
Study of Administrative Adjudication in Hawaii

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 91-12
February 1991



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
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9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Study of Administrative Adjudication in Hawaii

Summary

Administrative adjudication is the process whereby executive agencies decide the rights, duties, and privileges of specific parties. Presiding over adjudicatory proceedings in Hawaii are about 50 hearing officers dispersed throughout state government, most of whom are employees of individual agencies. These officers make determinations in cases ranging from child support and public assistance to workers' compensation and occupational licensing. Most of their decisions are recommended; final decisions are usually the province of a board, commission, or agency director.

We explored the issue of whether separating hearing officers from their agencies and organizing them into a "central panel" would increase their independence, improve efficiency, and make the process appear more fair. Some observers suggest that the current "decentralized" arrangement tends to bias the decisions of hearing officers in favor of the agency that employs them, and that even if hearing officers are not personally biased, their direct association with the agency lends the *appearance* of bias and erodes public confidence in the process.

We believe that a central panel will enhance the appearance of fairness and lead to more confidence in government. It cannot, however, guarantee that the actual process will be more fair or more efficient than the current one. We believe that a pilot test of the concept, involving suitable agencies, should be conducted and its results evaluated.

Several legal and administrative improvements could be made to the current system. Hawaii's Administrative Procedure Act (Chapter 91) and the procedural rules of the agencies do not sufficiently regulate the circumstances governing the fairness and impartiality of hearings--conflicts of interest, for example. Agency programs need closer scrutiny to ensure that hearing officers are distanced from other activities of the agency, that they are better trained, and that ethical expectations are explicit. Because the civil service classifications for hearing officers are specific to the agency, they may perpetuate inequities in compensation and discourage productive exchanges of hearing officers among agencies.

Recommendations and Response

The annual conference of hearing officers should set up a mechanism to help the agencies implement some of our key recommendations. We recommended that each agency improve its rules governing adjudicatory hearings, propose changes in Chapter 91 as appropriate, and review its hearing program to ensure the independence and professionalism of its officers. We recommended that agencies adopt a code of conduct for hearing officers. The Department of Personnel Services should consider establishing a generic classification for hearing officers.

Finally, we recommended that the Legislature ask the governor to form a task force to pilot test the central panel concept. The task force would plan and implement the project and evaluate its success.

The Department of Education, the Department of Commerce and Consumer Affairs, and the Department of Human Services concurred with our recommendations. The Department of Personnel Services supports a pilot test. The Department of Labor and Industrial Relations believes the existing system works well and should not be changed.

Background

Government agencies carry out many potentially conflicting functions in rulemaking, adjudication, investigation, and prosecution. The history of administrative law reflects the effort to shield adjudication from other government functions. Some have promoted centralization as a way to achieve fairness. Thirteen states have some form of central panel. The panels vary in size, and in the kinds of hearings included within their purview. The Model State Administrative Procedure Act of 1981 incorporates a central panel. But the federal government does not use the concept, focusing instead on insulating its "administrative law judges" within the agencies they serve.

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Submitted by

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STATE OF HAWAII

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Foreword

Senate Concurrent Resolution 169, S.D. 1 of 1990 asked the auditor to study administrative adjudication in the State, looking in particular at the desirability of creating a central panel of state hearing officers. This report contains our conclusions.

We acknowledge the cooperation and assistance extended to us by personnel of the executive branch, the Judiciary, and the State Ethics Commission. We wish also to thank the many other persons in Hawaii and on the mainland who shared their experience and knowledge of administrative procedure.

Special thanks go to the consultants for the study, Professor Eric Yamamoto of the William S. Richardson School of Law, University of Hawaii, and Harry Yee, attorney at law. Their general guidance and their assistance in reviewing the state's statutes and rules on administrative procedure contributed greatly to the final product.

Newton Sue
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State of Hawaii

February 1991

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Chapter 1

Introduction

In the American system of government, judicial activity is not confined to the judicial branch. Agencies in the executive branch routinely decide the rights, duties, and privileges of individuals, businesses, and groups. In the more formal varieties of administrative adjudication, parties present their evidence and make their arguments at hearings. Presiding over the hearings are administrative law judges, who in Hawaii are called hearing officers or a similar title.

Hearing officers grapple with important disputes--public assistance, land use boundaries, occupational licenses, public utility regulation, and workers' compensation, to name a few. With so much at stake, the determinations made by hearing officers must be fair, credible, and timely.

In Senate Concurrent Resolution 169, S.D. 1 (1990), the Legislature requested the auditor to study the extent of administrative adjudication in the State and whether placing all hearing officers into a separate state office would promote efficiency and the appearance of impartiality in decision-making. The resolution also asked us to assess other more efficient and less costly measures to improve the efficiency, fairness, and impartiality of the process.

Objectives of the Study

1. Determine the nature and extent of administrative adjudication in the State.
2. Determine whether there are indications of problems with the efficiency, impartiality, or fairness of the administrative adjudication system.
3. Review alternatives for improving the efficiency, impartiality, and fairness of administrative adjudication, particularly whether it should be centralized.
4. Make recommendations for improving the system.

Scope and Methodology

This study encompasses contested cases and all other proceedings in which the opportunity for a hearing is required by law, even when the law (1) exempts the agency from compliance with Hawaii's Administrative Procedure Act (Chapter 91, HRS) or (2) permits

review through another hearing within the agency. In both these situations, as in contested cases, a hearing is needed to decide disputed questions of fact. Many of these hearings resemble contested case hearings and result in determinations that have a significant impact on the parties. They therefore were included in this study along with the contested case hearings.

Initial hearings on workers' compensation claims are less formal than most hearings and are sometimes viewed simply as extensions of the investigation process. But these hearings were included in the study because they are required by the workers' compensation statute.

We reviewed hearings held throughout the executive branch, but we gave particular attention to programs that use hearing officers to conduct the proceedings. Administrative-type hearings conducted by the State Ethics Commission (attached administratively to the Office of the Auditor) and by the Judiciary do not fall within the executive branch and were not included. County hearings were also not included in the study.

We gathered information from letters, interviews, survey questionnaires, agency documents, and a review of the literature. In interviewing hearing officers, we did not include those serving on the neighbor islands or members of state boards, commissions, or other panels who may preside over hearings. Also, we did not interview other agency personnel who may occasionally preside over hearings. We did not audit the data provided by agencies.

We surveyed all 18 executive agencies, the Office of the Governor, the Office of the Lieutenant Governor, the State Ethics Commission, and the Judiciary. A survey questionnaire was sent to administrators of centralized systems of administrative adjudication in other states.

Two consultants with expertise in administrative law were retained for general guidance and assistance in reviewing Chapter 91 and the rules adopted by particular agencies to govern their hearings. These rules were evaluated to identify possible improvements in fairness and impartiality. Mainland specialists on administrative law and procedure were also contacted.

We gave particular attention to the advantages and disadvantages of a central panel. We considered the cost of alternative approaches, including centralization, but did not do a detailed analysis of cost.

This assignment was performed between June and December 1990 in accordance with generally accepted government auditing standards, except as discussed above.

Chapter 2

Background

A major challenge for administrative law is to ensure that adjudication is conducted fairly and is not entangled with other agency functions. This chapter summarizes some historical developments in administrative law in the United States, the adjudicatory function of administrative agencies, and the requirements of due process. We also discuss the advantages and disadvantages of central panels as a means of ensuring fairness.

Overview of Administrative Law in the United States

Historical development

Administrative law has been defined as “that branch of the law that controls the administrative operations of government.”¹ It is concerned with the delegation of powers to administrative agencies, the appropriate use of these powers, and the judicial review of administrative action.

The creation of the Interstate Commerce Commission (ICC) in 1887 marks the beginning of modern administrative law in the United States. The ICC was the first agency whose sole mission was to regulate industry for the public good. Because of the need for specialized expertise, the commission was given broad rulemaking and adjudicatory powers, in addition to its executive powers. The ICC has served as a model for the creation of many other regulatory agencies, both federal and state, that require specialized expertise to administer their programs.

In 1933, the American Bar Association launched a study of administrative agencies by establishing a Special Committee on Administrative Law. Over the next three years, the committee recommended that the judicial function of administrative agencies be separated and made independent of their legislative and executive functions or be subjected to review by an independent administrative court.

In 1939, a presidential committee headed by the Attorney General of the United States was appointed to examine administrative agencies and determine whether reform was needed. After examining 40 federal agencies, the committee in 1941 issued a final report that served as a basis for the passage of the federal Administrative Procedure Act of 1946.² The act provided minimum standards for administrative procedure across federal agencies.

A Model State Administrative Procedure Act was approved by the American Bar Association and the National Conference of Commissioners on Uniform State Laws in 1946. Revised model acts were approved in 1961 and 1981. Many states, including Hawaii, based their administrative procedure acts on one or the other version of the model state acts.

Hawaii passed its Administrative Procedure Act in 1961. Codified as Chapter 91, HRS, it provides minimum procedures for state and county agencies in the administrative process, including rulemaking and adjudication.

Administrative agencies

According to both the federal and state administrative procedure acts, an administrative agency is an organized part of the government, other than the judiciary or the legislature, with the authority to make rules and adjudicate disputes. In practice, the two types of agencies most often involved with administrative law are the regulatory and social welfare agencies.

