

***UNIFICATION OF THE
ADMINISTRATIVE ADJUDICATORY
PROCESS IN PA.****

I am here as President of the Pennsylvania Conference of Administrative Law Judge's who support the concept of a unification of the administrative adjudicatory process in Pennsylvania and House Bill 1939.

Support for House Bill 1939 with Changes

We further support and recommend the Proposed Corrections and changes to House Bill 1039 as proposed to Brian J. Preski, Chief Counsel on December 7, 1997 by Judge Wayne Weismandel. (See Appendix A for details and supportive references)

Some of these recommendations are minor typographical corrections while others are of major significance of substantive nature such as:

1. The present bill contains a definition of "Agency" that is ambiguous especially regarding the inclusions of the Public

*Judge Gerald E. Ruth, Administrative Law Judge with Pa. Liquor Control Board and President of the Pa. Conference of Administrative Law Judges. B.A. 1954 Dickinson College; J. D. 1960 Vanderbilt Law School. Author of Unification of the Administrative Adjudicatory Process: An Emerging Framework To Increase Judicialization in Pennsylvania,, Widener Journal of Public Law, Volume 5, No. 2, page 297 (1996). The views expressed in this presentation are those of the presenter and the Pa. Conference of A.L.J. and do not officially state the views of the Pa. Liquor Control Board and or their Administrative Law Judge Office.

Utility Commission. For the sake of clarity it is suggested consideration to set forth each agency intended to be included.

2. It is recommended the minimum legal experience of five (5) years for an Administrative Law Judge is appropriate but the minimum legal experience requirement for Chief Administrative Law Judge be set as ten (10) years.
3. It is recommended the salaries should be set relative to salaries of Judges of Courts of Common Pleas.
4. It is recommended all the Administrative law Judges be under “Civil Service” protection except the Chief Administrative Law Judge.

Background

Around the fall of 1992, I became aware of a conference of various states who either already had or were planning centralization of hearing process for their respective state agencies.

I went to the conference, was received very courteously, and invited to listen and participate in discussions regarding the improvement and benefits of a centralized administrative adjudicatory system.

At that time there were about 17 states already centralized or considering changing. For the next few years I studied this concept at the Federal and State Level and attended a number of other conferences. I became convinced this concept was in the best interests of Pennsylvania, especially so, when I discovered an ABA study in 1974 recommended a Central hearing office for Pennsylvania, that legislation was introduced but died; and yet another study in 1977 by Pa. Deputy Atty. General Jeffrey G. Cokin and Professor Mallamud from Rutgers University recommended an “Independent Central Office , for hearing officers in Pennsylvania.

As a result of this I wrote a law review article in 1996 “Unification of the Administrative Adjudicatory Process: An Emerging Framework to Increase “Judicialization” in Pa.,” which was published by Widener Journal of Public Law, Volume 5 No. 2, Page 297 (1996) and later reprinted in the Winter of 1996, Volume XVI of the Journal of the National Association of Administrative Law Judges page 221.

By 1996 the centralized system mushroomed to 22 “centralized” states and New York City. Since then Alaska, Arizona, Michigan and Chicago have converted to the centralized system.

Illinois and Ohio are presently seriously considering converting to a centralized system. See Due Process and the Ohio Administrative

Procedure Act, The Central Panel Proposal Vol. XXIII Number 3 Ohio Northern University Law Review page 783 by Prof. Christopher B. McNeil, Chair of the Administrative Law Committee Ohio State Bar Association 1997.

To date, not one of the states that moved to a central panel system has repealed the implementing legislation. Allen Hoberg, Administrative Hearings; State Central Panels in the 1990's, 46 Adm. Law Review 75, 76 (1994) and Hon. Marvin F. Kittrell, Administrative Law Judge's in South Carolina, S.C. Law May-June 1996 at 42.

I have enclosed the most recent survey of the Central Panel states as amended November 3, 1997 for the 14th Annual Central Panel Director's Conference Nov. 97', Charleston, S.C. (See Appendix B).

Findings

Historically and consistently since the beginning of the Central Panel System it has been shown:

1. Administrative Law Judges are more efficiently allocated than assigned permanently to one agency. Also small agencies have qualified Administrative Law Judges ready to serve without the need to hire full-time or part-time personnel.

2. Administrative Law Judges who are not permanently tied to one agency feel more independence providing for well reasoned justifications for their decisions.
3. The Administrative Law Judges whose duties include rotating through various disciplines and those specifically trained in other disciplines approach the subject matter with a fresh and thorough perspective. Also see Malcolm Rich & Wayne E. Brucar, The Central Panel System For Adm. Law Judges; A Survey of Seven States (1983).
4. The Unified System provides for impartiality of Administrative Law Judge's as fact finders including improved perception and acceptance by the public.
5. The Unified System provides for improvement of the quality of hearings and decisions.
6. The management and training of all Administrative Law Judges are in the hands of experienced officials, training staff in new developments in the law.
7. There are reductions in overall costs.
8. The Administrative Law Judges are experienced, politically insulated with career service attracting quality professionals.

