judge for an agency in Indiana prior to May 1, 2019 | <i>Silent</i>                    | Yes             | <i>Silent</i>   |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State     | Title  | State Law License   | Minimum Licensure Years Required   | Reside in State | Specialized Experience   |
|-----------|--|---|--|-----------------|--|
| Iowa      | Administrator and Chief Administrative Law Judge | Yes   | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
|           | Administrative Law Judge                         | Yes   | <i>Silent</i>  | <i>Silent</i>   | Silent as to specialized experience required upon hiring; requires the Division of Administrative Hearings to facilitate specialization by the Division's administrative law judges so that particular judges may become expert in presiding over cases in particular agencies |
| Kansas    | Director   | <i>Silent</i>   | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
|           | Presiding Officer                                | Yes, or if not, must be directly supervised by a person admitted to practice law in Kansas          | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
| Louisiana | Director   | Yes   | At least 5 years prior to appointment  | Yes             | <i>Silent</i>  |
|           | Administrative Law Judge                         | Yes, except for those who were transferred over when the Division of Administrative Law was created | At least 5 years prior to appointment; except those who transferred over when the Division of Administrative Law was created | Yes             | Silent, except that any adjudication involving violations of law under the jurisdiction of the Board of Ethics must be heard by an Administrative Law Judge who is licensed to practice law in Louisiana   |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State         | Title                                 | State Law License   | Minimum Licensure Years Required  | Reside in State | Specialized Experience  |
|---------------|---------------------------------------|---|---|-----------------|---|
| Maryland      | Chief Administrative Law Judge        | Yes   | <i>Silent</i>   | <i>Silent</i>   | <i>Silent</i>   |
|               | Administrative Law Judge              | Silent; Chief Administrative Law Judge responsible for establishing Administrative Law Judge qualifications   | Silent; Chief Administrative Law Judge responsible for establishing Administrative Law Judge qualifications | <i>Silent</i>   | Silent, but the Chief Administrative Law Judge is responsible for establishing further qualifications for Administrative Law Judges   |
| Massachusetts | Chief Administrative Magistrate       | Chief Administrative Magistrate must have substantial experience as a trial attorney, but there is no explicit requirement for active law licensure | <i>Silent</i>   | Yes             | The Chief Administrative Magistrate shall be a person with substantial experience as a trial attorney   |
|               | Administrative Magistrate             | Yes   | <i>Silent</i>   | <i>Silent</i>   | Administrative Magistrates shall have had trial experience and those responsible for adjudicating public construction contract disputes must have prior experience in construction law. |
|               | Director of Special Education Appeals | The director is required to be an attorney  | <i>Silent</i>   | <i>Silent</i>   | Extensive knowledge and experience in the areas of litigation, administrative law and special education law   |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State                               | Title                          | State Law License   | Minimum Licensure Years Required | Reside in State | Specialized Experience  |
|-------------------------------------|--------------------------------|---|----------------------------------|-----------------|---|
| Massachusetts<br><i>(continued)</i> | Hearing Officer                | Yes   | <i>Silent</i>                    | <i>Silent</i>   | Must meet qualifications and criteria set forth in 34 C.F.R. section 300.511(c) and any other regulations or applicable provisions of the Individuals with Disabilities Education Act and board of elementary and secondary education regulations |
| Michigan                            | Executive Director             | <i>Silent</i>   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|                                     | Administrative Law Examiner    | <i>Silent</i>   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
| Minnesota                           | Chief Administrative Law Judge | Chief Administrative Law Judge must be "learned in the law" | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|                                     | Administrative Law Judge       | Administrative Law Judge must be "learned in the law"       | <i>Silent</i>                    | <i>Silent</i>   | Administrative Law Judges must have demonstrated knowledge of administrative procedures   |
|                                     | Compensation Judge             | Compensation Judges must be "learned in the law"            | <i>Silent</i>                    | <i>Silent</i>   | Compensation Judges must have demonstrated knowledge of workers' compensation laws  |
| Missouri                            | Commissioner                   | Yes   | <i>Silent</i>                    | <i>Silent</i>   | At least 3 commissioners are required to be trained in special education matters and are the only commissioners that may be assigned to special education due process hearings  |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State          | Title                                       | State Law License   | Minimum Licensure Years Required | Reside in State | Specialized Experience  |
|----------------|---|---|----------------------------------|-----------------|---|
| New Jersey     | Director and Chief Administrative Law Judge | Yes   | 5 years                          | <i>Silent</i>   | <i>Silent</i>   |
|                | Administrative Law Judge                    | Yes, unless appointed prior to the effective date of the amendatory act referenced in | 5 years                          | <i>Silent</i>   | Silent as to specialized experience required upon appointment; requires the director to establish and environmental unit consisting of Administrative Law Judges having special expertise in environmental law; requires the Administrative Law Judges with expertise in the relevant subject areas to be assigned to and adjudicate matters before the Smart Growth Unit |
| North Carolina | Chief Administrative Law Judge              | Yes   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|                | Senior Administrative Law Judge             | Yes   | <i>Silent</i>                    | <i>Silent</i>   | Silent as to specialized experience required upon appointment; Chief Administrative Law Judge is authorized to designate certain Administrative Law Judges as having the experience and expertise to preside at specific types of contested cases   |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State                         | Title                               | State Law License   | Minimum Licensure Years Required | Reside in State | Specialized Experience  |
|-------------------------------|-------------------------------------|---|----------------------------------|-----------------|---|
| North Carolina<br>(continued) | Administrative Law Judge            | Yes   | <i>Silent</i>                    | <i>Silent</i>   | Silent as to specialized experience required upon appointment; Chief Administrative Law Judge is authorized to designate certain Administrative Law Judges as having the experience and expertise to preside at specific types of contested cases     |
| North Dakota                  | Director of Administrative Hearings | Yes   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|                               | Administrative Law Judge            | Yes   | <i>Silent</i>                    | <i>Silent</i>   | Each Administrative Law Judge must have a demonstrated knowledge of administrative practices; the director is required attempt to assign cases based on the subject matter expertise of each Administrative Law Judge                                 |
| Oregon                        | Chief Administrative Law Judge      | Yes   | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |
|                               | Administrative Law Judge            | Statute requires "a knowledge of administrative law and procedure" but does not explicitly require law licensure; the Chief Administrative Law Judge is authorized to establish additional qualifications by rule | <i>Silent</i>                    | <i>Silent</i>   | In assigning an Administrative Law Judge to a hearing, the Chief Administrative Law Judge is required to, whenever practicable, assign an Administrative Law Judge that has expertise in the legal issues or general subject matter of the proceeding |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State          | Title  | State Law License   | Minimum Licensure Years Required | Reside in State                                 | Specialized Experience   |
|----------------|--|---|----------------------------------|---|--|
| South Carolina | Chief Judge of the Administrative Law Judge Division | Yes   | 8 years                          | Yes, for 5 years immediately preceding election | <i>Silent</i>  |
|                | Administrative Law Judge                             | Yes   | 8 years                          | Yes, for 5 years immediately preceding election | <i>Silent</i>  |
| South Dakota   | Chief Hearing Examiner                               | Yes   | <i>Silent</i>                    | <i>Silent</i>                                   | <i>Silent</i>  |
|                | Hearing Examiner                                     | <i>Silent</i>   | <i>Silent</i>                    | <i>Silent</i>                                   | <i>Silent</i>  |
| Tennessee      | Administrative Judge                                 | Yes   | <i>Silent</i>                    | <i>Silent</i>                                   | Silent generally, but an Administrative Judge who hears education contested cases involving certain allegations must annually participate in Title IX training |
|                | Hearing Officer                                      | No; hearing officers by definition are "not licensed to practice law" | N/A                              | <i>Silent</i>                                   | Silent generally, but a Hearing Officer who hears education contested cases involving certain allegations must annually participate in Title IX training       |



**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State | Title                           | State Law License | Minimum Licensure Years Required | Reside in State | Specialized Experience  |
|-------|---------------------------------|-------------------|----------------------------------|-----------------|---|
| Texas | Chief Administrative Law Judge  | Yes               | At least 5 years                 | <i>Silent</i>   | Must have practiced administrative law, conducted administrative hearings, or engaged in a combination of both for at least 5 years   |
|       | Senior Administrative Law Judge | Yes               | At least 6 years                 | <i>Silent</i>   | At least 6 years of general legal experience, at least 5 years of experience presiding over administrative hearings or presiding over hearings as a judge or master of a court, and any other requirement prescribed by Chief Administrative Law Judge  |
|       | Master Administrative Law Judge | Yes               | At least 10 years                | <i>Silent</i>   | At least 10 years of general legal experience, at least 6 years of experience presiding over administrative hearings or presiding over hearings as a judge or master of a court, and any other requirement prescribed by Chief Administrative Law Judge |
|       | Administrative Law Judge        | Yes               | <i>Silent</i>                    | <i>Silent</i>   | <i>Silent</i>   |

**Table 3.20 (continued) - Administrative Law Judge Qualifications**

| State                | Title   | State Law License | Minimum Licensure Years Required   | Reside in State   | Specialized Experience   |
|----------------------|---|-------------------|--|---|--|
| Washington           | Chief Administrative Law Judge                        | Yes               | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
|                      | Administrative Law Judge                              | Not necessarily   | N/A  | <i>Silent</i>   | Administrative Law Judges must have "demonstrated knowledge of administrative law and procedures"  |
| Wisconsin            | Administrator of the Division of Hearings and Appeals | <i>Silent</i>     | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
|                      | Hearing Examiner                                      | <i>Silent</i>     | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
| Wyoming              | Director and Chief Hearing Examiner                   | Yes               | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
|                      | Hearing Examiner                                      | Yes               | <i>Silent</i>  | <i>Silent</i>   | <i>Silent</i>  |
| District of Columbia | Chief Administrative Law Judge                        | Yes               | <i>Silent</i> , but must be a member in good standing of the D.C. Bar at the time of assuming office and throughout tenure as Chief Administrative Law Judge | Yes; must be a resident of DC or become a resident within 180 days of assuming office                                   | <i>Silent</i>  |
|                      | Administrative Law Judge                              | Yes               | At least 5 years   | Yes; must be a resident of DC or become a resident within 180 days of assuming the position of Administrative Law Judge | Must have experience with court administrative, or arbitration litigation and "[p]ossess judicial temperament, expertise, experience, and analytical and other skills necessary and desirable" for an Administrative Law Judge |

#### 4. Part-Time, Full-Time, Temporary, and Contract Administrative Law Judges

States vary widely with respect to allowing part-time administrative law judges. Four states (California, Kansas, Minnesota, and Wyoming) make explicit in statute that at least certain part-time administrative law judges are permitted.<sup>128</sup> In contrast, 8 jurisdictions explicitly prohibit part-time status for some or all of their administrative law judges: Florida, Georgia, Louisiana, Maryland, Massachusetts, New Jersey, Texas, and the District of Columbia.<sup>129</sup> The remaining 16 states with central panels are either silent regarding part-time administrative law judges, or an implicit prohibition may be read into the relevant statutes.<sup>130</sup>

There is no uniformity among states regarding the employment of administrative law judges on either a contract or a temporary basis. Nine states explicitly authorize by statute the hiring of contract administrative law judges.<sup>131</sup> Fourteen states statutorily authorize the hiring or appointment of temporary administrative law judges in some or all instances.<sup>132</sup> No state explicitly prohibits in statute the hiring of temporary administrative law judges.