Regulatory agencies determine general standards of conduct for private industries and businesses, and investigate and prosecute violators of those standards. Some regulatory agencies grant permits and licenses. Social welfare agencies have the authority to dispense benefits. The benefits promote social and economic welfare, and include pensions, disability payments, public assistance, and governmental insurance. Until the 1970s, most activity in administrative law fell in the regulatory area. However, with the growth of public welfare programs, a majority of administrative hearings now occur in the non-regulatory area.

Agency adjudicatory functions

Administrative adjudication involves two types of cases. In most instances, the agency is both the judge and one of the parties in a dispute. An example is a public welfare case where the dispute is between the department and a welfare recipient. But sometimes the agency is the arbiter in a dispute between two outside parties. An example is a workers' compensation case in which the claimant and the employer or insurance carrier are the only parties.

Administrative adjudication ranges from informal to formal determinations of the rights and duties of persons or entities. A "paper review" of submitted information without a hearing is an example of informal administrative adjudication. In formal administrative adjudication, the opportunity for an agency hearing is required or authorized by law (statute, regulation, constitution) because questions of disputed fact are likely to arise. Some agencies reserve the term "formal" for contested case hearings required under Chapter 91. The chapter defines a *contested case hearing* as "a proceeding in which the legal rights, duties, or privileges of specific

parties are required by law to be determined after an opportunity for agency hearing.” An *agency hearing* is defined in Chapter 91 as a hearing where the next level of appeal is the courts.³ Any agency hearing which adjudicates rights, duties, or privileges of parties falls within the scope of Chapter 91 unless specifically exempted by law.

The procedures for a formal agency hearing resemble in significant respects those employed for a trial by a court of law: notice of the issues is given, evidence is presented, witnesses are examined and cross-examined (often by attorneys), and decisions are based on record evidence. One source of these trial-like procedures is Chapter 91.⁴ Another source is the due process clause of the United States Constitution.⁵

Due Process in Formal Administrative Adjudication

In administrative law, *due process* generally means a fair procedure. The guarantee of due process requires the State to treat individuals with fundamental fairness where it seeks to deprive those individuals of liberty or property. When a government agency is one of the parties in an administrative case, there is a basic inequality between the parties--the individual versus the power and resources of the government. A goal of administrative law is to minimize the inequality, and to the extent possible, to place the State and the individual on equal grounds before the law.⁶ Due process requires fundamental fairness even where the State adjudicates disputes between private individuals and is not a party in the dispute.

As defined by the courts

The U.S. Supreme Court defined due process in formal administrative adjudication in two landmark cases: *Goldberg v. Kelly* (1970)⁷ and *Mathews v. Eldridge* (1976).⁸ *Goldberg v. Kelly* dealt with regulations that provided for a formal hearing only *after* benefits for a welfare recipient had been terminated. The Supreme Court found that the post-termination hearing was inadequate on constitutional grounds, holding that a full “evidentiary hearing” was required *before* termination of welfare benefits. The Court considered welfare benefits an entitlement.

Goldberg identified ten procedural requirements of due process. These included the right to timely and adequate notice, an opportunity to defend oneself by confronting any adverse witnesses, the right to present arguments and evidence, and the right to an attorney. The *Goldberg* decision was controversial, drawing criticisms that it was administratively unwieldy, unduly expensive, and unnecessary to the reasonable protection of individuals.

The *Goldberg* due process requirements were softened in the Supreme Court’s 1976 decision in *Mathews v. Eldridge*. *Mathews*

was concerned with whether a hearing was required before terminating disability benefits. The Supreme Court decided that the post-termination hearing procedure of the agency satisfied due process requirements.

Mathews departed from *Goldberg* by stating that due process did not automatically require a trial-type evidentiary hearing. The court applied a more flexible standard, noting that procedural due process protections should meet the demands of particular situations. The court stated that three factors should be considered in determining whether due process has been satisfied: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."⁹

Courts and agencies since *Mathews* have tended to emphasize the government's fiscal interests and the agencies' practical burdens. This "flexible" due process standard has lessened procedural protections for individual claimants. The *Mathews* "cost-benefit" analysis has resulted in a marked retreat from the *Goldberg* due process procedures.

Judicial review

Judicial review of agency decisions is minimal. Except in instances of agency misconduct or an error of law, agency adjudicatory decisions are affirmed unless the court finds that the agency's conclusions were clearly erroneous or if discretionary decisions were arbitrary and capricious.¹⁰

Hawaii's Administrative Procedure Act

The Hawaii Administrative Procedure Act (Chapter 91, HRS) sets forth minimum procedures for rulemaking, adjudication of contested cases, and judicial review of administrative decisions. Enacted in 1961, the law aimed to establish uniform procedures in all state and county boards, commissions, departments, and offices and to provide for judicial review of agency decisions. Its general intent was to have a fair procedure for all participants. The House Judiciary Committee had noted that many agencies lacked proper safeguards of constitutional rights. The committee believed that the provisions would help the public participate in and understand the rulemaking and adjudicatory procedures of all government agencies.

The basic structure of Chapter 91, as well as the language of certain sections, were adopted from the draft of the Model State Administrative Procedure Act of 1961. Hawaii's act also drew upon

language in the federal Administrative Procedure Act, Chapter 7 of the 1955 *Revised Laws of Hawaii*, and the Hawaii Rules of Civil Procedure.

The enactment of Chapter 91 freed the Legislature from passing lengthy enabling legislation for adjudication by each agency. The act has equal importance with the organic statutes of all state agencies (except those exempted by statute or by the State Constitution). The organic statute provides an agency with the necessary mandate and authority. Chapter 91 directs the process for how that mandate is to be implemented in rulemaking and formal adjudication. The organic statute of the state agency and Chapter 91 are intended to work in concert to achieve the agencies' goals. Ideally, a cross reference to Chapter 91 in the enabling legislation or organic statute ensures uniformity and consistency in agency actions.

Sections 91-1 and 91-9 through 91-14 of Chapter 91 define the process of formal administrative adjudication by state agencies. These provisions specify procedures for contested case hearings and are the foundation for the regulations promulgated by state agencies for their hearings.

Insulating the Hearings Process

The wisdom and legality of combining legislative, judicial, and executive functions within administrative agencies have been sharply debated. Critics point to the concept of separation of powers: an agency should not serve as rulemaker, investigator, prosecutor, and judge. Supporters tend to be pragmatic. The combination of functions exists for practical reasons: it enables agencies with special expertise to handle very large numbers of small claims.

Challenges to the combination of functions on constitutional grounds have been rejected since the landmark U.S. Supreme Court case of *Withrow v. Larkin*.¹¹ The *legality* of the combination of functions, however, is not the same as its *desirability*.¹² Combining functions can increase the risk of unfairness--or the perception of unfairness--since the investigator and prosecutor both belong to the agency that makes the rules and adjudges violations.

To solve problems created by the combination of functions, two main solutions have been proposed: (1) internally separating the judging function or (2) separating all or part of it from the administrative agencies, sometimes by centralizing it.

Internal separation of functions

The 1941 final report of the U.S. Attorney General's Committee on Administrative Procedure rejected complete separation because it would diminish the efficiency of agencies and lead to a proliferation

of organizations. Rather, the committee recommended separating the investigating, prosecuting, and judging functions by having them performed by different persons within the agency. The Attorney General's recommendation on internal separation was reflected in the federal Administrative Procedure Act.

The federal act strives for internal separation of those who investigate and prosecute from those who *initially* hear and decide cases. Hearings are conducted by administrative law judges whose employment status is not subject to agency control.

Centralization of functions

In 13 states, the hearings of some state agencies are conducted through a separate office of hearing officers. These offices are sometimes called *central panels*. The first central panel was formed in California in 1947 in hopes of improving the efficiency of the hearing process. But the most common argument in favor of central panels is that separating hearing officers from the agency will improve the perception and reality of fairness. The central panel movement therefore is driven by a combination of concerns about efficiency, the perception of impartiality, and actual fairness. The desire of hearing officers to improve their professional status and career prospects plays a role as well.

Central panels have been the subject of continued debate. While most states and the federal government operate under a decentralized system, there appears to be increasing national interest in centralization. The 1981 revision of the Model State Administrative Procedure Act incorporates a central panel.

Advantages of centralization

Centralization is said to protect due process, promote administrative effectiveness, and ensure hearing officer independence. The traditional system, according to supporters of central panels, fails to ensure the independence of hearing officers. And even if they are independent, it means little if the public believes that they have a bias toward the agency. The appearance of bias must be avoided to instill confidence in the fairness of the process.

A recent California study summarized the case for central panels:¹³

- Independence of hearing officers in hearing and deciding cases;
- Greater standardization of contested case procedures;
- Reduced risk of improper contacts between hearing officers and agency employees;

- Increased efficiency, including cost efficiency; and
- Enhanced status of hearing officers with resultant benefits to the state in recruiting and retaining the services of highly skilled professionals.

Proponents also say that centralization heads off conflicts of interest, bolsters public confidence in the administrative process, promotes the diversification of caseload (which keeps hearing officers from becoming stale), and lessens the politicization of the process when hearing officers are subordinate to political appointees.

Disadvantages of centralization

Opponents counter that subject expertise, the heart of the administrative process, will be lost if an independent corps of hearing officers is created. Hearing officers are located in the agencies to take advantage of their experience with the statutes and their specialized knowledge of the subject matter. Expertise is especially important in administrative law because the statutory issues and methods of arriving at decisions differ from routine civil or criminal controversies. Persons with technical expertise will get to the issues faster and make better decisions.