Pennsylvania's Present System

The present Pennsylvania Administrative Adjudicatory System covering approximately 44 agencies is a disjunctive non uniform process which includes the potential of commingling the prosecutorial and adjudicatorial functions regardless of various "fabricated" walls of division.

The Pa. Supreme Court in Lyness vs. State Board of Medicine 605 a2d 1204 (1992) mandated a change in the structure of administrative agencies in Pennsylvania and other courts have held commingling of the prosecutorial and adjudicatorial functions and appearance of bias or impropriety must be avoided. However, there has been no change in the administrative system.

The solution is simple. Follow the lead of our sister states and create a unified administrative adjudicatory system. (See Appendix C, copy of letter of support by Judge James D. Porterfield typical of the support of the Pa. Conference)

Conclusion

The concept of a unified administrative adjudicatory system in Pennsylvania follows through with Governor Ridge's request set forth in his 1998-99 Program Policy Guidelines to improve program management and

operations, reduce costs, and maximize direct service (Administrative Circular 97-30, dated August 29, 1997. See page 6).

Furthermore, this concept promotes the Governors announced goal of “Making Government User Friendly and Customer Focused” in accordance with the tenets of PRIME.

Governor Ridge pointed out “Agencies” should seek to cooperate and collaborate in order to enhance the services provided to the “Commonwealth customers, because very rarely is one agency the single point of government contact for that individual”. Governor Ridges Administrative Circular 97-30, page 6.

The Governor further recognized the need for the Agencies of the Commonwealth as a whole to be able to reorganize to react to changing demands of citizens.

The Governor has also called for progress toward more efficiencies, higher productivity and performance in state operations including long term planning.

The unification of the administrative adjudicatory functions promotes a mechanism for quality management, for overall statistics, comparison with different cases, time, costs etc., within agencies. It also provides for more accountability while maximizing flexibility of assignment when there are

low volume and high volume periods within Agencies. All this can be centralized through our modern computer technology that can calculate, sort, schedule and disseminate information better and faster. Thus, releasing our bonds as prisoners of the past and providing efficient, quality, independent adjudications without the appearance of bias.

APPENDIX
A

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December 7, 1997

Brian J. Preski, Chief Counsel
House Judiciary Committee
Representative Research Department
House Box 202217
Harrisburg, PA 17120-2217

Re: Proposed Corrections and Changes to House Bill 1939

Dear Mr. Preski:

Enclosed please find a copy of Proposed Corrections and Changes to H.B. 1939. While some of these are minor typographical corrections, others are of major significance in substantive areas of the legislation.

As submitted, the current Bill contains a definition of an "agency" that is, at best, ambiguous as to its inclusion of the Public Utility Commission. For obvious reasons, it is vital to Public Utility Commission Administrative Law Judges who are working for the passage of this legislation that this ambiguity be removed. The proposed change in the definition of an "agency" removes any doubt that the Public Utility Commission is included. If the proposed change is deemed too broad, then the definition of an agency should be re-written to specify each and every agency intended to be included, by name. Such a list, while

cumbersome, would remove any doubt as to the agencies whose contested cases are to be heard by the new Office of Administrative Hearings.

A number of Administrative Law Judges now serving have expressed the opinion that the Chief Administrative Law Judge should have at least ten years experience as an attorney, rather than the five years currently provided. It is believed that the greater depth of experience and familiarity with the legal and administrative processes would increase the capability of the Chief Administrative Law Judge.


Salaries of the Chief Administrative Law Judge, and of the other Administrative Law Judges, should be set relative to salaries of Judges of Courts of Common Pleas and be automatically adjusted to maintain that relationship. ALJ's are now, and will be even more so under the new system, viewed by the public and most practitioners as judges. They should be compensated accordingly. Additionally, only by providing a fair, but not excessive compensation, can superior candidates for the positions be obtained. It is interesting to note that a recent survey in Lancaster County, where pay scales are fair but certainly not excessive, determined that an average associate attorney's yearly wage is \$55,231. The proposed salaries would pay the Chief Administrative Law Judge \$90,525 per year and the other ALJ's \$88,400 per year. This compares favorably with Senator Bell's proposal of a few year's ago to pay Administrative Law Judges

\$5,000 less than Judges of the Pennsylvania Commonwealth Court. Finally, pay should not be left to the discretion of the Executive Board. This would serve to dampen the proper independence of the ALJ's that is one of the primary goals of the legislation. It should be noted that The Pennsylvania Small Business Advocate, whose salary is set by the Executive Board, has not had any salary increase in four years (recently, one of his senior deputies, whose salary increases in civil service steps, was making more than the Small Business Advocate himself).

