

# ADMINISTRATIVE LAW REFORM REPORT

CMS BUREAU OF ADMINISTRATIVE HEARINGS

JULY 2017



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# I. EXECUTIVE SUMMARY

In April 2016, Governor Bruce Rauner signed Executive Order 2016-06. The purpose of the Executive Order was to evaluate and rationalize the way the State of Illinois conducts its administrative hearings. The Governor's Office recognized a problem in the way that agencies, historically, have served their constituents in these highly important legal proceedings.

The Executive Order created a pilot Bureau of Administrative Hearings at the Department of Central Management Services (CMS) and charged the Bureau with conducting extensive data collection for qualitative analysis to determine how hearings are conducted now - what works and what does not work - and to make recommendations to implement change.

This report highlights areas for change and improvement and showcases the work the Bureau has done to date to make hearings better, smarter, and more citizen-friendly.

## **Background:**

- 150,000+ hearing matters open across 25+ State agencies each year.
- Hearings run the gamut of state services, and parties to these hearings may be highly sophisticated businesses, but are often small businesses, non-profits, and everyday citizens relying on the State to provide them with needed goods or services.
- Administrative hearings are quasi-judicial proceedings. Some resemble trials. Others may require only a 20-minute phone call. This leads some to call administrative adjudicators the hidden judiciary.
- The adjudicators who preside over these hearings have many different titles, including administrative law judge (ALJ), hearing officer, and hearing referee.<sup>1</sup>
- State agency decisions may ultimately become court cases if the decision of a State ALJ is appealed.

<sup>1</sup> Like so many other facets of the administrative hearings process in Illinois, there is no uniformity for adjudicator titles. Some are ALJs, while others are called "Hearing Officer," "Hearing Referee," "Fair Hearing Officer," or others. For purposes of this report, ALJ will be used to refer to all of the State's adjudicators, regardless of title.

### Bureau of Administrative Hearings: Accomplishments

- Implemented a case-sharing solution between the Department of Labor, the Department of Public Health (DPH), and the Department of Revenue to resolve a backlog problem at Labor. At no cost, DPH and Revenue judges doubled the output of Labor cases. More than 500 cases were heard during the pilot period.
- Created a case-sharing program for Springfield-based agencies, so that they share one judge for their cases, cutting roughly \$120,000 in costs to hire outside counsel.
- Initiated case sharing between the Illinois State Police and the Department of Financial & Professional Regulation.
- Developed a set of model rules for Administrative Hearings that would cut 100s of rules from Illinois's administrative code, while at the same time it would make hearings faster and easier for citizens and practitioners to understand.
- Launched a website to be a one-stop-shop for the public to understand their rights and the conduct of hearings around the state.
- Trained or coordinated 1,100+ hours of professional training for judges across state agencies, including sponsoring a day-long seminar on administrative law.
- Conducted the first comprehensive quantitative and qualitative survey about administrative hearing processes around the state.
- Drafted a "bench manual" as a first standard orientation tool for judges.
- Created committees in regulatory reform, information technology, and professional development staffed by agency judges and chief judges, who continue to propose new solutions to make hearings better.

### HISTORY

As social and economic problems have become increasingly complicated, and society becomes more interconnected and fast-paced, the role of administrative law—and the state agencies that administer laws—has also become much more important in the lives of citizens. Throughout the 20th century, the administrative state expanded. So while citizens often know that the court system exists as a forum to adjudicate their rights and define their obligations to government and to each other, the increasing impact of administrative law in their lives may come as a surprise.

Administrative agencies have both statutes that they implement and administer, and also pass rules that may govern the conduct of constituent citizens and businesses. In order to effect these laws and rules, agencies may have investigatory arms that root out violations of law, and enforcement arms that can take action based on the outcome of investigations.

State administrative agencies often serve as neutral decision makers for disputes between third parties, such as when individual employees are challenging whether they were paid appropriately. In other instances, the State is taking an action impacting a private citizen or business entity, whether it is revoking a license, setting public assistance levels, or taking other regulatory action. The State's ability to act is not unlimited. Citizens or entities

impacted by government action can challenge the State's determinations. Most frequently, this challenge occurs in an administrative hearing process.

Administrative hearings units work much like the courts that handle civil cases, but there are some major differences. Administrative hearings units often have relaxed rules of procedure regulating how a case moves forward and is heard. This makes it easier for individuals, often not represented by attorneys, to present their case.

In Illinois, 150,000+ administrative hearings are held before more than 25 different State agencies each year. Illinois takes a fully-decentralized approach to their hearings that differs from the majority of states in the nation. Because administrative hearings units are housed at separate agencies, these units are limited in what types of cases they decide. For example, the Department of Revenue handles income tax cases but does not hold hearings about unemployment tax withholding. Because of this decentralized approach, litigants before the State's various administrative courts can have very different experiences while facing different procedural requirements. While one set of litigants can have resolution within months, others may wait for years. Without a centralized structure, the State has not been poised to address these disparities.

### Recognizing the Need for Change:

- The central panel model is successfully operating in 30 states and other municipalities;
- Central panels operate efficiently, cost-effectively, and with an increased independence in decision-making;
- Legal practitioners across the State are supportive of reforming the State's administrative process;
- The State's ALJs would welcome improvements in training, particularly training specific to their work as State government adjudicators;
- Many current ALJs hear a wide variety of cases, including cases interpreting laws under the jurisdiction of other executive branch agencies; and
- Current efforts to better utilize existing staff have been effective in decreasing backlogs and avoiding a disruption in service while carrying out the State's statutory requirements.

More than 30 states have consolidated at least some administrative hearings into what are often referred to as "central panels." Governor Rauner, taking executive action to create the Pilot Bureau of Administrative Hearings, recognized that Illinois could be missing out on an important movement that could help both agencies and the citizens they serve. The role of the Bureau is to gather data and further assess the feasibility of consolidating ALJ functions in Illinois.

This report serves as the end-of-the-pilot report required by Executive Order No. 16-06, and provides a look into the Bureau's work during the pilot period, April 29, 2016, through June 30, 2017.

It cannot be stated strongly enough that the work of the Pilot Bureau would not have been possible without the persistence and tenacity of State employees from many agencies and the support of even more, including staff at the Department of Central Management Services and the Department of Innovation and Technology.

#### **Problems in Illinois:**

- Illinois's administrative hearings processes are a quagmire of administrative rules that are often difficult for practitioners, individuals, and entities to navigate;

## I. EXECUTIVE SUMMARY

- State administrative agencies vary greatly in caseload, support staff levels, use of technology, and their approaches to training; and
- Most of the State’s technological supports for administrative hearings are woefully inadequate and desperately out of date.

### **Recommendations**

First, acquiring and implementing an electronic case management system available to all State agencies that hold hearings is a worthy investment that can not only improve transparency, accountability, and customer service, but is also expected to provide significant cost savings once fully implemented.

Second, the State’s regulations governing hearings, in many cases, exacerbate delays, making administrative hearings more expensive to litigants and the State alike while depriving participants of a timely resolution of their disputes. Enacting model rules, with agency-specific subparts detailing any statutorily-mandated departures from the default, would go a long way to ensuring that citizens are able to more easily assert their rights and meaningfully engage in the State’s hearing process. Adoption of model rules that include streamlined process and tightened timeframes for resolution would improve the State’s service to the public and should result in not insignificant cost savings.

Third, training focused on the important function of adjudication is uneven, at best, and woefully inadequate, at worst. Filling this void by providing meaningful, ALJ-based training has been and should continue to be an immediate priority.

Finally, based on the experiences in other states, as well as the progress during the pilot period, the Pilot Bureau should be made permanent. The State should take legislative or executive action toward consolidation of hearing functions into a centralized panel. Consolidation with a focus on empowering ALJs, improving customer service, and attaining cost savings for State taxpayers would be beneficial not only to litigants but also to State employees carrying out these functions. A permanent Bureau would be in the best position to recommend and implement future reforms that can most dramatically improve the State’s hearings.

This report also includes the Bureau’s next steps should it continue to exist beyond the end of the pilot period, including meeting with employees, agencies, and external customers; updating and clarifying data on the State’s existing hearings personnel, policies, and processes; continuing to offer ALJ-based training; and crafting ongoing recommendations to the Governor’s office and General Assembly regarding the future of Illinois’s administrative hearings.

## II. Background on Existing Problems and Limitations of Current System

Illinois can only be successful at delivering high quality citizen service in the area of administrative hearings if it is consistent, transparent, and thorough in its efforts to collect data and monitor progress about these hearings. But until the Pilot, the State never made a concerted effort to understand the scope of the problem it faces. Rather, Governor Rauner took office to strong anecdotal evidence that the administrative hearing process is poorly administered, but little by way of data to understand why.

Still, it was clear that at many agencies, cases take months and years to conclude. Because dozens of agencies employ their own adjudicators, use parochial administrative hearing rules, and conduct hearings across any number of sites across the State, it is often difficult for ordinary citizens and sophisticated parties alike to access the administrative hearing process in Illinois. Moreover, many agencies have antiquated case management systems, and several do not have electronic case management systems at all, which creates delay and invites human error.

Across the nation, states and municipalities have confronted the issues facing Illinois: **backlog**; **inefficient use of resources**; and **inconsistent legal procedures**. Over and over again, Illinois' peer states have turned to centralization of administrative law functions as a solution to these problems. Thirty states and many municipalities, including the City of Chicago and Cook County, have

some form of the central panel model. As a result, they report that their administrative law judges decide cases more quickly and efficiently and citizens enjoy greater clarity about the hearing process. Public trust is also bolstered where citizens can interact with an impartial judiciary. Centralization is a common sense, customer-service driven solution.

Historically, legislators on both sides of the aisle in Illinois saw the same problems and the same possible solution in a central panel solution. And then, after a wave of central panels were formed across the nation in the 1980s and 1990s, Illinois witnessed the success of its sister states.

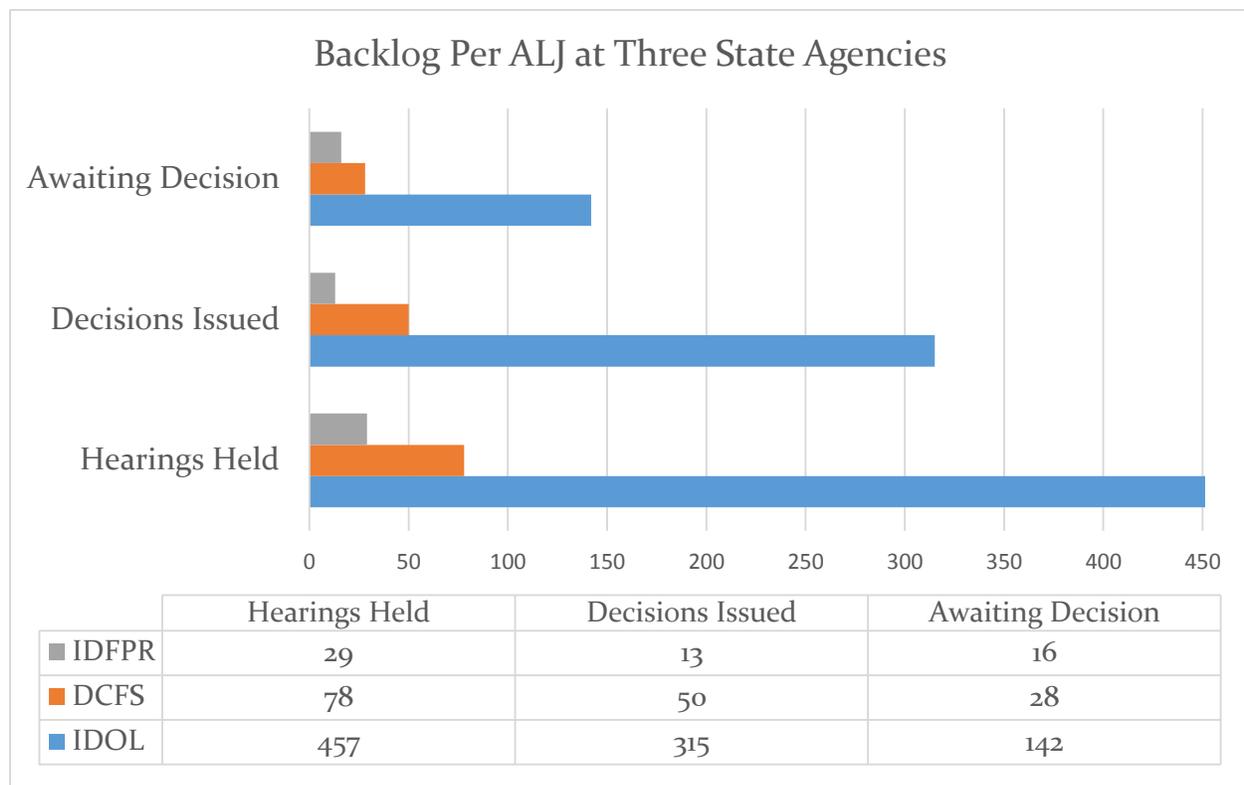
But in Illinois, nine legislative attempts to institute a central panel have failed. Legislation has languished in committee instead of moving to the floor for meaningful debate, in no small part because the executive branch has not tried to be part of the solution. The commitment of CMS, DoIT, the pilot agencies, and all the other state agencies that have lent their support and expertise to the Pilot Bureau of Administrative Hearings proves this is no longer the case. And through the efforts of the Pilot, meaningful data collection has begun and already provides a much richer view into the current state of administrative hearings.

## II. Background on Existing Problems and Limitations of Current System

### A. Poor Service to the Public

The most obvious example of poor service in the current administrative scheme is delay. Inefficient staffing, inadequate resources or poor resource allocation, and old technology exacerbate delays. But at the same time that technological systems are aging, the number of hearings across the state grows each year. For example, the Department of Children & Family Services received 54 cases for review in 1986. In 2016, it received nearly 3,900.

Delays create backlogs that continue to bury ALJs deeper and deeper and make the public wait longer and longer for decisions. IDOL ALJs hold approximately 1,600 hearings per year. Despite their high production, writing more than 300 decision per year, they are left with a writing backlog of more than 140 cases per year. At IDFPR, ALJs have more cases awaiting decision in a year than those where they have issued decisions.