---

<sup>128</sup> See CAL. GOV'T CODE §11370.3; KAN. STAT. ANN. §75-37,121(b); MINN. STAT. §14.48(3)(d) (allowing "[o]nly administrative law judges serving as temporary judges under a written contract are considered to be part-time judges for purposes of the code."); and WYO. STAT. ANN. §9-2-2201(c).

<sup>129</sup> See FLA. STAT. §440.45(2)(a); GA. CODE ANN. §50-13-40(e)(1) and (5); LA. REV. STAT. ANN. §49:995(C); MD. CODE, STATE GOV'T §9-1603(b)(2); MASS. GEN. LAWS ch. 7, §4H and ch. 71B, §2A; N.J. STAT. ANN. §§52:14F-3 and 52-14F-5(1); TEX. GOV'T CODE ANN. §2003.022(c); and D.C. CODE §§2-1831.04(b)(4) and 2-1831.09(a)(9).

<sup>130</sup> Seven states have statutes that imply that administrative law judges may *not* be part-time: Missouri; North Carolina (chief administrative law judge only); North Dakota (director of administrative hearings only); Oregon (chief administrative law judge only); South Carolina; Washington (chief administrative law judge only); and Wyoming (chief administrative law judge). See MO. REV. STAT. §621.015; N.C. GEN. STAT. §7A-752; N.D. CENT. CODE §54-57-01(2); OR. REV. STAT. §183.610; S.C. CODE ANN. §1-23-510; WASH. REV. CODE §34.12.010; and WYO. STAT. ANN. §9-2-2201(b).

<sup>131</sup> See ALASKA STAT. §44.64.040(d); ARIZ. REV. STAT. §41-1092.1(C)(3); KAN. STAT. ANN. §75-37,121(b); N.C. GEN. STAT. §7A-757; N.D. CENT. CODE §54-57-02; OR. REV. STAT. §183.620; S.D. CODIFIED LAWS §§1-26D-2 and 1-26D-3; TEX. GOV'T CODE ANN. §2003.043; and WASH. REV. CODE §34.12.030(2) (for "specified hearings").

<sup>132</sup> See ARIZ. REV. STAT. §41-1092.1(C)(3); CAL. GOV'T CODE §11370.3; FLA. STAT. §440.45(2)(d) (authorizing the governor to appoint a judge of compensation claims *pro hac vice*, but the appointee must have at least 5 years of practice of law in the state and may not serve for a period of more than 120 successive days); GA. CODE ANN. §50-13-40(e)(2) (special assistant administrative law judges are appointed "on a temporary or case basis"); GA. CODE ANN. §50-13-40(e)(4) (a special lay assistant administrative law judge is appointed for a specific hearing); IOWA CODE §10A.801(4) (authorizing the administrator of the Iowa Administrative Hearings Division, in certain circumstances, to designate a full-time employee of another agency to hear a particular contested case); KAN. STAT. ANN. §75-37,121(b) ("The office may employ or contract with presiding officers"); MD. CODE, STATE GOV'T §9-1607 (authorizing the chief administrative law judge, in certain circumstances, to designate a full-time employee of another agency to hear a particular contested case); MA. GEN. LAWS ch. 71B, §2A (authorizing the director of special education appeals to "assign matters to hearing officers . . . outside the bureau if necessary" in specific, temporary circumstances); MINN. STAT. §14.48(3) and (4) (authorizing temporary judges to serve on a part-time basis and authorizing the chief administrative law judge to appoint a retired administrative law judge or compensation judge to hear a particular proceeding); MO. REV. STAT. §621.025 (authorizing temporary administrative law judges (called "commissioners") only in the case of incapacitation of a currently serving commissioner); N.J. STAT. ANN. §§52:14F-4, 52:14F-5(m), 52:14F-6(b) (authorizing the temporary recall of retired administrative law judges, the appointment of temporary administrative law judges, and the assignment of "[a] person who is not an employee of the office" to preside over a particular case[,]" respectively); N.C. GEN. STAT. §7A-752, (authorizing a designated senior administrative law judge to perform the duties of the chief administrative law judge if the latter is absent or unable to serve temporarily); N.C. GEN. STAT. §7A-757 (authorizing the hiring of

## 5. Civil Service Versus Exempt Employment of Administrative Law Judges

States also vary widely with respect to statutorily designating administrative law judgeships as civil service positions. For example, Kansas specifies that as employees of the Kansas Office of Administrative Hearings, presiding officers "shall be under the classified civil service."<sup>133</sup> Minnesota<sup>134</sup> and North Dakota<sup>135</sup> also specify that all administrative law judges in their respective states shall be hired as classified employees. However, Kansas, Minnesota, and North Dakota all clearly exempt the chief administrative law judge from civil service.<sup>136</sup> Several other states, including Iowa, Louisiana, and Oregon, appear to exempt their chief administrative law judges from civil service.<sup>137</sup> Alaska employs both its chief administrative law judge and all other administrative law judges "in the partially exempt service."<sup>138</sup> Wyoming specifies that "[h]earings examiners serve at the pleasure of the director and may be removed by him at any time without cause."<sup>139</sup>

## 6. Code of Judicial Conduct

While specific standards or regulations are not codified in statute, 11 of the 28 jurisdictions examined for this report require by statute that administrative law judges adhere to a code of judicial conduct, either specific to administrative law judges or governing all judges in the state generally.<sup>140</sup> Of those 11 jurisdictions, 5 (Alaska, Iowa, Maryland, Oregon, and Texas) require by statute that the chief administrative law judge establish a code of judicial conduct to govern their

---

temporary administrative law judges as well as the designation of a full-time state employee in a different agency to serve as a temporary administrative law judge in certain circumstances); N.D. CENT. CODE §54-57-02; TEX. GOV'T CODE ANN. §2003.043; and WASH. REV. CODE §34.12.030(2) (authorizing the hiring of contract administrative law judges for "specified hearings"; it is unclear if the "specified hearings" referenced are discrete, one-time hearings).

<sup>133</sup> KAN. STAT. ANN. §75-37,121(b).

<sup>134</sup> See MINN. STAT. §14.48(3)(a).

<sup>135</sup> See N.D. CENT. CODE §54-57-01(3).

<sup>136</sup> See KAN. STAT. ANN. §75-37,121(a); MINN. STAT. §14.48(3)(a); and N.D. CENT. CODE §54-57-01(3).

<sup>137</sup> See IOWA CODE §10A.801(3)(a) ("Administrative law judges, except the chief administrative law judge, shall be covered by the merit system provisions of chapter 8A, subchapter IV [State Human Resource Management--Operations]"); LA. REV. STAT. ANN. §49.995(C) ("The director shall be a full-time unclassified employee of the division"); and OR. REV. STAT. §183.610(1) (specifying that the chief administrative law judge serves an appointive term of four years and may be removed by the Governor only for cause, "[n]otwithstanding ORS 236.140[.]").

<sup>138</sup> ALASKA STAT. §§44.64.010(d) and 44.64.040(a).

<sup>139</sup> WYO. STAT. ANN. §9-2-2201(c).

<sup>140</sup> These jurisdictions are: Alaska, Colorado, Florida, Illinois, Iowa, Maryland, Minnesota, North Carolina, Oregon, South Carolina, and Texas. See ALASKA STAT ANN. §44.64.050(b); COLO. REV. STAT. §24-30-1003(4); FLA. STAT. §440.45(2)(e); Ill. Exec. Order No. 2017-04 ("[T]he Bureau shall work with agencies to implement the standard code of professional conduct for adjudicators[.]"); IOWA CODE §10A.801(7)(d) (requiring the chief administrative law judge to establish a code of administrative judicial conduct to which all administrative law judges must abide); MD. CODE, STATE GOV'T §9-1604(a)(9) (requiring the chief administrative law judge to develop a code of professional responsibility for administrative law judges); MINN. STAT. §14.48(2) and (3)(d); N.C. GEN. STAT. §7A-754 (requiring compliance with the Model Code of Judicial Conduct for State Administrative Law Judges, as amended); OR. REV. STAT. §183.680(1)(a); S.C. CODE ANN. §1-23-560; and TEX. GOV'T CODE ANN. §2003.022(d)(3).

corps of administrative law judges.<sup>141</sup> Some states, including North Dakota, simply require that an administrative law judge "be free of any association that would impair [the administrative law judge's] ability to function officially in a fair and objective manner."<sup>142</sup>

#### D. Final Authority of Contested Case Decisions

While administrative law judges in a central panel system are almost always empowered by statute to administer oaths and make findings of fact and conclusions of law, most states do not grant final decision authority to administrative law judge decisions. Currently, Georgia, Louisiana, South Carolina, and the District of Columbia are the only jurisdictions that establish by statute that all administrative law judge orders are final.<sup>143</sup> Minnesota specifies that "the report or order of the administrative law judge constitutes the final decision in the case *unless* the agency modifies or rejects it[.]"<sup>144</sup>

In nearly all other jurisdictions, administrative law judge decisions are considered initial or preliminary decisions that an agency may consider before it issues a final decision on a contested case matter. However, some states have adopted statutory provisions authorizing an individual agency, by rule, to vest final decision authority in a central panel for specific hearings. In these cases, unless an agency grants this final decision authority to a central panel, an administrative law judge's decision will be considered an initial or preliminary order or ruling subject to agency review.<sup>145</sup> For example, in Texas, an administrative law judge may make the final decision in a contested case matter only when "expressly authorized by a state agency rule[.]"<sup>146</sup>

There is significant debate regarding whether an administrative law judge should have final authority with respect to contested case decisions, and some legal scholars point to what appears to be an emerging trend toward restricting agency review of administrative law judge decisions by granting final decision authority to central panels.<sup>147</sup> Perhaps illustrating this trend, in 2018,

<sup>141</sup> See ALASKA STAT ANN. §44.64.050(b); IOWA CODE §10A.801(7)(d); MD. CODE, STATE GOV'T §9-1604(a)(9); OR. REV. STAT. §183.680(1)(a); and TEX. GOV'T CODE ANN. §2003.022(d)(3).

<sup>142</sup> N.D. CENT. CODE §54-57-01(2) and (3).