Finally, as is true with Administrative Law Judges working for the Public Utility Commission at this time, ALJ's in the new Office (other than the Chief) should be in the classified service. Again, this goes to attracting and keeping the best qualified people to devote themselves to a career as an Administrative Law Judge. Pennsylvania can have the best administrative law system in the country, and the creation of the new Office of Administrative Hearings will go a long way to achieving that goal. The proposed changes included with this letter are designed to improve an already fine piece of legislation.

Thank you for your interest and support. If I may be of any further assistance, please do not hesitate to contact me.

Very truly yours,



Wayne L. Weismandel

Enclosure

cc: Hon. Donald W. Snyder, Majority Whip (with enclosure)
Hon. Thomas E. Armstrong (with enclosure)

Proposed Corrections and Changes to H.B. 1939

Section 101

"Agency." The departments, boards, commissions, authorities and other officers and agencies of the Commonwealth of Pennsylvania, to include boards, commissions, authorities and other agencies and officers of the Commonwealth which are not subject to the policy supervision and control of the Governor, but the term does not include the Governor, any court or other officer or agency of the unified judicial system, the General Assembly and its officers and agencies, or any political subdivision, municipal or other local authority and any officer or agency of any such political subdivision or local authority.

Section 301. Purpose and functions.

(a) Establishment. There is created an Office of Administrative Hearings as an independent administrative agency[] for the purpose of conducting impartial and fair hearings in contested cases where there is a need to separate the investigatory or prosecutorial function from the adjudicatory function. The office shall provide for the issuance of recommended decisions and final decisions in all contested cases referred to it under this act.

(b) Powers of office. In addition to the powers granted by other sections of this act, the office shall have the powers

necessary or convenient to carry out this act, including, but not limited to, the power to:

Section 501. Chief administrative law judge.

(a) Appointment. The office shall be headed by a chief administrative law judge who shall be appointed by the Governor, with the advice and consent of a simple majority of the Senate, for a term of six years. The chief shall continue in office until a successor is appointed unless the chief has been removed for good cause under this act. The chief may be reappointed in the same manner upon expiration of his term.

(b) Removal. The position of chief administrative law judge shall be in the unclassified service but may not be withdrawn from a person so appointed, nor his salary diminished, by the Governor except on a finding of good cause. Prior to removal, the chief shall be given notice and an opportunity to be heard at an adjudicatory hearing under the general rules of administrative practice and procedure by an impartial hearing officer who shall determine and report to the Governor whether good cause exists for removal.

(c) Qualifications. No person shall be appointed and serve as chief unless that person:

(2) Has been licensed to practice law for a minimum of ten years.

(d) Salary. The annual salary of the chief shall be eighty-five percent (85%) of the annual salary fixed by law for the President Judge of the Court of Common Pleas of Philadelphia County.

Section 502. Administrative law judges.

(a) Selection. Administrative law judges shall be selected and appointed by the Governor on the recommendation of a nomination committee consisting of: the President pro tempore of the Senate, the Speaker of the House of Representatives, the chairman and minority chairman of the Judiciary Committee of the Senate, the chairman and minority chairman of the Judiciary Committee of the House of Representatives, and the president of the Pennsylvania Bar Association or their designees.

(b) Removal. Administrative law judges other than the chief shall be in the classified service and shall be afforded employment security as provided by the act of August 5, 1941 (P.L. 752, No. 286), known as the "Civil Service Act". An administrative law judge shall not be removed, suspended, reprimanded, nor disciplined except for misconduct, incompetence, or neglect of duty, but may be removed or suspended for physical or mental disability. Prior to the removal or suspension of an administrative law judge, he shall be given notice and an opportunity to be heard at an adjudicatory hearing by an impartial hearing officer.

(d) Salary. The annual salary of an administrative law judge shall be eighty-five percent (85%) of the annual salary fixed by law for a judge of a court of common pleas of judicial districts having one or two judges.