### B. Regulatory Inconsistencies and Inefficiencies

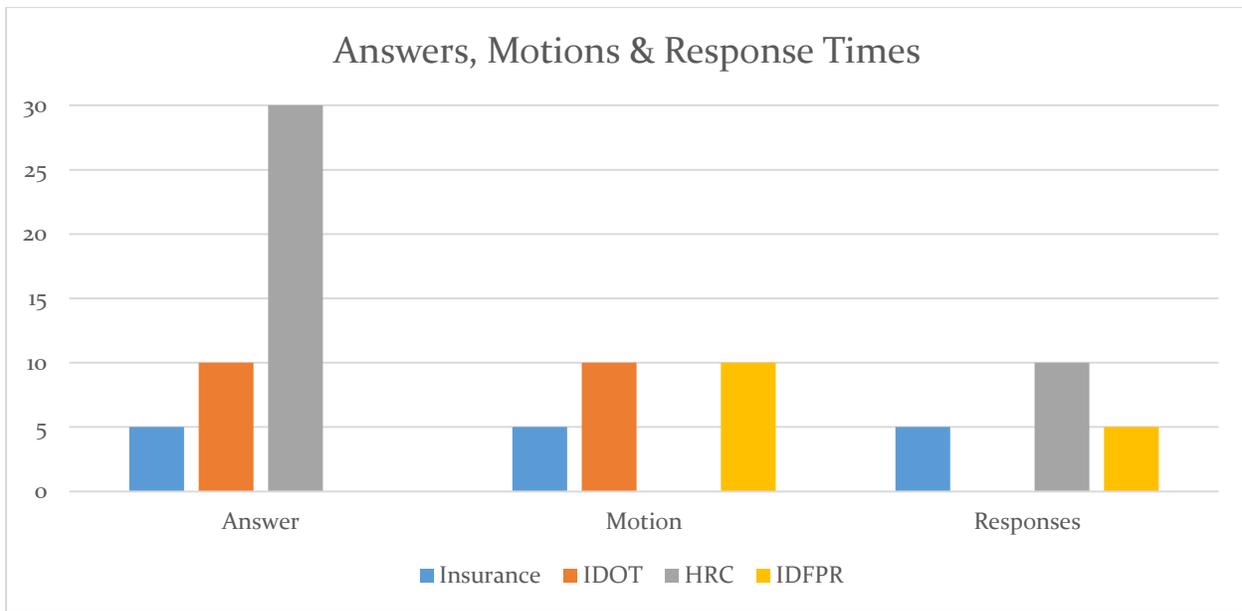
Administrative hearings cover a diverse array of state services and benefits. Substantively, hearings cover health care, public safety, employment matters, professional regulation, permitting and construction, and nearly every other facet by which state agencies interact with their constituencies. But while the subject matters are diverse, the

## II. Background on Existing Problems and Limitations of Current System

procedure that governs hearings is, or should be, largely similar. Just the same way that a trial is governed by much of the same rules whether it is a criminal trespass case or a contract dispute, hearings at their core are very much the same across agencies.

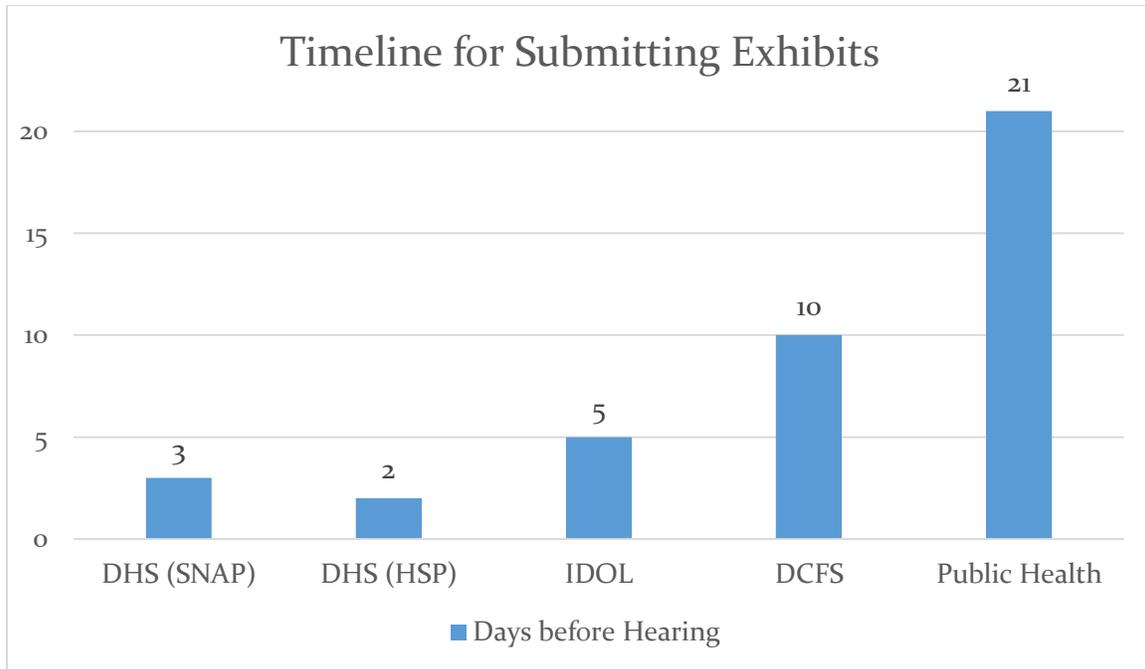
But you would not be able to tell by looking at the administrative rules. Agencies each have **dozens** or **hundreds** of rules and in sum, thousands of rules cover the breadth of Illinois' administrative hearings. So, the average citizen who may be the beneficiary of multiple state services, or pay licensing fees and taxes to multiple agencies, may have to learn a completely new vocabulary of terms each time she interacts with a new state agency. She could not only need to know that a "plaintiff" in one case happens to be the "initiating party" in another, she also would need to keep track of different timelines, filing requirements, rules of evidence, and different schedules to receive decisions about the issues that matter to her. This problem becomes even more complicated for businesses, particularly small businesses that are regulated or interact with the state in a myriad of ways.

If a citizen mastered the vernacular, she would still need to dig deep into the State's administrative rules and statutes to find the timelines that governed her appeal. Often, litigants must timely file an answer or face a default judgment against them, but the timeframe for filing this crucial document varies from agency to agency. Similarly, timeframes for filing and responding to motions are far from uniform, making navigation of the hearing process and asserting your rights that much more difficult.



## II. Background on Existing Problems and Limitations of Current System

Litigants also have to ascertain the timeframes for submitting exhibits or risk not being allowed to introduce and use the evidence supporting their claim at hearing. However, these rules vary from agency to agency, and even from program to program within single agencies.



A litigant certainly would also like to know when to expect a decision from the State. However, if her case is before the Departments of Revenue, Insurance, Healthcare and Family Services, Human Services, Agriculture, Public Health or Transportation as well as the Commerce Commission, Liquor Control Commission, Racing Board, Gaming Board, Labor Relations Board, or Office of State Fire Marshal, she would have to look somewhere other than the administrative hearings rules. These agencies' hearings rules provide no guidance as to when a litigant can expect resolution. If the statute giving rise to the hearing is silent, a litigant is left without any way to know when her case may be resolved.

In other instances, timeframes can be different even within a single agency. Appearing before DCFS, the final administrative decision is required to be issued within 90 days for service appeals and expungement proceedings, unless a citizen requests an expedited appeal, which must be issued within 35 days. For licensure cases before DCFS, the recommended decision is due within 30 days of the hearing, but there is no timeframe for the final administrative decision. Banking cases before IDFPR require a recommendation to be issued within 30 days of hearing, while the rules provide no timeline for other types of hearings before the agency.

## II. Background on Existing Problems and Limitations of Current System

*Citizens should not struggle to understand - and learn and relearn and relearn again - the rules and their rights in administrative hearings. This parochial approach is not a policy prerogative; it is merely the result of a haphazard system of promulgating new rules without taking a comprehensive look at all the rules already on the books.*

*It is poor regulatory planning the same way that failing to account for the layout of existing streets would be poor city planning, and in just the same way it results in extra and unnecessary work for agencies. Rather than looking to history and the accumulated knowledge of sister agencies, each agency drafts from scratch and issues its rules in a vacuum.*

- Governor Bruce Rauner

## II. Background on Existing Problems and Limitations of Current System

Importantly, a lack of consistency means unpredictability. An unpredictable process is an unfair one. Delay and confusion may chill the desire of citizens to assert their rights in a hearing. Inconsistency also creates an unfriendly climate for business. Companies need to be able to predict outcomes, even if they are unfavorable outcomes, in order to plan effectively for the future.

### C. Inadequate Technological Systems

At least 22,000 requests for hearing are filed each year with agencies that have no electronic case management systems to track these requests and subsequent hearings.

Technology is also not a problem that only plagues state agencies. It is difficult for citizens to find out information about their hearings online as well. Many agencies have no webpage for their hearings, or if they do have one it is difficult to find. Information about how to schedule or where to appear for an administrative hearing should not be hard to find. And as the rules are complicated and agency specific, they are also not readily available or understood in the way that 21st century Illinoisans can access online. The Pilot Bureau's [website](#) is a first step at making this information more available, but much more work should be done. The Pilot Bureau's IT subcommittee surveyed the administrative hearings websites from central panels across the nation and has prepared several recommendations that could be adopted for the benefit of Illinois agencies and citizens:

- Mobile web functionality;
- Public interface allowing access to a party's hearing information – for all hearing types – in one location;
- Guides and/or video explaining rules of evidence and procedure;
- Maps, pictures, or video of typical hearing rooms; and
- Electronic filing and scheduling functionality.

Adopting some or all of these recommendations will greatly improve the technology that drives the hearing process.

Mobile web functionality, coupled with a public interface, allows citizens and entities with cases before the States to have real-time information about their cases at their fingertips whether at work, at home, or in line at the grocery store. Because individuals often represent themselves in administrative hearings, they often do not have anyone to give them basic information about what to expect. This added anxiety is one that can be largely alleviated by a robust public interface.

Scheduling can be an unnecessary time drain. Instead of scheduling being nearly automatic based on case criteria and existing schedules, in many instances, cases are assigned directly to the ALJ, who must find time between hearings to schedule new matters.

## II. Background on Existing Problems and Limitations of Current System

Depending on travel, hearings, and other assignments, a case could sit for weeks before it is even scheduled. This ministerial task is not one State ALJs should be performing, nor should it be an impediment to receiving a prompt hearing.

Electronic filing is a trend not only in State and federal courts, but also in other states and in other State of Illinois programs. People have become much more electronically adept in recent years and the ability to send hearings materials from your smartphone would be an added convenience for many who appear before State administrative agencies.

### **D. Governor Takes Action by Issuing Executive Order 16-06**

On April 29, 2016, Governor Rauner took executive action to address the backlog and delay of cases existing at numerous state agencies. Through Executive Order No. 16-06, the Governor created the Pilot Bureau of Administrative Hearings and tasked it with gathering data on existing processes and further assessing the feasibility of moving toward a centralized hearings process.



Effective May 1, 2016, a new Deputy Director position was established within CMS to serve as the Bureau Chief for the Pilot Bureau. This position is responsible for formulating policy, implementing and administering the Executive Order. Executive Order 16-06 specifically directed the Pilot Bureau to focus on providing centralized training programs for adjudicators, developing uniform rules of procedures, creating a standardized code of conduct, and developing and implementing a modern, uniform filing and case management system. To fulfill these functions, the Pilot Bureau created three subcommittees, each comprised of and led by existing State employees involved in the State's administrative hearings functions. Each subcommittee, in conjunction with the Bureau Chief, was charged with tasks in one of three areas: rulemaking, information technology, and professional development.

The Pilot Bureau made information requests to agencies in order to gather preliminary data with respect to the number of adjudicators employed by each agency, title and function of support staff, types of hearings held at each agency, number of requests for hearing made each year, and number of hearings actually held each year. This information was not necessarily precise, but provided at least a thumbnail picture of the State's network of adjudicators.

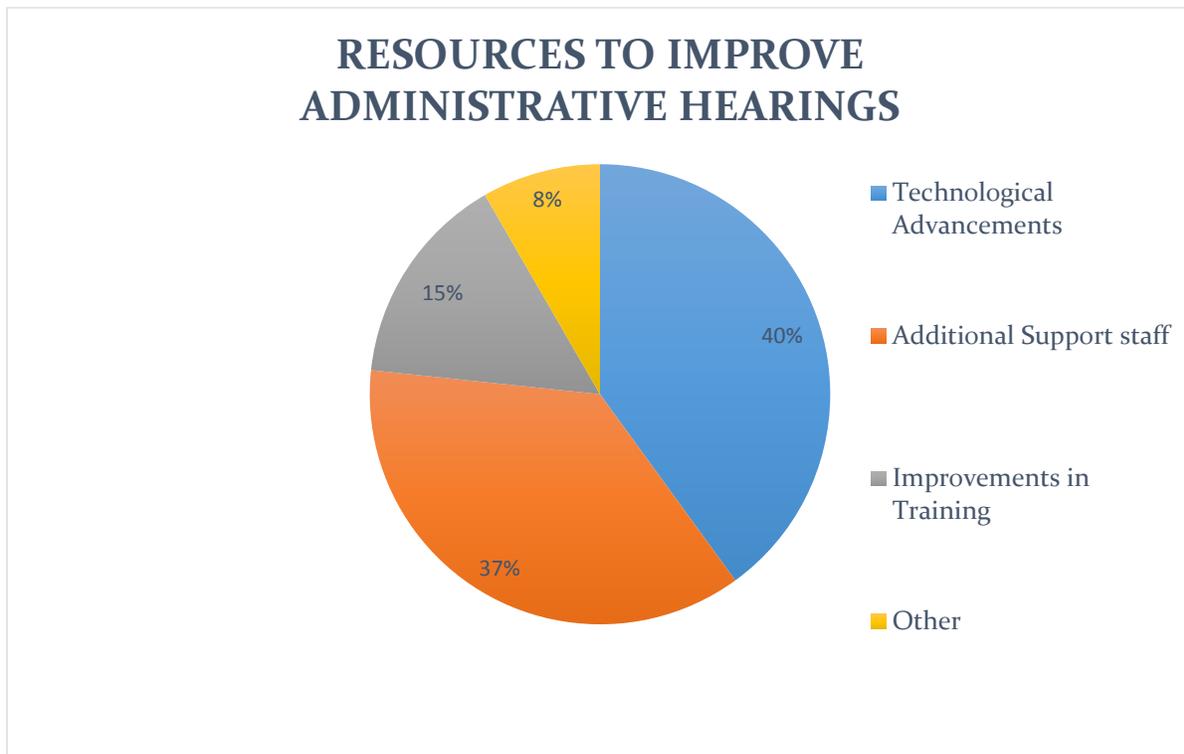
## III. Summary of Data Gathered

### A. Staffing and Caseload

More than 30 agencies, boards, and commissions in State government hold administrative hearings. Some agencies, such as Illinois Department of Employment Security, Illinois Tollway, Property Tax Appeal Board, and Department of Human Services handle tens of thousands of hearing requests per year. Others handle only a handful of cases. Of these agencies, 12 either hire contract attorneys to serve as adjudicators or have intergovernmental agreements with other State agencies for that agency's ALJs to hear their cases.

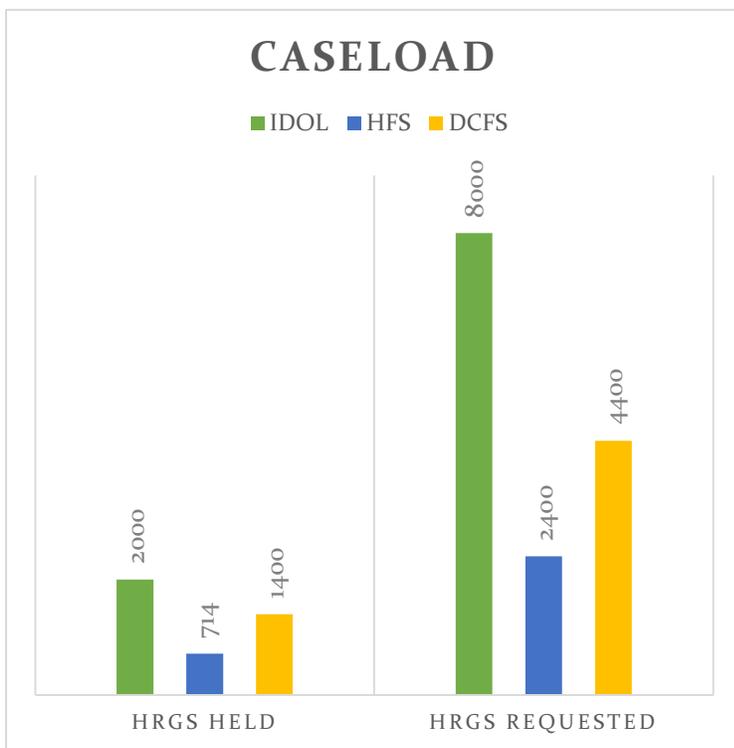
More than 210 positions in the State have some responsibility for adjudicating matters or supporting those functions. An additional 75 staff positions support these adjudicators in an administrative capacity. Not all of these positions are subject to consolidation through executive branch reorganization. However, for the approximately 170 ALJs and 90 support staff at agencies that could be consolidated, the State spends nearly \$39 million on salaries and benefits, not including travel, rent, and other overhead expenses.