Opponents of centralization also fear that creating an independent corps of hearing officers will rob the agency of administrative power and jeopardize the ability to hold agencies accountable for their decisions. The courts will view the hearing officer as the responsible party rather than focus properly on the agency. Another concern is that hearing officers will render decisions that undercut the agency's prerogative to set priorities and policies. Underlying this objection is the notion that hearing officers serve as instruments of agency policy.

Finally, critics ask, why fix something that may not be broken? The current system, while imperfect, comes close to achieving the goals sought through centralization. First, they say, there is no extensive evidence that agency officials interfere with hearing officer decisionmaking. Second, the absence of any huge public outcry of dissatisfaction attests to the judiciousness, fairness, objectivity, and competence of those who dispense administrative justice.

Activity at federal level

Some federal administrative law judges are pushing to create a central corps of administrative law judges. Several measures were introduced during the past decade to create a centralized system. In 1990, Congress considered another bill to establish a centralized federal system.

Experience with Central Panels in Other States

Organization, size, powers, and jurisdiction

Thirteen states have some form of central panel: California, Colorado, Florida, Iowa, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, North Carolina, Tennessee, Washington, and Wisconsin.¹⁴ No two systems are exactly alike. Central panels vary in organizational structure, size, powers, jurisdiction, and in the qualifications of administrative law judges.

Except for Tennessee, all central panels are in the executive branch. They are typically an independent or semi-autonomous unit placed within a general services agency. Tennessee's panel is with the Secretary of State, a constitutional officer elected by the legislature to a four-year term.

Central panels range in size from 3 judges in Missouri to 75 in Maryland. Florida, New Jersey, California, and Washington have between 34 and 58 judges, and Minnesota has 11 regular judges, 28 workers' compensation judges, and 25 part-time judges. Wisconsin, North Carolina, Tennessee, and Massachusetts employ 12 or fewer judges.

In some central panel states, administrative law judges make only recommended decisions. In other states they make either final or recommended decisions, depending on the type of case heard. In Missouri, the decisions of the central panel judges are final.

Central panel states vary in the extent of the panel's jurisdiction but share some aspects in common. All panels have jurisdiction over occupational licensing board cases and most hear employee discipline cases. Only Minnesota and Colorado handle workers' compensation cases, and only Washington hears unemployment compensation cases.

Qualifications of hearing officers

Almost all of the central panel states require hearing officers to be licensed attorneys. Washington does not, but its practice is to hire attorneys. Experience requirements vary from being an attorney in good standing (Maryland) to being an attorney with five years experience (California, Colorado, and Florida).

Impact of centralization

We surveyed the administrators of central panels in other states for what they could tell us about the impact of centralization on costs, efficiency, and fairness. Most states did not have specific data on the costs of implementing a central panel system. Both Colorado and Minnesota reported that they were more efficient and had achieved an economy of scale. Washington reported no significant change in cost. Wisconsin said it processed an increased number of cases and rendered decisions in a shorter time with no increase in staff.

A majority of states reported gains in efficiency. Colorado, Minnesota, Tennessee, and Wisconsin reduced the time to hear cases and reach decisions. Washington is now able to handle more cases. Massachusetts reports that the productivity per administrative law judge has improved 100 percent over the past ten years.

All states cited improvements in impartiality and fairness. Comments ranged from Colorado's "tremendous" to Florida's "improved." Tennessee said that the increased perception of impartiality and fairness by the public and the bar has been one of the most prominent and satisfying benefits. Minnesota noted similar benefits that led to the inclusion of workers' compensation cases under the central panel office.

Chapter 3

Administrative Adjudicatory Hearings in Hawaii

Adjudicatory hearings are held in almost all departments and offices of the executive branch. They vary widely in subject matter and governing law. They can be short and relatively straightforward, as in many appeals of unemployment benefits; or they can be very technical with many of the trappings of civil litigation, as with adjudication involving public utilities. This chapter describes the nature and variety of hearings and hearing officers in Hawaii.

Agencies Holding Hearings

Administrative adjudicatory hearings are held in almost every executive agency. Only the Department of Accounting and General Services and the Department of Defense reported no hearings.

Some hearings fall directly under an executive agency's authority. Examples are those conducted by the Office of Administrative Hearings in the Department of Commerce and Consumer Affairs, by the Office of Child Support Hearings in the Department of the Attorney General, and by the Administrative Appeals Office in the Department of Human Services.

Other hearings are conducted by organizations attached to an executive agency for administrative purposes only, such as the Hawaii Housing Authority in the Department of Human Services and the Land Use Commission in the Department of Business and Economic Development.

Subjects and presiding officers

The hearings cover such subjects as public assistance, land use applications, occupational licensing, disability compensation, child support enforcement, campaign violations, public utility regulation, special education, public housing evictions, civil service dismissals, and tax assessments. In the appendix is a table that summarizes what the executive agencies reported about the subject matter of their adjudication activities.

Some agencies conduct one or two types of hearings, others a wide range. The dispute is often between the State and a private party, as in the determining of welfare benefits, but sometimes the State serves as the arbiter between two parties, as in many workers' compensation cases.

Most hearings are conducted by full-time state employees known as hearing officers, referees, hearing examiners, or a similar title. Some of these positions are in civil service; other are exempt. Statewide,

there are 44 full-time hearing officer positions and 15 contract positions. The contract officers work part-time and preside over hearings as needed. Hearings may also be presided over by other departmental staff, by chairpersons or members of boards and commissions, or by deputy attorneys general.

Both attorneys and non-attorneys serve as hearing officers. The title "administrative law judge" is used in some other states and the federal government, but not in Hawaii.

The Department of Labor and Industrial Relations, which held more than 16,000 hearings in FY1988-89, has 30 hearing officer positions, of which 12 are allocated to the neighbor islands. The department also uses 3 contract hearing officers. Table 3.1 shows the number of hearing officer positions by agency. The totals are conservative: the table includes only those agencies that reported employing hearing officers, examiners, or referees to preside over hearings; and it omits agencies that did not report employing such persons. For example, the Department of Public Safety reports that it lacks "hearing officers" as such, but assigns current staff to its corrections hearings and parole officers to its parole hearings. Its hearings on criminal injuries compensation are conducted by a commission. Had we counted as a "hearing officer" every official who presides over hearings, the totals would have been higher.

Decisions and governing law

Agency directors, boards, and commissions usually make the final decisions. Although some hearing officers make final decisions, most of them make recommended decisions, with a higher authority such as the agency director, board, or commission making the final decision.

Most hearings are governed by Hawaii's Administrative Procedure Act (Chapter 91), but many are not covered by the act. Some, such as child support enforcement hearings and the Department of Education's special education hearings, are governed by both federal and state requirements.

Diversity of subjects

A few examples show the diversity of hearings in Hawaii:

- In child support hearings in the Department of the Attorney General, a parent contests the State's proposed order to establish, modify, or enforce a child support obligation. The hearing officers are permanent, exempt employees. Their decision is final within the department, although it may be appealed to the Family Court. The hearings are governed by federal and state laws and regulations. According to the department, Chapter 91 does not apply, but the process is generally consistent with it.

- The Department of Commerce and Consumer Affairs conducts disciplinary hearings against persons licensed or regulated by the department or its boards and commissions. Generally the hearing officer makes a recommended decision, and the director or a board or commission makes the final decision. State law, including Chapter 91, governs. The department also conducts hearings on revocations of trade names and trademarks and denials of no-fault benefits and occupational licenses. The three hearing officers are permanent, exempt employees.
- Workers' compensation hearings in the Department of Labor and Industrial Relations adjudicate claims for benefits from job-related disabilities and injuries. A hearing officer makes the recommended decision; the director makes the final decision. Claimants may appeal decisions to the Labor and Industrial Relations Appeals Board, which holds a completely new hearing. State laws, except Chapter 91, govern the hearing process. The department also has hearings on such subjects as apprenticeships, discrimination, notices of plant closings, collective bargaining, unlawful terminations of employment, temporary disability, and unemployment insurance. All of the full-time hearing officers are civil servants.
- The Administrative Appeals Office in the Department of Human Services conducts hearings on such wide-ranging subjects as entitlements to public assistance, reconsideration of Medicaid rates, and the licensing and certification of social service providers. Some hearings are governed by both state law and federal regulations, others by state law only. All are governed by Chapter 91. The hearing officers are permanent, civil service employees. In most cases, the hearing officer's decision is final, but in a few instances the director or a designee is the final authority. In some hearings, the final decision is made by the Foster Grandparent Advisory Council.

During FY1988-89, Hawaii's administrative agencies conducted an estimated 20,180 hearings. Table 3.2 shows the breakdown by agency for FY1988-89. Available data for FY1989-90 are also shown for purposes of comparison. Agencies hearing the most cases in FY1988-89 were the Department of Labor and Industrial Relations (80 percent of total hearings) and the Department of Public Safety (14 percent of total hearings). Many agencies, like the Department of Health, had only a few hearings during the two-year period (10 hearings). Some agencies held no hearings during this time.

Most of the 16,187 cases in the labor department in FY1988-89 involved disability or unemployment compensation. The Paroling Authority accounted for 2,206 of the 2,913 hearings conducted by the Department of Public Safety. Other busy agencies in FY1988-89 included the Criminal Injuries Compensation Commission, the Hawaii Housing Authority and the Administrative Appeals Office of the Department of Human Services, and the Public Utilities Commission. Table 3.3 shows a further breakdown of cases within the five departments hearing the most cases.

