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# Memorandum

To: Nicki Neal  
Director

Thru: Keith Murry   
Class Studies Supervisor

From: Brandon Cullum   
Human Resource Specialist II

Date: August 16, 2012

Subject: Administrative Law Judge Study

## Preamble:

In March, 2012, the Chief Administrative Law Judge, Terry Thurbon, at the Office of Administrative Hearings (OAH), requested that the Division conduct a study of the Administrative Law Judge I-II job class series to accommodate the need for specially-qualified judges<sup>1</sup> to preside over tax-based appeals as delegated to the OAH in the administrative provisions<sup>2</sup> of the State's tax statutes<sup>3</sup>.

At the time of the request the OAH did not have a job class for which minimum qualifications met the statutory tax experience requirement; however, the Chief was able to assign tax-related cases to three staff members that happened to have the appropriate experience. These staff included the Chief herself, the Deputy Chief Administrative Law Judge, and one Administrative Law Judge II.

While this system worked as a stop-gap for several years<sup>4</sup>, in 2012 Executive Order 116 transferred additional jurisdiction and staff to the OAH and promised to increase the administrative-related responsibilities of both the Chief and Deputy Chief, and as such reduce their ability to hear tax-related appeals. This increased administrative workload precipitated Chief Thurbon's study request.

<sup>1</sup> AS 43.05.420

<sup>2</sup> AS 43.05.405 – 43.05.499

<sup>3</sup> Alaska Statutes – Title 43: Revenue and Taxation

<sup>4</sup> The authority to hear tax appeals was delegated to the Office in 2004.

In response, Classification agreed to study the existing Administrative Law Judge I-II job class series to update the existing classes and facilitate the addition of a class with minimum qualifications that meet the statutory requirements set for presiding over tax appeals.

The following memo presents the process and findings of the study that followed.

### **Study Contacts:**

Terry Thurbon, Chief Administrative Law Judge, and Chris Kennedy, Deputy Chief Administrative Law Judge, were this study's primary contacts. Andy Hemenway, Mark Handley, and Kay Howard, all Administrative Law Judges II, were interviewed with Deputy Chief Kennedy on June 15, 2012.

### **History of Job Classes:**

The Office of Administrative Hearings was established with the ratification of Senate Bill 203 in 2004. Prior to SB203, Hearing Officers and Hearing Examiners presided over adjudicative hearings while serving as agency representatives for individual Executive Branch agencies. The Bill's stated intent was to provide an independent panel of investigators to conduct impartial hearings. The independent nature of these hearing officers would provide for a more impartial appeal process than the one provided by the pre-SB203 system<sup>5</sup>.

The Office's chief executive, the Chief Administrative Law Judge, was established by statute<sup>6</sup> in August, 2004.

The Administrative Law Judge I and II job classes were established by the 2004 Administrative Law Judge Study, effective January 1, 2005.

The Deputy Chief Administrative Law Judge was established in August, 2005, by the 2005 Deputy Chief Administrative Law Judge job class study.

### **Class Analysis:**

The State's classification plan provides for the grouping of positions into job classes when they are sufficiently similar with respect to duties and responsibilities, degree of supervision exercised and received, and entrance requirements so that: 1) the same title can be used to clearly identify each position; 2) the same minimum qualifications for initial appointment can be established for all positions; 3) the same rate of basic pay can be fairly applied to all positions; and 4) employees in a particular class are considered an appropriate group for purposes of lay off and recall. Job classes should be constructed as broadly as feasible as long as the tests of similarity are met.

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<sup>5</sup> 2004 Administrative Law Judge Study; History.

<sup>6</sup> AS 44.63.10

## Administrative Law Judge I and II

The Administrative Law Judge I job class was established as the journey level of the series by the 2004 study. Incumbents in this class preside over and conduct formal administrative hearings on behalf of multiple State agencies and prepare recommendations or final decisions on formal proceedings related to agency programs or other government related hearings referred to the Office of Administrative Hearings.

The Administrative Law Judge II job class was established as the advanced level of the series by the 2004 study. Incumbents in this class preside over and conduct formal administrative hearings on behalf of multiple State agencies, and prepare recommendations or adopt final decisions on formal proceedings related to agency programs or other government related hearings referred to the Office of Administrative Hearings. The Administrative Law Judge II provides peer review to the Administrative Law Judges I and training to state adjudicative staff.