In a recent survey, existing ALJs were asked what resources would improve the State's administrative hearings process. ALJ responses generally fell into one of three categories: technological advances, increased support staff, and better training.



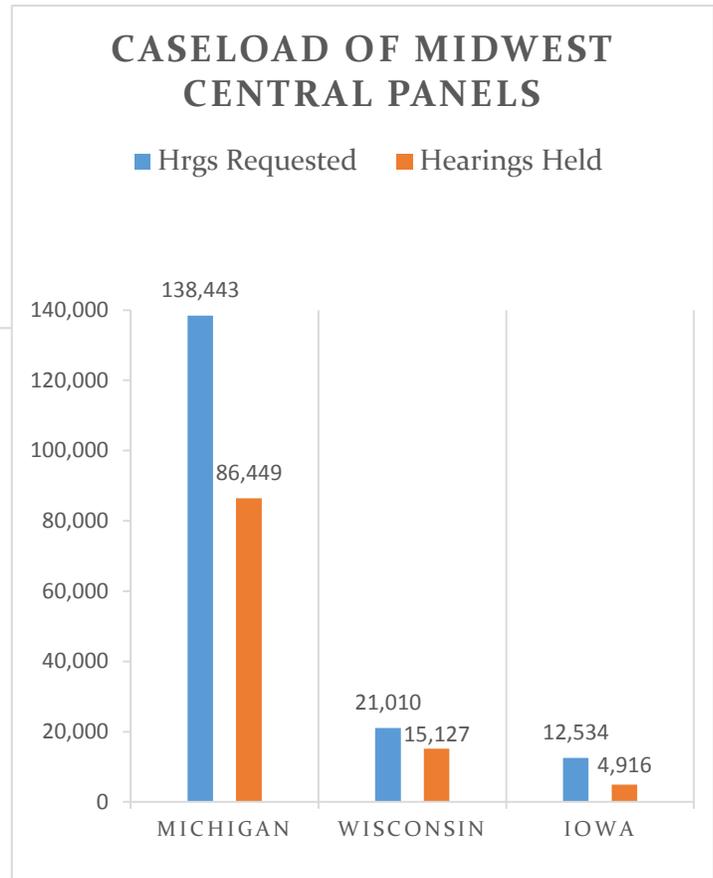
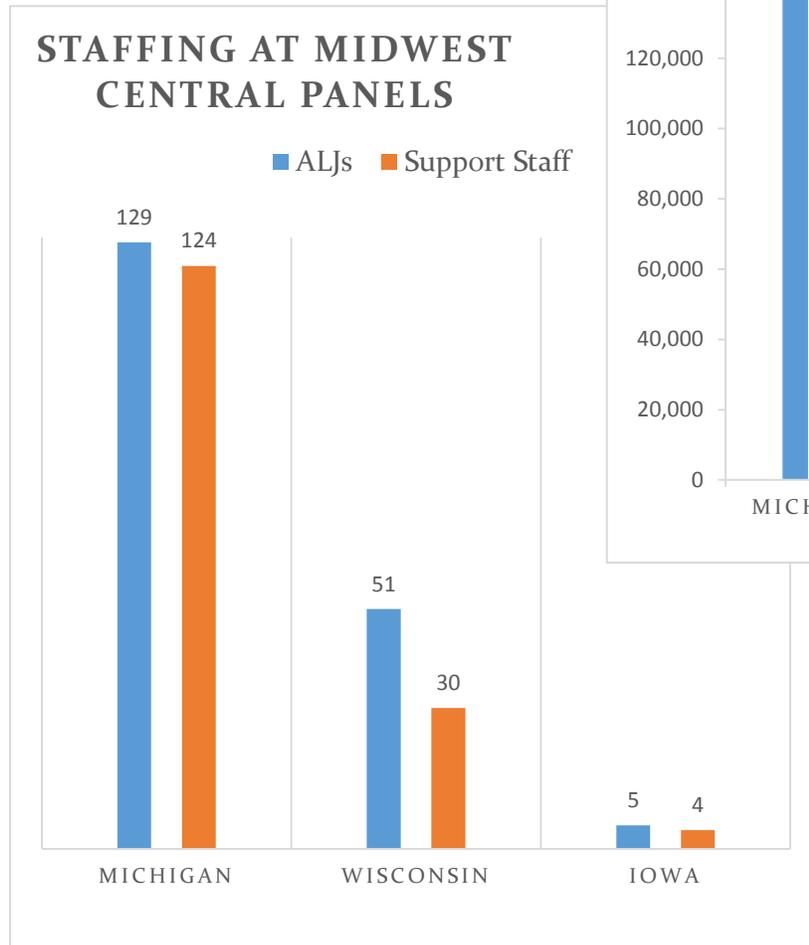
### III. Summary of Data Gathered

The data reflects the support staff to hearing ratio is wildly different from agency to agency. For example, DCFS employs approximately 18 ALJs to hold roughly 1,400 hearings per year of the 2,000 requested. DCFS's hearings unit is supported by 17 support staff. In contrast, at IDOL, three ALJs hold approximately 2,000 hearings per year of 8,000 requested, and are supported by only two support staff positions. HFS, which utilizes electronic case management system, has 11 ALJs that hear more than 700 cases per year of the nearly 2,500 requests processed. Technology allows three support positions to support HFS's hearing function.



### III. Summary of Data Gathered

Three neighboring state have existing central panels. Their staffing numbers reflect a similar staffing level similar to that which exists at DCFS. These central panels have been successful in their states, so much so that they have continued to see **their jurisdiction expanded**.



These neighboring states are also looking to expand their use of technological solutions to further automate some aspects of their hearings process.

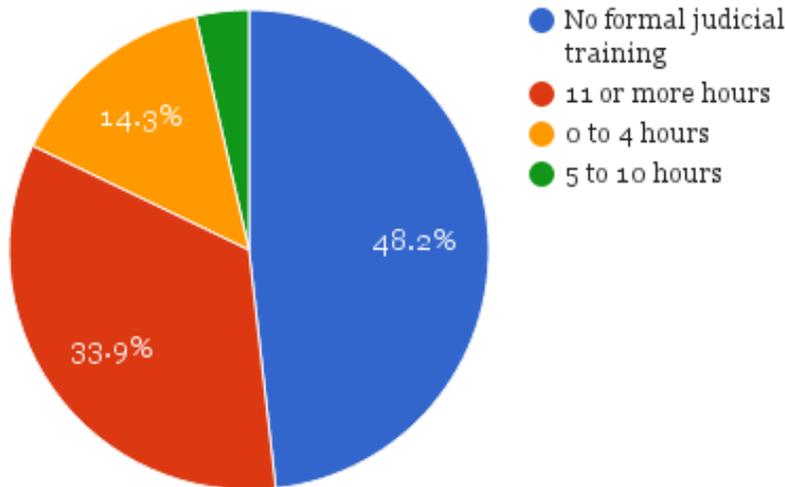
### III. Summary of Data Gathered

#### B. Training

Experiences varied widely from agency to agency with respect to training, both initial and ongoing training. Of the more than 50 ALJs responding to a Pilot Bureau survey, **nearly half** received no judicial training when they began working as an adjudicator for the State.

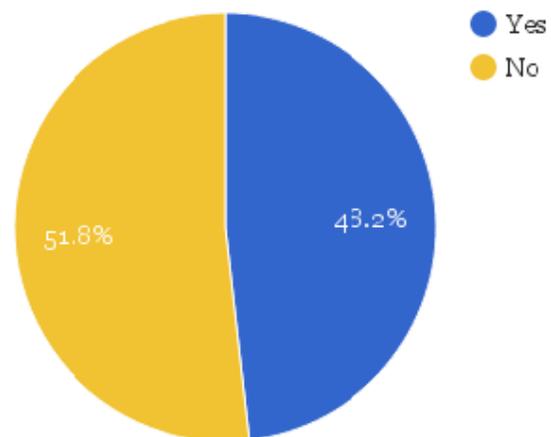
“Surprisingly little is offered that provides education on administrative practice specific to ALJs.”

**Approximately how many hours of formal judicial training did you initially ?**



**More than half** of ALJs reported that they do not receive continuing training specific to their role as an adjudicator.

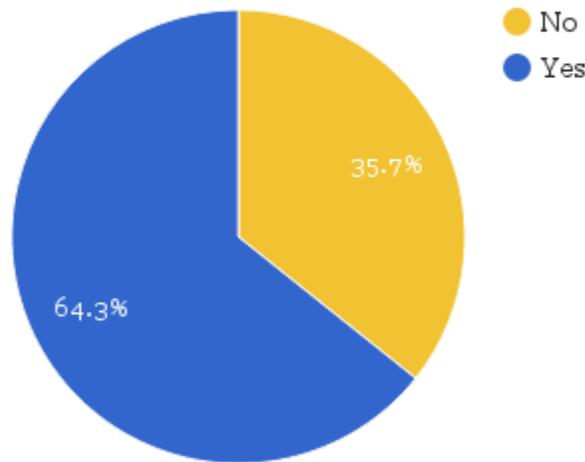
**Do you currently receive ongoing training specific to your role as an adjudicator?**



### III. Summary of Data Gathered

**Thirty-five percent** of responding ALJs reported having not received any specialized training in their agency’s subject matter at the outset of their employment and hearing cases.

**Did you receive any specialized training in your agency’s subject matter?**



Survey respondent ALJs universally indicated their desire for ALJ-specific training covering topics such as:

- **General Judicial Training**
- **Evidence**
- **Adapting decisions on Remand**
- **Discovery Issues**
- **Admin Law Updates**
- **Motion Practice**
- **Decision Making**
- **Docket Management**
- **Handling Self-represented litigants**
- **Prehearing Procedure**
- **Courtroom Objections**

### III. Summary of Data Gathered

*“I know there is technology out there of which we are not even aware because our agency just got rid of its stone tablet and chisel and now has a quill and scroll!”  
- ALJ Survey Respondent*

#### C. Technology

Utilization of technology was another area where practices varied widely. Unlike IDOL’s completely paper-based process, DHS and HFS use a sophisticated electronic case management system that has automated many support staff functions, allowing support staff to actually support ALJs rather than spending endless hours gathering data for reports, printing and mailing letters, and manually creating hard copy files. Other agencies fall somewhere in the middle. Many agencies have some manner of electronic case management, but a number of the State’s existing systems have been in place for five to ten years and are in need of upgrading in the face of becoming obsolete or unsupported.

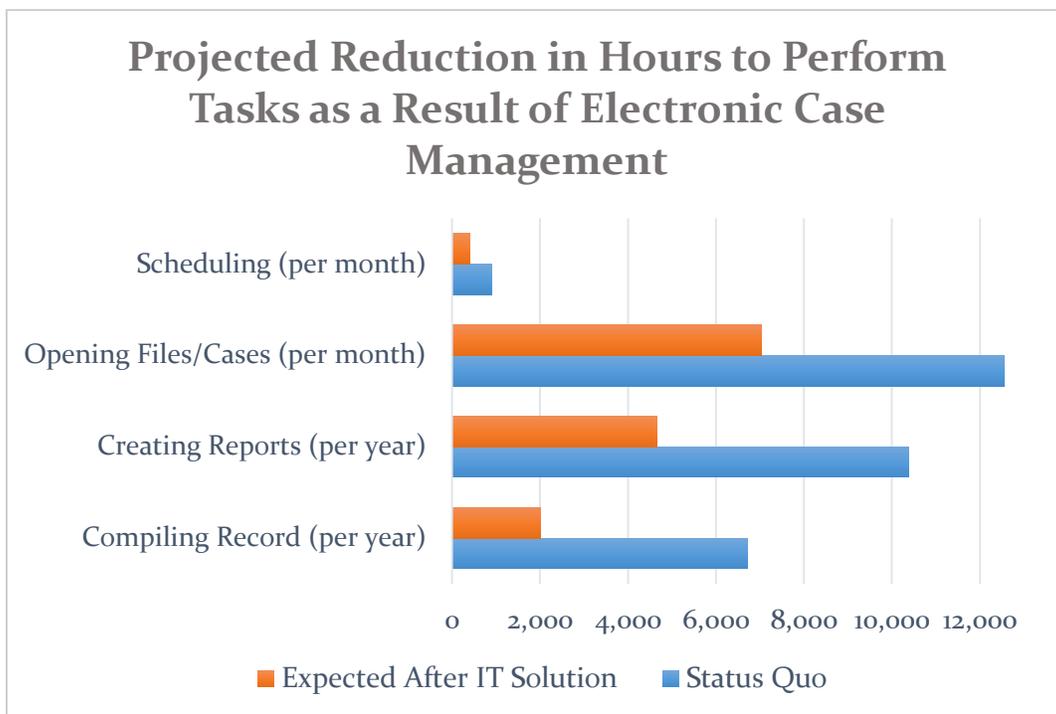
From reporting agencies:

AGENCY	AGE OF SYSTEM
Human Services	1997 (upgrades 2010-2014)
Health & Family Services	1997 (upgrades 2010-2014)
Children & Family Services	2001
Financial & Professional Regulation	2005
Tax Tribunal	2014
Agriculture	2000
Employment Security	2010
Human Rights Commission	2000
Public Health	2009

Though the cost of a standardized case management system would not be insignificant, staff analysis reflects that the cost saving of a fully-implemented system would far outweigh the cost of creation and implementation of the much-needed IT solution. IT subcommittee personnel worked to craft assumptions based on the business requirements of a proposed

### III. Summary of Data Gathered

IT solution. Relying on the experience of DHS in implementing similar automation solutions, personnel applied those assumptions to a sample of 15 agencies' hearings units. The analysis included reduction in labor hours needed to manually create new files, draft letters, handle service issues, schedule hearings, compile the record for administrative review actions, and compile data for various reporting requirements. The analysis also accounts for costs related to postage costs related to perpetuating a paper-based process and travel costs necessitated by a lack of technology allowing for other means of holding hearings, e.g. telephonically or via video conferencing.



Based on the analysis of the sample 15 agencies, staff projected future savings at **\$3 to \$4 million per year**. These savings were derived not only from the reduction in hours resulting from automation, but also from reduction in the number and cost of sending correspondence by first class mail. An electronic case management system with integrated public interface would facilitate e-filing, similar to that which has existed in federal courts for nearly a decade. State courts, including Cook County Circuit Court and the Illinois Appellate Court, are also making strides to communicate and interact with parties electronically. Staff projected that implementation of a similar system, which could allow notices, decisions, and motions, to be served electronically could nearly halve the State's spending on first class mail postage. This projected savings does not reflect other costs of mailing, such as paper and envelopes.