The data are similar for 1989-90, with some changes. The Office of Child Support Hearings of the Department of the Attorney General increased its hearings from 12 in FY1988-89 to 111 in 1989-90. In the Department of Labor, the number of unemployment claims hearings dropped dramatically from 8,822 in 1988-89 to 2,232 in 1989-90.

TABLE 3.1
State Hearing Officer Positions Reported by Agencies

Agency	Full-Time	Contract
Department of the Attorney General	7*	
Department of Budget and Finance		4
Department of Commerce and Consumer Affairs	3	
Department of Education		6
Department of Health	1	
Department of Hawaiian Home Lands		2
Department of Human Services	3	
Department of Labor and Industrial Relations	30*	3
Total	44	15

Source: Responses to auditor's letter of August 9, 1990, and auditor's survey, August 24, 1990.

Note: The table includes only those agencies that reported currently employing hearing officers, examiners, or referees. In some other agencies, only boards, commissions, and/or other personnel preside over the hearings. Thus the count is conservative.

*Not all positions are filled.

TABLE 3.2
Estimated Number of Cases Adjudicated in Administrative Hearings in
FY1988-89 and FY1989-90

	Fiscal Year 1988-89	Fiscal Year 1989-90
Office of the Governor	0	0
Office of the Lt. Governor ¹	N/A*	N/A*
Department of Agriculture	0	0
Department of the Attorney General ²	12	111
Department of Budget and Finance	263	280
Department of Business and Economic Development	32	34
Department of Commerce and Consumer Affairs	130	140
Department of Education ³	7	2
Department of Hawaiian Home Lands	0	8
Department of Health	10	10
Department of Human Services	552	679
Department of Labor and Industrial Relations	16,187	9,754
Department of Land and Natural Resources	0	4
Department of Personnel Services	26	89
Department of Public Safety	2,913	N/A ⁴
Department of Taxation	48	48
Department of Transportation	0	0
University of Hawaii	0	0
TOTAL	20,180	N/A

Source: Responses to auditor's survey, August 24, 1990.

Note: Data for FY1989-90 are not complete.

1. Responded that data were not available.
2. Hearings held in Office of Child Support Hearings.
3. Hearings related to special education only.
4. Data from Paroling Authority were not available.

TABLE 3.3
Breakdown of Cases in Agencies With Largest Number of
Hearings in FY1988-89 and FY1989-90

	FY1988-89	FY1989-90
Department of Budget and Finance		
Employees' Retirement System	22	7
Public Utilities Commission	240	270
Housing Finance and Development Corp.	1	3
Department of Commerce and Consumer Affairs		
Office of Administrative Hearings	130	140
Department of Human Services		
Administrative Appeals Office	360	458
Hawaii Housing Authority	192	221
Department of Labor & Industrial Relations		
Apprenticeship Division	0	1
Disability Compensation Division	7,185	7,348
Office of Employment and Training	0	1
Hawaii Labor Relations Board	15	3
Labor & Industrial Relations Appeals	86	107
Enforcement Division	79	62
Employment Security Appeals Office	8,822	2,232
Department of Public Safety		
Criminal Injuries Compensation Commission	707	700
Hawaii Paroling Authority	2,206	N/A

Source: Responses to auditor's survey, August 24, 1990.

Chapter 4

Findings and Recommendations

Adjudication in the executive branch differs in significant respects from adjudication in the judicial branch, but both branches share the goal of dispensing justice. The statutes and rules are the foundation upon which to build a fair and efficient procedure. Here we discuss some legal and administrative alternatives that could enhance the State's adjudicatory hearings.

Findings

1. By lending an appearance of impartiality, a central panel of state hearing officers is likely to foster more public confidence in the fairness of administrative adjudication. But it is not clear that centralization will in fact guarantee justice and efficiency. A pilot test of the concept would be useful.
2. There are promising alternatives for improvement without reorganization. They include:
 - Updating Hawaii's Administrative Procedure Act (Chapter 91, HRS).
 - Upgrading the agencies' administrative rules of procedure.
 - Reviewing each agency's hearing program.
 - Expanding the training of hearing officers.
 - Adopting a code of conduct for hearing officers.
 - Creating a generic classification for those hearing officers who are in civil service.

Central Panel Would Foster Confidence in Administrative Fairness

Few citizens would pursue their legal rights in court if they expected the judge and jury to be biased against them. The same is true in administrative adjudication. The welfare recipient whose payments have been terminated, the physician threatened with loss of license, the parent desperate for child support, all these people need to believe that the hearing officer who presides over their case will treat them fairly. Many experts feel that a central panel would encourage this belief.

The main ingredient here is often called “the appearance of impartiality.” Legal commentators and courts—including the Hawaii Supreme Court—have observed that the appearance of fairness is as important as fairness itself.¹ Some of the hearing officers and others we interviewed informed us that perceptions of bias do exist in Hawaii because hearing officers are employed by the agencies and conduct the proceedings on agency premises. Greater impartiality was one of the basic arguments given in support of a central panel.

Agencies have a stake in the outcome of their hearings, either as parties to the proceedings or for reasons of policy, programs, and politics. Because of this, private parties may see the deck as stacked against them, causing them to abandon their claims. Public perceptions of bias can undermine faith in specific agencies, in the hearing process, and in government as a whole. Moving the hearing function to more neutral turf and putting it in the care of persons not employed by the agency could change these perceptions.

On a cautionary note, a central panel also could be viewed as more vulnerable to larger political forces than a decentralized system. The State would then have traded perceptions of bias toward a particular agency for perceptions of bias toward the central state administration.

Actual impact uncertain

But however much they may foster the perception of fairness, central panels in and of themselves cannot guarantee fairness. A fair process depends on many factors—the experience and training of hearing officers, their attitudes towards their duties and responsibilities, the ethical expectations of government, the insulation of hearing officers from influence and coercion, the adequacy of procedural requirements, and more. Centralization would not necessarily bring improvements in all these areas.

In the opinion of administrators in states with central panels, the efficiency and fairness (real and perceived) of their systems have improved with centralization. Cost savings, however, have been difficult to measure, and we could not verify their claims.

Proponents of a central panel also believe that a decentralized system is more open to abuse. The pressure that an agency can exert on hearing officers to rule in a particular way has been offered as a strong reason for creating a central panel. Many administrators are in a position to influence a decision, subtly or directly, thereby compromising the integrity and fairness of the process. For example, a task force in New York State found that administrators had exerted undue influence over hearings decisions. The study reported that “all too often the substantive findings and decisions of agency administrative law judges [in New York State] are influenced by

executive officials within the agency” and that often the influence “is so pervasive as to prevent agency hearings from being truly fair and impartial.”²

Studies in other jurisdictions, however, found no extensive evidence of this problem.

Hearing officers interviewed in this study believed there was no widespread unfairness or inefficiency in Hawaii’s current system. Most hearing officers said they were not pressured by administrators. Those who did report pressures attributed these to sharing the same building with department staff and administrators, knowing the agency’s position on certain issues, dealing regularly with the same agency employees, and being aware of a relationship between management and some parties. Some persons also felt pressure when adjudicating cases receiving lots of publicity or those involving large sums of money where the State was either a party or had some interest.

Pilot test central panel concept

In view of the equally strong arguments for and against a central panel and the need for more data regarding its actual benefits, we believe a pilot test of the concept is called for.

Many of the arguments against central panels can be answered. The criticism that hearing officers will lose subject matter specialization can be countered by organizing them into divisions specializing in certain subjects. Another criticism, that a central panel would limit the agencies’ prerogative of making policy, fails to consider that most hearing officers make only recommended decisions, and that even with a central panel, most agencies would continue to make the final decision.

The concept of centralization has some support in Hawaii. About a third of the agency administrators expressing an opinion said they would support some degree of centralization, though almost twice as many said they would not. Among hearing officers, about a third thought centralization was a good idea; only a few were directly opposed. Officials who approved of an independent corps spoke of enhancing independence and impartiality, promoting efficiency and uniformity, and separating functions. Opponents preferred the current system, feared a decrease in efficiency and agency accountability, and questioned whether a central panel would be able to hear cases requiring specialized expertise.

For the existing system, however, there was little open criticism. Most administrators and hearing officers saw no fundamental problems with the efficiency, impartiality, and fairness of

administrative adjudication in their programs or in other programs. Most hearing officers interviewed were confident of their own independence.

Thus a number of arguments can be marshalled against carrying out a major reorganization at this time: the formation of a central panel would involve some disruption; the impact of central panels on fairness and efficiency is not proven; and a number of promising alternatives for improvement exist. We therefore recommend creating a modified central panel as a pilot project. The idea, we believe, has merit because of the potential a central panel has for fostering public confidence in the fairness of administrative hearings.

Steps in pilot project

The governor should establish a task force of representatives from executive agencies that hold hearings. Its mission would be to develop and implement a central panel pilot project. The task force should take the following steps:

1. **Project initiation.** The task force should outline the reasons justifying the project; its objectives, nature, and scope; the estimated commencement and completion dates; the resources needed; the anticipated benefits; and the criteria for evaluating how successful the central panel is in attaining its objectives. The attorney general could be consulted regarding legal issues.

Ideally, the pilot project should ascertain the cost-effectiveness of a central panel and allow conclusions as to the most workable design and organization. The project could help ascertain whether a panel of hearing officers could handle the specialized hearings of different agencies, and it could identify those agencies most suited to centralization. Assessing economies of scale should be attempted.

