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HIRING, TRAINING AND RETENTION OF ADMINISTRATIVE LAW JUDGES IN CENTRAL PANEL STATES

John William Maurer 1/
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I. GENERAL DISCUSSION.

A. 1981 MSAPA provisions.

Review of section 4-301 of the National Commissioners on Uniform State Laws' 1981 Model State Administrative Procedure Act, the section which addresses the formation of a central unit to carry out the procedures established by the Act, clearly indicates that the Commissioners contemplated the development of significant variations when those units were actually formed. The Model Act thus, in a significant sense, is a recommendation to the several states which includes only the broadest of guidelines. The Act uses the convention of bracketed language to offer the suggestion that persons employed by a central office for the purpose of conducting hearings be admitted to the practice of law, and recommends in division (E) of the section that:

"...the office may adopt rules to establish further qualifications..., procedures by which candidates will be considered..., standards and procedures for the evaluation, training, promotion and discipline of administrative law judges..., and the manner in which public notice of vacancies...will be given."

1/ Administrative Law Judge, Board of Review, Ohio Bureau of Employment Services.

2/ Administrative Law Judge, Ohio Hazardous Waste Facility Board.

B. Review of the several states.

Of the ten states at present utilizing a central unit structure, four do not statutorily require that their administrative adjudicators be licensed to practice law in any jurisdiction. However, the Administrative Procedure Acts of three of these states--Minnesota, New Jersey, and Washington--do require candidates for these positions to have a demonstrated knowledge of administrative law, hearings, and proceedings, and, peculiarly, each of these three states' legislatures has chosen the administrative law judge title for their administrative adjudicators. In Iowa, the fourth state without a statutory mandate that adjudicators be attorneys, the Office of Personnel has determined that entrance to the bar is a requisite of employment.

The other six states require by statute that hearing officers be licensed to practice law within their jurisdictions, require varying numbers of years of prior legal experience, and use other titles, including administrative judge, administrative magistrate, or hearing officer. California administratively adopted the administrative law judge title in 1975.

C. Recommendations.

1. Recognition of the ever-increasing impact of state administrative proceedings upon the economy, social programs, the environment, and the citizenry in general would suggest that those persons employed as quasi-judicial decision-makers be, at minimum, members of the bar with some years of experience in the administrative process, whether as governmental attorneys or as practitioners in the private sector.

2. Some of the central unit states provide civil service protection for their professional personnel; some do not. When considering the possibility of civil service status for these employees, the states should weigh the independence that derives from such protection against the sacrifice of tenure for salary that occurs without it. Notwithstanding, the argument could be made that a higher salary package may, in fact, attract candidates with more extensive qualifications.

3. The ten states examined herein all provide some sort of training for their professional personnel, and all have methodology for evaluation of performance. Some

evaluative programs are established by statute, some by rule, and some by the director of the central unit. Some training and evaluation structures are extensive, as is New Jersey's, and others have little formal detail. The states should recognize the usefulness of appropriate regular evaluations of professional employees so long as there is a tandem requirement for position descriptions that clearly outline what is expected. There should be an objective evaluative structure set up which utilizes a director's subjective judgment of unit adjudicators.

4. Continuing legal education is not only commendable; it is necessary. Financial constraints seem to be the only limiting factors in this area, as all the central unit states provide what they can, when they can, including continuing legal education (CLE) programs, practice and training in decision making and decision writing, and in-house training in substantive matters of all natures. Most states utilize the National Judicial College administrative law program when budgets so afford. The University of Miami (Fla.) is increasingly becoming a presence in providing CLE for administrative law judges (ALJ's). Legislatures should strongly consider mandating regular training and education for ALJ's.

II. REVIEW OF EXISTING STATUTES AND STRUCTURES.

Following is an examination of the provisions of the 1981 MSAPA and the individual central unit states' administrative procedure statutes and rules insofar as they relate to hiring, training, and retention of administrative adjudicators.

The examination is organized as follows. First, the pertinent portion of the Model Act is quoted. The ten central panel states are then treated in alphabetical order. The examination of each state begins with a general overview, consisting of information received from directors and employees of central units, and is followed by relevant portions of the enabling statutes and rules.

A. MODEL STATE ADMINISTRATIVE PROCEDURE ACT
§ 4-301. [Office of Administrative Hearings--Creation, Powers, Duties].

(a) There is created the office of administrative hearings within the [Department of _____], to be

headed by a director appointed by the governor and confirmed by the Senate.