Since the establishment of the preceding classes the limited responsibility of the Administrative Law Judge I, as indicated by an inability to preside over more complex cases, has proven to be untenable because of the rights of both parties in an appeal, known as preemptory challenge, to request a change of judge without cause<sup>7</sup>. When parties to an appeal exercise their right to preemptory challenge the Chief must reassign the case to another judge's docket. In complex cases where both parties exercise this right a case will be reassigned three times, requiring three different qualified Administrative Law Judges. As this right applies to complex cases as well as routine, in times of heavy docket load, the Chief will often run out of Administrative Law Judges II that are eligible to receive complex cases in this manner. This has resulted in an evolved expectation that all Administrative Law Judges will be prepared to preside over the full scope of cases at any given time and has antiquated the 2004 "complexity" delineation of journey and advanced work. As a result the Administrative Law Judge I has become an unused job class as all non-supervisory Administrative Law Judges have been allocated to Administrative Law Judge II.

This change in job class use supports abolishing Administrative Law Judge I and redefining the Administrative Law Judge II as a generalist class where incumbents are hearing officers in the Office of Administrative Hearings and preside over administrative appeals that fall within the Office of Administrative Hearing's multi-departmental jurisdiction.

## Tax Qualified Administrative Law Judge

Incumbents of the new generalist Administrative Law Judge job class do not routinely preside over tax-related cases even though qualified incumbents may be occasionally assigned tax cases in times

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<sup>7</sup> AS 44.64.070(c)

of heavy docket load. As noted earlier, this is primarily because statute requires additional tax-related experience over and above the statutory minimum qualifications imposed on generalist Administrative Law Judges. In addition, tax-related cases, because of the amount of capital that is often at stake and the complex arguments that tend to follow from high-stakes appeals, tend to be much more complex than cases that fall within the standard non-tax OAH jurisdiction.

While increased complexity and more stringent requirements for similar bodies of work would typically precipitate the creation of an additional level in a job class series that is not the case here. It is not appropriate to include the tax-qualified body of work as a second level in an Administrative Law Judge series because, while a sitting generalist Administrative Law Judge may accrue the tax-related experience required to hear tax appeals by assisting the presiding hearing officer in these cases, that accrual period is not necessarily parallel with the incumbent's time in the generalist class but instead must be calculated on the basis of case hours. This method of calculation does not lend itself to standard layoff and recall requirement calculation and as such does not facilitate the creation of a job class series.

As such, a separate tax-qualified Administrative Law Judge job class is established and defined as a job class where incumbents are hearing officers in the Office of Administrative Hearings and preside over tax appeals established in the administrative provisions of the State's tax statutes and other appeals that fall within the Office of Administrative Hearing's multi-departmental jurisdiction.

#### Job Class Structure Changes

Body of Work	Comment	Action
First level journey hearing officer	No longer used	Abolish job class
Advanced hearing officer	Level evolved from advanced to generalist	Revise job class
Tax-qualified hearing officer	No appropriate job class	Create job class

#### Class Title:

A class title should be the best descriptive title for the work. An appropriate class title will convey concisely and accurately the kind and level of work performed, should be brief, easily recognized, gender neutral, and understood by potential applicants.

Administrative Law Judge is the most suitable title for the generalist body of work submitted to this study. The title is easily recognized in recruitments and in common usage and is already in use by incumbents of the pre-study Administrative Law Judge II job class.

Administrative Law Judge (Tax Qualified) is the most suitable title for the tax-oriented administrative law judge. This title conveys the general body of work performed by incumbents; makes a useful tax-related distinction from the generalist body of work; and will be useful in noting the job class's specialty to potential applicants.

Legacy Class Title	Action	Revised Class Title
Administrative Law Judge I	abolish	n/a
Administrative Law Judge II	update	Administrative Law Judge
n/a	create tax-qualified job class	Administrative Law Judge (Tax Qualified)

Minimum Qualifications:

The minimum qualifications established for a job class must relate to the knowledge, skills, and abilities needed to perform the work and must not create an artificial barrier to employment of individuals in protected classes. Required training should be limited to the basic formal training that customarily prepares individuals for work in the field. Experience requirements are intended to ensure new employees can successfully perform the work after a period of orientation or familiarization. Required experience should be directly related to the actual duties of positions in the class and should not be equivalent to the work performed.