2. **Pilot project design.** In this phase, the task force should identify specific costs, project phases, tasks, and time requirements. The design should lay out the configuration of the project, its location, the agencies to be included, and the criteria, instruments, and procedures to be used in measuring its success. The task force should review the needs of each agency to determine how well-suited it is for the pilot project. The task force should obtain an independent appraisal of the evaluation methodology. Based on the results of the task force's review of agency needs, programs could be added incrementally to the central panel.

The task force might consider designating the hearing office at the Department of Commerce and Consumer Affairs (DCCA) as

the location for the pilot test. The office handles a wide variety of hearings concerning regulated occupations, trade names, trademarks, and no-fault insurance benefits. Moreover, DCCA already has agreements with the Department of Agriculture and the Division of Vocational Rehabilitation of the Department of Human Services to conduct hearings on their behalf.

The task force would have to resolve several issues before using any hearing office for a pilot test. First, agencies may not have sufficient authority to delegate part of their adjudicatory powers to another entity without an explicit mandate from the Legislature or the governor. Second, there is concern about which procedural rules will be followed in a delegated hearing. For example, under its current arrangement with other agencies, DCCA plans to use its own procedural rules (if parties consent) should there be gaps in the agencies' rules. This practice could create controversy and confusion about which rules to apply. Third, it may not be appropriate for the central panel agency to apply the substantive rules of other agencies without knowledge or training in the subject. The pilot office must know the limits of agency jurisdiction and the degree of discretion and authority given to them by legislation. Decisions made by hearing officers can be overturned if the courts find that the hearing officer interpreted the law too broadly.

3. **Status and progress reports.** The task force would ensure that the pilot project progresses as planned in time, money, and effort, and it should submit periodic progress reports to the governor and the Legislature.
4. **Evaluation.** At the conclusion of the pilot phase, the task force should obtain an independent evaluation. The final report of the task force should include recommendations to the Legislature on whether a central panel should be adopted and if so, the proposed location, organizational structure, and other details.

Alternatives to Reorganization Are Available

Several actions have the potential for improving Hawaii's adjudicatory hearings without a major reorganization. These are (1) re-examining Hawaii's Administrative Procedure Act, (2) improving the procedural rules of each agency, (3) reviewing the hearing program of each agency, (4) expanding the training of hearing officers, (5) adopting a code of conduct for hearing officers, and (6) creating a generic classification for hearing officers who are in the civil service.

Re-examine Administrative Procedure Act

Many developments related to adjudication are not addressed in Hawaii's Administrative Procedure Act (Chapter 91, HRS). Since enactment in 1961, amendments have been made concerning rulemaking and judicial review, but the contested case provisions are very little changed.

The Model State Administrative Procedure Act of 1981 can be used to highlight areas not addressed by state administrative procedures and to provide suggested language. A review of Chapter 91 should include, at a minimum, an examination of its organization and the gaps that should be filled. Because of inadequacies in these two areas, agencies and the public may not be fully aware of their rights and responsibilities and there may be procedural and decisional inconsistencies by hearing officers.

Organization

The 1981 model act is clearly organized and provides a complete set of procedures.³ In contrast, Hawaii's act covers only rulemaking, contested case hearings, and judicial review and does not provide complete guidance in these areas. For example, the authority of administrative agencies to require and administer oaths at contested case hearings is not found in Chapter 91. Instead, this general power of administrative agencies is found in another chapter relating to public agency meetings and records.⁴ The act does not cross reference these provisions.

Omissions

There are several areas that Chapter 91 omits. These weaknesses can limit an agency's ability to promulgate rules, policies, and procedures that meet both its needs and the public's. Statutory language in these areas would give agencies clear authority to establish rules and set parameters for the use of an agency's powers.

1. **Impartial and competent hearing official.** The statute is silent on the responsibility of agencies to provide an impartial and competent hearing official. Without clear guidance, agencies may lack rules that allow the public to question the impartiality or competence of hearing officials.
2. **Reasonableness of costs of the administrative hearing and further appeal.** Costs have the potential of prohibiting public access to the administrative adjudicatory process. Chapter 91 should have guidelines on reasonableness of costs. Although costs related to agency proceedings are not easily specified, a general guideline would give the public a guarantee of reasonableness.

3. Ex parte communication and separation of functions.

Chapter 91 should be strengthened in both areas. The 1981 act provides a good model for each. *Ex parte* communications are those that leave out one party. The 1981 model act bars communications between the hearing officer and anyone who has an interest in the outcome of the proceeding, or anyone who presided at a previous stage of the proceeding, unless all parties are given an opportunity to take part in the communication. The 1981 model act also lays out actions to be taken if contacts occur, including possible disqualification of the hearing officer. Without clear guidelines, hearing officers can have varying opinions on *ex parte* communications. In one agency, some officers said that *ex parte* communication was prohibited, others said that it was allowed, and still others said they did not know.

To ensure separation of functions, the model act prohibits persons who served as investigators, prosecutors, or advocates in any phase of the case from presiding over the hearing.

4. Pre-hearing conferences. Pre-hearing conferences allow hearing officers to explore settlements, clarify issues, and decide pre-hearing matters with parties informally. Such conferences can expedite resolution of a case. Without direction from Chapter 91, agencies could omit pre-hearing conferences from their rules. Agencies could also inappropriately expand pre-hearing conferences to allow for motions and decisions on substantive matters.

Improve rules of procedure

Nearly all of the 37 sets of agency rules that we studied (1) rely excessively on statutory provisions for clarity and guidance, (2) contain insufficient procedural safeguards for persons seeking administrative relief, and (3) are ambiguous because they are silent on important issues or poorly organized.

Perhaps most important to our study, about 75 percent of the rules do not adequately head off conflicts of interest on the part of hearing officers. First, the rules do not proscribe or discourage conflicts of interest attributable to family or business relationships that might give the hearing officer an interest in the outcome of the case. Second, most of the rules lack procedures for challenging the hearing officer.

Some of the rules deal inadequately with notice, evidence, and appellate rights by merely referring to general statutory provisions for guidance instead of expanding on and clarifying those provisions. For instance, the Board of Agriculture's Rules of Practice and Procedure, Section 4-1-39, cite for guidance Section 91-9.5, HRS,

pertaining to service of process for notices and give only a cross reference to Section 91-9, which describes the necessary elements of proper notice.

Procedural safeguards are inadequate or missing entirely in many of the rules. In more than two-thirds of the rules, provisions for notice of hearing to affected parties fail to require disclosure of such essential information as the date, time, and place of the hearing; rights of the affected party; authority of the administrative agency; and description of the issues in dispute as required under Section 91-9. In a typical case, rules of the Hawaii Employment Relations Board merely provide for written notice of the time and place of the hearing without mentioning (1) respondent's right to be represented by legal counsel, (2) respondent's right to present and challenge witnesses and evidence, (3) a description of the issues in dispute, and (4) the legal authority of the agency.

Approximately one-quarter of the rules omit or provide insufficient evidentiary guidelines. Like Chapter 91, none of the rules address the competency of hearing officers or the reasonableness of the costs for administrative hearings and appellate review.

About one-quarter of the rules do not provide or inadequately provide for the right of a party to appear with legal counsel. The oversight may be because the agencies are relying on Chapter 91 to fill this gap. However, none of these rules cite Section 91-9(b) of the Administrative Procedure Act, dealing with legal counsel.

About half of the rules do not provide or inadequately provide guidelines for (1) decisions to be based solely on the evidence presented at the hearing, (2) decisions to be explained in writing, and (3) records to be made of the information presented at the hearing. The right of parties to appeal decisions to the courts is either missing or inadequately addressed in many rules.

Most of the rules do not restrict *ex parte* communication, and some rules that do have such restrictions are inadequate. For example, the Board of Agriculture's restriction of *ex parte* communication does not address the issues of furnishing, augmenting, diminishing, or modifying the evidence introduced at the hearing. The rules of the Intake Services Centers in the Department of Public Safety are insufficient because they fail to restrict communications to subordinates or representatives of hearing officers or any alteration of the evidence in the record.

Most of the rules do not provide for pre-hearing conferences, and many of those that do fail to point to any legal authority for such conferences.

Need for regular review

Properly drafted rules can (1) promote uniformity of the process for persons seeking relief, (2) clarify specific procedural and substantive requirements for obtaining relief, and (3) facilitate fair and efficient handling of matters. Ideally, the rules should establish minimum procedural safeguards for parties, set forth the requirements for hearing officers, and describe the criteria for decision-making.

The procedural rules adopted by each agency should be a self-contained set that (1) restates Chapter 91, as applicable and procedural requirements of other statutes relevant to the subject matter of the program, and (2) expands upon these statutes as needed to structure the type of hearing involved.

A few of the agencies have rules for administrative adjudication that with some polishing could be models for other agencies. These are the contested case rules of the Department of Commerce and Consumer Affairs, the Department of Hawaiian Home Lands, and the Land Use Commission, and the rules of the Department of the Attorney General governing child support hearings.

Each agency should review its procedural rules and make improvements as needed, focusing on the problems we described above. As part of this process, the agencies should compile their suggestions for improvements in Chapter 91. This review process would enable the State to resolve issues which arise because of court decisions, agency experiences, or other developments in administrative law.

Review the hearing programs

State agencies could improve their hearing programs by increasing the organizational independence of hearing officers. Physical separation would also help.

Organizational independence

Independence, or the freedom from bias, coercion, or external influence, is necessary in hearings. A court may find due process wanting if an agency is unable to act impartially in judging a case. Agencies should organize their hearings to maintain both the fact and appearance of impartiality.