(b) The office shall employ administrative law judges as necessary to conduct proceedings required by this Act or other provision of law. [Only a person admitted to practice law in (this State) (a jurisdiction in the United States) may be employed as an administrative law judge.]

(c) If the office cannot furnish one of its administrative law judges in response to an agency request, the director shall designate in writing a full-time employee of an agency other than the requesting agency to serve as administrative law judge for the proceeding, but only with the consent of the employing agency.

The designee must possess the same qualifications required of administrative law judges employed by the office.

(d) The director may furnish administrative law judges on a contract basis to any governmental entity to conduct any proceeding not subject to this Act.

(e) The office may adopt rules:

(1) to establish further qualifications for administrative law judges, procedures by which candidates will be considered for employment, and the manner in which public notice of vacancies in the staff of the office will be given;

(2) to establish procedures for agencies to request and for the director to assign administrative law judges; however, an agency may neither select nor reject any individual administrative law judge for any proceeding except in accordance with this Act;

(3) to establish procedures and adopt forms, consistent with this Act, the model rules of procedure, and other provisions of law, to govern administrative law judges;

(4) to establish standards and procedures for the evaluation, training, promotion, and discipline of administrative law judges; and

(5) to facilitate the performance of the responsibilities conferred upon the office by this Act.

(f) The director may:

(1) maintain a staff of reporters and other personnel; and

(2) implement the provisions of this section and rules adopted under its authority.

Commissioners' Comment

The 1961 revised Model Act did not discuss the possibility of creating an independent organization of administrative law judges. A number of states have such systems, including California, Colorado, Florida, Massachusetts, Minnesota, New Jersey, Tennessee and Washington. The question whether the use of administrative law judges from the central panel is permissive or mandatory depends upon whether or not a state adopts certain language that is bracketed in Section 4-202(a); see that subsection and the related comment.

This act uses the term "administrative law judge", which is used in a number of state statutes as well as in the federal APA. Some jurisdictions use other terms, such as "hearing examiner", "hearing officer" or "referee", to denote persons performing similar functions.

Cross-reference should be made to Sections 4-215 and 4-216, regarding the powers of administrative law judges when they preside over formal adjudicative proceedings. Since the administrative law judges are obviously not the agency head, they come within the requirements of Section 4-215(b), to the effect that a presiding officer who is not the agency head shall render an initial order. Such orders are generally appealable to the agency head, under Section 4-216(a), but a provision of law may depart from this general structure. Consequently, a provision of law may confer finality upon the initial order of an administrative law judge, or

may declare an initial order to be appealable to one or more persons other than the agency head.

The provisions on initial orders and final orders of Sections 4-215 and 4-216 apply also to conference adjudicative hearings, since Section 4-402 incorporates into the conference adjudicative hearings all procedures of the Act pertaining to formal hearings unless otherwise stated, and no special provisions have been inserted regarding presiding officers at conference adjudicative hearings.

Administrative law judges may also preside at summary adjudicative proceedings, pursuant to Section 4-503(a). As regards emergency adjudication, Section 4-501 does not specify who may serve as presiding officer. Thus the Act does not preclude the use of an administrative law judge in such proceedings, if this would fulfill the requirement of subsection (b) that the agency take "only such action as is necessary".

The present section locates the office of administrative hearings within the Department of _____" without attempting to identify the appropriate department. The intent is to place the office in the most neutral possible organizational position, so as to maximize the independence of the office.

The power conferred upon the office of administrative hearings by paragraph (e)(4)--to establish standards and procedures for the evaluation, training, promotion and discipline of administrative law judges--should be related to the civil service law of the state.

B. CALIFORNIA.

1. General overview.

The governor appoints, and the senate confirms, the Director of the Office of Administrative Hearings (OAH). The Director must have been a member of the California bar for five years. The same qualification applies to hearing officers, who are appointed by the Director and belong to the state bargaining unit once hired. A state personnel board policy requires that hearing officers have two years

of administrative law experience as a hearing officer or lawyer.