State statutes require a baseline body of qualifications for both the generalist body work assigned to Administrative Law Judges<sup>8</sup>, and the broader tax-encompassing work assigned to Administrative Law Judges (Tax Qualified)<sup>9</sup>. Reflecting the Chief Administrative Law Judge's statutory authority to increase minimum qualification requirements beyond the statutory minimum, the pre-study Administrative Law Judge I and II had minimum qualifications that were more restrictive than the statutory base. The following minimum qualifications for both Administrative Law Judge and Administrative Law Judge (Tax Qualified) remove these additional requirements and reflect the statutory minimum to provide the OAH with greatest amount of recruitment flexibility, as requested and authorized by the Chief.

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<sup>8</sup> AS 44.64.040(a)

<sup>9</sup> AS 43.05.420(b)

Minimum Qualifications	
Administrative Law Judge	Administrative Law Judge (Tax Qualified)
Currently licensed to practice law in Alaska; AND Licensed to practice law in Alaska for at least two years.	Currently licensed to practice law in Alaska; AND Licensed to practice law in Alaska for at least two years; AND Four years of professional experience as a tax attorney, a certified public accountant practicing in the area of tax, or a tax administrator.

Class Outline:

A Class Code is assigned based on the placement of the job class in the classification schematic of Occupational Groups and Job Families. Occupational Groups are made up of related Job Families and encompass relatively broad occupations, professions, or activities. Job Families are groups of job classes and class series that are related as to the nature of the work performed and typically have similar initial preparation for employment and career progression.

The Administrative Law Judge and the Administrative Law Judge (Tax Qualified) perform duties that support their placement in the Legal, Judicial, and Related (PI) occupational group, which includes job classes that advise on, administer, supervise, or perform professional legal work, and related administrative or clerical work, and scientific investigation for law enforcement<sup>10</sup>.

Within this occupational group, the two subject classes are assigned to the Judges and Adjudicators (PI03) family of job classes, which is appropriate for classes of positions that administer, supervise or serve as third-party triers of fact in adversarial hearings on government programs or other government-related matters. Initial preparation for employment is typically through advanced education and experience in law with subsequent career progression based on progressively responsible experience.

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<sup>10</sup> State of Alaska Classification Class Outline (Group) Pg 27

Job Class	Class Code	AKPAY Code
Administrative Law Judge	PI0302	P7233
Administrative Law Judge (Tax Qualified)	PI0303	K0119

### Fair Labor Standards Act

The positions in this study are covered by the minimum wage and maximum hour provisions of the Fair Labor Standards Act of 1938, as Amended (FLSA). While exemption from the provisions of the Act are based on the specific circumstances of an individual employee on a work-week basis, there are general aspects of the classes and their influence on the exemptions for employees in bona fide executive, professional, or administrative positions that can be addressed in general.

An incumbent of either the Administrative Law Judge or Administrative Law Judge (Tax Qualified) job classes will be a member of the Alaska State Bar Association, in good standing, and as such will hold a valid license or certificate permitting the practice of law in the State of Alaska and meet the requirements set forth in 29 CFR §541.304 for exemption from overtime pay as a professional employee.

### Salary Analysis:

The salary range of a job class is determined based on internal consistency within the State's pay plans, in accordance with merit principles, with the goal of providing fair and reasonable compensation for services rendered and maintaining the principle of like pay for like work. In evaluating internal consistency the difficulty, responsibility, knowledge, skills, and other characteristics of a job are compared with job classes of a similar nature, kind, and level in the same occupational group and job family or related job families.

As noted in the Class Outline section of this memorandum, the Administrative Law Judge and the Administrative Law Judge (Tax Qualified) perform duties that support their placement in the PI Legal, Judicial, and Related occupational group.

Within the PI Group, the classes are assigned to the Judges and Adjudicators (PI03) family of job classes.

This salary alignment compares the two subject classes to other classes within the PI03 job family within the framework of the eight classification factors:

- Nature, variety, and complexity
- Nature of supervision received

- Nature of available guidelines
- Initiative and originality
- Purpose and nature of person-to-person work relationships
- Nature of scope of recommendations, decisions, commitments, and consequence of error
- Nature and extent of supervision exercised over the work of other employees
- Qualifications required

The following table illustrates each comparable class's defining characteristics and the general characteristics of each applicable range within the family.