The impartiality of hearing officers hinges on the nature of their relationship with the agency. The location of a hearing unit within the agency and the extent of agency control over the unit will generally dictate how much influence (actual or perceived) an agency has over the hearing officers. Distancing hearing officers from the agency fosters independence. Likewise, heavy involvement by the

agency over operations such as the budget, promotions, employment, and allocations of office space, may also compromise the hearing process.

Administrative agencies in Hawaii appear to be aware of the need to keep the hearing function separate. Some agencies, such as the Department of Commerce and Consumer Affairs and the Department of Human Services, have the hearing office report to the director. This arrangement maximizes the separation of the hearing function from the investigative and prosecutorial functions of the agency.

The Department of the Attorney General is separating its Child Support Hearings Office from the Child Support Enforcement Agency. The enforcement division investigates and prosecutes child support cases; the hearings office adjudicates contested cases between the enforcement agency and private parties. Until recently, the enforcement office controlled the hearings office budget. This meant that the hearings office had to submit its budget request to the division head responsible for prosecuting child support cases, creating some operational difficulties as well as problems in appearance. The department is reorganizing by separating the hearing office from the enforcement division.

The combination of certain functions within a position, unit, or agency can also affect the fact and appearance of fairness. For example, the workers' compensation law requires the director of the Department of Labor and Industrial Relations to decide any claim for compensation. The law also charges the director to administer the special compensation fund. Payments for a compensable injury must come either from the injured employee's employer or from the special compensation fund. The director's dual role of administering the fund and deciding issues of compensability could conflict, for example, should compensation threaten the fund's solvency or reduce its value.

Co-location with agency

Ideally, both the hearings offices and the hearings rooms should be in a location separate from other departmental staff. Some parties reportedly perceived the process to be unfair because hearings were conducted at agency offices. Few agencies have taken steps to remove their hearing office from the building that houses their other operations. The Administrative Appeals Office of the Department of Human Services is in a building separate from other staff. However, because federal welfare regulations require that hearings take place near where recipients live, most of the hearings still take place in regular department offices.

State agencies with full-time hearing officers should consider separating the hearings office from other agency offices. An independent office may remove some of the perceptions of bias about the current decentralized hearings. Hearing officers would have greater independence, and public confidence in the hearings process could be heightened.

Expand training for hearing officers

Most administrative hearings in Hawaii are conducted by full-time hearing officers. Some are also performed by the administrators and staff of agencies, appointed members of boards and commissions, and hearing officers hired on contract. Most state agencies have no formal training requirements for persons serving as hearing officers. The Department of Education requires its special education hearing officers, who are hired on contract, to have training every six months.

The training of hearing officers varies from informal, on-the-job activities and special conferences to more formal coursework at the National Judicial College. About half the hearing officers interviewed said that they attended at least one administrative law course at the National Judicial College.

Those conducting administrative hearings should receive formal training in the handling of evidence, the conduct of a fair hearing, proper demeanor, and related topics. They must understand their role and proper conduct as impartial decision makers. Training should also teach hearing officers their subject matter. Most hearing officers in the State hear cases in a specific subject area such as child support, welfare, or workers' compensation.

Training could promote due process, equity, and efficiency. Hearing officers with the right training will be better qualified to protect the due process of parties in a hearing. They may be better able to control the proceedings and render decisions with greater speed. They may, as a consequence, be perceived as more fair and just.

Adopt code of conduct

Hearing officers in Hawaii do not now have a generic code of professional conduct. The Department of Commerce and Consumer Affairs has adopted applicable portions of the Code of Judicial Conduct used by court judges. The code is designed to ensure that judges maintain their impartiality and independence and avoid activities that could result in a conflict of interest.

An Oregon study observed that a code of conduct promotes fairness and consistency in the hearing process, discourages interferences with and abuses of the process, and results in greater trust and confidence in the government. The Oregon report concluded that developing a code specifically for hearing officers was preferable to simply applying the Code of Judicial Conduct.⁵

We agree. Although a judicial code provides a good model for drafting a hearing officer code, its language refers to "the judiciary" and "the courts" throughout. Rather than wholesale adoption, it would be better to revise the judicial code with the help of hearing officers and others to determine whether all of its provisions are appropriate to the administrative setting. We recommend that the agencies develop a model code of professional conduct for state hearing officers together with hearing officers, the State Ethics Commission, the Judiciary, and the Hawaii State Bar Association.

Create a generic hearing officer classification

The class specifications for hearing officer positions in the civil service are different for each program. There is no generic class specification for hearing officer, although the various class specifications are about the same. Applicants must have been graduated from an accredited college or university or have relevant work experience.

The distinction among the specifications lies in the description of subject matter knowledge. Applicants for workers' compensation hearing officer positions are required to have experience working with the laws, rules, and regulations related to workers' compensation. Employment security appeals referees and public welfare hearing officers have similar requirements for specialized experience. This material can be learned on the job and in formal training.

The Department of Personnel Services should consider creating a generic hearing officer class. This would promote the exchange of personnel among agencies to stimulate growth and development. A generic class would also respond to concerns about qualification standards and possible inequities in compensation.

A related issue is whether hearing officers should be in the civil service. Most hearing officer positions in Hawaii are covered under the civil service law. However, a number are exempt, including those at the Department of Commerce and Consumer Affairs, the Department of the Attorney General, and the Department of Health.

Many believe that civil service status enhances the independence of hearing officers. The federal Administrative Procedure Act requires that all federal administrative law judge positions be civil service appointments. These federal administrative law judges can be removed only upon good cause and after an opportunity for a hearing.

Provide continued support and guidance

The governor has brought together state hearing officers by holding statewide conferences in 1989 and 1990. These conferences are geared to improve administrative adjudication in Hawaii and would

be the logical forum to make, or to assist in making, many of the recommendations in this report. We believe that the conference should create a mechanism--such as a standing committee or ongoing study group--that would provide assistance to agencies in their review of rules, in improving their hearing programs, and in developing a code of conduct. The committee or group would review suggestions for improvements in Chapter 91; develop a basic code of conduct working with the State Ethics Commission, the Judiciary, and the Hawaii State Bar Association; assist the Department of Personnel Services in developing a generic civil service class specification for hearing officer; and assess whether hearing officer positions should be made civil service.

The governor could provide additional guidance by requiring that anyone conducting hearings receive appropriate training, by supporting the improvement of Chapter 91 and agency procedural rules, and by reinforcing among his cabinet members and appointees the need to ensure fairness and the appearance of fairness in adjudication.

Recommendations

1. Each agency should review and improve its rules governing adjudicatory hearings and propose changes in Chapter 91 as appropriate.
2. Each agency should review its hearing program to ensure the organizational independence of hearing officers and expand their formal training. The agencies should adopt a code of professional conduct for their hearing officers.
3. The Department of Personnel Services should consider establishing a generic hearing officer personnel classification.
4. The Legislature should request that the governor establish a task force on administrative adjudication to pilot test the central panel concept. The task force would be responsible for project initiation, planning, implementation, and evaluation.
5. The statewide conference of hearing officers should create an ongoing mechanism to assist agencies in their review of rules and programs, assist in developing a generic code of conduct, review proposals for changes in Chapter 91, and assist the Department of Personnel Services with a generic hearing officer classification.

Notes

Chapter 2

1. Bernard Schwartz, *Administrative Law*, 2nd ed., Boston, Little, Brown and Co., 1984, p. 2.
2. Walter Gellhorn, "The Administrative Procedure Act: The Beginnings," *Virginia Law Review*, vol. 72, no. 2, March 1986, p. 226.
3. Sections 91-1(5), 91-1(6), and 91-14, HRS.
4. Sections 91-9 through 91-12, HRS.
5. See Lea Oksoon Hong, "*Sandy Beach Defense Fund v. City and County of Honolulu: The Sufficiency of Legislative Hearings in an Administrative Setting*," *University of Hawaii Law Review*, vol. 12, no. 2, Fall 1990, pp. 499-532; and Eric Yamamoto, "Resolving Disputes with Local Government Authorities in Pacific Rim Countries: The Hawaii Sandy Beach Controversy," *Town Planning and Local Government Guide*, January 1990, pp. 3-10.
6. Schwartz, *Administrative Law*, p. 29.
7. *Goldberg v. Kelly*, 397 U.S. 254 (1970).
8. *Mathews v. Eldridge*, 424 U.S. 319 (1976).
9. *Mathews*, p. 335.
10. Section 91-14, HRS. See Denise Nip, "*Outdoor Circle v. Harold K.L. Castle Trust Estate: Judicial Review of Administrative Decisions*," *University of Hawaii Law Review*, vol. 7, no. 2, Summer 1985, pp. 449-472.
11. *Withrow v. Larkin*, 421 U.S. 35 (1975).
12. Schwartz, *Administrative Law*, p. 333.
13. California Law Revision Commission, Memorandum 90-36, Subject: Administrative Adjudication (Central Panel), April 2, 1990.

14. Wyoming has an independent administrative hearings office which hears only workers' compensation cases. New York City has a centralized system, but New York State does not.

Chapter 4

1. See *Sussel v. City and County of Honolulu Civil Service Commission*, *Hawaii Reports*, vol. 71, pp. 102-110.
2. New York State Bar Association, *Report of the Task Force on Administrative Adjudication*, July 14, 1988, p. i.
3. Uniform Law Commissioners, *Model State Administrative Procedure Act* (1981), vol. 15 of *Uniform Laws Annotated*, Saint Paul, Minnesota, West Publishing Co., 1990 (see especially Article IV, "Adjudicative Proceedings").
4. Sections 92-2 and 92-16, HRS.
5. Oregon, Commission on Administrative Hearings, *Report of the Commission on Administrative Hearings to the Sixty-Fifth Legislative Assembly, The Chief Justice of the Oregon Supreme Court, and the Governor of the State of Oregon*, April 1989, pp. 19-23.