**APPENDIX
B**

CENTRAL PANELS

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL-CODE OF CONDUCT
ARIZONA <i>New</i>	Cliff Vanell, Director, 1700 W. Washington, Rm602 Phoenix 85007 (602) 542-9826 oah@getnet.com	by Governor with Senate confirmation	by Director, CALJ may contract for temporary ALJs	-Executes contracts -Hires employees, including ALJs -Adopts Rules -Develops training and evaluation -Assigns ALJs	Office of Administrative Hearings -Began on 1/2/96 and expires in 2000 -Executive Branch	S.1274, Chapter 251, adding Article 10 to Title 41, Chapter 6, Arizona revised statutes	Cannon of Ethics for Attorneys
CALIFORNIA	Karl S. Engeman, Director/Executive Officer, admitted to practice 5 years 501 J. St., Suit.230 Sacramento 95814 (916) 445-4926 kengeman@dgs.ca.gov http: www.dgs.ca.gov/oah	by Governor with Senate confirmation	by Director (Has special unit of ALJs to handle health planning and CON cases) -40 ALJ's (all unionized)	OAH is under his direction and control	Office of Administrative Hearings (within the Department of General Services) -4 offices -A division of a state agency	-Statutes 1961, Chap. 2048 -Administrative Procedures Act - Gov. C. Title 2, Div. 3, Pt.I, Chapter 4. Sec. 11370, et seq. -Began in 1946	Cannon of Ethics for Attorneys
COLORADO	Edwin L. Felter, Jr., Director and Chief ALJ The Chancery 1120 Lincoln St. Suite 900 Denver, Co. 80203 (303) 894-2500 ed.felter@state.co.us	by Executive Director of Department of General Support Services	by Director -17 ALJ's	Division is under his Direction and Control	Division of Administrative Hearings (within the Dept. of General Support Services.) -A division of a state agency	§ 24-30-100j, et seq. L.76, p. 585, § 19. -created July1, 1976	Adopted "Code of Judicial Conduct for ALJ's" of the state Central Panels in 1991 -Handles Workers Comp.
FLORIDA	Sharyn L. Smith, Director The DeSoto Bldg. 1230Appalachee Parkway Tallahasee, Fla. 32399-1550 (850) 488-9675 smithsh@mail.state.fl.us	by the Governor and cabinet	Employs all staff and ALJs -34 ALJs	-Administers work of the Division -Organizes & manages clerical personnel & hearing officers (ALJs) -Oversees caseload & case schedules, travel, quality & quantity of work of ALJs -Same as C J of Circuit Court	Division of Administrative Hearings (in the Dept. of Admin.) -Not subject to control, supervision or direction by the Dept.) -Executive Branch	Laws 1974, c. 74-310, created Chapter 120 called the Administrative Procedures Act -Rules of Procedure are all statutory -created in 1975	Judicial Code of Ethics & Attorneys Code of Ethics

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL-CODE OF CONDUCT
GEORGIA	Mark A. Dickerson Chief ALJ, 6 yr. term, admitted to practice 5 years 235 Peachtree St., NE, Suite 700 Atlanta, Ga. 30303 (404)656-3508 markalandi@aol.com	by Governor -eligible for reappointment -may be removed for cause -salary set by Gov.	-ALJs and personnel employed by Chief -compensation determined by Chief -34 ALJs and 25 contract ALJs	Head of OAH -promulgates rules & regs. -establishes procedure	Office of State Administrative Hearings -A state agency in Exec. Branch -Assigned for Admin. purposes only to Dept. of Admin. Services	O.C.G.A. Ga. Code § 50-13-40, et seq. -Began on April 1, 1995	-Lots of high volume hearings
ILLINOIS - CITY OF CHICAGO	James M. Reilly, Chief Admin. Law Officer 333 S. State St., Suite 550 Chicago, Illinois 60604 (312) 747-5899 (After 1/24/97) 740 N. Sedgwick, 6th Floor Chicago, Illinois 60610 (312) 742-8210	by the Mayor, subject to approval of City Council	-84 ALJs/Hearing Officers -52 Staff	-Appoints and dismisses ALOs -Prepares budget -Executes contracts on behalf of the office -Hire, supervise & fire staff -Adopts internal rules & admin. policies & rules of procedure for hearings	Dept. Of Administrative Hearings -Separate dept. within City government	Title 2, Chapter 2 - 14 of the Municipal Code of Chicago -Created January 1, 1997	-400,000 High volume cases annually -Code of Conduct for ALOs -City of Chicago has Code of Ethics for all employees
IOWA	Larry J. Bryant, Chief ALJ Lucas State Office Bldg., 2nd Floor Des Moines, 50319 (515) 281-6372	by the Director of Iowa Dept. of Inspections and Appeals	by Administrator, subject to review by Director of Dept. of Inspections & Appeals	-Coordinates the Administration of the Division -Develops and Administers the Division's policies & procedures for the conduct of appeals & hearings	Appeals and Fair Hearings Division -Iowa Dept. of Inspection and appeals -Executive Branch	§ 10A.201 -Began in 1995	-Conduct telephone hearings -High volume hearings