Applicants for hearing officer positions are evaluated and ranked by a panel composed of a representative of the OAH, a representative of the state personnel board, and a member of the public. The ranking is based on percentiles, and those in the top three percentiles become eligible for appointment. When a position opens, all interested eligible candidates are interviewed by the Director, who is usually joined by the managing hearing officer from the physical office to which the new hearing officer will be assigned. Applicants are examined as to their writing skills, ability to communicate, willingness to travel, and demeanor, but not as to their expertise in a particular area of law.

As members of the state bargaining unit, each hearing officer must receive an annual evaluation, which is used primarily as a tool for improving individual performance. The annual evaluation is performed by the supervisory hearing officer in the office to which the hearing officer is assigned. The quality of decision-writing of hearing officers is also the responsibility of the supervisory hearing officer. New appointees' decisions are reviewed throughout the first year of their appointment. In subsequent years, the quality of decision-writing of a hearing officer is reviewed one month prior to his/her annual evaluation.

Each separate office of the OAH (there are three) annually provides training for three persons at the National Judicial College. Three days of in-house training are provided, utilizing either qualified hearing officers or outside instructors. In-house training is offered in the psychology of decision-making, the conduct of pre-hearing conferences, and various substantive areas.

2. Relevant statutes.

§ 11502. ... The director of the office of administrative hearings has power to appoint a staff of hearing officers for the office as provided in Section 11370.3 of the Government Code. Each hearing officer shall have been admitted to practice law in this state for at least five years immediately preceding his appointment and shall possess any additional qualifications established

by the State Personnel Board for the particular class of position involved.

§ 11502.1. There is hereby established a unit of hearing officers who shall preside over... (health planning and certificate-of-need cases). In addition to meeting the qualifications of hearing officers as prescribed in Section 11502, the hearing officers in this unit shall have a demonstrated knowledge of health planning and certificate-of-need matters...

§ 11370.2(b). The director shall have the same qualifications as hearing officers and shall be appointed by the governor subject to the confirmation of the Senate.

§ 11370.3. The director shall appoint and maintain a staff of... hearing officers qualified under Section 11502...

C. COLORADO.

1. General overview.

The director of the division of hearing officers (DHO) is selected by the Director of the Department of Administration. The director of DHO and the hearing officers have civil service protection.

Applicants are screened by the human resources section of the Department of Administration to determine if they are members of the Colorado bar and have been licensed to practice law for at least five years. Prior trial experience and general legal and administrative law backgrounds are also considered. An oral examination is administered to those applicants who have not been screened out. The oral examination is graded by a retired hearing officer and a lawyer, or two lawyers with expertise in the primary substantive area for which the hearing officer is sought, and a third person. The director of DHO may submit questions for use in the oral examination.

Three finalists from the oral examination are eligible for interview by the director. The director may request participation in the interview by a representative of the agency administering the substantive area to which the hearing officer will be first assigned. The director of the DHO makes the final decision as to appointment.

The director conducts a confidential, personal evaluation of each hearing officer on an annual basis, using procedures set forth in the civil service system. During the course of each year, the director receives input from anonymous peer surveys and from practicing members of the bar. Throughout the year, questionnaires are sent by the Department of Administration to attorneys who have appeared before a particular hearing officer in order that the DHO, through the Department of Administration, may receive constructive input as to individual abilities.

The DHO utilizes the following training modalities: (1) on-the-job training wherein new employees' decisions are reviewed before issuance; (2) in-house training once the initial guidance process is complete; (3) appropriate substantive and procedural CLE programs offered within the state; and (4) National Judicial College training when funding allows.

2. Relevant statutes.

§ 24-30-1001. Division of Hearing Officers.

(1) There is hereby created the division of hearing officers in the department of administration, the head of which shall be the executive director of the department of administration.

(2) Effective July 1, 1976, any attorney-at-law employed at that time as a hearing officer by any state agency, except those attorneys employed pursuant to Section 40-2-103, C.R.S. 1973, shall be transferred to the department of administration. Such personnel shall retain all rights under the state personnel system and retirement benefits under the law of this state, and their services shall be deemed to have been continuous.

§ 24-30-1002. Appropriation of Funds. All moneys appropriated for expenditure by any state agency for hearing officers appointed pursuant to this part 10 shall be appropriated to the department of administration.

§ 24-30-1003. Hearing Officers--Appointment--Qualifications. (1) The executive director of the department of administration may appoint such hearing officers, except those hearing officers employed pursuant to Section 40-2-104, C.R.S.