Responses of the Affected Agencies

Comments on Agency Responses

On January 29, 1991, we transmitted a draft of this study to the following departments: attorney general, budget and finance, commerce and consumer affairs, education, Hawaiian home lands, health, human services, labor and industrial relations, and personnel services. A copy of the transmittal letter to the Department of Personnel Services is included as Attachment 1. Similar letters were sent to the other departments.

Written responses were submitted only by the departments of personnel services, commerce and consumer affairs, education, human services, and labor and industrial relations. Their responses are included as Attachments 2, 3, 4, 5, and 6, respectively.

The departments of commerce and consumer affairs, education, and human services concur with our recommendations. The Department of Personnel Services approves of our recommendation to pilot test the central panel concept. The department says that it should wait for results from the pilot project before modifying the current classification of hearing officers. The Department of Labor and Industrial Relations takes exception to our recommendation to pilot test the central panel concept. It says that the existing system of assigning hearing officers to the department has served the department well and should not be changed. We suggested in our report that the needs of each agency should be reviewed to determine how well-suited it is for the pilot project and that the hearing office at the Department of Commerce and Consumer Affairs might be the appropriate location for the pilot test.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813



(808) 548-2450
FAX: (808) 548-2693

January 29, 1991

C O P Y

The Honorable Sharon Y. Miyashiro
Director
Department of Personnel Services
Keelikolani Building
830 Punchbowl Street
Honolulu, Hawaii 96813

Dear Ms. Miyashiro:

Enclosed are three copies, numbers 30 to 32 of our draft report, *Study of Administrative Adjudication in Hawaii*. We ask that you telephone us by Thursday, January 31, 1991, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, February 8, 1991.

The Directors of Budget and Finance, Commerce and Consumer Affairs, Hawaiian Home Lands, Health, Human Services, Labor and Industrial Relations, and the Attorney General, the Superintendent of Education, the Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Newton Sue
Newton Sue
Acting Legislative Auditor

Enclosures

JOHN WAIHEE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF PERSONNEL SERVICES
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

SHARON Y. MIYASHIRO
DIRECTOR

LAWRENCE ISHIMI
DEPUTY DIRECTOR

February 7, 1991

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OFC. OF THE AUDITOR
STATE OF HAWAII

The Honorable Newton Sue
Acting Legislative Auditor
Office of the Auditor
465 S. King Street
Honolulu, Hawaii 96813

Dear Mr. Sue:

Thank you for sharing your draft report on "Study of Administrative Adjudication in Hawaii". Our comments are provided below.

We note that the basic recommendation of your report is to pilot test the central panel concept "in view of the equally strong arguments for and against a central panel and the need for more data regarding its actual benefits". The report further details the steps for the pilot project, of which, one of the step calls for an evaluation at the conclusion of the pilot project.

We believe that your basic recommendation is a good idea, and therefore, we should wait for the evaluation report before we start to modify the current classification scheme of the hearings officer positions or "consider" a generic class. We currently have many "non-generic" hearing officer classes. The line agencies have indicated preferences for non-generic, specialized classes because of the need for program knowledge.

Having stated the above, we want to emphasize that if the departments show interest in establishing "generic" hearing officer classes, we certainly will work with them without waiting for the evaluation report. We wish to serve the line agencies and avoid dictating how their positions should be structured.

Mr. Newton Sue
Page 2

February 7, 1991

Our department should also be invited to participate in the state-wide conference of hearing officers so we could assist the line agencies and the hearing officers in discussing the pros and cons of generic hearing officer classes.

If you have any questions, please call Ms. Kaapu at 8-7952. Thank you.

Sincerely,



SHARON Y. MIYASHIRO
Director

cc: D. Kaapu, CCR/DPS



JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR
COMMISSIONER OF SECURITIES

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

February 7, 1991

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The Honorable Newton Sue
Acting Legislative Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

FEB 8 9 32 AM '91
OFF. OF THE AUDITOR
STATE OF HAWAII

Re: Study of Administrative Adjudication In Hawaii Draft Report

Dear Mr. Sue:

The Department of Commerce and Consumer Affairs agrees with the substance of the Study of Administrative Adjudication In Hawaii Draft Report, and supports the recommendations which are raised in the Report.

The Department has long been cognizant of the unique nature of the administrative hearings process, and the concomitant obligations of the Department to ensure that the administrative hearings process be conducted in a manner which is commensurate with the seriousness of the subject matter of the administrative hearings

By way of clarification, there are just a few items which I would like to address regarding the manner in which the Department conducts administrative hearings. First, the Department has promulgated Hawaii Administrative Rules Chapter 201 which specifies the procedural aspects of hearings conducted by the Department, including: 1) the requirements for a fair and impartial hearings officer; 2) the grounds for the recusal of a hearings officer in situations where an appearance of conflict may arise; 3) the prohibition of ex parte communications between the participants and the hearings officer or the final administrative authority; and 4) the requirements for holding prehearing conferences.

As far as the costs to the participants for an administrative hearing, the Department has never required any filing fees or other costs as part of the hearings process; however, in no-fault denial hearings, there is statutory authority for the insurance commissioner to impose the costs of the hearings on either or both parties. Therefore, as far as the Department is concerned, the cost of the hearing process has never been a factor in terms of people having access to the Department's administrative hearings process.

The training of Department hearings officers has from the inception of the Department's Office of Administrative Hearings, been a priority of the administrative

Mr. Newton Sue

Page 2

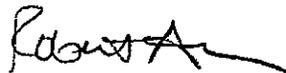
February 7, 1991

hearings process. All Department hearings officers must be attorneys licensed to practice law in the State of Hawaii. Furthermore, all Department hearings officers receive formal training at the National Judicial College. Department hearings officers also attend training and informational seminars to develop and maintain their administrative hearing skills and increase their knowledge of specific subject matters.

Insofar as the code of conduct for Department hearings officers, the Code of Judicial Conduct has always been the source of guidance for Department hearings officers, and on April 15, 1988 the Code of Judicial Conduct was formally adopted by the Office of Administrative Hearings. The Office of Administrative Hearings is also a member of the Conference of Central Panel Directors, which is a national organization comprised of the Chief Administrative Law Judges of states which utilize central panels for conducting administrative hearings. The Senior Hearings Officer for the Department is a member of the Conference of Central Panel Director's Ethics Committee, which is presently in the process of drafting a model code of conduct for administrative law judges.

In closing, the Department reiterates its agreement with the Report, and the Department would be willing to provide whatever support may be necessary in regards to the task force on administrative adjudication, and the proposed pilot test for the central panel concept.

Very truly yours,



ROBERT A. ALM

Director



STATE OF HAWAII
DEPARTMENT OF EDUCATION

P. O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

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FEB 7 8 28 AM '91

OFF. OF THE AUDITOR
STATE OF HAWAII

January 31, 1991

Mr. Newton Sue
Acting Legislative Auditor
Office of the Auditor
465 South King Street
Honolulu, Hawaii 96813

Dear Mr. Sue:

Thank you for the opportunity to respond to your draft report, Study of Administrative Adjudication in Hawaii. We have reviewed the report and concur with your recommendations.

Sincerely,

A handwritten signature in cursive script that reads "Charles T. Toguchi".

Charles T. Toguchi
Superintendent of Education

CTT:ry

cc: Management Analysis & Compliance Branch

ATTACHMENT 5

JOHN WAIHIEE
GOVERNOR



WINONA E. RUBIN
DIRECTOR
~~LYNN FALLIN~~
~~DEPUTY DIRECTOR~~
LEO MATSUBARA
~~DEPUTY DIRECTOR~~

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

ADMINISTRATIVE APPEALS OFFICE
P. O. BOX 339
Honolulu, Hawaii 96809

MEMORANDUM:

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FEB 13 8 47 AM '91

OFF. OF THE AUDITOR
STATE OF HAWAII

TO: Newton Sue
Acting Legislative Auditor
Office of the Auditor

FROM: Winona E. Rubin *WR*
Director of Human Services
Department of Human Services

THROUGH: Susan M. U. Wong *S.M.U.*
Appeals Administrator
Administrative Appeals Office

DATE: February 12, 1991

SUBJECT: Comments to draft, Study of Administrative Adjudication
in Hawaii

Thank you for the opportunity to respond to Study of Administrative Adjudication in Hawaii. We generally support your findings and recommendations and regard your alternatives to reorganization as valuable to administrative adjudication even without consideration of a central panel.

The following comments from the Administrative Appeals Office (AAO) are forwarded to you:

Chapter 2 -- Background:

Due Process in Formal Administrative Adjudication, page 5--We at AAO believe there is a typographical error in the last statement of the first paragraph: "Due process requires fundamental fairness even where the State adjudicates disputes between private individuals and is not a party in the dispute." In context of the paragraph which discusses the need for fairness when the State is a party, the conclusion must be that due process requires fairness where the State is adjudicator and party. Therefore, "not" should be deleted.