<sup>143</sup> See GA. CODE ANN. §50-13-41(c) ("Except as [otherwise] provided . . . , every decision of an administrative law judge shall be a final decision" subject to judicial review); LA. REV. STAT. ANN. §49:992(B)(2) and (3); S.C. CODE ANN. §1-23-600; and D.C. CODE §2-1831.16(a) ("An order of the Office [of Administrative Hearings] shall be effective upon its issuance[.]").

<sup>144</sup> MINN. STAT. §14.62(2a) (emphasis added).

<sup>145</sup> See, e.g., ALASKA STAT. § 44.64.030(c) ("To the extent otherwise permitted by law, the agency may delegate to the administrative law judge assigned to conduct the hearing on behalf of the agency the authority to make a final agency decision in the matter. The final decision may be appealed to the superior court by any party."); GA. CODE ANN. §50-13-41(d)(5) ("An agency may provide by rule that proposed decisions in all or in specified classes of cases before the Office of State Administrative Hearings will become final without further agency action and without expiration of the 30 day review period otherwise provided for in this subsection."); IND. CODE §4-15-10.5-12(b) (establishing that any decision by the Office of Administrative Law Proceedings "is not a final agency action[] unless expressly designated by the agency."); S.D. CODIFIED LAWS §1-26D-7 (authorizing an agency to provide, by rule, that decisions of the Office of Hearing Examiners are final unless the agency takes action within a specified period of time); and TEX. GOV'T CODE ANN. §2003.042(7).

<sup>146</sup> TEX. GOV'T CODE ANN. §2003.042(7).

<sup>147</sup> See James F. Flanagan, *An Update on Development in Central Panels and ALJ Final Order Authority*, 38 Ind. L. Rev. 401, 401-02 (2005) (citing numerous scholarly articles noting a trend toward restricting agency review of

Georgia vested its administrative law judges with final decision authority for all contested case decisions.<sup>148</sup> Proponents of both administrative law judge final decision authority and restricted agency review argue that allowing agencies to modify or deny an administrative law judge's order significantly detracts from the independence and impartiality of the central panel process by allowing an administrative agency to act as both prosecutor and arbiter of a matter in which the agency is party.<sup>149</sup>

In contrast, those who argue to preserve agency review of administrative law judge decisions often contend that an agency "has the knowledge and expertise to properly conduct agency review of [administrative law judge] decisions[.]" and in denying an agency the opportunity to review a decision, there is a "loss of political accountability for the decisions reached through administrative adjudication" that may "adversely affect[] the agency's ability to develop and implement a consistent regulatory scheme."<sup>150</sup> Advocates for agency review also point to the "long-standing principle of administrative law" granting an agency "authority to establish policy through agency review of administrative action[.]"<sup>151</sup>

## Part IV. Fiscal Matters

### A. Start-Up Costs

Despite reports of resultant cost-savings and efficiencies as a result of the adoption of a central panel system, state-level controversies have arisen over the initial costs associated with creating an independent administrative agency. For example, Oregon's legislature passed a bill in 1997 to create a stand-alone administrative hearings agency.<sup>152</sup> At the time, Oregon's governor vetoed the bill, citing unavailability of the \$2,000,000 estimated in necessary start-up funds.<sup>153</sup> Two years later, however, another effort was made to establish a central panel "substantially larger than the one contemplated in 1997."<sup>154</sup> A key difference in the structure of the later central panel bill was that the office was "supported by a different agency, and hearing staff were to remain physically located in their former parent agencies, at least for a time[.]" instead of creating a new agency from scratch.<sup>155</sup> The resulting start-up costs for Oregon's central panel were reported at the time to be \$92,000.<sup>156</sup>

---

administrative law judge decisions). *See also generally* Larry J. Craddock, *Final Decision Authority and the Central Panel ALJ*, 33 J. Nat'l Ass'n Admin. L. Judiciary 471 (2013), available at <http://digitalcommons.pepperdine.edu/naalj/vol33/iss2/1>.

<sup>148</sup> *See* 2018 Georgia Laws Act 454 (H.B. 790), effective May 8, 2018.

<sup>149</sup> *See* Craddock, *supra* note 147, at 484 (citation omitted) (quoting Judge John W. Hardwicke, referring to a central panel as "the hearer": "If, in principle, it is necessary to separate the hearer from the agency, is fundamental fairness sacrificed by permitting the agency to superimpose its will upon the final result?").

<sup>150</sup> Flanagan, *supra* note 147, at 402.

<sup>151</sup> *Id.* at 418 (citation omitted) (noting also that this "long-standing principle of administrative law" has been "continually" affirmed by the United States Supreme Court).

<sup>152</sup> *See* Hardwicke, *supra* note 23, at 233.

<sup>153</sup> *See id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *See id.* Using the Consumer Price Index Inflation Calculator of the United States Department of Labor's Bureau of Labor Statistics, the actual start-up costs of the Oregon Office of Administrative Hearings equals \$143,772.54 in

Like Oregon, other states have found ways to reduce the initial costs of creating an independent administrative hearings agency, often by administratively attaching the agency, at least initially, with an existing state agency. To avoid high start-up costs, the Indiana Office of Administrative Law Proceedings, which will begin hearing matters on July 1, 2020, provides that "[a]n agency must provide office space, hearing rooms, and administrative support for administrative proceedings for the agency."<sup>157</sup> Other examples include Tennessee's Administrative Procedures Division, which is housed within the Office of the Secretary of State,<sup>158</sup> and Minnesota's Office of Administrative Hearings, which shares a building and other material resources with Minnesota's Department of Revenue in St. Paul.<sup>159</sup> Minnesota's co-location with the Department of Revenue results in significant cost savings through shared services, and "[c]ost allocation agreements with the larger agency have provided [the Office of Administrative Hearings] with access to a much greater range and depth of administrative support services than was possible when [it] was a small, free-standing agency."<sup>160</sup>

## B. General Savings Over Time

Proponents of central panels often argue that a centralized administrative hearings system may result in significant cost savings for the government.<sup>161</sup> Actual data proving these savings is difficult to obtain, but some limited anecdotal evidence exists.

For example, centralization of administrative hearings through North Carolina's Office of Administrative Hearings has been credited with reducing overall costs of administrative hearings.<sup>162</sup> Similarly, an examination of Oregon's central panel revealed that the Oregon Office of Administrative Hearings "produced considerable savings for the State of Oregon[.]" including an efficiency improvement of 11% between the years 2000 to 2002 that "translate[ed] into lower unit costs" and an estimated biennium savings of \$1,120,000.<sup>163</sup> In Minnesota, the costs to conduct Public Utility Commission hearings in the late 1970s, pre-central panel, totaled \$400,000.<sup>164</sup> During the Minnesota Office of Administrative Hearings' first year of operation, the cost of conducting those hearings fell by nearly \$90,000, and in the second year of operation, the cost fell an additional \$77,000.<sup>165</sup> Thus, in its first two years with a central panel, Minnesota saved over \$166,000 on Public Utility Commission hearings alone.<sup>166</sup> Adjusting for inflation, that savings

---

September 2019 dollars. See CPI INFLATION CALCULATOR, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=92000&year1=199901&year2=201909> (last visited November 12, 2019).

<sup>157</sup> IND. CODE §4-15-10.5-16.

<sup>158</sup> See TENN. CODE ANN. §4-5-321(a).

<sup>159</sup> See MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS, *supra* note 44. See also Johnson, *supra* note 44, at 53.

<sup>160</sup> Johnson, *supra* note 44, at 53.

<sup>161</sup> See generally discussion regarding efficiency and cost savings *supra* Chapter 3, Part II.B., at 90-91.

<sup>162</sup> Mann, *supra* note 22, at 156-57 ("After its creation, OAH did reduce overall costs with the centralization of these administrative hearings but at that same time the central panel also produced unexpected advances" in other areas that go toward efficiency, including "competency of the adjudicator, [] quality of the official record, convenience of hearings' location, and broader access to administrative justice.").

<sup>163</sup> Ewing, *supra* note 32, at 87.

<sup>164</sup> See Hardwicke, *supra* note 23, at 236.

<sup>165</sup> See *id.* at 237.

<sup>166</sup> See *id.*

totals over \$624,000 in 2019 dollars.<sup>167</sup> Like Minnesota, the state of Maryland experienced significant savings soon after adoption of its central panel; by its second year, the Maryland Office of Administrative Hearings saved the state \$828,000 in administrative hearings costs<sup>168</sup> which, adjusted for inflation, totals nearly \$1,500,000 in 2019 dollars.<sup>169</sup> Also, within its first two years of operation, the Texas State Office of Administrative Hearings reported that its costs to conduct hearings dropped by 70%.<sup>170</sup>

### C. Central Panel Funding Methods

Cost savings may also be gained by directing state moneys to a single central panel rather than to numerous, individual agencies for purposes of conducting administrative hearings. The jurisdictions that have established central panels vary greatly in the methods by which they fund their central panels, but most use one or a mix of the following methods: direct appropriation of general funds by the legislature; assessment to referring agencies; or hourly billing to referring agencies.<sup>171</sup> Table 3.21, *infra* at pages 129 to 130, details the various funding methods utilized by each state central panel. The choice of central panel funding method "is commonly made when the panel is first established" and "tends to reflect the political environments, local organizational needs, and fiscal realities that prevail at that time."<sup>172</sup> All three funding methods have distinct advantages and disadvantages, which may explain why many states use a combination of two or more funding methods to support their central panel.

---

<sup>167</sup> The Minnesota Office of Administrative Hearings opened its doors on January 1, 1976. *See* MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS: ABOUT US - HISTORY, <https://mn.gov/oah/about-us/history/> (last visited November 2, 2019). Using the Consumer Price Index Inflation Calculator of the United States Department of Labor's Bureau of Labor Statistics, \$166,000 in January 1978 dollars is equal to \$624,040.91 in September 2019 dollars (the most current available month for calculating CPI inflation). *See* CPI INFLATION CALCULATOR, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=166000&year1=197901&year2=201909> (last visited November 12, 2019).

<sup>168</sup> *See* Hardwicke, *supra* note 23, at 236.

<sup>169</sup> The Maryland Office of Administrative Hearings was established in 1991. *See id.* Using the Consumer Price Index Inflation Calculator of the United States Department of Labor's Bureau of Labor Statistics, \$828,000 in January 1993 dollars is equal to \$1,490,858.71 in September 2019 dollars (the most current available month for calculating CPI inflation). *See* CPI INFLATION CALCULATOR, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=828000&year1=199301&year2=201909> (last visited November 12, 2019).

<sup>170</sup> Hardwicke, *supra* note 23, at 236.