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL-CODE OF CONDUCT
LOUISIANA	Ann Wise, Director P.O. Box 44033 Baton Rouge, La. 70804-4158 (504) 342-1800 charlottec@dnr.state.la.us	By Governor w/ Senate Confirmation 6 year term	All ALJs and staff are hired by Director under classified Civil Service System	<ul style="list-style-type: none"> -Under Dir.'s direction and control -Develops & submits budget -Organizes division into sections -Develops uniform standards, rules of evidence, procedures -Employs/discharges ALJs and staff subject to Civil Service rules & regs -Oversees caseload, travel and quantity of ALJ's work -Administers and supervises the conduct of adjudications -Secures, compiles & maintains all records of adjudications -Assures that agencies properly promulgate rules under the APA -Assists agencies in preparation of publication & interpretation of rules under APA -Develops & implements programs of judicial evaluation and for Continuing Legal Educ. of ALJs 	Division of Administrative Law, within the Department of Civil Service -Start Date October 1, 1996	La. R.S. 36:53(I) La. R.S. 49:991-999 (La. APA) Enacted by Act No. 739 of the 1995 Legislative Session	Program of Judicial evaluation developed & implemented by the Dir. ALJs subject to Code of Governmental Ethics, La. R.S. 42:1101-1169
MARYLAND	John W. Harwicke, Chief ALJ 11101 Gilroy Rd. Hunt Valley, Md. 21031-1301 (410) 229-4105 jweave@erols.com	by Governor with advice & consent of Senate, for 6 years	by Chief ALJ	<ul style="list-style-type: none"> -May employ a staff -Supervises the office -Establishes qualifications for ALJs -Assigns ALJs -Appoints ALJs -Contract for ALJ -Serves as an ALJ -Establishes education programs & trainings -Develops rules of procedure -Monitors the hearings 	Office of Administrative Hearings -Independent unit in Executive Branch of state govt.	1989, ch. 788 Am. Code of Maryland, Subtitle 16, § 9-1601, et. seq. started Jan.. 1, 1990	Own Judicial Code of Ethics

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL-CODE OF CONDUCT
MASSACHU.	Christopher F. Connolly, Chief Administrative Magistrate 100 Cambridge St., Room 904 Boston, Mass. 02202 (617) 727-7060 christopher.connolly@users@ala@gateways@state.ma.us	by the Secretary of the Exec. Office for Administration and Finance, with approval of Gov. -Experience required, including substantial experience as a trial attorney	by the Chief Administrative Magistrate	-Assigns hearing officers -Organizes the Division -Establishes policies -Employs persons necessary to discharge responsibilities of Division	Division of Administrative Law Appeals, a part of the Exec. Office for Administration & Finance -Created in 1974 -Executive Branch	Statute 1973, c. 1229, § 3 -Effective July 1, 1974	-Cannon of Ethics for Attorneys -Casebook: 1075 a year -8 full time magistrates or judges -1152 in 1995 -130-140 cases per year per judge
MICHIGAN	Edward F. Rogers, Chief ALJ P.O. Box 30018 Ohanda State Office Bldg. Lansing, Michigan 48909 (517) 335-2484	by the Director of the Dept. Of Consumer and Industry Services	by Chief ALJ		Dept. Of Commerce & Industry Services, Office of Legal Services		-Cannon of Ethics for Attorneys
MINNESOTA	Ken Nickolai, Acting Chief ALJ 100 Washington Sq. Suite 1700 Minneapolis, Mn. 55401-2138 (612)341-7600 kjohnson@oah.st.mn.us	by Governor for a six year term -Removable for cause	by Chief ALJ -Appoints ALJs and Compensation judges	-May hear cases -Office under his direction -May contract for Temporary ALJs -Employs staff	Office of Administrative Hearing -Created Jan. 1, 1976 -Executive Branch	Laws 1975, c. 380, § 16	-Own Judicial Code of Ethics -Workers Comp. transferred in 1982 -Child support hearings & about 25 rulemaking hearings per year
MISSOURI	Sharon M. Busch Presiding Commissioner Truman State Office Bldg., Room 640 P.O. Box 1557 Jefferson City, Mo. 65102 (573)751-2422	Appointed by full commission (no more than 3) to serve a 1 yr. term	None -All commissioners by Gov. for 6 years -Conduct administrative review of admin. actions	-Managerial & budgetary powers & duties as assigned by majority vote of commissioners	Office of Administrative Hearing Commission (part of Office of Administration) Executive Branch	Chapter 621, Revised Statutes of Missouri	Rules of Professional Conduct (replaced old Cannon of Ethics in 1971)

