

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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