<sup>171</sup> *See, e.g.,* Bruce H. Johnson, *Methods of Funding Central Panels: The Fiscal, Management, and Policy Implications*, 20 J. Nat'l Ass'n Admin. L. Judges 301, 302 (2000), available at <http://digitalcommons.pepperdine.edu/naalj/vol20/iss2/4> ("Generally, funding methods fall into three categories: (1) appropriating funds directly to the hearing office; (2) assessing other agencies for their allocated shares of the hearing office's costs; and (3) allowing the hearing office to maintain a revolving fund account and to bill referring agencies an hourly rate for the time spent on hearings.") [hereinafter Johnson, *Methods of Funding*]; *see generally* STELLAR ASSOCIATES, LLC, WASHINGTON STATE OFFICE OF ADMINISTRATIVE HEARINGS: FEE STRUCTURE, BILLING METHODOLOGY, PRODUCTIVITY, AND ORGANIZATIONAL STRUCTURE REVIEW 103-10 (June 2019); *see also, e.g.,* KAN. STAT. ANN. §75-37,121(g) ("The secretary of administration may adopt rules and regulations to establish fees to charge a state agency for the cost of using a presiding officer.").

<sup>172</sup> Johnson, *Methods of Funding*, *supra* note 171, at 301.



## 1. Funding by General or Special Fund Appropriations

Using general fund or special fund appropriations to finance a central panel typically "results in a relatively simple and predictable budget process that produces a measure of fiscal stability sometimes lacking with funding by assessment or hourly billing."<sup>173</sup> Referring agencies also benefit, as they do not need to budget for annual hearing costs which may fluctuate dramatically from year to year.<sup>174</sup> However, funding by appropriation does not necessarily encourage swift settlement of cases (including pre-hearing settlement) in the same manner that assessment or direct hourly billing might. Further, an appropriation does not provide any budgetary flexibility for an unexpected increase in case volume that may require the hiring of additional staff or temporary administrative law judges. Funding by appropriation, however, allows the governor and the legislature a much greater degree of central panel oversight and control than funding by assessment or billing.<sup>175</sup>

## 2. Funding by Assessments

Some state central panels are funded by assessments, or a periodic pro rata allocation to an agency of the central panel's costs based on the amount of central panel services utilized by that agency.<sup>176</sup> Louisiana, Oregon, and Wyoming are currently the only three states that fund their central panels wholly through assessment to referring agencies.<sup>177</sup> While funding by assessment does not provide as much financial stability to a central panel as funding by appropriation, it is "more predictable and stable than the budget of [a central panel] funded entirely by hourly billings."<sup>178</sup> Assessments also accommodate the hiring of temporary or contract administrative law judges in the event of an unexpected or temporary increase in caseload. However, funding by assessment may discourage agencies, in the interest of reducing their own annual expenses, from providing citizens with due process hearings to which they may be entitled. Smaller agencies may also find assessments challenging to budget for if they only use central panel services on an infrequent or unpredictable basis.<sup>179</sup>

## 3. Funding by Hourly Billing

Funding by hourly billing is used by a number of jurisdictions, but no jurisdiction uses it as the exclusive method of funding its central panel.<sup>180</sup> Billing referring agencies by the hour may work well in certain instances, including situations in which administrative law judges conduct large numbers of low cost hearings, such as license suspensions and revocations.<sup>181</sup> However, relying exclusively on an hourly billing system for funding may create significant financial instability for a central panel, particularly in instances where lengthy, complex adjudications take

---

<sup>173</sup> *Id.* at 303.

<sup>174</sup> *See id.*

<sup>175</sup> *See id.* at 305.

<sup>176</sup> *See id.* at 306-07.

<sup>177</sup> *See Stellar Associates, supra* note 171, Appendix 1 at 111-12.

<sup>178</sup> Johnson, *Methods of Funding, supra* note 171, at 307.

<sup>179</sup> *See id.* at 308.

<sup>180</sup> *See* Table 3.21, *infra* at 129-130.

<sup>181</sup> *See* Johnson, *Methods of Funding, supra* note 171, at 311.

place, but only on an infrequent basis.<sup>182</sup> Due to the varying nature of matters heard by central panels, funding by billing may make long-term budgeting difficult and unpredictable, thereby impacting the central panel's stability and readiness.<sup>183</sup>

---

<sup>182</sup> *See id.* at 311-12.

<sup>183</sup> *See id.*

**Table 3.21 - Central Panel Funding Methods by State**

| State                    | General Fund Appropriation | Special Fund Appropriation | Assessments to Agencies | Hourly Billing to Agencies |
|--------------------------|----------------------------|----------------------------|-------------------------|----------------------------|
| Alaska                   | x                          |                            |                         | x                          |
| Arizona                  | x                          |                            | x                       |                            |
| California               |                            |                            | x                       | x                          |
| Colorado                 | x                          |                            | x                       |                            |
| Florida                  |                            |                            | x                       | x                          |
| Georgia                  | x                          |                            | x                       |                            |
| Illinois <sup>184</sup>  |                            |                            |                         |                            |
| Indiana <sup>185</sup>   |                            |                            |                         |                            |
| Iowa                     | x                          | x                          |                         | x                          |
| Kansas                   |                            |                            | x                       | x                          |
| Louisiana                |                            |                            | x                       |                            |
| Maryland                 |                            |                            | x                       | x                          |
| Massachusetts            | x                          | x                          |                         |                            |
| Michigan                 |                            |                            | x                       | x                          |
| Minnesota                | x                          | x                          |                         | x                          |
| Missouri                 | x                          |                            |                         | x                          |
| New Jersey               | x                          |                            | x                       |                            |
| North Carolina           | x                          |                            |                         |                            |
| North Dakota             | x                          | x                          |                         | x                          |
| Oregon                   |                            |                            | x                       |                            |
| South Carolina           | x                          |                            | x                       |                            |
| South Dakota             | x                          |                            |                         |                            |
| Tennessee <sup>186</sup> |                            |                            |                         |                            |
| Texas                    | x                          |                            | x                       |                            |

<sup>184</sup> The Illinois Bureau of Administrative Hearings is authorized to enter into contracts with up to 25 executive branch agencies to provide administrative hearings services. *See* Ill. Exec. Order No. 2017-04. At the time of this report, it is unclear which particular funding structure is utilized by the Illinois Bureau of Administrative Hearings for its engagement among these agencies for contested case hearing services.

<sup>185</sup> At the time of this report, the Indiana Office of Administrative Law Proceedings is not yet in operation; it will begin hearing cases on July 1, 2020. IND. CODE §4-15-10.5-1(a). While there appears to be no funding method designation by statute, the Indiana Personnel Department is required to provide "offices, rooms, and staff assistance" to the director of the Office of Administrative Law Proceedings "for the office." *See* IND. CODE §4-15-10.5-9. Additionally, agencies that utilize the Office of Administrative Law Proceedings to conduct hearings are required to provide "office space, hearing rooms, and administrative support for administrative proceedings for the agency." IND. CODE §4-15-10.5-16.

<sup>186</sup> The Administrative Procedures Division is housed within the Tennessee Office of the Secretary of State, but it is unclear at the time of this report how the Administrative Procedures Division is funded.

**Table 3.21 (continued) - Central Panel Funding Methods by State**

| State                | General Fund Appropriation | Special Fund Appropriation | Assessments to Agencies | Hourly Billing to Agencies |
|----------------------|----------------------------|----------------------------|-------------------------|----------------------------|
| Washington           |                            |                            |                         | x                          |
| Wisconsin            | x                          |                            | x                       |                            |
| Wyoming              |                            |                            | x                       | x                          |
| District of Columbia |                            |                            | x                       |                            |

### Part V. Effectiveness of Central Panels

There is limited quantifiable data regarding the effectiveness of centralized administrative hearings systems. However, it is notable that no state that has adopted a central panel has disbanded it in favor of reverting back to a decentralized system.<sup>187</sup> While not conclusive evidence of central panel efficiency, a general trend toward expanded central panel jurisdiction suggests some level of efficiency - and proficiency - in handling contested case matters.

One of the primary concerns articulated in debates over central panels is the anticipated loss of expertise and corresponding loss of effectiveness when transitioning to a centralized agency staffed largely by generalist administrative law judges.<sup>188</sup> A common area of concern is transitioning from a system of "in house" agency adjudicators and employees who are often specific subject matter experts to a centralized system in which administrative law judges may preside over hearings involving a number of agencies and addressing a variety of matters, some of which may be particularly technical or complex.<sup>189</sup>

Opponents of centralization often argue that central panels become, in fact, *less* efficient due to this anticipated "loss of expertise."<sup>190</sup> When establishing a central panel, some states specifically account for this concern by providing in statute that those who currently preside over agency hearings are expected to move from their employing agency to the central panel.<sup>191</sup> Also, some states require a chief administrative law judge to consider an administrative law judge's subject matter expertise when assigning an administrative law judge to a particular case.<sup>192</sup> It is

<sup>187</sup> See Flanagan, *supra* note 147, at 404-05 ("Once established, [central panels] have proven popular. No state with a central panel has returned to its former practice of decentralizing [administrative law judges]."); Boerner, *supra* note 18, at 1 (noting South Dakota as the only state to abandon a central panel system, only to re-adopt a central panel system again); and Hoberg, *supra* note 51, at 242 (noting that, initially, the jurisdiction of the Texas Office of Administrative Hearings included only those agencies that did not already employ at least 1 full-time hearings officer; the office's jurisdiction has since greatly expanded).

<sup>188</sup> See discussion regarding Hawaii agency concerns regarding a prospective centralized administrative hearings department, *supra* Chapter 2, Part III.C., at 80-82.

<sup>189</sup> See Rich, *supra* note 1, at 31-32.

<sup>190</sup> See, e.g., *id.*

<sup>191</sup> See, e.g., KAN. STAT. ANN. §75-37,121(i); LA. REV. STAT. ANN. §49:994(C); Mich. Exec. Order No. 2019-06(3); MINN. STAT. §14.56; and MO. REV. STAT. §621.040.