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL- CODE OF CONDUCT
NEW JERSEY	Barbara A. Harned Director and Chief ALJ 9 Quakerbridge Plaza, CN 049 Trenton, NJ 08625 (609)588-6600 harned@oal.state.nj.us	By Gov. for a 6 year term, with advice & consent of Senate -Salary as approved by law	Permanent ALJs by Gov. with consent of Senate -For initial 1 yr. term, then 4 yrs. or until successor appointed -Temp. ALJs by Director -37 ALJs	<ul style="list-style-type: none"> -Administers office -Organizes office -Appt. all clerical staff & personnel -Assigns & reassigns personnel -Develops uniform standards, rules of evidence & procedures -Promulgates rules for implementation & coordinated administration of the APA -Assign permanent ALJs to preside over contested cases -Develops & maintains training & CLE of ALJs -Develop & implement a program of judicial evaluation -Assigns ALJs to other duties when not trying cases -Secure, maintain & compile all reports of ALJs -Assist in the making of reappointments by evaluations 	Office of Administrative Law -Within the executive branch -Independent of any supervision or control	New Jersey S.S. 52: 148-5 -Have a Code of Judicial Conduct for ALJs -Created in 1978	<ul style="list-style-type: none"> -Own Judicial Code of Ethics -Publishes the New Jersey Administrative Code
City of NEW YORK	Rose Luttan Rubin Chief ALJ 40 Rector St., 6th Fl. NY, NY 10006 (212)442-4900	by Mayor -No set term or tenure	by Chief ALJ for a 5 yr. term	<ul style="list-style-type: none"> -Directs the office -Establishes rules for conduct of hearings 	Office of Administrative Trials and Hearings -Executive Branch	New York City Charter, Chapter 45-A -Created in 1979	Code of Judicial Conduct & City Conflicts of Interest Law

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL-CODE OF CONDUCT
NORTH CAROLINA	Julian Mann, III Chief ALJ and Director P.O. Drawer 27447 Raleigh, NC 27611-7447 (919)733-2719 jmann@oah.state.nc.us	by Chief Justice of Supreme Court for a 4 yr. term -May serve until successor appointed	-By Chief ALJ -May be removed by Chief ALJ for just cause -8 ALJs -Defines the duties of ALJ	-Shall designate 1 ALJ as Sr. ALJ, Will assume duties of Chief ALJ if Chief is absent or unable to serve temporarily -May contract with qualified individuals to serve as an ALJ for specific assignments -May order consolidation of cases -May order mediation -Assign judges to preside over contested cases	Office of Administrative Hearings -an independent quasi-judicial agency -has such judicial powers as reasonably necessary to accomplish its purposes -Executive Branch	General statutes of North Carolina Chapter 7A, Subchapter XII, Article 60 -began January 1, 1986	-Attorneys Code of Ethics -Have an Administrative Code -All decisions published in digest -codifies & published all admin. rules
NORTH DAKOTA	Allen C. Hoberg Director 1707 N. Ninth St., Lower level (701)328-3760 ahoberg@pioneer.state.nd.us	By Gov., confirmed by Senate for a 6 yr. term	by Director -Director may contract for temporary ALJs, 3 full-time ALJs, 17 p/t temporary ALJs	-May preside at hearing -May employ hearing officers -Assigns hearing officers -May employ necessary staff required by the office -Adopts rules of administrative Hearings Practice or Procedure -State Advisory Council -Committee or subc. of State Bar, appted. by its Pres., meets semiannually with Director to advise on policy matters affecting the office & on rules adopted by the Director -Also conducts rule-making hearings	Office of Administrative Hearings -A separate State Agency -Executive Branch	S.L. 1991, Chapter 637 N.D. Cent. Code Chapter 54, §§4-57-01, et seq. -began in 1991	Attorneys Code of Ethics
SOUTH CAROLINA	Marvin E. Kittrell Chief ALJ P.O. Box 11667 Columbia, SC 29211-1667 (803)734-0550 scaljd@infoave.net	Elected by legislature for 5 yr. term	Elected by legislature for 5 yr. terms	-Responsible for administration of the Division -Assigns judges of the Division -Appoints the clerk -Can assign other duties to clerk	Administrative Law Judge Division -An independent quasi-judicial agency w/in Executive Branch	S.C. Code Ann. § 1-23-500, et seq. -Began on March 1, 1994	-Code of Judicial Conduct -Also conducts rulemaking hearings

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL- CODE OF CONDUCT
SOUTH DAKOTA	Robert Krogstad Chief Hearing Examiner 445 E. Capital Ave. Pierre, SD 57501 (605)773-6811 robertk@adpr6.state.sd.us	by Governor	-Appoints other hearing examiners	-Appoints staff -Adopts rules for the operation of the office & procedures to be used with regard to hearing contested cases -Contracts with other agencies to conduct hearings for them	-Office of Hearing Examiners -Attached to Bureau of Administration, for reporting and budgetary purposes -w/in Executive Branch	SL 1995, Chp. 8, § 16 -created July 1, 1995	
TENNESSEE	Charles C. Sullivan, II Director, Chief ALJ Suite 1700, James Polk Bldg. Nashville, TN 37243-0307 (615)741-7008	by Sec. of State	by Sec. of State	-Staff appointed by Sec. of State -Responsible to Sec. of State for supervision of all employees & ALJs -Assigns ALJs -Reviews their decisions for clarity & uniformity -Generally responsible for implementation of office policy -Responsible for coordinating personnel, divisional budget -Responsible for implementing policies & procedures of Sec. of State as they relate to the Division -Reviews legislation -Responsible for preparing uniform rules of procedure for conducting cc hearings & manual of policy & procedure	Administrative Procedures Division -Within the Sec. of State's office	Tenn. Statute § 4-5-321, et seq.	Canons of Judicial Conduct -1400 hearings in 1995 -have a digest on all cases