1973, as may be necessary as to provide services to each state agency, except the public utilities commission, entitled to use hearing officers. Hearing officers shall be appointed in accordance with the provisions of Section 13 of Article XII of the state constitution and the laws and rules governing the state personnel system:

(2) Any hearing officer shall be an attorney-at-law in good standing and admitted to practice law in this state.

D. FLORIDA.

1. General overview.

The Director of the Division of Administrative Hearings (DAH) is chosen by majority vote of the administrative commission ^{3/} with Senate confirmation. The Director then appoints hearing officers, using the applicant's academic background, prior experience, legal writing abilities, and personal qualities as criteria in the evaluation process. The Florida APA requires that any hearing officer must have been a member of the Florida bar in good standing for five years immediately preceding appointment.

Once appointed, the applicant is considered an attorney in the state service, and as such becomes covered by civil service protection upon successful completion of a six-month probationary period. Thereafter, hearing officers are annually evaluated by the director in accordance with the civil service system evaluation procedures. Review of decisions prior to their issuance is used by the director as an evaluation tool, along with informal input from the practicing bar.

New employees observe experienced hearing officers in the conduct of hearings and then hear cases while a senior officer observes. After the initial training period, hearing officers receive training in major case litigation, decision-writing, evidentiary matters, and a number of

^{3/} The Administrative Commission is made up of the governor, lieutenant governor, attorney general, secretary of state, secretary of education, insurance commissioner, and secretary of agriculture.

substantive areas. The DAH utilizes training offered by the National Judicial College and in-state legal seminars, and provides in-house training through utilization of law professors with particular expertise.

2. Relevant statutes and rule.

§ 120.65. (1)...the Division of Administrative Hearings...headed by a director who shall be appointed by the Administrative Commission and confirmed by the Senate.

(2) The division shall employ full-time hearing officers to conduct hearings required by this chapter or other law. No person may be employed by the division as a full-time hearing officer unless he has been a member of the Florida bar in good standing for the preceding five years.

(5) By rule, the division may establish:

(a) Further qualifications for hearing officers and shall establish procedures by which candidates will be considered...

(b) The manner in which public notice will be given vacancies in the staff of hearing officers.

Rule 22. I-5.08 HEARING OFFICER VACANCIES. Public notice will be given of available vacant hearing officer positions in accordance with law. Additional notice to professional organizations and publications will be given to the extent practicable. Candidates will be considered for employment by the director on the basis of the criteria set out in Section 120.65, Florida Statutes, and on the basis of their overall qualifications, including academic achievement, past experience, legal writing ability and personal qualities.

E. IOWA.

1. General overview.

The administrator of the division of appeals and fair hearings is appointed by the Director of the Department

of Inspections and Appeals. The administrator appoints hearing officers from a list of candidates determined by the Department of Personnel. Applicants for placement on the list receive a veteran's preference bonus of five points. Scores are compiled for each applicant only to determine who is eligible for placement on the list; no rankings appear on the list. All hearing officers must be graduates of an accredited law school.

The division of appeals and fair hearings is subdivided into three bureaus each with specific subject matter jurisdiction and each headed by a bureau chief. Interviews of eligible candidates are jointly conducted by the administrator and the chief of the bureau in which the vacancy exists. All hearing officers are probationary employees for their first six months. After the probation period they have all the protections of civil service.

Standards for determining performance are developed by each bureau chief. One bureau chief develops these standards by consultation with the hearing officers in his bureau. Bureau chiefs evaluate each hearing officer at least once a year.

Hearing officers are subject to the Iowa Supreme Court requirement that attorneys receive fifteen hours of continuing legal education per year. The division normally grants administrative leave for this purpose. Where courses that are attended are in-state, the division will frequently pay some of the expense incurred.

2. Relevant statutes.

§ 10A.201. Definitions. As used in this article, unless the context otherwise requires:

1. "Administrator" means the chief hearing officer, who shall coordinate the administration of this division.
2. "Division" means the appeals and fair hearings division of the department of inspections and appeals.

§ 10A.202. Responsibilities. The administrator shall coordinate the division's conduct of appeals and hearings....

F. MASSACHUSETTS.

1. General overview.

The Director of Administrative Law Appeals is headed by the chief administrative magistrate, who is appointed by the secretary of administration and finance. The director has statutory authority to hire administrative magistrates, who must be members in good standing of the Massachusetts bar. The present chief magistrate prefers those hired to have two to three years' experience before the Massachusetts courts, and uses resumes, writing samples, and personal interviews in the evaluation of candidates.