As defined by the courts, page 5--We concur that Goldberg v. Kelly is one of two definitive statements by the Supreme Court about due process requirements. The justices identified procedural requirements of due process, but one may argue whether there are ten requirements as stated on page 5 because the Supreme Court did not so identify the procedures numerically. More importantly, we believe the procedural requirements listed on that page should include the right to an impartial decisionmaker as recognized at 397 U.S. 271. The "right to an attorney" as stated on page 5 is a misstatement because Justice Brennan was careful to note: "We do not say that counsel must be provided at the pre-termination hearing, but only that the recipient must be allowed to retain an attorney if he so desires." 397 U.S. 270. The list at page 5 should state "the right to retain counsel."

Chapter 3: Administrative Adjudicatory Hearings in Hawaii

Diversity of subjects, page 15--The description of hearings conducted by the Department of Human Services is accurate and we appreciate its thoroughness. We do note, however, that although administrative rules designate the Foster Grandparent Advisory Council as final decisionmaker, the appeal is not by hearing, but by review. Hawaii Administrative Rules §17-900-9.

Chapter 4: Findings and Recommendations

Findings, page 19--We generally support the findings and proposed alternatives.

Pilot test central panel concept, page 22--Although we support the idea of establishing a task force of representatives from executive agencies that hold hearings, we believe such a project would require resources beyond allocations available to the agencies even if there could be savings as a result of hearings conducted for agencies participating in the project. We suggest that the legislature support the concept with funding sufficient to support a pilot test central panel.

Alternative to Reorganization are Available, page 23--We wholeheartedly support the alternatives listed as necessary and vital to efficient administrative adjudication even without consideration of a central panel.

Improve rules of procedure, page 26--We endorse the recommendation that agencies review and improve rules of procedures. We believe the auditors recommendations will provide a good base from which our agency can work. We comment that the Department of Human Services Administrative Rules §17-2-14 provides standards for disqualification of director or hearing officer and addresses competency of hearing officers to conduct a

hearing. See page 26, paragraph 2. Also, we would like to reiterate the right of a party to appear with legal counsel is the right of a party to "retain counsel if the party so desires." Hawaii Revised Statutes §91-9(9). We think agency clients hesitate to pursue administrative appeals because of the belief that legal counsel is indispensable to appeals. The Department of Human Services Administrative Rules §17-602-6(2) states: "The claimant or the authorized representative shall have an opportunity to present the case independently or with the aid of others including legal counsel."

Recommendations, p. 31--We support the auditor's recommendations and we also think that these recommendations may be topics for examination through the Governor's Conference for State Hearing Officers.

JOHN WAIHEE
GOVERNORMARIO R. RAMIL
DIRECTORSHARON Y. MIYASHIRO
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

February 7, 1991

RECEIVED

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OFFICE OF THE AUDITOR
STATE OF HAWAIIMEMORANDUM

To: The Honorable Newton Sue
Acting Legislative Auditor

From: Mario R. Ramil, Director
Department of Labor and Industrial Relations

Subject: Study of Administrative Adjudication

Thank you for the opportunity to comment on subject draft which provides a comprehensive overview of the State's system of administrative adjudication. We have a direct interest in your findings and recommendations, since as you noted in your report, DLIR conducts the highest number of hearings in State government. Accordingly, there are two points we wish to make: the first is in the way of explanation and clarification, and the second takes exception to your recommendation calling for a pilot project to test a centralized hearings officer pool.

First point: p. 18, Table 3.3 shows the Employment Security Appeals Office as conducting 8,822 hearings in FY 88-89, and 2,233 hearings in FY 89-90. While this represents a significant decrease, we note that the reason for the high figure in FY 88-89 was the large number of backlogged labor dispute cases. The normal workload for this particular office is in the 2,000-plus range.

Second point concerns your recommendation calling for a pilot test of the central panel concept. We believe that the present system we have now where hearings officers are assigned to the department, has served us well and should not be changed.

Nonetheless, should the legislature decide in favor of a pilot test, please rest assured of our full cooperation. Should you have any questions, please call me.

APPENDIX
Subjects of Administrative Adjudicatory Hearings

Agency	Subject
Office of the Governor	
Office of State Planning	<ul style="list-style-type: none"> • Applications for special management area permits
Office of the Lt. Governor	
Boards of Registration	<ul style="list-style-type: none"> • Voter challenges • Voter registration
Campaign Spending Commission	<ul style="list-style-type: none"> • Violations of the Campaign Spending Law
Department of Agriculture	
Commodities Branch	<ul style="list-style-type: none"> • License suspension/revocation and other penalties for non-compliance with laws and rules • Establishment of marketing orders and agreements
Milk Control Branch	<ul style="list-style-type: none"> • Milk control statute and rules
Plant Industry Division	<ul style="list-style-type: none"> • Regulation of pesticide distribution and use
Department of the Attorney General	
Office of Child Support Hearings	<ul style="list-style-type: none"> • Orders to establish, modify or enforce a child support obligation
Office of Information Practices	<ul style="list-style-type: none"> • Uniform Information Practices Act*
Department of Budget and Finance	
Employees' Retirement System	<ul style="list-style-type: none"> • Appeals of decisions of the Medical Board relating to claims for disability retirement benefits
Public Utilities Commission	<ul style="list-style-type: none"> • Regulation of public utilities, water use, and motor carriers
Housing Finance and Development Corporation	<ul style="list-style-type: none"> • Appeals of state and county decisions on relocation assistance
Department of Business and Economic Development	
Hawaii Community Development Authority	<ul style="list-style-type: none"> • Appeals of decisions made by the authority
Land Use Commission	<ul style="list-style-type: none"> • Petitions for reclassification of land uses

Agency	Subject
Department of Commerce and Consumer Affairs	
Office of Administrative Hearings	<ul style="list-style-type: none"> • Disciplinary actions against persons licensed or otherwise regulated by DCCA and the boards and commissions assigned to DCCA; • Tradename and trademark revocations • No fault benefit denials • License denials
Department of Education	
Facilities and Support Branch	<ul style="list-style-type: none"> • School bus transportation • Student misconduct and safety violations
Food Service's Branch	<ul style="list-style-type: none"> • School lunch program
Information System Services Branch	<ul style="list-style-type: none"> • Confidentiality of school records
Special Instructional Program and Service Branch	<ul style="list-style-type: none"> • Permission to attend a school outside of a student's geographic attendance area • Suspensions, disciplinary transfers, and dismissals
Management Analysis and Compliance Branch	<ul style="list-style-type: none"> • Violations of nondiscrimination rights of students and parents under federal or state laws • Revocation or suspension of private school licenses
Office of Instructional Services	<ul style="list-style-type: none"> • Actions to initiate or change the identification, evaluation, program, placement of a child, or the free public education of a child
Department of Hawaiian Home Lands	
	<ul style="list-style-type: none"> • Cancellation of homestead leases due to loan delinquencies • Cancellation of leases due to violations of their terms and conditions*
Department of Health	
	<ul style="list-style-type: none"> • Health regulations
Department of Human Services	
Administrative Appeals Office	<ul style="list-style-type: none"> • General administrative relief • Entitlement to public welfare • Licensing and certification of social service providers

Agency	Subject
Hawaii Housing Authority	<ul style="list-style-type: none"> • Food stamp disqualifications • State income tax refunds • Medicaid providers • Appeals of disaster relief cases • Appeals of vocational rehabilitation cases • Evictions of tenants who remain in public housing and are in violation of the rental agreement • Section 8 hearings (federal housing assistance for lower-income families)
Department of Labor and Industrial Relations	
Apprenticeship Division	<ul style="list-style-type: none"> • Cancellation of registered apprentices
Hawaii Civil Service Commission	<ul style="list-style-type: none"> • Discrimination in employment, real estate transactions, public accommodations, and access to services receiving state financial assistance*
Disability Compensation Division	<ul style="list-style-type: none"> • Disability claims and awards for industrial injuries • Temporary disability insurance and prepaid health care benefits
Office of Employment and Training Administration	<ul style="list-style-type: none"> • Rulings on employee notification of plant closing • Violations of requirements under the Job Training Partnership Act
Hawaii Labor Relations Board	<ul style="list-style-type: none"> • Legal rights of parties in labor relations or collective bargaining matters
Labor and Industrial Relations Appeals Board	<ul style="list-style-type: none"> • Appeals of administrative decisions
Enforcement Division	<ul style="list-style-type: none"> • Unlawful suspension, discharge, or discrimination against an employee
Employment Security Appeals Office	<ul style="list-style-type: none"> • Appeals on unemployment insurance • Appeals on disaster unemployment insurance
Department of Land and Natural Resources	<ul style="list-style-type: none"> • Land use proposals for conservation districts
Department of Personnel Services	
Civil Service Commission	<ul style="list-style-type: none"> • Appeals on suspension, dismissal, or demotion

Agency	Subject
Public Employees Compensation Appeals Board	<ul style="list-style-type: none"> • Appeals on violations of Part II of the Civil Service Law • Appeals regarding DPS classification • Initial pricing and repricing appeals on civil service classes
Department of Public Safety	
Administration Division	• Appeals of administrative decisions*
Corrections Division	• Appeals related to administration of correction programs
Law Enforcement Division	• Revocation of controlled substance registration
Criminal Injuries Compensation Commission	• Eligibility and compensation for crime victims
Hawaii Paroling Authority	<ul style="list-style-type: none"> • Parole and parole revocation • Preliminary hearings
Department of Taxation	
Boards of Review	• Disputes between assessors and taxpayers
Department of Transportation	
	• Suspension or revocation of an official inspection station or inspector's certification
University of Hawaii	
	• Appeals of negative tenure actions*

Source: Responses to auditor's survey, August 24, 1990.

*A new type of hearing to be held in the future.