### III. Summary of Data Gathered

#### ALJs Observe Need for Technology

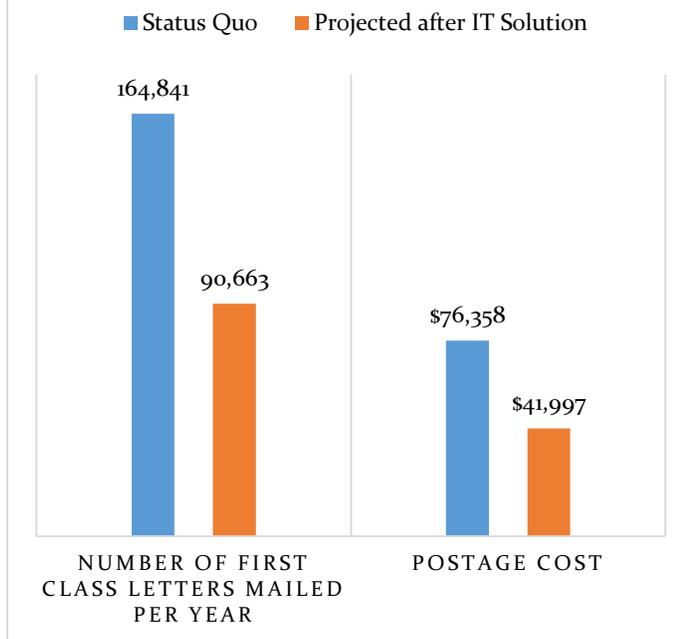
*“We really could use updated case management software. The time and effort that our admin staff expend would be greatly reduced. The use of mail merge and electronic docketing are the best features of the updated software.”*

*“DCFS uses an archaic system. The cases are assigned and the ALJ has to either look at the Unit Calendar to see if cases have been assigned or gets notice when the file arrives...”*

*“A centralized electronic docketing system would improve the State’s administrative hearing process. This docketing system should be one that all ALJs have access to.”*

*“Travel could be cut down if more teleconference technology were installed.”*

#### Projected Reduction In Postage Costs



Because many more than the 15 sample agencies could take advantage of an implemented, enterprise IT solution, these projected savings for the State are expected to only increase. If an enterprise IT solution satisfactorily automates these tasks, existing support staff can focus their time, energy, and skill to actually supporting ALJs rather than on the mechanics of processing paper. Our initial data reflects that there is rarely a shortage of work, but instead a shortage or misalignment of workers to perform existing work. This enterprise solution, which could also be made available to State agencies not subject to consolidation, should make real and lasting improvements in the way the State operates as well as the overall satisfaction of those who interact with the State’s administrative hearings process.

## IV. Experience of Central Panels

Thirty states in the nation and numerous other forms of government, including the City of Chicago, have established a centralized structure for conducting administrative hearings. In late October 2016, the Bureau Chief met with representatives from 15 of the 30 existing state central panels at the Central Panel Directors' annual national conference. At the conference, the Directors gathered to discuss their challenges and successes, exchange valuable lessons, and share resources. Prior to the conference, 23 agencies responded to an annual survey gathering data about the number of cases heard, staffing, and budget. These central panels varied in their size, the manner in which they were created, and the types of hearings they adjudicated.

With a more than \$43 million budget, Michigan is the largest central panel in the country; it processes nearly 140,000 cases per year and employs approximately 250 staff members, including 130 adjudicators. On the other extreme, North Dakota's central panel employs three adjudicators and two support staff to process approximately 700 cases per year.

There are a number of differences in the structure of central panels, as well. Many central panel directors are appointed to fixed terms that do not coincide with the appointing official's term and are subject to Senate confirmation. Others serve at the will of the sitting governor, though this can be

seen to negatively impact the perception of objectivity and independence of the agency. ALJ assignment structures are different as well. In Tennessee, for example, all ALJs are general jurisdiction ALJs and hear every kind of case the office handles. In Louisiana, though most ALJs hear general jurisdiction cases, a separate division within the office focuses on health and hospital cases (which would include federal, public assistance-type cases). Similarly, in Wisconsin and Michigan, the central panel consists both of generalists and subunits that hear only a few types of related cases.

Despite these differences, some things were universally reported. The body of research published for decades by the Journal of the National Association of Administrative Law Judiciary supports the anecdotal evidence given by the representatives of state central panels. Namely, central panels **increase the community's confidence in the fairness of the proceedings**, so much so that many central panels reported having had their jurisdiction expanded piecemeal over time.

These agencies, whose sole function is to adjudicate matters, are **more efficient** than hearings units that are part of larger organizations, both from a financial and productivity standard. Finally, ALJs who work as part of a central panel report **greater job satisfaction** and are viewed with greater respect by the legal community.

### A. Bolstered Public Confidence in the Independence of Decision Making

Nationally, Central Panels have often been created as the remedial legislative action following a public scandal involving agency pressure on adjudicators or evidence of bias in the hearings process. These public scandals have solidified what many members of the public already believed; a process wherein the investigator, prosecutor, judge, and final decision-maker are all employed by the same entity is inherently unfair. While Illinois has not had any recent scandal the prompted Governor Rauner's action, that certainly does not mean that Illinoisans do not perceive unfairness in the State's existing system. As one author noted in the *Journal of the National Association of Administrative Law Judges*,<sup>i</sup>

However carefully an agency erects a “[ ] wall” between its regulatory staff and administrative law judges (ALJs), citizens do not know that. If they do know it, they do not believe it. What citizens know is this: they are fighting the agency, and they want a fair hearing. When they enter the hearing room and learn that the judge presiding over the case is an employee of their adversary, no explanation will persuade them, especially if they lose, that the outcome was not predetermined.

The belief that the deck is stacked against the citizenry and that an individual cannot get a fair shake undermines public confidence in government in immeasurable ways. The long-time Director of Louisiana's Division of Administrative Law, Ann Wise, in an article written for the *Louisiana Law Review* in 2008, reflected on a conversation she had with a private citizen who appeared before Louisiana's central panel.<sup>ii</sup> The self-represented litigant recognized the purpose and success of that central panel: “I lost my case, but I got a fair hearing before a fair judge, and I can't ask for anything more than that.”

### B. Increased Productivity and Cost Efficiencies

Central Panel proponents cite increased productivity accomplished in primarily two ways: economies of scale and flexibility in assignments. Agencies that are devoted to the single task of hearing cases are better focused on the needs of performing that function, rather than balancing the other functions of, say, a state's primary Medicaid agency.

Central panels capture positive results from not only the economies of scale when dealing with a high volume of hearings but also the flexibility to assign ALJs in a way they could not in smaller organizations.

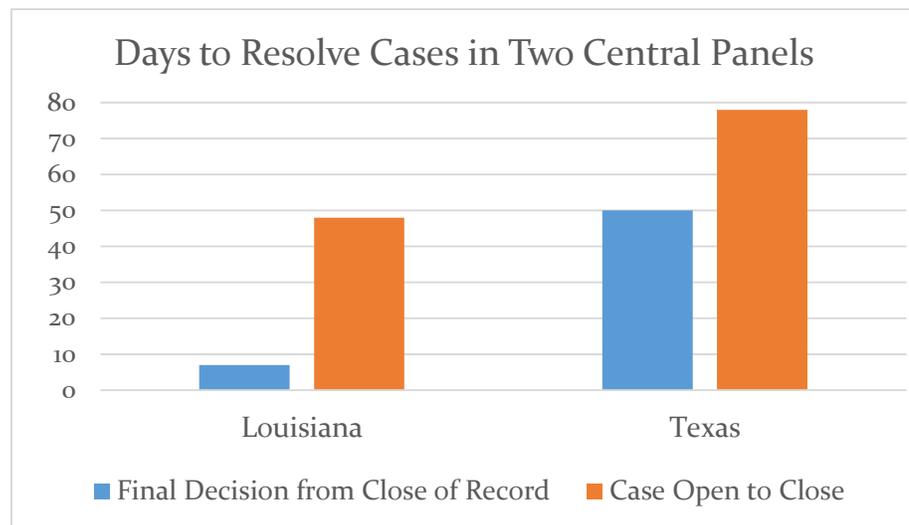
## IV. Experience of Central Panels

These efficiencies are not merely the product of a long running operation. The first Chief ALJ of Oregon’s central panel, the Oregon Office of Administrative Hearings, reported significant savings after establishment of his state’s central panel resulting from the shared resources, including case management systems, operational staff, vehicles, office space, etc. Specifically, between the first fiscal year of operation as a consolidated panel (FY2001) to the third year (FY2003), Oregon experienced a 17% reduction in the amount of time it took the consolidated agency to resolve a matter and a corresponding 11% reduction in the cost to handle a referral.

Central panels also boast efficiencies in completion of cases. Data on resolution of matters at two states was readily available and provides an encouraging picture. The Texas State Office of Administrative Hearings disposes of many cases in under 60 days, with an agency-wide average of 78 days.<sup>iii</sup> Texas ALJs issue their recommended decisions within 50 days of the closing of the record in major cases and within 6 days in tax cases. Louisiana’s Division of Administrative Law (DAL)<sup>iv</sup> boasts an impressive average of 45 days between the date a case is opened and docketed to its closure. DAL-wide, ALJs sign their decisions on average nine days from the close of a hearing record.

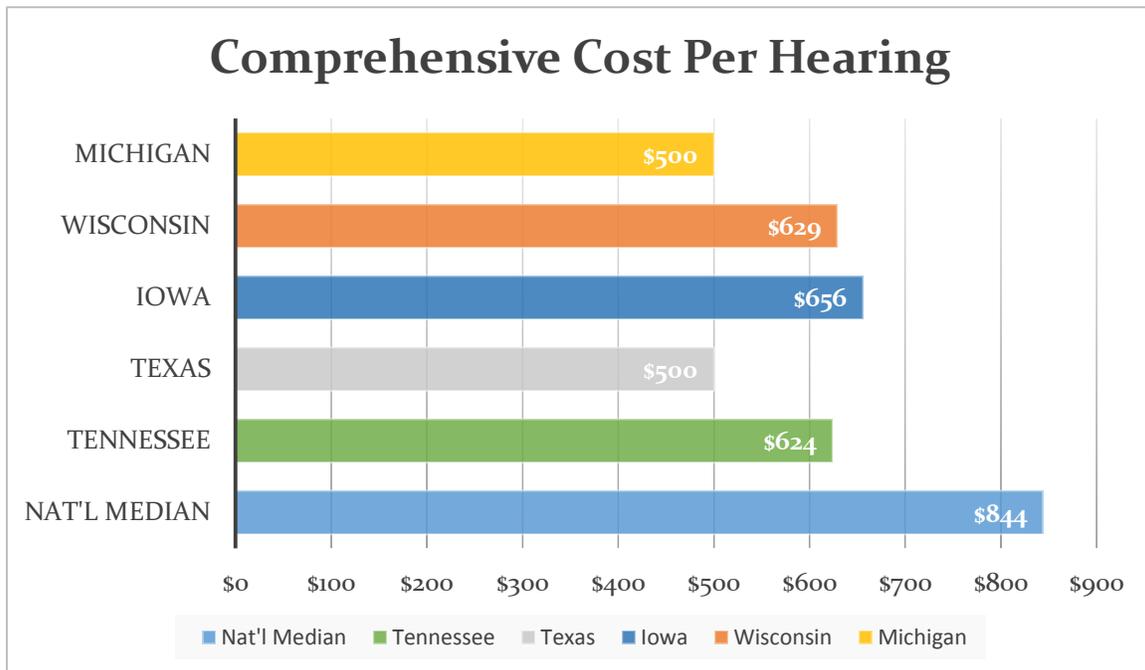
Numerous Central Panel Directors reported having their jurisdiction expanded such that their ALJs became responsible for hearing more and different types of cases. Because of the flexibility the central panel model provides, each Director reported being able to absorb the additional work

without having to add permanent staff. Directors pointed to varying case levels between hearing types as one factor that resulted in additional flexibility. Where one case type was slower in a given year, another type was busier. Because of the shared resources and available cross-training, the central panel was easily able to meet the hearings needs at any given time.



## IV. Experience of Central Panels

Of the twenty central panels responding to an annual survey in 2016, the national median for the total cost per hearing (total budget/number of hearings held) is \$844 per hearing. Looking at our neighboring states, as well as Texas and Tennessee, these central panels operate even more cost efficiently than the national average.



### C. Professional Satisfaction of ALJs

Both the Chicago Appleseed Fund for Justice, a national leader in central panel research, and professionals working in and around central panels report an increased job satisfaction and greater judicial independence for ALJs working in central panels. When ALJs are separated from the program agency, hearings units are comprised of professional judges instead of being housed by agency insiders. The central panels, dedicated to the sole function of hearing cases, provide more meaningful and on-point training, craft hearing-specific IT solutions to make the job of adjudicators and support staff easier, and better track data to ensure a more fair division of work and better services to the citizens.

### D. No Loss of Expertise

Where central panels are successful, ALJs do not hear cases for which they are not sufficiently trained. While some Central Panels are comprised primarily of generalists, most have subdivisions where ALJs hear many different types of cases that arise out of similar facts or derive from similar legal schemes.

## IV. Experience of Central Panels

Available research reflects that courts have not treated decisions issued by central panel ALJs differently than decisions issued agency-employed ALJs.<sup>v</sup> Reviewing courts have continued to apply agency deference in both circumstances.

Additional evidence of the satisfaction participating agencies have in central panels is the national trend for voluntary use of central panel ALJs. While central panels have statutorily-defined jurisdiction, many report that an increasing number of agencies voluntarily seek to have central panel ALJs hear their cases.

Finally, one fact speaks volumes about the successes of administrative hearing units following the central panel approach. Where a central panel has been created, no state has sought to deconsolidate the panel and return administrative hearings units to the individual agencies.

It was against this national backdrop that the Pilot Bureau began to reach out to customers and employees, test consolidation with Illinois agencies, and that the Pilot Bureau's subcommittees began their multi-pronged approach to improve the State's existing processes.

## V. Outreach to Customers and Employees

### A. Bar Associations

The Pilot Bureau has met with several groups around the State, including the Administrative Law Committee of the Chicago Bar Association, the Illinois State Bar Association's Human Rights and Administrative Law Sections, the labor and Employment Committee of the DuPage County Bar Association. These talks were met with enthusiasm and interest. Practitioners were especially interested in efforts to standardize practices and reduce lengthy waits for their clients.



The Illinois State Bar Association specifically **endorses** a centralized structure for administrative hearings.

At its mid-year meeting, the ISBA's Section on State and Local Taxation coordinated a work group to follow and assist in the emerging creation of a Bureau



### B. Chicago Appleseed Fund for Justice

The Chicago Appleseed Fund for Justice is a nonpartisan, independent research and advocacy organization that promotes social justice and government effectiveness by identifying barriers and inequities affecting vulnerable populations within our court systems. In 1983, Chicago Appleseed Executive Director Malcolm Rich authored a national study related to the centralized administrative hearing structure. As of the time Mr. Rich began his research, 1981, only seven states in the nation operated under

of Administrative Hearings. This Section in conjunction with the Chicago Bar Association, was integrally involved in the creation of the administrative rules governing the Independent Tax Tribunal.

This workgroup also includes representatives from the Sections on State and Local Taxation, Elder Law, Administrative Law, Health Law, Insurance, and others, to work with the Bureau on the Pilot Project and development of next steps and recommendations.

In March, the Government Bar Association invited me to discuss the status of administrative law reform. In April, I served on a panel for the Illinois Bar Association's Administrative Law Division.

The Bureau will continue to reach out to customer entities, including the Illinois and National Association of Administrative Law Judges, to gather additional insight and to answer questions posed by these groups.

## V. Outreach to Customers and Employees

the central panel model: California, Colorado, Florida, Massachusetts, Minnesota, New Jersey, and Tennessee.