<sup>192</sup> See, e.g., ARIZ. REV. STAT. §41-1092.01(H)(1) ("The director shall assign administrative law judges from the office to an agency . . . in accordance with the special expertise of the administrative law judge in the subject matter of the agency."); MASS. GEN. LAWS ch. 7, §4H (requiring administrative magistrates who preside over public

common among states to require that administrative law judges regularly attend training to maintain or expand specific areas of expertise.<sup>193</sup> Some argue that cross-training administrative law judges can "increase competence in the judges, in the same way that trial judges in the traditional court system usually are 'generalists' who are able to call upon lessons learned in one kind of case to help solve other cases[] and . . . the variety of work would attract a more capable and ambitious group of applicants for positions as administrative law judges."<sup>194</sup>

Jurisdictional accretion, a frequent occurrence in states that have established a central panel system, is another indicator that may reflect, to some degree, the efficiency of a central panel. Legislatures often expand a central panel's jurisdiction in the years following its establishment. Further, as individual agencies grow more comfortable with a central panel over time, they may elect to transfer the administrative hearings for certain matters to the central panel.<sup>195</sup> To illustrate, while it is unclear how many hearings were conducted or how many agencies utilized the California Office of Administrative Hearings in its early years, it presently receives anywhere between 10,000 to 14,000 individual case filings annually, which involve any of over 1,500 state and local government agencies.<sup>196</sup> Of those, approximately 50% of its General Jurisdiction and 96% of its Special Education cases "are resolved without the need for hearing and decision."<sup>197</sup>

Another example is Washington's Office of Administrative Hearings, which began to conduct contested case hearings in fiscal year 1983. During its first full year of operation, "the agency closed 35,372 administrative dispute cases."<sup>198</sup> Thirty-five years later, during calendar

---

construction contract disputes to "have had prior experience in construction law"); MINN. STAT. §14.50 ("In assigning administrative law judges or compensation judges to conduct hearings under this chapter, the chief administrative law judge shall attempt to utilize personnel having expertise in the subject to be dealt with in the hearing."); N.C. GEN. STAT. §7A-753 ("The Chief Administrative Law Judge may designate certain administrative law judges as having the experience and expertise to preside at specific types of contested cases and assign only these designated administrative law judges to preside at those cases."); N.D. CENT. CODE §54-57-03(5) ("When designating administrative law judges to preside in an administrative proceeding or adjudicative proceeding, the director shall attempt to assign an administrative judge having expertise in the subject matter to be dealt with."); and TEX. GOV'T CODE ANN. §2003.905 (both requiring administrative law judges who hear appeals from Appraisal Review Board Determinations to have specialized knowledge and entitling these judges to attend "one or more training and education courses" related to these types of matters).

<sup>193</sup> See, e.g., IND. CODE §4-15-10.5-10(5); IOWA CODE §10A.801(3)(b) ("The division shall facilitate, insofar as practicable, specialization by its administrative law judges so that particular judges may become expert in presiding over cases in particular agencies."); MD. CODE, STATE GOV'T §9-1604(a)(6) (requiring the Chief Administrative Law Judge to "establish and implement standard and specialized training programs . . . for administrative law judges"); MO. REV. STAT. §621.253 (requiring at least 3 Administrative Hearing Commissioners to receive annual training regarding special education matters and requiring these trained commissioners to preside over special education due process hearings); N.J. STAT. ANN. §52:14F-5(r) (requiring the Director and Chief Administrative Law Judge to "[d]evelop and maintain a program for the continuing training and education of administrative law judges"); OR. REV. STAT. §183.625(1); and TEX. GOV'T CODE ANN. §2003.0451.

<sup>194</sup> Gillette, *supra* note 7, at 320-21.

<sup>195</sup> See Jeff S. Masin, *New Jersey's Office of Administrative Law: The Importance of Initial Choices*, 23 J. Nat'l Ass'n Admin. L. Judges 387, 391 (2003), available at <http://digitalcommons.pepperdine.edu/naalj/vol23/iss2/2> (noting that many central panels were established with "very circumscribed jurisdiction over the hearings of only a few agencies" but over time, have gained jurisdiction over the hearings of additional agencies in a "piecemeal" fashion).

<sup>196</sup> See CALIFORNIA OFFICE OF ADMINISTRATIVE HEARINGS: ABOUT THE OFFICE OF ADMINISTRATIVE HEARINGS, *supra* note 47.

<sup>197</sup> *Id.*

<sup>198</sup> Stellar Associates, *supra* note 171, at 2.

year 2018, the office heard over 65,000 contested cases and closed nearly 50,000 cases.<sup>199</sup> Over time, the office's jurisdiction has fluctuated, but its case volume has nearly always grown.<sup>200</sup> Numerous caseloads have been moved from other agencies into the Office of Administrative Hearings' jurisdiction in the years since its establishment, including: the Liquor and Cannabis Board's marijuana licensing program cases (beginning in 2015); student misconduct and Title IX cases originating from the University of Washington, Washington State University, and Eastern Washington University (beginning in 2017); and Paid Family and Medical Leave Act cases (to begin being heard in late 2019).<sup>201</sup>

---

<sup>199</sup> *See id.* at 6.

<sup>200</sup> While the volume of case filings handled by the Washington Office of Administrative Hearings has nearly always grown, some case matters have moved out of the office's jurisdiction. For example, all Washington Utilities and Transportation Commission cases were transferred out of the Office of Administrative Hearings' jurisdiction and back to the referring agency in 1995. *See id.* at 8.

<sup>201</sup> *See id.* at 8-9.

## Chapter 4

### IN CONCLUSION: LIMITATIONS ON DATA AND FACTORS TO CONSIDER

Act 110 required the Legislative Reference Bureau to submit to the Legislature a report, including findings and recommendations, regarding contested cases in Hawaii and other jurisdictions.

This concluding chapter includes a brief discussion regarding the Bureau's findings based on state agency responses and examination of central panel systems in other jurisdictions. This chapter also presents a list of factors that lawmakers may wish to consider when contemplating the creation of a central panel.

#### Part I. Findings

##### A. Hawaii State Agency Responses and Limitations on Data Collected

Agencies varied significantly in their responses across all data points required by Act 110. The Bureau's survey included questions to gather the data required in Act 110, as well as additional questions about barriers to providing timely adjudication and concerns about the establishment of a centralized administrative hearings system in the State.

A number of agencies faced significant challenges in providing relevant data to the Bureau, often because the data requested was not available. Due to the limitations of available data, it was not possible for the Bureau to include information in this report regarding all subject areas described in Act 110. Most notably, data related to the costs of contested cases by subject matter was not available.

##### 1. Contested Case Subject Matter

During FY 2017-2018, Hawaii's executive branch agencies conducted contested case hearings for subject matters including: campaign and elections laws; agricultural matters involving food, animals, measurements, and other agricultural resources; public benefits claims; special education; child support; health matters including certain mental health, disability, nutrition, and environmental issues; insurance; public utilities; workers' compensation and other labor matters including collective bargaining, discrimination, wages and hours, unlawful suspension or discharge, family leave, and occupation safety and health; certain land and natural resource matters, including civil resource violations, conservation, enforcement, permits, vessels, and water resource management; tax assessments; and certain matters related specifically to the University of Hawaii system.<sup>1</sup>

---

<sup>1</sup> See Table 2.2, *supra* Chapter 2, Part II.B., at 14-16.

## 2. Caseload Statistics

### a. Volume of Cases

Hawaii state agencies varied significantly with respect to caseload statistics.<sup>2</sup> Of those agencies that reported to have conducted contested cases in FY 2017-2018, the number of administrative hearings conducted ranged from a high of 2,678 cases filed with the Department of the Attorney General's Office of Child Support Hearings to a low of 1 campaign finance case handled by Campaign Spending Commission.<sup>3</sup>

### b. Duration of Cases

The data submitted by agencies regarding the average duration of administrative hearing matters from filing to disposition varied widely.<sup>4</sup> For example, of the 85 workers' compensation cases in FY 2017-2018 that resulted in a final decision after a trial-type hearing, the average total duration of these cases from filing to decision rendered was 1,076 days.<sup>5</sup> In contrast, the Office of Child Support Hearings handled 492 child support contested cases that resulted in a final decision after a trial-type hearing, with the average duration of these cases from filing to disposition totaling 77 days.<sup>6</sup>

### c. Presiding Officers

With respect to the number of hearing officers employed or retained by the responding agencies, most agencies employed or retained a single individual to preside over contested cases. Numerous agencies have commissioners or board members that participate in contested case matters, and those usually include anywhere from 2 to 10 individuals.<sup>7</sup> In some instances, such as with the Commission on Water Resource Management, the chairperson of a commission or board is required to preside over contested cases.<sup>8</sup> Additionally, other commission or board members may be expected to participate in various aspects of a contested case, usually as a decision-making body to consider a proposed decision and order issued by a hearings officer.<sup>9</sup> For example, the Department of Labor and Industrial Relations' Labor and Industrial Relations Appeals Board conducts contested cases that are presided over by board members or hearings officers, but only the board may issue final decisions in contested cases.<sup>10</sup>

---

<sup>2</sup> See Tables 2.5 through 2.12, *supra* Chapter 2, Part II.E. through Part II.O., at 27-74.

<sup>3</sup> Numerous agencies responded that no contested cases were filed with their agencies in FY 2017-2018.

<sup>4</sup> See Table 2.11, *supra* Chapter 2, Part II.J.2., at 52-58.

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See Table 2.4, *supra* Chapter 2, Part II.D., at 20-26.

<sup>8</sup> Section 13-167-56(c), Hawaii Administrative Rules (requiring the chairperson of the Commission on Water Resource Management to serve as the presiding officer over contested cases; also authorizing the chairperson to designate a presiding officer in the chairperson's stead). See also Survey Response from the Commission on Water Resource Management, Department of Land and Natural Resources, July 31, 2019, at 7.

<sup>9</sup> See Table 2.4, *supra* Chapter 2, Part II.D., at 20-26.

<sup>10</sup> See Survey Response from Labor and Industrial Relations Appeals Board, Department of Labor and Industrial Relations, July 24, 2019, at 3-4. (specifying that: (1) members of the Labor and Industrial Relations Appeals Board



#### **d. Decisions Appealed**

Considering the overall volume of cases, there were comparatively few appeals of final decisions. Fifteen of the 27 responding agencies that issued a final decision in a contested case matter had one or more decisions appealed in FY 2017-2018, with a total of 78 final decisions appealed across all responding agencies in FY 2017-2018.<sup>11</sup> The Department of Labor and Industrial Relations' Labor and Industrial Relations Board reported 28 workers' compensation appeals, the greatest number of contested case decision appeals among the responding agencies.<sup>12</sup>

### **3. Agency Concerns**

#### **a. Preventing Conflicts of Interest**

When asked about conflicts of interest that may arise due to an agency adjudicating a dispute that originates from and involves as a party the department to which the agency is attached, most agencies responded with information demonstrating measures that have been taken to insulate contested case proceedings from any undue agency influence.<sup>13</sup> For example, the Department of the Attorney General's Office of Child Support Hearings stated that the Child Support Enforcement Agency (the arm of the Department of the Attorney General that enforces child support matters) is a separate division with the department that is subject to separate statutes and administrative rules.<sup>14</sup> The Department of Human Services' Administrative Hearings Office noted its physical separation from other agencies within the department and also mentioned an administrative rule that prohibits departmental *ex parte* communications with the department's hearings officers.<sup>15</sup>

#### **b. Barriers to Adjudication**

Agencies noted several barriers to providing fair and timely adjudication of contested cases. The agencies surveyed for this report primarily cited challenges with respect to availability of hearing officers as well as other staffing, resource, and logistical obstacles.<sup>16</sup> Meeting board or commission quorum requirements to conduct contested case hearings or issue final decisions was cited as a concern, especially when a board or commission is composed solely of volunteers.<sup>17</sup> Agencies that conduct contested case hearings on a less frequent basis

---

may preside over various aspects of a contested case hearing, either solely or as a panel of at least two; (2) hearings officers may preside over all aspects of a contested case hearing individually; and (3) hearings officers issue proposed decisions and orders for the board's consideration but final decision authority is retained solely by the Labor and Industrial Appeals Board).