Range	Job Class	Description	Range Characteristics
21	Hearing Officer	investigates alleged violations of state statutes and regulations; conducts hearings; issues determinations	investigator and adjudicator in quasi-judicial administrative hearings or developmental statute-specific adjudication
	Worker's Compensation Officer I	entry/developmental level. designed to prepare incumbents to act as Designated Chair of Worker's Compensation Board and preside over appeals hearings and prepare proposed decisions	
22	Worker's Compensation Hearing Officer II	Act as Designated Chair of Worker's Compensation Board to preside over appeals hearings and prepare proposed decisions	statute-specific adjudication

24	Hearing Examiner I	conduct hearings and prepare proposed decisions related to the rights and obligations of a person or corporation subject to the law administered by an agency	supervisor and manager of statute-specific adjudication or generalist adjudicator of limited jurisdiction
	Chief of Worker's Compensation Adjudication	administers statewide worker's compensation adjudication program and is responsible for associated legal processes and adjudicative functions	
26	Deputy Chief Administrative Law Judge	assists in the planning, policy development, coordination and execution of the Office of Administrative Hearings' administrative and adjudicative functions and acts for the Chief in his/her absence	direct supervision over a single agency's adjudication function or deputy to the primary supervisor and manager of statewide adjudication
	Hearing Examiner II	supervises a section of three or more Hearing Examiners I	
27	Chief Administrative Law Judge	supervises, plans, establishes and implements policy and procedures governing the administrative and adjudicative functions of the Office of Administrative Hearings	statewide, multi-departmental adjudication management and supervision

### Administrative Law Judge

Administrative Law Judges are hearing officers in the Office of Administrative Hearings and preside over administrative appeals that fall within the Office of Administrative Hearing's multi-departmental jurisdiction. Within the PI03 family, Administrative Law Judge compares most

succinctly to the range characteristics noted at salary range (SR) 24. As generalist adjudicators of limited jurisdiction, the work performed by this class compares best with Hearing Examiner I (SR24). Hearing Examiners I conduct hearings and prepare proposed decisions on formal proceedings related to the substantive rights and obligations of persons, including corporations, subject to the provisions of laws administered by an agency. Incumbents of both classes are attorneys licensed to practice in Alaska and are impartial triers of fact over varying bodies of law.

Hearing Examiners I are typically assigned appeals stemming from a single department's guiding statutes, while Administrative Law Judges preside over appeals from a wide body of statutes and multiple departments. Incumbents of both classes make objective decisions based on fact where there may be a dearth of precedent and where decisions have broad impact on State business and the interests of the parties involved. While a broader jurisdiction often translates to greater diversity, this is not necessarily the same as greater complexity. This is illustrated when one considers that before tax hearings were moved into the OAH, this body of appeals was assigned to Hearing Examiners in the Department of Revenue. Hearing Examiners that were presiding over tax appeals were doing extremely complex work because of the predictably complex and high stakes nature of tax cases and the taxing demands such cases put on a hearing officer. Even though this specific situation no longer exists, it supports the conclusion that while a Hearing Examiner may preside over appeals from a narrow scope of statute, those appeals may be just as complex as the wider array of appeals assigned to Administrative Law Judges. Subsequently, Administrative Law Judge is aligned to SR24.

#### Administrative Law Judge (Tax Qualified)

Incumbents of the Administrative Law Judge (Tax Qualified) job class are hearing officers in the Office of Administrative Hearings and preside over tax appeals established in the administrative provisions of the State's tax statutes and other appeals that fall within the Office of Administrative Hearing's multi-departmental jurisdiction. In this family, SR26 is populated by classes that are working supervisors over other hearing officers, and that SR24 is populated by journey hearing officers that are required to have and maintain a license to practice law in Alaska. In this environment, the more complex tax-related dockets handled by this class is appropriately aligned at SR25 between the generalist Administrative Law Judge and the first level supervisor Deputy Chief Administrative Law Judge. Subsequently, Administrative Law Judge (Tax Qualified) is aligned to SR25.

#### Conclusions:

#### Class Structure, Salary Alignment, and FLSA Status

Job Class	Salary Range	FLSA Status
Administrative Law Judge	24	Exempt
Administrative Law Judge (Tax Exempt)	25	Exempt

Nicki Neal  
August 16, 2012  
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The preceding job class revisions and subsequent position allocations are effective August 16, 2012.

Attachment:  
Final class specifications

cc: Terry Thurbon, Chief Administrative Law Judge  
Office of Administrative Hearings  
Department of Administration

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