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL-CODE OF CONDUCT
TEXAS	<p>Shelia Bailey Taylor Chief ALJ (Must be board certified in administrative law) 300 W. 15th St, Suite 502 P.O. Box 13025 Austin, TX 78701-3025 (512)475-4993 charley.shepherd.@soah.stat e.tx.us</p>	by Gov. for a 2 yr. term	<p>by Chief ALJ -70 judges & 47 staff</p>	<p>-Employs ALJs -May contract with qualified individuals to serve as temp. ALJs -Shall adopt rules relating to qualification requirements for temporary judges -May hire other staff as required -Has an admin. division that oversees training, evaluation, discipline & promotion of all ALJs -Submit annual report to legislature -Also has a central panel of Sr. judges to coordinate & supervise operation of the hearings -Adopt rules of procedure for admin. hearings & other regulations -Monitors quality of the hearings</p>	<p>State Office of Administrative Hearings -w/in Executive Branch -13 field offices & 4 regional offices</p>	<p>Texas S.B. 884 (Senate Bill) -Began 4/92</p>	<p>Code of Conduct for ALJs -1157 hearings in 1995</p>
WASHING.	<p>Art Wang, Chief ALJ P.O. Box 42488 Olympia, Wash. 98504-2488 (360)-664-8717</p>	by Gov. for 5 yr. term, with advice and consent of Senate	<p>by Chief ALJ -65 ALJs</p>	<p>-Appoints all ALJs -May contract with qualified individuals to serve as ALJs for specific hearings -Office under direction of Chief ALJ -Appoints clerical & other specialized or technical personnel -ALJs subject to discipline and termination by CALJ -Assigns ALJs on a long-term basis -Promulgates rules governing procedural conduct of hearings -Sets salaries for ALJs</p>	<p>Office of Administrative Hearings -office adopts rules for its own operation -w/m Executive Branch -7 million budget</p>	<p>Washington State Register Act of 1977 Chapter 34.12, Section 34.12.010, et seq.</p>	<p>Own code of conduct -high volume cases (60,000 in 1995)</p>

STATE	DIRECTOR	HOW DIRECTOR APPOINTED	HOW ALJs APPOINTED	AUTHORITY OF DIRECTOR	OFFICE NAME/PLACE in GOVT.	LEGISLATION CREATING AGENCY	SPECIAL- CODE OF CONDUCT
WISCONSIN	David H. Schwarz Administrator 5005 University Ave., Suite 201 Madison, Wisc. 53705-5400 (608)266-7709	by Sec. of the Dept. of Administration	by Chief Judge	-Appoints all hearing examiners -Supervises the examiners	Wisconsin Division of Hearings and Appeals -part of the Department of Administration -Executive Branch	Chapter 418, Laws of 1977 - Wisconsin -Began in 1978	-Canon of Ethics for Attorneys; Code of Ethics for State employees; Code for ALJ's (taken from NAALJ model)
WYOMING	Larry Donovan Director 2020 Carry Ave., 9th Floor Cheyenne, Wyoming 82002-0270 (307)777-6660	by Gov. with advice and consent of Senate -Serves at pleasure of Gov.	by the Director -Serves at his pleasure -May be removed without cause at any time	-Administrative head and chief hearing examiner -Shall promulgate reasonable rules and regulations necessary to carry out the functions and responsibilities assigned to the office	Office of Administrative Hearings -independent agency in Executive Branch	Laws, 1992, Chapter 30, § 1 § 9-2-2201, et seq.	-None -Handles workers comp. and drivers license cases also

**APPENDIX
C**

**James D. Porterfield
Box 22044
Pittsburgh, PA 15222**

(412) 565-3550 363-5672

January 8, 1998

**The Honorable Senator Leonard J. Bodack
The Senate of the Commonwealth of Pennsylvania
4825 Butler Street
Pittsburgh, Pennsylvania 15201**

Re: House Bill No. 1939

Dear Senator Bodack:

As your constituent and supporter, I write to you to highlight pending legislation that could be of significant interest to you and of substantial benefit to the citizens of the Commonwealth. House Bill No. 1939 proposes to establish the Office of Administrative Hearings, that is, an independent agency that would supply judges, support personnel, and facilities, in order to provide a quasi-judicial forum or tribunal where controversies involving certain agencies of the Commonwealth would be resolved, in the first instance, much like a trial court in civil controversies. Such systems have been in place for many years in a number of progressive states (e.g., New Jersey, Maryland, and Minnesota). Many of these so-called "central-panel states" have cut overall costs and provided greater efficiency to the public. Basically, the concept is that it is cheaper and better for the public to have the quasi-judicial function, especially the trial court function, of government agencies centralized in one agency.