<sup>11</sup> See Table 2.12, *supra* Chapter 2, Part II.K., at 59-61.

<sup>12</sup> See *id.*

<sup>13</sup> See discussion regarding Conflicts of Interest, *supra* Chapter 2, Part III.A., at 75-78.

<sup>14</sup> See *id.* at 75.

<sup>15</sup> See *id.* at 76.

<sup>16</sup> See discussion regarding Other Barriers, *supra* Chapter 2, Part III.B., at 78-80.

<sup>17</sup> See *id.* at 79.

expressed difficulty in procuring and scheduling contract hearings officers.<sup>18</sup> Hawaii's unique geography was also mentioned as a challenge with respect to conducting and staffing contested case hearings.<sup>19</sup> For example, the Hawaiian Homes Commission travels to the islands of Kauai and Molokai once per year to conduct land lease contested case hearings; the Commission travels to Lanai to conduct these types of contested case hearings once every other year.<sup>20</sup>

### **c. General Concerns**

Some agencies also expressed general concerns about the establishment of a central panel in Hawaii. The primary concern expressed was whether adjudicators in a central panel system would possess sufficient specialized subject matter expertise to fairly and efficiently preside over contested cases.<sup>21</sup> The Public Utilities Commission suggested that, should the State adopt a central panel, the central panel should include a sub-department that specializes in public utilities and renewable-energy matters.<sup>22</sup> Other concerns included the employment status of current agency staff who potentially may be transferred to a newly-created central panel agency as well as adoption of procedures governing contested case matters should a central panel be established.<sup>23</sup>

## **B. Central Panel Systems in Other Jurisdictions**

In accordance with Act 110, the Bureau researched and summarized the form and function of centralized administrative hearing offices, referred to as "central panels" both conventionally and for purposes of this report, that have been established in other jurisdictions. Specifically, the Bureau studied central panels in 28 jurisdictions: Alaska, Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and the District of Columbia.<sup>24</sup>

### **1. Factors Driving Adoption of State Central Panels**

Central panel adoption among the states began with California in 1945, and after a slow start, has continued steadily through the present, with Indiana establishing its Office of Administrative Law Proceedings in 2019. The factors driving the adoption of a central panel system for administrative hearings vary among the states, but historically, concerns over one or more of the following often serve as the basis for establishing a central panel: impartiality and

---

<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *See id.*

<sup>21</sup> *See* discussion regarding Concerns About a Prospective Centralized Administrative Hearings Department, *supra* Chapter 2, Part III.C., at 80-82.

<sup>22</sup> *See id.* at 80.

<sup>23</sup> *See id.* at 80-82.

<sup>24</sup> *See generally* Table 3.17 and accompanying text, *supra* Chapter 3, Part I, at 87-89.

equity; efficiency and cost-savings; and standardization and professionalization of the administrative hearings process.<sup>25</sup>

## **2. Common Factors Among Central Panels**

No two states have adopted an identical system with respect to central panel organization, jurisdiction, adjudicators, or authority, but there are numerous commonalities among the various central panel systems.<sup>26</sup> While most jurisdictions examined for purposes of this report have established central panels through legislation, no two statutory schemes are identical. Some states enacted comprehensive and specific legislation governing their central panel, while others enacted a central panel through much less detailed legislation. Central panels are considered to be an "organ of the executive branch" and, thus, their duties are executive, not judicial, in nature.<sup>27</sup>

### **a. Organization**

Most, though not all, central panels have been established as independent agencies within a state's executive branch. This independence is meant to allow a central panel to operate outside of the influence of any other agency or department. Some states, however, appear to attach a central panel to another agency or department for purposes of cost-savings achieved through the sharing of resources such as office space or certain administrative personnel. Most state central panels have a headquarters office, usually located in the capital city of a state, in addition to one or more satellite offices in other locations throughout the state.

### **b. Jurisdiction**

Most states establish a central panel's specific jurisdiction by statute, and currently, none of the central panels examined for purposes of this report has been granted jurisdiction over all of a state's contested cases. Many states enumerate by statute the individual agencies that are within a central panel's jurisdiction for purposes of contested case hearings, and others specify the agencies that are exempt from any such requirement; some do both.

The cases most frequently included in a central panel's jurisdiction include suspensions or revocations (frequently related to motor vehicle licensing or professional licensing), individual benefit claims, disability allowances, child support, and workers' compensation matters. Some jurisdictions, like Michigan and Texas, hear other types of cases, such as tax valuation appeals.

### **c. Administrative Law Judges**

Twenty of the 28 jurisdictions examined for purposes of this report use the term "administrative law judge" for at least some of the presiding officers employed by their central

---

<sup>25</sup> See Chapter 3, Part II, *supra* at 89-92.

<sup>26</sup> See Chapter 3, Part III, *supra* at 92-124.

<sup>27</sup> Christopher B. McNeil, *The Model Act Creating a State Central Hearing Agency: Promises, Practical Problems, and a Proposal for Change*, 53 Admin. L. Rev. 475, 478-79 (2001), available at <https://works.bepress.com/cbmneil/7/>.

panel. Most states specifically designate the head of a central panel, often using the title "chief administrative law judge." States vary significantly in the number of administrative law judges employed to conduct hearings in the central panel system, but only two states designate a specific number.<sup>28</sup>

The methods by which administrative law judges are hired vary among states as well. Some states require appointment by a state's governor, others require appointment or confirmation by a nominating or selection commission, but most authorize a chief administrative law judge (who is often appointed by a state's governor) to employ other administrative law judges.

The jurisdictions examined for purposes of this report vary with respect to professional requirements for administrative law judges. Most require by statute that an administrative law judge must be a licensed attorney in the state, and some states additionally require an administrative law judge to have been licensed to practice law for a certain number of years. Most states employ administrative law judges who are expected to hear contested cases irrespective of subject matter, but some states statutorily designate that only certain trained or experienced administrative law judges may hear specific matters (e.g., special education contested cases, workers' compensation cases). Some states impose by statute a residency requirement on their administrative law judges. Most states examined for this report require their administrative law judges to serve in a full-time capacity, but others specifically allow for the hiring of part-time, temporary, or contract administrative law judges. Many also require that central panel administrative law judges adhere to a code of judicial conduct, either specific to administrative law judges or generally applicable to judges in the state.

The jurisdictions examined for this report also vary significantly with respect to whether a central panel's adjudicators are granted final decision authority. While some legal scholars point to a trend toward granting this authority to central panels, most states do not grant final decision authority to administrative law judge decisions. Currently, only Georgia, Louisiana, South Carolina, and the District of Columbia establish by statute that all administrative law judge orders are final. Most other jurisdictions provide by statute that an individual agency, by rule, may grant a central panel final decision authority for specific hearings.<sup>29</sup> Unless an agency grants a central panel final decision authority, whether by statute or agency rule, an administrative law judge's decision will be considered an initial or preliminary order or ruling subject to agency review.

---

<sup>28</sup> Missouri caps their administrative law judges (called "commissioners") at 5, and South Carolina has a statutory maximum of 6 administrative law judges. *See* MO. REV. STAT. §621.015 *and* S.C. CODE ANN. §1-23-510(A). Most states employ more administrative law judges, but do not designate a specific number in statute. For example, Washington employs over 100 administrative law judges in its central panel. *See* OFFICE OF ADMINISTRATIVE HEARINGS: OAH ADMINISTRATIVE LAW JUDGES, <http://oah.wa.gov/Content-Area-Management/All-About-OAH-Hub/OAH-Judges> (last visited December 10, 2019).

<sup>29</sup> *See* Chapter 3, Part III.D., *supra* at 123-24.

### **3. Fiscal Matters**

Several fiscal matters impact the adoption and operation of central panels. These include start-up costs, general savings over time, and methods of funding central panels.

Jurisdictions examined for purposes of this report have devised various strategies to minimize the start-up costs associated with establishing a central panel. For example, some states have co-located their central panel with another state agency or encouraged cost allocation agreements with a larger agency to grant the central panel access to greater range or depth of administrative support services than the central panel would have if it were a completely stand-alone agency.

Data detailing general savings over time is difficult to obtain, but some limited anecdotal evidence exists, discussed *supra* at Chapter 3, Part IV.B. Several states have reported that the establishment of a central panel has resulted in cost savings with respect to the overall costs of contested case hearings.

States differ with respect to the method of central panel funding that they adopt, but most use some combination of two or more of the following: general fund appropriations; special fund appropriations; assessments to agencies; or funding by hourly billing.

### **4. Effectiveness of Central Panels**

There is limited quantifiable data regarding the effectiveness of centralized administrative hearings systems, however, it is notable that no state that has adopted a central panel has disbanded it in favor of reverting back to a decentralized system. While not conclusive evidence of central panel efficiency, a general trend toward expanded subject matter jurisdiction among states with established central panels suggests some level of efficiency - and proficiency - in handling contested case matters over time.

## **Part II. Further Considerations Regarding Establishment of a State Central Panel**

The Bureau suggests several factors to be considered if lawmakers wish to pursue the establishment of a central panel in the State. In light of the limitations on data collected from state agencies for purposes of this report, the Legislature may wish to direct stakeholders (e.g., various entities that conduct contested case hearings) to identify and standardize specific contested case data, which could include case record information or financial cost itemization, to be collected, retained, and reported by all state agencies on an annual basis. This data collection requirement would allow for a standardized and multi-year overview of the current contested case caseloads, processes, and finances among the State's executive branch agencies, providing a baseline from which lawmakers can make future cost and operational efficiency comparisons if implementation of a central panel system in Hawaii is contemplated.

Additionally, lawmakers may wish to address the following factors when considering the establishment of a central panel in the State.

- Determining Rationale for Reform.
  - Determining the specific rationale for reform to the State's current administrative hearing system may help to clarify and guide that change. Historically, common reasons for the adoption of central panels include increased equity and impartiality, efficiency and cost-savings, or standardization and professionalization of the overall administrative hearings process.
  
- Determining Central Panel Form and Placement.
  - Another factor to consider is whether a central panel might be best established as a principal executive branch department or as an agency within or attached to an existing executive branch department in the State. It should be noted that the Hawaii State Constitution limits to 20 the number of principal executive branch departments in the State, and currently, there are 18 principal departments.<sup>30</sup>
  - If a central panel is to be established within an existing department, the nature of the relationship between the principal department and a central panel should be considered and clearly articulated. For example, a central panel could operate independently but be attached to an agency purely for administrative purposes (e.g., offices, administrative resources, etc.), or the agency could be wholly governed by the principal department.
  