On the basis that the magistrates' work is of a confidential nature, they are not covered by civil service protections once appointed, and as such are exempt from the governmental employee bargaining unit.

There are no established performance standards either in use by the division or in the enabling statute. Informal review takes place through the chief magistrate's periodic review of written decisions, input from the public members of the bar in the form of commendations or complaints, and observation of the judicial temperament, demeanor, and abilities of the administrative magistrate during the actual conduct of hearings.

The administrative magistrates receive in-house training as needed, and receive further training through mandatory attendance at continuing judicial education programs designed and regularly scheduled for the Commonwealth's judiciary. Attendance at such programs is mandated by the chief magistrate, rather than the statute.

2. Relevant statute.

7 § 4H. There shall be within the executive office for administration and finance a division of administrative law appeals under the direction of a chief administrative magistrate who shall be appointed by the secretary of the executive office for administration and finance with the approval of the governor...[and] shall be a resident of the commonwealth at the time of his appointment, shall be a person with substantial trial experience as an attorney, shall devote full time to the duties of his office, and shall have no financial interest in any provider of services on which he

shall make a rate determination...[h]e may employ...administrative magistrates who shall be members of the bar of the commonwealth and who shall have had trial experience. Administrative magistrates responsible for adjudicating public construction contract disputes...shall in addition have had prior experience in construction law; such administrative magistrates may be hired either as regular employees or on a consultant basis.

G. MINNESOTA.

1. General overview.

The Chief Administrative Law Judge of the Office of Administrative Hearings (OAH) must, according to the enabling statute, be learned in the law, and is appointed to a six-year term by the governor with the advice and consent of the Senate. The Chief appoints administrative law judges (ALJ's) and workers' compensation judges, who then become part of the classified service, but not members of the state employees' bargaining unit. These appointees also must, by statute, be learned in the law and must be free from any associations that would impair their ability to function fairly and objectively. The workers' compensation judges must additionally, by statute, demonstrate knowledge of the workers' compensation laws and have trial experience therein.

Candidates are examined and graded by the Department of Employee Relations. Points are given for admission to the Minnesota or other state bar; years of legal, judicial or quasi-judicial experience; and trial or administrative law experience. A five-point veteran's preference is recognized. The top twenty candidates are interviewed by supervisory ALJ's who assess judicial temperament, writing ability, and general demeanor, and who recommend three to five finalists to the Chief ALJ. The Chief ALJ makes the appointment.

Performance is annually evaluated through performance standards listed in extensive position descriptions, and such evaluations are used for salary determinations. The OAH also provides questionnaires that seek input as to ALJ abilities from attorneys and non-attorneys utilizing the office, but uses the results of such questionnaires only for training purposes, not as part of the evaluation process or for disciplinary purposes.

All new ALJ's attend the National Judicial College FAIR HEARING course, and then attend advanced courses upon gaining further judicial experience. In-house training is utilized initially; and as needed. Each ALJ is allowed 52 hours' administrative leave and \$1,400 per biennium for educational purposes.

2. Relevant statute.

§ 14.48. The office (of administrative hearings) shall be under the direction of the chief administrative law judge, who shall be learned in the law and appointed by the governor, with the advice and consent of the Senate...[and] shall appoint additional administrative law judges and compensation judges to serve in his office. ... All administrative law judges and compensation judges shall be in the classified service except that the chief administrative law judge shall be in the unclassified service, but may be removed from his position only for cause. All administrative law judges shall have demonstrated knowledge of administrative procedures and shall be free of any political or economic association that would impair their ability to function officially in a fair and objective manner. All workers' compensation judges shall be learned in the law, shall have demonstrated knowledge of workers' compensation laws and shall be free of any political or economic association that would impair their ability to function officially in a fair and objective manner.

H. NEW JERSEY.

1. General overview.

The Office of Administrative Law (OAL) is headed by a Director and its adjudicative function is performed by ALJ's. Both the Director and the ALJ's are appointed by the governor with the advice and consent of the Senate. The Director is appointed to a term of six years, and the ALJ's to an initial term of one year, then a term of four years, then to five-year terms. Although the enabling statute does not require that all such appointees be attorneys, the trend within the office is away from non-attorneys, and toward at least five years' experience before the bar. The last non-attorney appointment was in 1981, and met requirements

in the statute particularly directed to qualifications for non-attorneys.