Economy and efficiency, while of considerable importance, pale beside the greatest benefit conferred on the public by the proposed legislation -- to be able to seek justice in an impartial, unbiased, and independent forum, or what is the same, to get a fair hearing by any standard! This is not to say, at least in my experience, that under the current systems the public does not get fair and impartial hearings. It is the very real potential for the appearance of bias and partiality that taints the current administrative hearing systems.

At the very heart of any enduring and ethical judicial or quasi-judicial system is the confidence of the public that the judges are fundamentally honest and, as importantly, are impartial and unbiased when evaluating evidence, in order to make decisions affecting the rights of citizens. Justice must satisfy the appearance of justice. Justice must include fact-finders, schooled in the law, who are fair, unbiased and impartial as they evaluate evidence presented by parties in order to resolve disputes.

Under the current systems, administrative law judges, hearing officers, examiners, etc., in at least the vast majority of instances, are employees of various agencies of the Commonwealth. For example, I have been an administrative law judge for the Pennsylvania Public Utility Commission for nearly 14 years and being an employee of the Commission is a necessary condition for this position. Notwithstanding the evolution of the workplace over the last three or four decades, it is not uncommon to hear members of the public use autocratic or militaristic terms (*e.g.*, "boss," "peon," etc.), from bygone days, and to apply those terms to present-day employer/employee relationships. With this persistent, embedded concept of the employer/employee relationship, or for that matter even a kinder concept, held by the public, it is difficult to reconcile how the public has confidence in a quasi-judicial system that relies on employees of an agency to dispense fair, impartial decisions based on facts of record when the parties' positions often differ, in varying degrees, from the positions taken by various bureaus or offices of an agency. A judge working for the proposed Office of Administrative Hearings would be an employee of the agency, but the involved agency would not have a substantive agenda and would not be mandated to make policy affecting the public generally.

An agency, under present conditions, that sponsors a quasi-judicial forum (for the benefit of the public) and hires judges, hearing officers, or examiners necessarily exerts considerable control over its employee/judges through the personnel function or, for example, by setting wages, determining working conditions, and parceling out work assignments. Even within legal and ethical bounds, there is a great potential for mischief under these circumstances.

Notwithstanding that I hold hearings on the premises of the Public Utility Commission and that my correspondence reflects that I am an employee of the Commission, I am reminded sometimes that not all parties to proceedings before me are aware that I am an employee of the Commission. I wonder, then, if less deference or confidence would be extended by the public if the employer/employee relationship were expressly stated. Certainly, even to the better informed members of the public, the awareness that the judges' assignments and working conditions are controlled by the agency to which the party is taking an adverse position must give rise, if only fleetingly, to thoughts about the judges' ability to impartially evaluate evidence they have presented and to make an independent recommendation to the Commission.

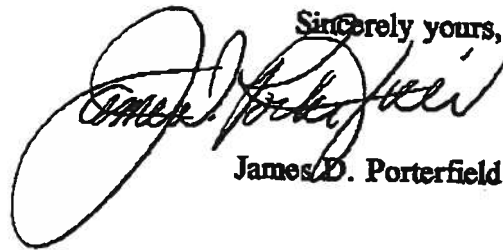
It is the law of the Commonwealth that "the mere appearance of bias must be avoided" in the context of administrative hearings. *Lyness v. State Board of Medicine*, 605 A.2d 1204, 1208 (Pa. Cmwlth, 1992). Particularly poignant examples of where the appearance of bias may easily arise, under current circumstances, are where former

The Honorable Senator Leonard J. Bodack
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employees of an agency practice law, as advocates, before employee/judges (knowing well the inter-workings of the agency) or where employees of an agency have been "promoted" to an agency judge. Usually one is grateful for a promotion and could easily be perceived by the public as being beholden to the agency, for the promotion, to such an extent that the ability to evaluate evidence and to make independent recommendations would be impaired. House Bill No. 1939 proposes an economical and effective remedy to the very real potential for the appearance of bias and partiality that taints the current administrative hearing systems in the Commonwealth.

Please peruse the enclosures and consider the importance of offering your support to the proposed legislation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "James D. Porterfield", written in a cursive style. The signature is positioned above the printed name.

James D. Porterfield

Enclosures