- Establishing Subject Matter Jurisdiction.
  - Consideration should be given to how circumscribed, if at all, the central panel's jurisdiction is to be. The Legislature may wish to require a central panel to conduct all contested case hearings, or it may wish to exempt certain agencies or contested case matters from a central panel's jurisdiction.<sup>31</sup>

---

<sup>30</sup> Article V, section 6, of the Hawaii State Constitution states that "[a]ll executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions." *See also* §26-4, Hawaii Revised Statutes.

<sup>31</sup> For example, several states specifically exempt workers' compensation cases from their state central panel's jurisdiction, while others create a separate division within the central panel that solely handles workers' compensation matters. *See, e.g.*, COLORADO OFFICE OF ADMINISTRATIVE COURTS: WORKERS COMPENSATION, <https://www.colorado.gov/pacific/oac/workers-compensation> (last visited November 25, 2019) (specifying that the Office of Administrative Courts conducts workers' compensation hearings in 3 specific offices located in Denver, Colorado Springs, and Grand Junction); COLORADO OFFICE OF ADMINISTRATIVE COURTS: ABOUT, <https://www.colorado.gov/oac> (specifying that the Office of Administrative Courts is divided into 4 "work units": Operations; Workers' Compensation; General Services; and Mediations); FLA. STAT. §440.33 (providing specifically

- Further, it may be helpful to solicit additional input from any agency currently conducting contested case hearings in the State when determining the subject matter jurisdiction of a central panel in the State.<sup>32</sup>
- Determining Central Panel Structure.
  - Centralizing administrative hearings in the State would provide an opportunity to standardize certain aspects of the process, including terminology, qualifications, standards of conduct, and leadership, if that is deemed desirable. For example, these could include:
    - Determining the desired designation for those who preside over contested case hearings in the State, whether "administrative law judge," "hearings officer," or another term. While most agencies in the State currently use the term "hearings officers" to refer to those who preside over contested case hearings, some designate these adjudicators "conciliation panels," "hearings examiners," "administrative proceeding coordinators," or "presiding officers."<sup>33</sup> Many agencies also involve commissioners or board members as adjudicators in these matters<sup>34</sup>;
    - Specifying qualifications for those who preside over contested cases, such as licensure as an attorney in good standing with the Hawaii State Bar, expertise in a particular subject matter, or residency in the State;
    - Determining whether to specifically provide that officials who preside over contested cases in a central panel may do so on a part-time, contract, or temporary basis;

---

for judges of compensation claims that specifically handle workers' compensation administrative hearing matters); IND. CODE § 4-15-10.5-2(3) (exempting hearings of "the worker's compensation board of Indiana" from the Office of Administrative Law Proceedings' jurisdiction); LA. REV. STAT. ANN. §49:992(D)(3) (exempting hearings of "[t]he office of workers' compensation administration in the Louisiana Workforce Commission" from the Division of Administrative Law's jurisdiction)); MD. CODE, STATE GOV'T §9-1601(a)(7) (exempting hearings of "the State Workers' Compensation Commission" from the Office of Administrative Hearings' jurisdiction); MINN. STAT. §14.48(3)(c) (specifying that workers' compensation hearings may only be heard by compensation judges within the Office of Administrative Hearings); and STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION: DIVISION OF HEARINGS AND APPEALS, <https://doa.wi.gov/Pages/AboutDOA/HearingsAndAppeals.aspx> (last visited November 25, 2019) (noting that the Division of Hearings and Appeals separates hearings into 4 administrative units: corrections; workers' compensation hearings; general government; and work and family services).

<sup>32</sup> For example, the Department of Hawaiian Home Land's Hawaiian Homes Commission states that delegation of contested case decision making would violate both the Hawaiian Homes Commission Act and the state constitution. Note that the Department of the Attorney General responded on behalf of the Hawaiian Homes Commission. See Chapter 2, Part III.C. and accompanying note 82, at 80-82.

<sup>33</sup> See Table 2.4, *supra* Chapter 2, Part II.D., at 21-26.

<sup>34</sup> See *id.*

- Requiring that officials who preside over central panel hearings abide by a particular code of conduct, whether by specifying the creation of a code for those who preside over central panel hearings or mandating compliance with the Hawaii Revised Code of Judicial Conduct<sup>35</sup>; or
  - Considering how to structure a central panel with respect to leadership, including determining: whether to statutorily designate a central panel head; who should be authorized to designate the central panel head (e.g., gubernatorial or legislative appointment); and whether to limit the appointment term for the head of a central panel.
- Delegating Final Decision Authority.
    - Another factor to consider in establishing a central panel is to what extent, if at all, to grant final decision authority to central panel adjudicators.
  - Funding and Fiscal Matters.
    - The initial costs of establishing a central panel should be considered. Factors impacting these initial cost estimates include whether the central panel would be established as a stand-alone, principal executive branch department or as an agency within or administratively attached to an existing principal executive branch department.
    - A preferred method for funding a central panel should be considered, for example, whether by general fund direct appropriation, special fund appropriation, assessments to agencies, or hourly billing.

---

<sup>35</sup> Hawaii Revised Code of Judicial Conduct, *available at* [https://www.courts.state.hi.us/docs/court\\_rules/rules/rcjc.htm](https://www.courts.state.hi.us/docs/court_rules/rules/rcjc.htm). Incorporating a code of conduct into a central panel's statutory scheme may allay partiality concerns that sometimes influence the perception of the fairness of the administrative hearings process.



# APPENDIX A



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

June 21, 2019

**GOV. MSG. NO. 1212**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 21, 2019, the following bill was signed into law:

HB1307 SD2 CD1

RELATING TO AN OFFICE OF ADMINISTRATIVE  
HEARINGS.  
**ACT 110 (19)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

Approved by the Governor

on JUN 21 2019

HOUSE OF REPRESENTATIVES  
THIRTIETH LEGISLATURE, 2019  
STATE OF HAWAII

ACT 110  
H.B. NO.

1307  
S.D. 2  
C.D. 1

---

---

# A BILL FOR AN ACT

RELATING TO AN OFFICE OF ADMINISTRATIVE HEARINGS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that in most federal  
2 agencies and in many state, territorial, and local  
3 jurisdictions, administrative adjudications take place within a  
4 single agency that combines regulatory, enforcement,  
5 prosecutorial, and adjudicatory authority. The legislature  
6 believes that this combination of functions creates a potential  
7 conflict of interest. The legislature also believes that this  
8 combination of functions may also compromise the integrity of  
9 administrative adjudications and is often perceived as unfair by  
10 the litigants opposing the agencies.

11           The legislature also finds that the conflict of interest  
12 inherent in the same agency acting as both prosecutor and judge  
13 has led to the establishment of state central hearing agencies,  
14 also known as central panels. In central panels, an independent  
15 administrative law judge presides over the administrative  
16 litigation and is completely independent of the agency  
17 prosecutorial functions. Approximately twenty-nine state and



1 local jurisdictions, including New York City; the City of  
2 Chicago; Cook County, Illinois; and the District of Columbia,  
3 have addressed this conflict by creating a central hearing  
4 agency.

5 The legislature further finds that the American Bar  
6 Association House of Delegates, on February 3, 1997, approved a  
7 model act that provides guidance to states intending to create  
8 central panels. The American Bar Association enunciated a goal  
9 of separation of functions in section 1-2(a) which states that  
10 the "Office of Administrative Hearings is created as an  
11 independent agency in the Executive Branch of State Government  
12 for the purpose of separating the adjudicatory function from the  
13 investigatory, prosecutory and policy-making functions of  
14 agencies in the Executive Branch."

15 The American Bar Association model act, as well as the  
16 current practices in most central panel states, authorizes the  
17 central panel to hear all contested cases that arise from a non-  
18 exempt agency. Central panel states report that state  
19 legislatures continue to expand and confer additional  
20 jurisdiction on existing central panels. Likewise, the American  
21 Bar Association model act and nearly all current central panel



1 states authorize some or all final decision making authority in  
2 the central panel administrative law judges.

3 The purpose of this Act is to require the legislative  
4 reference bureau to submit a report to the legislature regarding  
5 the existing administrative hearings process in the State and  
6 the potential for a centralized office of administrative  
7 hearings that includes:

- 8 (1) Statistical, non-confidential information from 2018  
9 from all state departments and agencies that conduct  
10 or delegate contested case hearings, and which must be  
11 provided to the legislative reference bureau by August  
12 1, 2019; and
- 13 (2) Research on centralized administrative hearings  
14 offices in other jurisdictions.

15 SECTION 2. (a) The legislative reference bureau shall  
16 compile a report of the contested case hearings process  
17 conducted or delegated by the various state departments and  
18 agencies.

19 (b) To facilitate the completion of the report by the  
20 legislative reference bureau, all state departments and agencies  
21 that conduct or delegate contested case hearings shall provide

1 the following data in an electronic format approved by the  
2 legislative reference bureau for 2018 regarding all contested  
3 case hearings to the legislative reference bureau by August 1,  
4 2019:

- 5 (1) Case type, based on subject matter;
- 6 (2) Caseload statistics, including:
- 7 (A) Number of administrative hearings conducted;
- 8 (B) Average duration of cases, from filing to  
9 disposition;
- 10 (C) Number of hearings officers; and
- 11 (D) Number of contested cases appealed to the court;  
12 and
- 13 (3) Costs, broken down by case type.

14 (c) All state departments and agencies shall provide the  
15 legislative reference bureau with information on any areas of  
16 conflicts of interest or other barriers to third party  
17 administrative hearings.

18 (d) Each state department or agency that provides  
19 information to the legislative reference bureau pursuant to this  
20 section shall also specify whether the 2018 data is



1 representative of a typical year with regard to contested case  
2 hearings for that department or agency.

3 (e) The legislative reference bureau shall have the  
4 ability to request additional non-confidential information from  
5 each department and agency, as needed.

6 SECTION 3. The legislative reference bureau shall research  
7 whether other jurisdictions have centralized administrative  
8 hearings offices. For all jurisdictions that have centralized  
9 administrative hearings offices, the legislative reference  
10 bureau shall summarize how each of these systems are run.

11 SECTION 4. The legislative reference bureau shall submit a  
12 report of its findings and recommendations, including a  
13 summation of the statistical data provided by section 2 and a  
14 summary of research complied pursuant to section 3, to the  
15 legislature no later than twenty days before the convening of  
16 the regular session of 2020.

17 SECTION 5. This Act shall take effect on July 1, 2019.

APPROVED this 21 day of JUN, 2019



GOVERNOR OF THE STATE OF HAWAII

HB No. 1307, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2019  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki  
Speaker  
House of Representatives




Brian L. Takeshita  
Chief Clerk  
House of Representatives

**THE SENATE OF THE STATE OF HAWAI‘I**

Date: April 30, 2019  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai‘i, Regular Session of 2019.