The Director recommends potential appointees to the governor, and twice evaluates appointees during their first year. Thereafter, ALJ's are evaluated annually. Evaluation is made by means of statistical review of case dispositions, review of judicial conduct and ability as assessed by litigants and their representatives through confidential questionnaires, and by periodic review of ALJ decisions.

New Jersey has engaged an outside testing service to set up a statistically reliable questionnaire for use in the evaluation system, including a procedure whereby an ALJ can request rejection of input from certain cases on the basis that a party or parties are unduly prejudiced against the ALJ. The questionnaires as designed provide excellent input for evaluation of performance and for training purposes. Salaries may be increased or reduced as a result of the evaluative process.

The OAL utilized in-house training with instructional personnel from the attorney general's office, agency personnel, National Judicial College faculty, and senior ALJ's. Each year the ALJ's attend a three-day retreat, with cabinet-level officers or legislators as speakers.

2. Relevant statutes.

C. 52:14F-3. Director. The head of the office (of administrative law) shall be the director who shall be an attorney-at-law of this state. The director shall be appointed by the governor with the advice and consent of the Senate.

C. 52:14F-4. Administrative Judges; Appointment; Evaluation; Term; Re-Appointment. Permanent administrative law judges shall be appointed by the governor with the advice and consent of the Senate to initial terms of one year. During this initial term, each judge shall be subject to a program of evaluation as delineated in... (C. 52:14F-5). First re-appointment of a judge after this initial term shall be by the governor for a term of four years and until the appointment and qualification of the judge's successor. ...

Subsequent re-appointments of a judge shall be by the governor with the advice and consent of the Senate to terms of five years and until the appointment of the judge's successor. The advice and consent of the Senate, as provided in this section, shall be exercised within 45 days after a nomination for appointment has been submitted to the Senate, and if no action has been taken within the 45-day period, the nomination shall be deemed confirmed. ...

C. 52:14F-5. Powers and Duties of Director. The Director of the Office of Administrative Law shall:

a. ...

1. Assign permanent administrative law judges at supervisory and other levels who are qualified in the field of administrative law or in subject matter relating to the hearing functions of a state agency. The entire time of a permanent administrative law judge shall be devoted to the duties of the office. ...

Administrative law judges shall be attorneys-at-law of this state, or any persons who are not attorneys-at-law, but who, in the judgment of the governor or the director are qualified in the field of administrative law, administrative hearings and proceedings in subject matter relating to hearing functions of a particular state agency; ...

r. develop and maintain a program for the continuing training and education of administrative law judges; ...

s. Develop and implement a program of judicial evaluation to aid himself in the performance of his duties, and to assist in the making of re-appointments under Section 4 of P.L. 1978, c.67 (C. 52:14F-4). This program of evaluation shall focus on three areas of judicial performance: competence, productivity, and demeanor. It shall include consideration of: industry and promptness in adhering to schedules, making rulings and rendering decisions; tolerance, courtesy, patience, attentiveness, and self-control in

dealing with litigants, witnesses and counsel, and in presiding over contested cases; legal skills and knowledge of the law and new legal developments; analytical talents and writing abilities, settlements skills; quantity, nature, and quality of caseload disposition; impartiality and conscientiousness.

The director shall develop standards and procedures for this program, which shall include taking comments from selected litigants and lawyers who have appeared before a judge. The methods used by the judge but not the result arrived at by the judge in any case may be used in evaluating a judge. Before implementing any action based on the findings of the evaluation program, the director shall discuss the findings and the proposed action with the affected judge. The evaluation by the director and supporting data shall be submitted to the governor. These documents shall remain confidential and shall be exempted from the requirements of P.L. 1963, c.73 (C. 47:1A-1 et seq.).

I. NORTH CAROLINA.

1. General overview.

The Director of the Office of Administrative Hearings (AOH) is appointed by the Chief Justice. The Director thereafter appoints hearing officers to non-civil service employment, with an initial probationary period of one year. Until an appointee has been employed for five years, there is no right to appeal of a removal for cause; thereafter, more formal procedures are utilized, including a right to appeal.