Mr. Rich is currently updating his research to include lessons learned from emerging central panels and expects this research to be completed for publication this fall. Mr. Rich's initial results, shared with Central Panel Directors, reflect many of the same conclusions that others have reached through the decades: **cost efficiencies**, including reducing overhead and better use of video and phone hearings; **better rules and case management systems**; **improved training opportunities**; **heightened hiring standards**; and an **overall improvement in the quality of the hearing process**. Mr. Rich also reported that though agencies often reported concerns when a central panel was created, once the central panel was established and operating, agencies could not imagine going back. The central hearings unit alleviated a number of headaches for the agencies and allowed them to focus on the programmatic work they perform. ALJs also reported a preference for hearing more than one type of case. Further, they felt that by being in a centralized unit, and separate from the agencies that appear before them, the decisional independence was protected.

Mr. Rich has agreed to facilitate further coordination with external users of Illinois hearing process. For example, legal aid lawyers nationally have desired moves toward centralized administrative hearings for access to justice reasons and for improved confidence in the process by the populations they serve. The Bureau anxiously awaits Mr. Rich's updated research, which promises to be a valuable tool in crafting next steps and best practices here in Illinois.

### C. State Employees Involved in Administrative Hearings

In December 2016, the Pilot Bureau issued the first edition of its Newsletter to individuals involved in the administrative hearings process, as well as to the General Counsels around the State. The Newsletter was designed to introduce the new Bureau Chief, provide an overview of the Pilot Bureau's work, congratulate pilot agencies on a job well done, and invite further participation. The Pilot Bureau has continued to communicate monthly with administrative hearings staff through its newsletters, which are also posted at the Pilot Bureau's website.



The Pilot Bureau also periodically holds employee roundtables, informational forums where State ALJs and hearings staff can hear directly about the Pilot Bureau's work and ask any questions they may have. More importantly, State employees actively involved in the administrative hearings process have the opportunity to share their experiences and make suggestions for solutions to the challenges they face.

## VI. Overview of the Work of the Bureau's Subcommittees

### A. Rules Subcommittee *Co-Chair, Sadzi Oliva*

The Rules Subcommittee's work coincides with the work of another current initiative – **Regulatory Reform**. The Rules Subcommittee scoured the Illinois Administrative Code to locate each and every regulation that governed the State's many administrative hearings processes, analyzed existing rules, sought to identify best practices, and looked for ways the rules could exacerbate delays or require additional expensive steps not required by statute or general canons of due process. Drafters then crafted a set of model rules that while preserving due process, would streamline hearings, provide for more prompt resolution of matters, and allow for technological advances in the hearing process.

Features of the model rules seek to break the chain of delay plaguing many hearings. First, the model allows for notice and service by verifiable electronic means, clearing the way for electronic filing and significantly reducing the amount of paper agencies create and handle. The model rules also place limitations on circumstances under which a continuance should be granted. The model rules clarify that discovery is a process between the parties and that any hearings unit should not be facilitating the exchange of information. Most notably, the model rules also place narrowed timeframes on the hearings

### Features of the Model Rules

- Clear instructions to parties
- More readable for members of the public and the bar
- More efficient service
- Electronic filing
- Limits on Discovery
- Standardized criteria for continuances
- Timeframes reflect need for more timely resolution
- Default deadline of final administrative decision issued 40 days after the hearing

process and create a default deadline for issuance of a final administrative decision of 40 days after hearing.

The model rules also improve transparency for non-attorney, non-agency litigants. The model rules lay out the hearing process and expectations in a way that is intended for easy digestion by the widely diverse populations that appear for administrative hearings.

The drafters recognize that differences in statutory schemes and requirements may require agencies to create a brief supplement to the model rules to address issues unique to their programs. However, use of the model rules as the baseline regulations governing State

## VI. Overview of the Work of the Bureau's Subcommittees

administrative hearings is expected to decrease processing time, provide avenues for less expensive and cumbersome service and filing, and make regulations more user-friendly for members of the public.

After completion of the model rules, agencies were invited to draft subparts containing statutorily required deviations from the model rules. These regulatory changes will be promulgated in coming months to increase consistency and efficiency in the State's hearings procedures.

### **B. IT Subcommittee**

*Co-Chair CoreyAnne Gulkewicz*

The IT subcommittee first examined existing case management systems and other electronic processes. It became clear rather quickly that most State agencies did not have the technology resources to bring the hearings process into the 21st century. Technological solutions can make hearings more accessible to the citizenry, limit costs associated with bringing and processing cases, and ensure that records are adequately maintained.

The IT subcommittee drafted business requirements related to what the committee identified as needs and wants for a comprehensive IT solution that could be made available to all State agencies that perform an administrative hearings function. Based on those identified criteria, the subcommittee is

analyzing the adequacy of existing systems and determining whether the State would need to procure additional resources to meet the technology needs of the State's many hearings units.

The IT subcommittee was also instrumental in the creation of the Pilot Bureau's [website](#), which has been live since December 15, 2016. The website is but a first step toward making the hearings process more accessible to the public.

If the Bureau were made permanent, the Bureau will upgrade the website to include links to the Bureau's training materials, ALJ Code of Professional Conduct, and a compilation of existing information about the State's hearings units. The website would also be home to resources for self-represented litigants, including user guides, frequently asked questions, and links to legal assistance organizations.

### **C. Professional Development Subcommittee**

*Co-Chair Katy Straub*

The work of the Professional Development Subcommittee is focused on providing professional resources to the State ALJs helping them develop and maintain the skills necessary to perform their functions in a highly competent, professional, and independent manner.

## VI. Overview of the Work of the Bureau's Subcommittees

### 1. *ALJ Code of Professional Conduct*

The subcommittee gathered and analyzed numerous codes of conduct from across the country before setting about drafting a code of conduct for Illinois's adjudicators. The Code provides guidance to assist our Illinois administrative law judges in maintaining high standards of professional and personal conduct as they hear and decide cases on important public matters. Illinois administrative law judges are not currently subject to a single uniform code of conduct specific to their work as neutral adjudicators.

As state employees, ALJs are subject to the State Officials and Employees Ethics Act and the State of Illinois Code of Personal Conduct. If lawyers, their professional conduct is governed by Supreme Court's Rules of Professional Conduct. However, these laws do not specifically address the unique ethical dilemmas that confront ALJs. The Code equips our ALJs with a valuable tool to serve the public, and strengthen the public's faith in decisions and the hearing process.

In Spring of 2017, the ALJ Code of Professional Conduct was circulated to agencies employing ALJs for implementation.

### 2. *Survey of ALJs*

In December 2016, existing ALJs received a short, anonymous survey

intended to gauge the professional development needs of the State's adjudicators. ALJs were asked about the initial training they were provided, asked what they found to be meaningful and helpful, and sought suggestions for additional topics both for initial training and for continued development.

Reporting ALJs overwhelmingly reported a desire for ALJ-specific training, including pre-hearing strategies, handling a courtroom, evidence, handling objections, dealing with unrepresented litigants, docket management, managing motion practice, and writing.

### 5. *Uniform New ALJ Orientation*

Nearly half of current ALJs reported no initial judicial training. Because of this and the fact that initial training is as important if not more important than ongoing training, the subcommittee is working toward creation of a uniform orientation for new ALJs. This initial step would capitalize on the efforts of agencies which do a better job with training staff while extending those resources to agencies who could benefit from implementation of more robust training.

Consistency in practices between hearing types is valuable not only to the customers the State serves, but also for ALJs who can utilize the experience of others through implementation of best practices.

### 6. *Bench Book*

More than 75% of responding ALJs reported that their agency does not have a bench book. A bench book is a tool

## VI. Overview of the Work of the Bureau's Subcommittees

utilized by many central panels and hearing units as a comprehensive go-to resource for ALJs to more easily handle issues that arise during the hearing process.

Relying on the tried-and-true resources of existing central panels such as the City of Chicago, national organizations like the National Association of Administrative Law Judges, and State agencies that have already crafted guidance for their ALJs, the committee has authored a bench book to be made available to all ALJs. The bench book contains resources covering areas of particular interest to ALJs, such as:

- Case management;
- Discovery;
- Pre-hearing conferences;
- Hearing preparation;
- Handling requests for continuances;
- Prehearing motions;
- Prehearing negotiations;
- Overview of typical hearing structure;
- Applicable burdens of proof;
- Tips for the orderly presentation of cases;
- Best practices for organizing the record of hearing;
- Evidence issues, including admissibility and identification of evidence for the record;
- Best practices for ensuring due process with self-represented litigants;
- Guidance for conducting telephone or video hearings;
- Tips for managing courtroom decorum and managing parties most efficiently;
- Tips for dealing with unrepresented parties;
- Handling different types of records such as mental health records, and other confidential material;
- Guidance for press interaction and requests for cameras in the courtroom;
- Templates for common hearing tools, such as:
  - Exhibit lists,
  - Witness lists,
  - Statements of Uncontested Material Facts, and
  - Draft Recommendation or Final Order;
- Sample scripts for opening a hearing, advising parties of their rights, and dealing with privacy concerns;

The bench book also contains applicable administrative rules and statutes, the ALJ Code of Professional Conduct, Attorney Rules of Professional Conduct, as well links to general resources such as the OEIG website, ARDC ethics hotline, and contact for FOIA officers.

Providing ALJs with this resource is expected to improve the quality and efficiency of an ALJ's practice and improve the hearing experience for customers.

## VII. ALJ-Centered Training

In response to the lack of consistent ALJ training and the outcry for more professional development, the Pilot Bureau undertook several steps to immediately address these needs.

### 1. *Final Fridays CLE program*

First, it developed a monthly ALJ-centered training called the Final Fridays CLE program. As the name suggests, the training is scheduled on the final Friday of each month. Nearly 75% of responding ALJs indicated that they would take advantage of lunchtime CLE offerings, which are less likely to conflict with hearing schedules, so the Pilot Bureau set the trainings for this time. Since the inaugural Final Fridays CLE on February 24, 2017, the Pilot Bureau has offered more than **100 hours** of continuing legal education credit through these programs.

### 2. *8<sup>th</sup> Annual Illinois Administrative Law Conference*

The Pilot Bureau also took up the mantle of the Illinois Administrative Law Conference, previously sponsored by the Chicago Bar Association and the Administrative Hearings Review Committee. On June 9, 2017, the Pilot Bureau sponsored the day-long conference which was attended by more than 140 attorneys. Sessions included cultural competence, evidence, ethical issues facing ALJs, and procedural fairness, as well as a keynote address by Illinois Supreme Court Justice Rita Garman. In all, the Pilot Bureau provided more than **890 hours** of continuing legal education credit with no cost to the

participants or the agencies that employ them.

### 3. *National Judicial College - Best Practices for ALJs*

Thanks to relationships developed with those advocating for a central panel approach to administrative hearings in Illinois, the Pilot Bureau was able to coordinate attendance of 13 State ALJs and Chief ALJs at a two-course put on by the prestigious National Judicial College. This program not only paired ALJs with nationally-recognized professors of judicial studies, but also allowed them to learn from others. The State employees obtained nearly **150 hours** of continuing legal education credit at no cost.



ALJs attending the NJC training



ICC Commissioner Joshua Luskin and DHS Chief ALJ Rich Madison participate in training at the NJC course

### A. Department of Labor Cases

Despite the hard work of IDOL's ALJs, who on average hear more than 650 cases a year, data revealed a significant backlog of cases, resulting in no small part to a 2011 statutory change that transformed informal hearings to formal hearings without additional resources.

The Pilot Bureau determined to test consolidation by coordinating IDPH and Revenue agency ALJs, who statistically appeared to have capacity to hear additional cases, to hear IDOL cases. In all, 11 ALJs from IDPH and Revenue were commissioned pursuant to agreements between the agencies to hear 2 IDOL cases per week. The Pilot Bureau worked with IDOL to set parameters for the selection of cases to be heard by the IDPH and Revenue ALJs.

Beginning October 3, 2016, the ALJs began to hear Wage Payment and Collection Act cases involving unpaid wages or vacation, hearings that usually last approximately one hour.

#### 1. Technology

Once the cases and ALJs were identified, the Pilot Bureau turned to DoIT for technological support. Several challenges were placed in the ready hands of DoIT's professionals. First, the provider agency ALJs work at different locations than the IDOL ALJs, and in some cases in different cities. The Pilot Bureau determined that these hearings could be conducted by telephone, but conducting

a formal hearing required more than just a phone. WebEx, a program supported by DoIT that was already in use throughout State government, provided just such a solution. WebEx allows ALJs to control the hearing by calling each party, provides for an easy method for recording and saving the hearing audio, and eliminates concerns that parties would have access to ALJ contact information that could lead to unlawful ex parte communications.

SharePoint sites allowed for **file sharing**, facilitating the workflow of the cases as they are processed, and allowing for running **reports** tracking productivity.

#### 2. Training for Provider Agency ALJs



IDOL's Chief ALJ provided initial training to familiarize IDPH and Revenue ALJs with the relevant portions of the Wage Payment and Collection Act, the applicable administrative rules, regulations, and IDOL procedures, as well as practical examples of common issues that arise in these hearings. Follow-up trainings were held for ALJs with individual questions, as well as in a group setting.

ALJs also received training on the use of their respective SharePoint site and operating WebEx, including initiating the hearing calls and setting WebEx to provide a verbatim recording of the hearing.

### 3. Results

From October 3, 2016, through the end of the pilot period, June 30, 2017, nearly **550 cases** were heard that would not have otherwise been heard. IDPH and Revenue ALJs, along with the dedicated staff at IDPH, Revenue, and IDOL, allowed for **550** more individuals to assert their rights and have “their day in court” than would have absent the consolidation. Providing more prompt resolution for litigants results in more timely payment to employees whose compensation was unlawfully withheld, decreases in statutory fines paid by employers found to have violated the Act, and certainty to all involved. In short, with the success of this aspect of the Pilot Project, IDOL litigants are having their cases heard months before they would have otherwise.

### 4. Lessons Learned

One thing is certain, State of Illinois ALJs are **intelligent, resilient, and professional** enough to adjudicate hearings related to a number of different legal schemes and factual scenarios. In fact, most ALJs in the state hear numerous different types of hearings every year. However, the successes of this exercise do not mean that the agencies involved in the consolidation trial did not face challenges.

For example, IDOL’s hearings process is 100% paper-based, and IDOL has **no** centralized case management system. The administrative burden involved in

processing a single case at IDOL is enormous. This burden was exacerbated when the Pilot Bureau sought to capitalize on existing State personnel to improve customer service and reduce backlogs.

Similarly, having cases created, screened, and scheduled by one agency while another agency hears the cases is no small administrative barrier. In addition to the added administrative burden of preparing files for sharing, the increase of hearings held by 11 more ALJs also results in exponential increases in the manual process of preparing a case for hearing. IDOL had another difficulty in that an existing administrative support position vacancy was frozen through the terms of the AFSCME collective bargaining agreement. To IDOL’s credit, they went all hands on deck and have been able to meet these administrative demands. However, this is not a viable long-term solution.

Another challenge is that employees are, at times, resistant to changes in the manner in which they are expected to perform their adjudicative duties and their personal practices. As many have reflected, **change and comfort rarely coexist**. Those involved in this aspect of the Pilot Bureau’s work had their share of discomfort adjusting to this change. The challenge was particularly acute where, as here, things moved quickly, catching employees off guard. Any further consolidation would benefit from additional communication particularly with affected ALJs and support staff.

Finally, recognizing that initial training is important, ongoing training and access to individuals more familiar with new subject areas is also critical. This is made exponentially more difficult when adjudicators are in different physical locations.

The test consolidation reflects the disparity between capacity and caseload across various agencies. The three ALJs at IDOL hear more than 650 cases per year, while IDPH and Revenue ALJs average around 15 hearings per year. While these statistics must be viewed in light of the types of cases being heard, the extent of pre-hearing process provided, and the complexity of matter being decided, this pilot consolidation exercise reveals that the State is better served by taking a macro view of its adjudicator resources and applying those resources in a way that meets the State's greater hearing needs.