  
President of the Senate

  
Clerk of the Senate



## APPENDIX B

### Legislative Reference Bureau Survey of State Agencies Regarding Hearings (Pursuant to Act 110, Session Laws of Hawaii 2019)

The Legislative Reference Bureau respectfully requests your completion of this survey for the purposes of section 2 of Act 110, Session Laws of Hawaii 2019, which requires all state departments and agencies that conduct or delegate contested case hearings to provide the Bureau with pertinent data, in **electronic format**, for the Bureau's upcoming report on the contested case hearings process. You may type your responses into this document, or you may respond by using separate spreadsheets, word processing documents, and/or other electronic documents. Please respond to the **best of your knowledge and ability**. If any of the requested information is unavailable, please briefly explain why. Please **email your completed responses** to Paul Kanoho, Research Attorney, at the Legislative Reference Bureau at [pa.kanoho@capitol.hawaii.gov](mailto:pa.kanoho@capitol.hawaii.gov) no later than **August 1, 2019**. An electronic copy of Act 110 is also attached for your reference.

This survey is intended for a **single agency** that conducts hearings on contested cases. If your department has or is administratively attached to more than one agency that conducts such hearings, a separate survey should be completed for each agency.

Please specify the agency that is the subject of this survey:

|                    |                   |
|--------------------|-------------------|
| <b>Agency:</b>     | <i>Agency</i>     |
| <b>Division:</b>   | <i>Division</i>   |
| <b>Department:</b> | <i>Department</i> |

Please provide the following contact information for follow-up questions or clarification:

|   |                       |
|---|-----------------------|
| <b>Your Name:</b>                               | <i>Name</i>           |
| <b>Your Position Title:</b>                     | <i>Position Title</i> |
| <b>Your Phone:</b>                              | <i>Phone</i>          |
| <b>Your Email:</b>                              | <i>Email</i>          |
| <b>Your Agency (If Different from Above):</b>   | <i>Agency</i>         |
| <b>Your Division (If Different from Above):</b> | <i>Division</i>       |

## Definitions

For the purposes of this survey:

- "Agency" means the agency, division, office, board, or other non-individual entity:
  - That has authority to conduct hearings; and
  - For which you are completing this survey.
- "Average" means the statistical mean.
- "Contested case" means a proceeding:
  - In which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for a hearing; and
  - For which, pursuant to section 91-14, Hawaii Revised Statutes (HRS), or other applicable law, a party is entitled to judicial review of the agency's preliminary ruling or final decision.
- "Court-reviewable preliminary ruling" means a preliminary ruling for which a party may seek judicial review under section 91-14, HRS, or other applicable law.
- "Final decision" means a final agency decision or order for which a party may seek judicial review pursuant to section 91-14, HRS, or other applicable law.
- "Hearing" means a hearing, conference, or meeting conducted by the agency on a contested case.
- "MOF" means "means of financing," which may include general funds, special funds, or other types of funds.
- "Non-trial-type hearing" means a hearing other than a trial-type hearing. Examples of such hearings may include, but are not limited to, status hearings, pretrial conferences, settlement conferences, and hearings on motions.
- "Trial-type hearing" means a hearing in which parties may present facts, evidence, and arguments on the merits of a contested case, and which is intended to result in the agency issuing a final decision on the contested case.

## Questions

1. Please list the statutes and/or administrative rules that establish the agency.

*Your response*

2. Please list the subject matters over which the agency has authority to conduct hearings, and list the corresponding statutes and/or administrative rules that grant the agency such authority over each of those subject matters.

*Your response*

3. Please list the deadlines that the agency is legally required to meet regarding contested cases and hearings, and list the corresponding statutes and/or administrative rules that establish those deadlines.

*Your response*

4. What are the position titles of the individuals who preside over the agency's hearings, and how many of them are required to preside over each hearing? If your response depends on the type of hearing or the subject matter covered in the hearing, please explain.

*Your response*

5. Do the individuals described in Question 4 also issue the agency's rulings and decisions on the contested cases over which they preside, or do they issue recommendations that are subject to further administrative review by another authority within the department to which the agency is attached? If the latter applies, please state which authority issues the agency's rulings and decisions.

*Your response*

6. Please state the minimum qualifications that individuals are required to meet to preside over the agency's hearings or issue the agency's rulings and decisions on contested cases. List any corresponding statutes and/or administrative rules that establish those standards.

*Your response*

7. For fiscal year 2017-2018, please provide the:
- (A) Total number of contested cases that were filed for the agency's consideration; and
  - (B) Number of contested cases, per subject matter, that were filed for the agency's consideration.

*Your response*

8. Please provide the number of contested cases that were closed by the agency in fiscal year 2017-2018 that were closed due to factors **unrelated to the merits** of the case (such as a dismissal of a case due to a withdrawal of a petition, an issuance of a notice not to proceed, a settlement between parties, a failure of a party to appear at a hearing, or other factors). Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

9. Please provide the average duration, in days, from the date the cases described in Question 8 were filed for the agency's consideration (even if not filed in fiscal year 2017-2018) to the date the agency closed the cases. Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

10. Please provide the number of **non-trial-type hearings** that the agency conducted in fiscal year 2017-2018. Hearings should be included regardless of whether the underlying contested cases were filed for the agency's consideration during that same fiscal year or a prior fiscal year. If a hearing was conducted over the course of more than one day, please clarify whether the statistics provided count each day as separate hearing. Provide relevant data for ALL relevant hearings in the aggregate, as well as data for relevant hearings segregated by subject matter.

*Your response*

11. Please provide the number of **trial-type hearings** that the agency conducted in fiscal year 2017-2018. Hearings should be included regardless of whether the underlying contested cases were filed for the agency's consideration during that same fiscal year or a prior fiscal year. If a hearing was conducted over the course of more than one day, please clarify whether the statistics provided count each day as separate hearing. Provide relevant data for ALL relevant hearings in the aggregate, as well as data for relevant hearings segregated by subject matter.

*Your response*

12. Please provide the number of **court-reviewable preliminary rulings** that the agency issued in fiscal year 2017-2018. Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

13. Please provide the number of cases for which the agency issued a **final decision on the merits** of a contested case in fiscal year 2017-2018. Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

14. Of the cases discussed in Question 13, please provide the number of cases in which the agency issued its final decision **without completing a trial-type hearing**, which may have occurred due to an agreement between the parties, or as otherwise authorized by law. Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

15. Please provide the average duration, in days, from the date the cases discussed in Question 14 were filed for the agency's consideration (even if not filed in fiscal year 2017-2018) to the date the agency issued a final decision. Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

16. Of the cases discussed in Question 13, please provide the number of cases in which the agency issued its final decision after the **completion of a trial-type hearing**, regardless of when the trial-type hearing took place. Please provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

17. For the cases discussed in Question 16, please provide the average duration, in days, from:
- (A) The dates the cases were filed for the agency's consideration (even if not filed in fiscal year 2017-2018) to the dates the trial-type hearings commenced;
  - (B) The dates the trial-type hearings commenced to the dates the hearings were completed; and
  - (C) The dates the trial-type hearings were completed to the dates the agency issued final decisions on those cases.

Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

18. Please provide the number of instances in which, pursuant to section 91-14, HRS, or other applicable law, a party appealed for judicial review of a **court-reviewable preliminary ruling** that the agency issued in fiscal year 2017-2018 (see Question 12). Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

19. Please provide the number of instances in which, pursuant to section 91-14, HRS, or other applicable law, a party appealed for judicial review of a **final decision** that the agency issued in fiscal year 2017-2018 (see Question 13). Provide relevant data for ALL relevant contested cases in the aggregate, as well as data for relevant contested cases segregated by subject matter.

*Your response*

20. For fiscal year 2017-2018, please provide, without specifying individuals' names:
- (A) The total number of individuals who presided over the agency's hearings;
  - (B) The total number of individuals who issued rulings and decisions for the agency on contested cases (if they are different from the individuals who presided over the agency's hearings);
  - (C) The total number of other individuals employed by the agency;
  - (D) An estimate of the average number of hours per week each of the individuals described in paragraphs (A) to (C) worked (regardless of whether the work was related to contested cases);
  - (E) An estimate of the average number of hours per week each of the foregoing individuals worked on matters specifically related to contested cases;
  - (F) The specific subject matter(s) that each of the foregoing individuals covered when working on contested cases;
  - (G) The salary or total wages of each of the foregoing individuals; and
  - (H) The MOF for each of the foregoing salaries and wages (if more than one MOF was used for any salary or wage, please specify each MOF and the amount of funding from each of those MOFs).

*Your response*

21. Please state the agency's total budget for the administration of its duties relating to contested cases (other than for salaries and wages) for fiscal year 2017-2018, and the MOF for the budget. If more than one MOF was applied, please specify each MOF and the amount of funding from each of those MOFs. Provide relevant data, in dollars, for ALL cases in the aggregate, as well as data for cases segregated by subject matter.

*Your response*

22. Are the responses that were provided for Questions 7 through 21 representative of a typical fiscal year for the agency? If not, please briefly explain.

*Your response*

23. Does the agency utilize a case management system for contested cases? If so, what system is used? To what extent, if any, does the department to which the agency is attached, or other agencies, divisions, or offices of the department (including the office of the director or other departmental head) have access to that system?

*Your response*

24. Please explain how the agency addresses alleged conflicts of interest, such as when there may be a perception of bias due to:
- (A) The agency's attachment to the same department that is attempting to enforce the law; or
  - (B) The relationship (working, familial, or otherwise) that one or more of the parties has with a person who presides over a hearing or other agency employee.

Cite any statutes and/or administrative rules that govern any process the agency may employ to address conflicts of interest. Provide a general estimate of how often parties raise conflict of interest objections.

*Your response*

25. Please briefly state what barriers, if any, the agency typically faces in the fair and timely adjudication of cases, and what steps would be necessary to remove or minimize the impact of those barriers.

*Your response*

26. Please state any concerns the agency may have if the agency's current responsibilities with respect to contested cases are transferred to a centralized administrative hearings department within the State, as contemplated by Act 110.

*Your response*

27. Does the agency conduct hearings on cases for which its decisions and rulings are not subject to direct judicial review pursuant to section 91-14, HRS, or other applicable law (and thus do not meet the definition of a "contested case" in the Definitions section of this survey)? If so, please state the subject matters these cases involve, and provide the number of hearings the agency conducted on these cases in fiscal year 2017-2018.

*Your response*

28. If the agency can provide any additional information that may help contextualize any of the responses to this survey, explain any extenuating circumstances, or help the Legislature better understand how the agency conducts hearings on contested cases, please feel free to include such information.

*Your response*