The Director, in choosing appointees, considers their experience in administrative law processes, their demeanor, and their reputation in the legal community. There is no formal evaluative system other than day-to-day observance of the hearing officer's performance.

The Office encourages attendance at the National Judicial College, and provides for attendance at one session by each hearing officer each fiscal year by allowing paid administrative leave and assuming all expenses. Further, each hearing officer is allowed to attend at least one CLE program annually and more than one if attendance is

justified. A committee of hearing officers is structuring an in-house training program, utilizing law professors and other legal authorities for training in evidence, in administrative law generally, and in various substantive areas.

2. Relevant statutes.

§ 7A-754. Qualifications; standards of conduct; removal. ... Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the director and chief hearing officer or as a hearing officer in the office of administrative hearings. Neither the chief hearing officer nor any hearing officer may engage in the private practice of law...while in office; violation of this provision shall be grounds for removal. A hearing officer may be removed from the office by the director of the office of administrative hearings for just cause, ...

§ 7A-752. Director; appointments; vacancy. The director of the office of administrative hearings shall be appointed by the Chief Justice for a term of office of four years.

§ 7A-753. Additional hearing officers; appointments; specialization. The director shall appoint...additional hearing officers to serve in the office of administrative hearings.

J. TENNESSEE.

1. General overview.

The secretary of state appoints a member of the Tennessee bar to be the Director of the Administrative Procedures Division. The Director hires the administrative judges and may dismiss them with the concurrence of the secretary of state. Judges are hired at two levels of experience: one year or three or more years. They must be learned in the law as evidenced by admission to the Tennessee bar. The Director's subjective judgment is critical in the hiring process as to qualities, such as judicial mien, personality, level of self-confidence, and apparent abilities. Prior administrative law experience is considered, as is the Director's personal knowledge of the applicant's accomplishments and abilities.

There is no civil service protection. In-house training is utilized, and the division, through participation with the state CLE program in seminar presentation, engages in continuing self-education.

2. Relevant statute.

§ 4-5-321. ... [the Administrative Procedures] division shall...: (2) Establish and maintain in cooperation with the attorney general a pool of administrative judges, who shall be learned in the law as evidenced by their having been licensed to practice law by the Courts of Tennessee.

K. WASHINGTON.

1. General overview.

The Chief Administrative Law Judge is appointed to a term of five years by the governor with the advice and consent of the Senate, and in turn appoints administrative law judges to the Office of Administrative Hearings (OAH). Those appointed do not have civil service protection, and serve during good behavior. Candidates are required by statute to have a demonstrated knowledge of administrative law and procedures. There is no requirement that they be members of the bar, although, in practice, only those so admitted become appointees.

Hearing officers employed by agencies prior to the creation of the central unit were transferred from civil service employment to their present non-civil positions. As yet there is no formal evaluation process, although appointees are subject to discipline and termination by the chief ALJ for cause. A disciplined ALJ may request the reasons for discipline in writing and may appeal the matter to the courts.

Each ALJ is allowed 15 hours of administrative leave per year for purposes of CLE training, and in-house training is utilized for particular substantive areas. The OAH sends four ALJ's to the National Judicial College annually. ALJ's are also granted leave to attend the annual meeting of the association of Washington State ALJ's during which professional training is provided.

2. Relevant statutes.

§ 34:12-1. ... the office (of administrative hearings) shall be under the supervision of a

chief administrative law judge, appointed by the governor with the advice and consent of the Senate, for a term of five years. The person appointed is required, as a condition of appointment, to be admitted to practice law in the State of Washington, and may be removed for cause.

§ 34:12-2(2). "Administrative law judge" means any person appointed by the chief administrative law judge to conduct or preside over hearings as provided in this chapter.

§ 34:12-3(1). The chief administrative law judge shall appoint administrative law judges to fulfill the duties prescribed in this chapter. All administrative law judges shall have a demonstrated knowledge of administrative law and procedures. The chief administrative law judge may establish different levels of administrative law judge positions.

§ 34:12-4. The administrative law judges appointed under Subsection (1) of this section are subject to discipline and termination, for cause, by the chief administrative law judge. ...



Chicago's beautiful skyline displays the soaring John Hancock Center near The Inn of Chicago, site of NAALJ's 1987 Annual Meeting and Seminar. Photo: Ron Schramm/Chicago Convention and Tourism Bureau.