### **B. 9-1-1 Consolidation Cases**

A legislative change in 2015 requiring consolidation of 9-1-1 centers also transferred the jurisdiction of these matters from the Illinois Commerce Commission (ICC) to the Illinois State Police effective January 1, 2016. Consolidation plans or requests for a waiver were required to be filed by June 30, 2016. Entities seeking a waiver of the law's consolidation obligation are entitled to a hearing, as well as a public hearing before the Statewide 9-1-1 Advisory Board.

ISP does not employ administrative law judges and is a party to 9-1-1 consolidation waiver actions, so it looked

beyond its borders for adjudicators. When it became operationally impossible for ICC to continue hearing these cases, ISP, as a customer agency, looked to the Pilot Bureau for a solution. IDFPALJs agreed to act as a provide agency, this time in an effort coordinated by the Pilot Bureau.

#### *1. Training*

In November 2016, two IDFPALJs received training from ISP program staff regarding the law creating the Office of the Statewide 9-1-1 Coordinator, consolidation plans and requests for a waiver from consolidation. ISP program staff is also available to answer any follow-up questions or concerns. Because these hearings are conducted by telephone and documents are exchanged electronically, there was no technological component on which to obtain training.

#### *2. Results*

There was no disruption in State service, when, in December 2016, IDFPALJs began to hear the consolidation cases. These hearings are held by telephone, which eliminates logistical concerns arising from having a Chicago ALJ, Springfield agency representative, and other litigants from all over the State.

#### *3. Lessons Learned*

The greatest lesson here is that small volume hearings can easily be absorbed by existing State staff. Flexibility in case assignment ensures that the State is able to meet its statutory obligations with little to no disruption to services.

### **A. Agencies with Low Volume Hearing Needs**

Several agencies, including Department of Agriculture, Office of State Fire Marshal, Department of Natural Resources, Illinois Emergency Management Agency, Illinois State Police, and Illinois Department of Transportation, have programs that requires such a small number of hearings each year that hiring an ALJ would not be justified. Instead, these agencies solve this problem on an agency-by-agency basis. The solutions usually come in one of three varieties: (1) individually contracting with private sector lawyers to act as administrative law judges; (2) contracting with other State agencies to use their ALJs; or (3) task in-house lawyers to serve as administrative law judges deciding cases where their coworkers act as prosecutors. With respect to the first two of these solutions, based on agency reports, agencies with Springfield-based hearing needs spent between \$80,000 and \$115,000 per year to contract with other State agencies or private attorneys to hear their cases.

The third of these solutions, while most cost efficient, has the greatest negative impact on the public's perception of their ability to obtain a fair and impartial hearing. Many times lawyers act as judges in one case, then turn around and serve as the agency's prosecutor on another. While State employees certainly intend to act with integrity in all situations they find themselves, this practice poses ethical concerns for the lawyers who find themselves serving as both prosecutor and judge in hearings posing the same or similar legal issues.

The Pilot Bureau has crafted a long-range solution to the issues facing these agencies that both meets their hearings needs, but also allows them to eliminate costly contracts for ALJ services. On May 16, 2017, the Pilot Bureau's first ALJ, a CMS employee, started work. Since that time, the Pilot Bureau has executed intergovernmental agreements with Office of State Fire Marshal, Department of Natural Resources, Illinois Emergency Management Agency, Illinois State Police, and the Department of Commerce and Economic Opportunity. Under the IGAs, the Pilot Bureau will provide an ALJ for the agencies' hearings needs at no cost to the agencies beyond those incidental costs the agencies already bear (court reporting, travel, etc.).

Until such time as an enterprise, electronic case management system is completed and implements, the Bureau will utilize a SharePoint site to intake referrals, schedule hearings, and track resolution of matters heard by the Bureau.

### **B. Department on Aging Administrative Appeal Rulemaking**

The Department on Aging is working with the Pilot Bureau to finalize administrative rules for implementation of its Community Reinvestment Program (CRP) and Adult Protective Services (APS) Registry programs. CRP is a new program that aims to provide long-term services and supports in the community for non-Medicaid eligible individuals who meet the program's guidelines. The APS Registry is intended to prevent those

caregivers who have received a verified finding of abuse against them from being paid by the State to provide care to individuals receiving in-home and community-based services. Individuals and business will be able to request a hearing related to certain disputes arising from these programs.

With the programmatic expertise of the Department on Aging and the Pilot Bureau's knowledge of administrative hearings rules, this project is destined to result in a streamlined administrative appeal process that is user-friendly, efficient to implement, and protects the due process rights of the programs participants. The Pilot Bureau and the Department on Aging anticipate that once the administrative rules are in place, the Bureau will conduct the hearings for these two programs.

### **C. Coordination of Agency Regulatory Revisions**

In conjunction with the model rules, the Pilot Bureau continues to work with agencies to reform their hearings regulations. Where possible, agencies are encouraged to adopt the model rules and draft subparts containing statutorily-mandated deviations from this streamlined process.

The Bureau will continue to strategize the best way to bring about regulatory change to the State's administrative hearings process to the benefit of litigants and the State.

Should the Bureau be made permanent, it is poised to take numerous steps to build off the successes of the Pilot and continue to move forward in positively transforming the State administrative law processes.

### **A. Work with External Customers**

Who better to identify and quantify the customer satisfaction issues than those who use the State's administrative hearings process, but have no role in implementing or improving it? The ISBA's working group, along with other partners outside State government will help give a comprehensive critique of struggles facing the system and suggestions for improving this important function of State government.

External customers can help the Bureau identify what expectations customers most desire be addressed, where existing systems should be made more accessible to the public, and where rules can and should be made more user friendly.

The Bureau will meet with the ISBA task force; engage others in the legal community invested in the future of administrative hearings, such as social service agencies, the Illinois Association for Administrative Law Judges, and National Association for Administrative law Judges; and conduct additional community outreach for the remainder of the Pilot Period and into the future should the Bureau be made permanent.

### **B. Meet with Employees and Agencies**

Just as external customers can provide valuable insight into existing issues with the hearings process, employees and agency leadership, too will provide much needed perspective into proposed solutions. The Bureau will set additional employee roundtable discussions so that existing staff can hear about the Bureau's progress and have their questions answered. Most importantly, these roundtables provide a good opportunity for employees to make suggestions, identify challenged, and respond to Bureau initiatives.

Agency General Counsels will be primarily responsible for coordinating their agency's efforts to implement and the model rules and draft complimentary regulations where required by their enabling statutes. Agency Directors will also provide critical insight into agency operations and provide feedback on any proposed future action.

Meetings with State employees serving in roles within the hearing process, employees representing agencies in administrative hearings, as well as State agency Directors and General Counsels will better inform the Bureau as it seeks to implement improvements to the administrative hearings process for all involved.

### **C. Expand the Use of the Bureau's ALJ**

The Bureau's position provides a solution for a number of agencies, many with hearing needs in Springfield that

have been employing a patchwork of contractual services to have their hearings needs met.

Since May 2017, CMS has executed intergovernmental agreements with the Department of Natural Resources, Illinois Emergency Management Agency, Office of State Fire Marshal, Illinois State Police, and the Department of Commerce and Economic Opportunity. Additional agreements are being finalized between CMS and the Departments of Transportation and Agriculture.

Having a Bureau ALJ trained to handle the variety of cases for which downstate hearings need to be heard eliminates contract costs for those agencies. The Bureau will have the benefit of continuity of knowledge base, an available trainer on these hearings, as well as additional flexibility for assigning an adjudicator where needed.

### **D. Continue and Expand ALJ-based Training**

Existing ALJs gave a clear picture of the types of training they believe would be meaningful and assistive. The Bureau will continue to work with West's LegalEdcenter to make its programming available on demand to reach more ALJs.

### **E. Obtain Regularly-Updated Data**

Unfortunately, because hearings are but one of many functions performed by State agencies, most do not collect or analyze data related to the productivity of their hearing functions. The lack of comprehensive, electronic case

management is another obstacle to obtaining real-time information.

The initial data grew stale and subsequently obtained data must be further analyzed. For example, future retirements are expected to place an extremely heavy burden on smaller hearings units. A centralized unit could ease that burden by providing additional administrative support and disbursing work among more ALJs. Accurate data is important when crafting long-range solutions.

### **F. Craft Ongoing Recommendations**

As the Bureau moves beyond the pilot period, the Bureau Chief must continue the work of recommending ongoing initiatives for continued improvements. These initiatives will take into account national experiences and trends; needs and expectations of the State's customers; identified needs of ALJs and other existing State employees; the need for transparency and accountability; and the opportunity to achieve cost savings from improvements to the existing decentralized system.

Illinois' system is in need of reform to ensure that ALJs are empowered to exercise their professional judgment, customer service is at the core of the State's hearing process, including making the hearing process more consistent, user-friendly and certain; and that all possible cost savings are achieved by pooling resources where possible and eliminating unnecessary and expensive practices.

## XI. Acknowledgments

The Pilot Bureau's work would not be possible without the dedicated work and support of many, including the following:

Subcommittee Co-Chairs, Sadzi Oliva, CoreyAnne Gulkewicz, and Katy Straub and the members of the committees: Snigdha Acharya, Jessica Baer, Brian Goldberg, Robert Planthold, Valerie Puccini, Greg Ramel, Tom Chan, Martha Reggi, Michael McCarten, Leslie Lehr, Don Seasock, Donyelle Gray, Terry Charlton, Brian Fliflet, Greg Doerfler, Michael Callaway, Jayesh Hines-Shah, Fred Moore, Sunil Thomas, Prasad Alavilli, Tami Boston, Lisa Logan, Mitch Cohen, Patrick Riley, Joshua Luskin, Ted Sherrod, Elisabeth Pennix, Leslie Ann Taylor, Michelle Jackson, Tina Tsatsoulis, Sean O'Kelly, John Teefey, and all others who have answered the call for assistance.

CMS Acting Director Michael Hoffman and CMS staff

DoIT staff, including senior staff and agency CIOs

Pilot Agencies and staff: IDOL - Directors Joe Beyer and Hugo Chaviano, General Counsels Helen Kim and Benno Weisberg, Chief ALJ Claudia Manley, ALJs, and support staff; IDPH, Director Nirav Shah and General Counsel Kyle Stone, Chief ALJ Mitch Cohen, ALJs, and support staff; Revenue, Director Constance Beard and General Counsel Mark Dyckman, Chief ALJ Terry Charlton, ALJs, and support staff; ISP, Director Leo Schmitz and General Counsel Matthew Rentschler; IDFP, Secretary Bryan Schneider, General Counsel Dina Masiello, Chief ALJ Don Seasock, ALJs, and support staff.

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Staff of the Office of Governor Bruce Rauner, especially Christina McClernon and Matthew Swift

Directors from central panels around the nation



Deputy Director Sarah Kerley  
July 31, 2017

## XI. Acknowledgments



EXECUTIVE ORDER

2016-06

**EXECUTIVE ORDER TO ELIMINATE THE BACKLOG AND DELAY IN STATE ADMINISTRATIVE PROCEEDINGS**

**WHEREAS**, agencies of the State of Illinois make decisions that significantly impact the lives and livelihoods of Illinois residents and businesses – from deciding eligibility for healthcare and family benefits to licensing professionals and businesses, and from determining whether a person has been a victim of discrimination to ensuring that employers pay all wages due to their employees; and

**WHEREAS**, our constitutional, democratic principles require the State to afford due process to people and businesses affected by these decisions; and

**WHEREAS**, State agency decisions are reviewable through administrative hearings conducted under the Administrative Procedures Act; and

**WHEREAS**, more than 100,000 administrative hearings are requested each year, and more requests are expected in years to come; and

**WHEREAS**, each State agency is responsible for conducting its own administrative hearings, and this decentralized approach has resulted in a patchwork system that often is inefficient and unresponsive to the needs of the people and businesses that depend on it; and

**WHEREAS**, State agencies often do not have systems that track the amount of time it takes for cases to be concluded, making it difficult to determine with any sense of certainty where to direct resources and personnel; and

**WHEREAS**, under our current administrative hearing system at some agencies, such as the Departments of Labor and Financial and Professional Regulation, parties can wait up to two years to have their cases adjudicated; and

**WHEREAS**, the Human Rights Commission, which enforces state laws that prohibit discrimination, currently has a backlog of over 1,000 cases that have been pending without a decision for at least 2 years and some as long as 3; and

**WHEREAS**, these backlogs and delays are unacceptable and can illustrate the legal maxim, “justice delayed is justice denied”; and

**WHEREAS**, although a single statute governs State agencies’ administrative hearings, agencies often have different, conflicting, and inconsistent rules of administrative procedure, which confuse parties, impede transparency, and contribute to the backlog and delays; and

**WHEREAS**, administrative law judges and hearing officers generally conduct administrative hearings for the agencies at which they work even when those very agencies are a party in the case, thereby creating at least an appearance of a conflict of interest; and

**WHEREAS**, each State agency now bears responsibility for creating its own procedural rules and its own filing and case management systems, and this arrangement results in redundant and

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## A. Executive Order No. 16-06

inconsistent, non-interoperable procedures and systems across State government, with some agencies using electronic filing systems while other agencies do not and with some agencies sending and receiving documents by email while others do not; and

**WHEREAS**, because State agencies use multiple disparate systems, data across the State are isolated in agency-specific applications, and as a result agencies cannot easily share data to more efficiently serve businesses and citizens and save taxpayer resources; and

**WHEREAS**, some State agencies have so little administrative support for their adjudicators that the adjudicators themselves must take time away from conducting hearings and drafting decisions in order to schedule hearings, arrange for interpreters, copy documents and perform similar tasks, all of which increases case backlogs and the amount of time citizens must wait to receive decisions; and

**WHEREAS**, currently, the amount of resources and personnel each State agency with adjudicators expends varies greatly and does not necessarily bear a relation to the number of claims received and adjudicated by that agency; an assessment of State agencies' use of their resources for administrative hearings is required to determine if they are efficiently and effectively providing a high level of service, transparency, accountability, timely resolutions, efficient practices and procedures; and

**WHEREAS**, 30 states have established, either by statute or executive order, some form of a centralized office to preside over the state's administrative hearings and more efficiently manage their large administrative caseloads; and

**WHEREAS**, the purpose of this Executive Order is to initiate a pilot program through which the State will provide some central, uniform administrative support to a limited number of State agencies and to determine whether further consolidation should be considered through a subsequent Executive Order or legislation;

**THEREFORE**, I, Bruce Rauner, Governor of Illinois, by virtue of the executive authority vested in me by Section 11 of Article V of the Constitution of the State of Illinois, do hereby order as follows:

### I. DEFINITIONS

"Adjudicator" means an administrative law judge, hearing officer, hearing referee, or other State employee who conducts hearings on behalf of a State agency under the authority of the Office of the Governor pursuant to the Administrative Procedures Act.

"Bureau" means the CMS Bureau of Administrative Hearings.

"CMS" means the Department of Central Management Services.

"Pilot period" means the period from the effective date of this Executive Order until June 30, 2017, subject to extension by the Office of the Governor.

"State" means the State of Illinois.

### II. CREATION OF THE BUREAU OF ADMINISTRATIVE HEARINGS

The Director of CMS shall create within CMS the Bureau of Administrative Hearings (the "Bureau"). The Director of CMS shall also appoint the Bureau Chief from its existing legal staff. The Bureau shall exist only during the pilot period, unless continued by subsequent Executive Order, administrative rule, or Public Act.

