REASONS FOR A CENTRAL PANEL OF ALJs

A state central hearing agency (central panel) of administrative law judges is fundamentally a good government idea. Now, there are 28 central panels (state and city) in the United States. Eight central panels were identified in 1984. Prior to the establishment of Maryland's central panel in 1989, most central panels were established to address perceived and/or actual conflicts wherein agencies had the duty to administer, investigate and prosecute matters arising out of their programs; and also had control over the adjudicators of disputes between the public and government, arising out of these programs. The issue of public trust and confidence in state systems of administrative justice was foremost in the minds of state general assembly members. Consequently, they began creating state central hearing agencies that were detached from the agencies whose cases they adjudicated.

Colorado's central panel was created by the General Assembly in 1976 to address perceived and actual conflicts involving workers' compensation adjudications. The sponsors of the legislation were concerned, among other things, with the fact that the then Division of Labor [now the Division of Workers' Compensation (DOWC)] appeared before the adjudicators (now ALJs in the Office of Administrative Courts) in an adversarial capacity and it also employed the adjudicators. The DOWC Division Director had administrative responsibilities to oversee certain funds that were often the subject of dispute before one of the adjudicators who, ultimately, reported to the Director. Today, the Director of the Division of Workers' Compensation still has many of these same administrative responsibilities, including administering the premium surtax that funds the system; administering the fund (Subsequent Injury Fund) that is the beneficiary of 25% of all $1,000 per day penalties that ALJs may impose on parties who disobey the law; and, the DOWC appears as a party before the Office of Administrative Courts' ALJs in non-insured enforcement actions.

Public trust and confidence in our system of justice is a matter that is in the forefront of the public's consciousness. The American Bar Association (ABA) has given this issue one of its highest priorities. In 1997, the ABA House of Delegates unanimously adopted the *Model Act Creating a State Central Hearing Agency*. In doing so, the ABA made it clear that it favored central panels for state administrative law adjudications. Since the adoption of the *Model Act*, several jurisdictions have patterned proposed legislation with the *Model Act* as guidance (Maryland, Alaska, and the District of Columbia,). At this point, the jurisdictions adopting central panels are doing so as a good government measure. The thinking in the establishment of a central panel is rooted in a desire to improve public trust and confidence in the jurisdiction's system of administrative justice. It is also rooted in a desire to create a more efficient and effective system wherein the sole mission, and focus, of the central panel is to hear and decide cases in a fair and impartial manner, free of inappropriate influences from the administrative, investigative or prosecutorial functions.

Every administrative law case is different and the law must be applied to the evidence in that specific case in a fair and even-handed manner. The public expects this and it is entitled to no less. Perceptions of fairness are just as important as fairness itself. When an adjudicator is housed in an agency that administers, investigates and prosecutes, it is difficult to dispel the perception that the adjudicator is biased in favor of that agency, especially if the agency can be a monetary beneficiary of the outcome of the adjudication. The clearest solution to this problem is a central panel.

In administrative law, ALJs have an added responsibility to respect legitimate agency policy provided that it is not at odds with statutory law. Again, public trust and confidence is greatly enhanced when the public knows that the adjudicator dealing with agency policy, and statutes, is detached from the agency. The ill advised application of agency policy in favor of the agency has yielded a wealth of appellate decisions in administrative law, as well as a wealth of unseen appellate costs, delays and unintended consequences.

With a central panel, there is an efficiency of scale because its only function is to hear and decide cases. When all system costs are considered (this includes all litigation and lawyer costs, appellate tribunal costs, every penny spent on a dispute from a to z) meaningful cost savings are bound to occur in the central panel milieu. There is one caveat. Bottom line cost savings is not, and should not be, the paramount consideration. A credible and cost effective system of administrative justice that comports with established notions of due process, and one that enjoys the public trust and confidence should be the overarching consideration. One caveat is that the Maryland central panel, at its establishment in 1989, established a slight overall increase in costs for the first two years (over the aggregate costs of all confederated administrative law adjudicators). By year three, an overall decrease in costs was shown.