The Bureau shall invite up to ten State agencies (or such other number of State agencies as approved by the Office of the Governor) to participate in an administrative hearing support program during the pilot period. The Bureau shall enter into an interagency contract with each participating State agency, as authorized by the Intergovernmental Cooperation Act and other applicable law. Pursuant to such contract, the Bureau shall develop training programs for adjudicators; improve the process for assigning cases among adjudicators; promote shared resources among participating State agencies; develop uniform rules of procedure and recommend revisions to the agency's administrative rules on administrative hearings; develop a

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standard code of professional conduct for adjudicators; and in cooperation with the Department of Innovation and Technology ("DoIT"), implement modern, uniform filing and case management systems.

As part of their focus on providing excellent customer service, State agencies should actively track case backlogs and workflows. Coordination among State agencies and the Bureau shall ensure efficiency and effectiveness through cooperation in the development of uniform rules of procedure and a standard code of professional conduct and through the sharing of resources and information necessary to determine the efficacy of the pilot program. The Bureau should monitor and seek to eliminate backlogs and inefficiencies wherever they exist, and should identify where these goals are hindered by disconnects in communication, poor or nonexistent electronic case management systems and decentralized operations.

The Bureau shall investigate and determine whether and to what extent the further consolidation of adjudicators, administrative hearing and support functions, and associated resources among State agencies would result in a more efficient, timely, and responsive administrative hearing system. Such consolidation would be accomplished by subsequent Executive Order or Public Act. The Bureau shall consider, without limitation, whether consolidation would enable more efficient administrative procedures, greater customer satisfaction, greater public trust and confidence, reduced backlog of cases, and any cost savings or cost avoidance.

The Bureau Chief shall meet with the Office of the Governor and the Director of CMS by each of June 30, 2016 and December 31, 2016, to report on, and assess the impact of the administrative hearing support program. The Bureau Chief also shall describe the Bureau's investigation and determination with respect to further consolidation, as contemplated above, and include the Bureau's recommendations for any further reforms. By July 30, 2017, the Bureau Chief shall submit a written report to the Governor and the General Assembly and include the Bureau's recommendations for any subsequent reforms.

### III. SAVINGS CLAUSE

1. This Executive Order does not, and shall not be construed to, transfer any rights, powers, duties, functions, property, personnel, or funds from, to, or among State agencies; each State agency continues to have whatever authority is provided to it pursuant to the Intergovernmental Cooperation Act and other applicable law to enter into interagency contracts, which may include permissible transfers.
2. This Executive Order shall not affect any act undertaken, ratified, or cancelled or any right occurring or established or any action or proceeding commenced in an administrative, civil, or criminal case before this Executive Order takes effect, but these actions or proceedings may be prosecuted and continued by the Bureau in cooperation with the State agency, if necessary.
3. This Executive Order shall not affect the legality of any rules in the Illinois Administrative Code that are in force on the effective date of this Executive Order, which rules have been duly adopted by the pertinent agencies. If necessary, however, the affected agencies shall propose, adopt, or repeal rules, rule amendments, and rule recodifications as appropriate to effectuate this Executive Order.
4. This Executive Order does not contravene, and shall not be construed to contravene, any federal law, State statute, or collective bargaining agreement.

### IV. PRIOR EXECUTIVE ORDERS

This Executive Order supersedes any contrary provision of any other prior Executive Order.

### V. SEVERABILITY CLAUSE

If any part of this Executive Order is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

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**VI. EFFECTIVE DATE**

This Executive Order shall take effect upon filing with the Secretary of State.



Bruce Rauner, Governor

Issued by the Governor: April 29, 2016

Filed with Secretary of State: April 29, 2016

TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
CHAPTER \*\*: CENTRAL MANAGEMENT SERVICES

PART 3200  
PRACTICE IN ADMINISTRATIVE HEARINGS

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**ADMINISTRATIVE LAW JUDGE CODE OF PROFESSIONAL CONDUCT**

**PREAMBLE**

Pursuant to Executive Order 2016-06, the Department of Central Management Services Bureau of Administrative Hearings (the “Bureau”) is proud to announce the creation of the Code of Conduct for Administrative Law Judges in Illinois (the “Code”). The Code seeks to provide guidance to assist our Illinois administrative law judges in maintaining high standards of judicial and personal conduct as they hear and decide cases on important public matters. The terms “administrative law judge” or “ALJ” are intended to refer to all administrative adjudicators within this State, regardless of their job title.

Prior to the Code, ALJs were not subject to a single uniform code of conduct. Like all State employees, their conduct is subject to mandates of the Illinois Governmental Ethics Act, the State Officials and Employees Ethics Act, the State of Illinois Code of Personal Conduct created on behalf of the Governor pursuant to Section IV of Executive Order 2016-04, and any agency-specific personnel rules. If lawyers, conduct is governed by the Illinois Supreme Court Rules of Professional Conduct. However, these laws do not specifically address the unique ethical dilemmas that confront ALJs. The Code supplies minimum standards for ALJs statewide. In promulgating the Code, the Bureau hopes to equip our ALJs with a valuable tool to service the public and to strengthen the public’s faith in agency decisions and the hearing process as a whole.

The Code is based in part upon the American Bar Association’s Model Code of Judicial Conduct for State Administrative Law Judges (2016 Draft Version) and the National Association of Administrative Law Judiciary’s Model Code of Judicial Conduct for State Administrative Law Judges (adopted November 1993). The text of the rules under the canons is intended to be authoritative and enforceable. The commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the rules. The commentary is not intended as a statement of additional rules. The canons and rules thereunder are rules of reason. They should be applied consistently with constitutional requirements, statutes, administrative rules, administrative orders, and decisional law, and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of ALJs in making decisions.

The Code is designed to provide guidance to ALJs and to provide a structure for regulating conduct. However, it is not intended that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the Code and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the administrative law system. The Code is not designed nor intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if it were invoked by lawyers for mere tactical advantage in a proceeding before an ALJ.

**CANON 1**

**AN ADMINISTRATIVE LAW JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDICIARY AND AVOID THE APPEARANCE OF IMPROPRIETY.**

**Rule 1.1: Compliance with the Law**

An ALJ shall respect and comply with the law, including the Code of Conduct for Administrative Law Judges in Illinois.

**Commentary**

*None*

**Rule 1.2: Promoting Public Confidence in the Administrative Law Judiciary**

An ALJ shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative law judiciary, and shall avoid impropriety and the appearance of impropriety.

**Commentary**

*An independent and honorable judiciary is indispensable to justice in our society. An ALJ should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative law judiciary is preserved. The provisions of this Code shall be construed and applied to further that objective.*

**Rule 1.3: Avoiding Abuse of Prestige of Judicial Office**

An ALJ shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. An ALJ shall not abuse the prestige of office to advance the private interests of the ALJ or others, nor convey or permit others to convey the impression that they are in a special position of influence.

**Commentary**

*(1) Maintaining the prestige of office is essential to upholding public confidence in the system. ALJs should distinguish between proper and improper use of the prestige of office in all their activities. It is improper for an ALJ to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for an ALJ to utilize office letterhead to gain an advantage in conducting personal business.*

*(2) An ALJ may provide a reference or recommendation for an individual based upon the ALJ's personal knowledge using official letterhead if there is no likelihood that use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.*

*(3) Special considerations arise when ALJs write or contribute to publications of for-profit entities, whether related or unrelated to the law. An ALJ should not permit anyone associated with the publication of such materials to exploit the ALJ's office in a manner that violates this Rule or other applicable law. The ALJ should retain sufficient control over the advertising to avoid such exploitation.*

## CANON 2

### **AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF OFFICE IMPARTIALLY, COMPETENTLY AND DILIGENTLY.**

#### **Rule 2.1: Giving Precedence to the Duties of Office**

The duties of office, as prescribed by law, shall take precedence over all of an ALJ's personal and extrajudicial activities.

#### **Commentary**

*(1) To ensure that ALJs are available to fulfill their judicial duties, ALJs must conduct personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.*

*(2) Although it is not a duty of office unless prescribed by law, ALJs are encouraged to participate in activities that promote public understanding of and confidence in the administrative justice system.*

#### **Rule 2.2: Impartiality and Fairness**

An ALJ shall uphold and apply the law and shall perform all duties of office fairly and impartially.

#### **Commentary**

*(1) To ensure impartiality and fairness to all parties, an ALJ must be objective and open-minded. Although each ALJ has a unique background and personal philosophy, an ALJ must interpret and apply the law without regard to whether the ALJ approves or disapproves of the law in question. Good faith errors of fact or law made by an ALJ applying or interpreting the law do not violate this Rule.*

*(2) It is not a violation of this Rule for an ALJ to make reasonable accommodations to ensure self-represented litigants are afforded the opportunity to have their matters fairly heard.*

### **Rule 2.3: Bias, Prejudice, and Harassment**

An ALJ shall perform the duties of office, including administrative duties, without bias or prejudice. An ALJ shall not, in the performance of official duties, by words or conduct manifest bias or prejudice, or engage in harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit lawyers engaged in proceedings before the ALJ or others subject to the ALJ's direction and control to do so. This Rule does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors are issues in the proceeding.

#### **Commentary**

*(1) Expressions of bias or prejudice by an ALJ, even unrelated to judicial activities, may cast reasonable doubt on his or her capacity to act impartially as an ALJ.*

*(2) Facial expressions and body language can convey an appearance of bias or prejudice. An ALJ must avoid conduct that may reasonably be perceived as biased or prejudiced.*

### **Rule 2.4: External Influences on Judicial Conduct**

An ALJ shall not:

- (A) be swayed by public clamor or fear of criticism;
- (B) permit family, social, political, financial, or other interests or relationships to influence the ALJ's judicial conduct or judgment; or
- (C) convey or permit others to convey the impression that any person or organization is in a position to influence the ALJ.

#### **Commentary**

*An independent administrative law judiciary requires that ALJs decide cases according to law and facts, without regard to whether particular laws or litigants are popular or unpopular. Confidence in the administrative law judiciary is eroded if decision-making is perceived to be subject to inappropriate influences.*

### **Rule 2.5: Competence, Diligence, and Cooperation**

An ALJ shall perform judicial and administrative duties competently and diligently. An ALJ shall cooperate with other ALJs, legal professionals, and other officials in the administration of official business.

### Commentary

- (1) Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform judicial responsibilities.*
- (2) An ALJ should stay abreast of significant developments in law and strive to continually hone both legal and professional skills through education and training.*
- (3) Prompt disposition requires the ALJ to devote adequate time to judicial duties, to be punctual in attending hearings and expeditious in determining matters, and to take reasonable measures to ensure that staff, litigants, and their lawyers or lay representatives cooperate with the ALJ.*
- (4) In disposing of matters promptly, an ALJ must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. An ALJ should monitor cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. Attention to prompt resolution of the ALJ's docket, and issuing decisions without undue delay, is critical to the effectiveness and efficiency of administrative agencies.*

### **Rule 2.6: Ensuring the Right to Be Heard**

An ALJ shall accord to every person who has a legal interest in a proceeding, or that person's representative, the right to be heard according to law. An ALJ may encourage parties to a proceeding to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

### Commentary

*An unrepresented party may never have been in a hearing room before. Where necessary to advance the ability of an unrepresented party to be fully heard, an ALJ may provide brief information concerning hearing procedures and substantive law, explain any rulings made, and conduct the hearing so as to fully develop the record. However, in doing so, an ALJ should make clear to the unrepresented party his or her role is to conduct a fair and impartial hearing for all parties, not to provide legal advice or guidance or advocate on the unrepresented party's behalf.*

### **Rule 2.7: Responsibility to Decide**

An ALJ shall hear and decide matters assigned to the ALJ, except where disqualification is required under this Code or other law.

### Commentary

*None*

**Rule 2.8: Decorum and Demeanor**

An ALJ shall:

- (A) require order and decorum in proceedings before the ALJ; and
- (B) be patient, dignified, and courteous to litigants, witnesses, lawyers, staff and others with whom the ALJ deals in an official capacity, and shall require similar conduct of lawyers, staff, and others subject to the ALJ's direction and control.

**Commentary**

*None*

**Rule 2.9: Ex Parte Communications**

(A) An ALJ shall not initiate, permit, or consider ex parte communications. An ex parte communication is any written or oral communication that directly or indirectly imparts or requests material information or makes a material argument regarding a pending or impending proceeding without including all parties to the proceeding on the communication.

(1) The prohibition on ex parte communications does not prevent the ALJ from communicating to one party about routine procedural and practice matters.

(2) An ALJ may consult other ALJs and support personnel whose function is to aid the ALJ in carrying out the ALJ's adjudicative responsibilities.

(3) An ALJ may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the ALJ.

(4) An ALJ may initiate, permit or consider any ex parte communications when expressly authorized by law to do so.

(B) If an ALJ inadvertently receives an unauthorized ex parte communication bearing upon the substance of a proceeding, the ALJ shall make provision to promptly notify the parties of the substance of the communication and shall make the communication part of the record.

(C) An ALJ's decision shall be based exclusively upon evidence in the record of the proceeding and material that has been officially noticed. An ALJ shall not investigate facts independently.

(D) An ALJ shall make reasonable efforts to ensure that staff and others subject to the ALJ's direction and control follow the provisions of this Rule.

**Commentary**

*None*

**Rule 2.10: Statements on Pending and Impending Cases**

(A) An ALJ shall not, while a proceeding is pending or impending, make any public statement that might reasonably be expected to affect its outcome or impair its fairness or make any non-public statement that might substantially interfere with a fair hearing.

(B) An ALJ shall not, in connection with cases, controversies, or issues that are likely to come before the ALJ, make pledges, promises, or commitments that are inconsistent with the impartial performance of adjudicative duties.

(C) An ALJ shall require those subject to the ALJ's direction and control to refrain from making statements that the ALJ would be prohibited from making under Paragraphs (A) and (B).

(D) Notwithstanding the restrictions in Paragraphs (A) and (B), an ALJ may make public statements in the course of their official duties, explain administrative procedures, and comment on any proceeding in which the ALJ is a litigant in a personal capacity.

### Commentary

*None*

### Rule 2.11: Disqualification and Remittal

(A) An ALJ shall disqualify himself or herself in any proceeding in which the ALJ's impartiality might reasonably be questioned, including but not limited to instances where:

(1) the ALJ has a personal bias or prejudice concerning a party or a party's lawyer or other representative involved in the proceeding;

(2) the ALJ served as lawyer or representative in the matter in controversy, or a lawyer with whom the ALJ privately practiced law served during such association as a lawyer concerning the matter, or the ALJ or such lawyer has been a material witness concerning it;

(3) the ALJ has served in other governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) the ALJ has made a public statement, other than in an administrative proceeding, adjudicative decision or adjudicative opinion, that commits or appears to commit the ALJ to reach a particular result or rule in a particular way in the proceeding;

(5) the ALJ, individually or as a fiduciary, or the ALJ's spouse or domestic partner, child, or other member of the ALJ's family residing in the ALJ's household, has a more than de minimis financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding; or

(6) the ALJ or the ALJ's spouse or domestic partner or a person within the third degree of relationship to either of them or the spouse of such a person:

(a) is a party to the proceeding, or an officer, director, general partner, major shareholder, or trustee of a party;

(b) is acting as a lawyer or representative in the proceeding;

(c) is known by the ALJ to have an interest that could be substantially affected by the outcome of the proceeding; or

(d) is likely to be a material witness in the proceeding.

(B) An ALJ should be aware of his or her personal and fiduciary financial interests, and make a

reasonable effort to keep informed about the personal financial interests of his or her spouse or domestic partner, child, or other member of the ALJ's family residing in the ALJ's household.

(C) An ALJ disqualified by this Rule, other than for bias or prejudice, may disclose on the record the basis of the ALJ's disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers or representatives, independently of the ALJ's participation, all agree that the ALJ should not be disqualified and the ALJ is willing, the ALJ may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

#### **Commentary**

*For purposes of this Rule, third degree of relationship constitutes a segment of the extended family and includes first cousins, great grandparents and great grandchildren.*

#### **Rule 2.12: Supervisory Duties**

(A) An ALJ shall require staff and others subject to the ALJ's direction and control to act in a manner consistent with the ALJ's obligations under this Code.

(B) An ALJ with supervisory authority for the performance of other ALJs shall take reasonable measures to ensure that those ALJs properly discharge their adjudicative responsibilities, including prompt disposition of proceedings.

#### **Commentary**

*(1) An ALJ may not direct personnel to engage in conduct on the ALJ's behalf or as the ALJ's representative when such conduct would violate this Code if undertaken by the ALJ.*

*(2) Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, an ALJ with supervisory authority must take the steps needed to ensure that ALJs under their supervision administer their workloads promptly.*

*(3) A supervisory ALJ should not interfere with the decisional independence of other ALJs. Reasonable docket control, case assignments, logistical matters, and other administrative concerns are appropriate provided that these are done in an impartial manner and in no way operate to favor any particular outcome in any case.*

#### **Rule 2.13 Upholding the Integrity of the Legal Profession**

(A) An ALJ having reasonable belief that the performance of a lawyer or another ALJ is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action which may include a confidential referral to a lawyer or judicial assistance program.

(B) An ALJ having knowledge that another ALJ has committed a violation of this Code that raises a substantial question regarding the ALJ's honesty, trustworthiness, or fitness as an ALJ in other respects shall take appropriate action, including informing the appropriate authority.

(C) An ALJ having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall take appropriate action, including informing the appropriate authority.

(D) An ALJ shall cooperate and be candid and honest with judicial and lawyer disciplinary and other official investigatory agencies in a manner consistent with judicial confidentiality provisions provided by law.

(E) An ALJ shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of the ALJ or a lawyer.

### Commentary

*Cooperation with investigations and proceedings of judicial and lawyer disciplinary agencies, as required in Paragraph (D), instills confidence in ALJs' commitment to the integrity of the administrative judiciary and the protection of the public.*

## CANON 3

### A STATE ADMINISTRATIVE LAW JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE CONFLICT WITH JUDICIAL DUTIES

#### Rule 3.1: Extrajudicial Activities in General

An ALJ may engage in extrajudicial activities, except as prohibited by law or this Code, including engagement in the arts, sports, and other social or recreational activities. An ALJ may speak, write, lecture, and teach on legal issues as well as non-law-related subjects, subject to the other requirements of this Code and other controlling law and employment duties of the ALJ. However, when engaging in extrajudicial activities, an ALJ shall conduct all his or her activities so that they do not:

- (A) interfere with the proper performance of judicial duties;
- (B) lead to frequent disqualification of the ALJ;
- (C) appear to a reasonable person to undermine the ALJ'S independence, integrity, or impartiality; or
- (D) make use of court premises or staff, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

### Commentary

*(1) The actions, participation, or engagements that are prohibited under this Rule are also prohibited within the realm of social media. An ALJ is not required to forgo use of social media altogether. Rather, an ALJ must recognize that use of social media may implicate provisions of*

*this Code and are advised to proceed cautiously. An ALJ's use of social media must not interfere with the ALJ's overriding duty to uphold the independence, integrity, and impartiality of the administrative law judiciary.*

*(2) When utilizing social media, an ALJ must avoid creating an environment that might encourage ex parte communications regarding a pending or impending matter before the ALJ. The ALJ should not make any comment on any site about any matter before the ALJ nor should the ALJ interact on social media with individuals or organizations whose advocacy or interests in matters before the ALJ would raise questions about the ALJ's independence.*

*(3) This Code does not specifically prohibit an ALJ from blogging on the internet, but the ALJ should exercise caution as to how that blog is used in order to make sure the ALJ's impartiality is not called into question or the activity does not impair the ALJ's ability to decide issues that come before the ALJ.*

*(4) An ALJ utilizing social media should become familiar with and closely monitor privacy settings. An ALJ should be aware that other social media participants may not guard privacy as diligently and may thereby expose the ALJ's photos, comments, and personal information without the ALJ's permission. An ALJ should be cognizant that material posted to social media sites is often irretrievable and may be taken out of context.*

### **Rule 3.2: Appearance before Governmental Agencies and Officials**

An ALJ shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or legislative body or official, except:

- (A) In connection with matters concerning the law, the legal system, or the administration of justice;
- (B) In connection with matters about which the ALJ acquired knowledge or expertise in the course of the ALJ's official duties; or
- (C) When the ALJ is acting in a self-represented capacity involving his or her own legal or economic interests, or when the ALJ is acting in a fiduciary capacity.

#### **Commentary**

*None*

### **Rule 3.3: Testifying as a Character Witness**

An ALJ shall not voluntarily testify as a character witness in a judicial, administrative, or other adjudicatory proceeding.

#### **Commentary**

*An ALJ who testifies as a character witness without being subpoenaed abuses the prestige of the judicial office to advance the interests of another.*

**Rule 3.4: Appointment to Governmental Positions**

An ALJ may accept appointment to a governmental committee, board, commission, or other position only if such appointment neither conflicts with the ALJ's official duties nor impacts the ALJ's independent professional judgment.

**Commentary**

*If the appointment could present an appearance of impropriety, conflict, bias, or prejudice concerning the ALJ's official position, the ALJ should decline the appointment.*

**Rule 3.5: Use of Nonpublic Information**

An ALJ shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the ALJ's official duties.

**Commentary**

*None*

**Rule 3.6: Affiliation with Discriminatory Organizations**

An ALJ shall not:

- (A) hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation; or
- (B) utilize the benefits or facilities of an organization that the ALJ knows or should know practices invidious discrimination as identified in paragraph (A).

**Commentary**

*(1) An ALJ's attendance at an event or facility of an organization as delineated above does not violate this Rule if such attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices, but the ALJ should consider whether such attendance could cause a reasonable observer to question the ALJ's independence, integrity, or impartiality as delineated in Rule 3.1(C), above.*

*(2) Invidious discrimination means treating a class of persons unequally in a manner that is malicious, hostile, or damaging.*

**Rule 3.7: Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities**

An ALJ may, within the confines of Rule 3.1.:

(A) participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, including but not limited to the following activities:

(1) serving as an officer, director, trustee, or advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the ALJ; or

(b) will frequently be engaged in adversary proceedings in the tribunal of which the ALJ is a member, or in any tribunal subject to the appellate jurisdiction of the tribunal of which the ALJ is a member.

(2) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;

(3) soliciting contributions for such organization or entity, but only from members of the ALJ's family or other judges over whom the ALJ does not exercise supervisory or appellate authority;

(4) soliciting membership for such organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity;

(5) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting their title to be used in connection with an event of such an organization or entity;

(6) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities; and

(7) encouraging attorneys to provide pro bono public legal services.

(B) participate in activities sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit or for the economic or political advantage of its members, including but not limited to the following activities:

(1) serving as an officer, director, trustee, or advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the ALJ; or

(b) will frequently be engaged in adversary proceedings in the tribunal of which the ALJ is a member, or in any tribunal subject to the appellate jurisdiction of the tribunal of which the ALJ is a member.

(2) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds;

(3) soliciting contributions for such organization or entity, but only from members of the ALJ's family or other judges over whom the ALJ does not exercise supervisory or appellate authority; or

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting their title to be used in connection with an event of such an organization or entity, unless such event serves a fund-raising purpose, in which case the ALJ shall not so participate but may attend.

#### **Commentary**

*None*

#### **Rule 3.8: Appointments to Fiduciary Positions**

An ALJ shall not serve as an executor, administrator, trustee, guardian, or other fiduciary if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary, the ALJ will be engaged in proceedings that would ordinarily come before the ALJ, or if the estate, trust or ward becomes involved in adversary proceedings in an agency in which the ALJ serves or one under its appellate jurisdiction. An ALJ acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to an ALJ personally.

#### **Commentary**

*None*

#### **Rule 3.9: Service as Arbitrator or Mediator**

(A) An ALJ shall not be an arbitrator or mediator regarding a matter over which the ALJ may later preside.

(B) A full-time ALJ should not act as an arbitrator or mediator, nor perform other judicial functions apart from the ALJ's official duties, unless expressly authorized by law.

(C) A part-time ALJ may act as an arbitrator or mediator regarding matters over which the ALJ is not currently and will not later preside, but shall not do so if the ALJ's impartiality or independent professional judgment might reasonably be questioned because of such work.

#### **Commentary**

*This provision does not, and should not be interpreted to, include or cover any service as an arbitrator or mediator that is part of the ALJ's official duties, including but not limited to pre-trial or post-trial conferences or settlement negotiations.*

#### **Rule 3.10: Practice of Law**

Subject to law and agency rules, an ALJ may practice law if such activity neither affects the independent professional judgment of the ALJ nor the conduct of the ALJ's official duties. An ALJ acting as an attorney shall not accept representation of a client who is a litigant before the

tribunal for whom the ALJ serves or if it is possible that such person will appear before the ALJ. An ALJ shall not practice law before the administrative tribunal for which the ALJ serves.

#### **Commentary**

*If an agency has adopted a more restrictive policy governing secondary employment, the more restrictive policy shall control.*

#### **Rule 3.11: Financial, Business, or Remunerative Activities**

(A) An ALJ shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the ALJ's official position, or involve the ALJ in frequent transactions or continuing business relationships with attorneys or persons likely to come before the agency in which the ALJ serves.

(B) Subject to the requirements of paragraph (A), the laws of the jurisdiction and the other provisions of this Code, an ALJ may hold and manage personal investments of the ALJ and members of the ALJ's family, including real estate holdings, and engage in other remunerative activity. An ALJ shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that an ALJ may manage or participate in a business closely held by the ALJ or members of the ALJ's family, or a business entity primarily engaged in investment of the financial resources of the ALJ or members of the ALJ's family.

(C) An ALJ shall not engage in financial activities, even those otherwise permitted under the preceding paragraphs, if they will lead to frequent disqualification of the ALJ, and shall manage his or her investments and other financial interests to minimize the number of cases in which the judge might be disqualified. As soon as the ALJ can do so without serious financial detriment, the ALJ shall divest themselves of any such investments and other financial interests which might require frequent disqualification.

#### **Commentary**

*None*

#### **Rule 3.12: Compensation for Extrajudicial Activities**

An ALJ may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the ALJ's independence, integrity, or impartiality or such compensation is otherwise prohibited by law. Compensation should not exceed what a person who is not an ALJ would receive for the same activity.

#### **Commentary**

*(1) If the source of such payments might give the impression of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, the compensation should be declined regardless of the level of compensation.*

*(2) Nothing in this Code exempts the ALJ from having to follow Illinois law or policy regarding secondary employment opportunities.*

**Rule 3.13: Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

(A) An ALJ shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the ALJ's independence, integrity, or impartiality, and may only accept such gifts, loans, bequests, benefits, or other thing of value if such acceptance is consistent with relevant agency rules and other applicable laws.

(B) Unless otherwise prohibited by law or this Code, an ALJ may accept the following:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding before the ALJ would in any event require disqualification of the ALJ under this Code;
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not ALJs or judges;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not ALJs or judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not ALJs or judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of an ALJ residing in the ALJ's household, but that incidentally benefit the ALJ;
- (9) gifts incidental to a public testimonial;
- (10) invitations to the ALJ and the ALJ's spouse, domestic partner, or guest to attend without charge;
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
  - (b) an event associated with the ALJ's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to non-ALJs and non-judges who are engaged in similar ways in the activity as is the ALJ.

### Commentary

- (1) This Rule does not encompass campaign contributions, a matter covered by Canon 4.*
- (2) This Rule is not intended to replace provisions governing the acceptance of gifts found elsewhere in Illinois law or policy. An ALJ shall follow the most restrictive applicable mandate.*
- (3) Because benefits such as gifts, bequests, favors, and loans to a member of the ALJ's family could be viewed as intended to influence the ALJ, an ALJ shall inform family members residing in his or her household of the ALJ's ethical constraints and shall urge those family members to decline such benefits.*
- (4) An ALJ must be ever-cognizant of the appearance of impropriety referenced in Canon 1.*

### **Rule 3.14: Reimbursement of Expenses and Waivers of Fees or Charges**

- (A) Unless otherwise prohibited by this Code or other law, an ALJ may accept reimbursement and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the ALJ's employing entity, if the expenses or charges are associated with the ALJ's participation in extrajudicial activities permitted by this Code.
- (B) Reimbursement of expenses shall be limited to the actual costs reasonably incurred by the ALJ and, when appropriate to the occasion, by the ALJ's spouse, domestic partner, or guest. Payment in excess of such an amount is compensation.

### Commentary

*None*

## CANON 4

**AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM ENGAGING IN POLITICAL ACTIVITY INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE ADMINISTRATIVE LAW JUDICIARY.**

### **Rule 4.1: Political and Campaign Activities**

An ALJ shall abide by all laws, agency rules, and any administrative orders governing political activities of State employees.

### Commentary

- (1) Participation in political activities is the right of every person. Unless prohibited by law, an ALJ may engage in political activity on personal time so long as the activity does not affect his or her impartiality and does not foster impropriety or the appearance of impropriety.*

(2) *Examples of political activities an ALJ may engage in without violation of this Code includes, but is not limited to, displaying a bumper sticker on the ALJ's vehicle, displaying a sign on the ALJ's residence or yard, or contributing money to a political campaign so long as the ALJ does not attach to his or her name the title of ALJ.*

#### **Rule 4.2: Candidates for Appointive Positions**

A candidate for an appointed governmental position may communicate with the appointing or confirming authority, including any selection, screening or nominating commission or similar organization, and seek endorsements for the appointment from any person or organization other than a partisan political organization.

#### **Commentary**

*None*

#### **Rule 4.3: Activities of ALJs who Become Candidates for Elective Office**

An ALJ may run for public office, but shall at all times act in a manner consistent with the integrity and independence of his or her position as ALJ. An ALJ need not resign his or her position upon becoming a candidate for public office, unless otherwise required by law, provided the ALJ complies with the provisions of this Code.

#### **Commentary**

*None*

#### **EFFECTIVE DATE**

This Code of Conduct for Administrative Law Judges in Illinois shall be in full force and effect as of its issuance date of XXXXX and is subject to revision in whole or in part by the Bureau of Administrative Hearings.

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

<sup>ii</sup> Ann Wise, *Louisiana's Division of Administrative Law: An Independent Administrative Hearings Tribunal*, 68 La. L. Rev. (2008) available at <http://digitalcommons.law.lsu.edu/lalrev/vol68/iss4/6>

<sup>iii</sup> Data obtained from the Texas State Office of Administrative Hearing's August 30, 2013 Self-Evaluation Report submitted to the Texas Sunset Advisory Commission.

<sup>iv</sup> Data obtained from the Louisiana Division of Administrative Law's Operational Plan for FY 2017-18, submitted at the 2016 Central Panel Director's Conference.

<sup>v</sup> A. Michael Nolan, *State Agency-Based v. Central Panel Jurisdiction Is there a Deference?*, 29 J. Nat'l Ass'n Admin. L. Judiciary Iss. 1 (2009) Available at <http://digitalcommons.pepperdine.edu/maalj/vol29/issi/1>