

Seventeenth Annual Report to  
the Governor of Alaska and the Alaska Legislature  
from the Office of Administrative Hearings

January 31, 2021

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## I. Introduction

The Office of Administrative Hearings (OAH) is an independent agency housed in the Department of Administration and charged with providing administrative adjudication services, regulatory review, and training.<sup>1</sup>

OAH is the state executive branch's central hearing panel. A central panel is an independent adjudicative agency which hears executive branch appeals. As described by the National Judicial College, central panels are "panels of administrative law judges who, instead of being attached to a single administrative agency, are assigned to a 'central,' 'independent' panel that supplies administrative law judges to conduct contested case hearings for a variety of agencies."<sup>2</sup> The main role of a central panel "is to provide fair adjudications and due process to both the litigating agencies and the public."<sup>3</sup> Alaska's OAH is one of roughly 35 central panels nationwide, although the scope of such panels can vary greatly between states.

OAH was created "to increase the separation between the adjudicatory functions of executive branch agencies and the agencies' investigatory, prosecutory, and policy-making functions."<sup>4</sup> In addition, by consolidating adjudicatory functions in a central panel, the creation of OAH has improved efficiency for agency hearings, resulting in overall cost savings to departments, boards, and commissions. By making OAH's services available to municipalities, school districts, and other government agencies on a cost-reimbursement basis, the legislature has also made these savings available to other state-related governmental units.<sup>5</sup>

OAH operates under the supervision of the Chief Administrative Law Judge (Chief ALJ) for whom the law prescribes certain duties and goals.<sup>6</sup> One of the Chief ALJ's duties is to:

submit to the governor and the legislature on January 31 of each year the results of the survey [of hearing participants used to monitor the quality of hearings conducted by OAH and other state agencies] along with a report that includes a description of the activities of the office and recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies[.]<sup>7</sup>

This is the seventeenth such report; it covers OAH's activities for calendar year 2020.

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<sup>1</sup> See AS 44.64.010 – AS 44.64.020.

<sup>2</sup> Hon. W. Michael Gillette. *ALJ Central Panels: How's it Going Out There?* The Judicial Edge (National Judicial College, Sept. 17, 2015). Available online at: <https://www.judges.org/alj-central-panels-how-is-it-going-out-there/> (last visited Jan. 21, 2020).

<sup>3</sup> Larry J. Craddock, *Final Decision Authority and the Central Panel ALJ*, 33 J. Nat'l Ass'n Admin. L. Judiciary Iss. 2 (2013). Available online at: <http://digitalcommons.pepperdine.edu/naalj/vol33/iss2/1> (last visited Jan. 21, 2020).

<sup>4</sup> Sec. 1, ch. 163, SLA 2004.

<sup>5</sup> See AS 44.64.055.

<sup>6</sup> See AS 44.64.020.

<sup>7</sup> AS 44.64.020(a)(7).

## II. Activities of the Office of Administrative Hearings

For reporting purposes, OAH's activities are grouped into eight categories drawn from the statutory duties of OAH and the Chief ALJ. The first is OAH's core function, and the rest are its ancillary duties.<sup>8</sup> The activities are:

- Adjudication services;
- Peer review for OAH Administrative Law Judges (ALJs);
- Publication of decisions;
- Regulations review and development;
- Monitoring hearing processes (includes surveying hearing participants);
- Training of administrative adjudicators;
- Code of Hearing Officer Conduct administration; and
- Recruitment for Workers' Compensation Appeals Commission.

### A. Adjudication Services

#### 1. Overview

OAH's adjudication services range from preparing proposed decisions based on parties' written submissions in simple administrative appeals to conducting multi-day or multi-week trial-like evidentiary hearings in complex matters. Some cases are narrow, single-issue disputes; others are wide-ranging, and involve complicated legal and factual disputes. OAH's services do not stop at conducting hearings and writing decisions. They also include use of alternative dispute resolution (ADR) methods.

Using formal or informal ADR, or simply through good case management, OAH can resolve many cases within a matter of weeks. Others may remain active for many months, as the parties develop their positions, engage in motion practice, and prepare for detailed presentation of highly technical evidence and argument on complex legal issues. Most cases referred to OAH fall somewhere between these two extremes.

By law, the OAH ALJs are the final decisionmakers in only a few case categories.<sup>9</sup> When the final decisionmaker is a board or commission, or a principal agency head, OAH's adjudication services can include functioning as a legal adviser to that decisionmaker for the specific case.<sup>10</sup> Whether the final decisionmaker is the ALJ or an agency head, a final decision in an OAH appeal may be appealed to the Superior Court.

The table below illustrates the reach of OAH's adjudication services under its mandatory jurisdiction. That reach extends to most executive branch departments. Additionally, the departments for which OAH does not provide services directly may nonetheless be parties to disputes, such as procurement protests that OAH hears on behalf of a separate executive branch

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<sup>8</sup> See AS 44.64.020(a)(4) - (8); AS 44.64.050; AS 44.64.090; AS 23.30.007(d).

<sup>9</sup> In addition to the statutory categories in which OAH makes the final decision, OAH can receive final decision authority by delegation. See 44.64.030(c).

<sup>10</sup> OAH ALJs do not provide general legal advice to the decisionmaker, but rather address legal questions for the decisionmaker only in the context of the specific case under consideration. The Attorney General is the legal adviser to state agencies under most circumstances.

decisionmaker. Agencies may also become parties before OAH by voluntarily referring a dispute or class of disputes to OAH.

<b>Office of Administrative Hearings Mandatory Jurisdiction</b>	
<i>Executive Branch Office, Agency or Entity</i>	<i>Case Category</i>
Office of the Governor	<ul style="list-style-type: none"> <li>• Human Rights Commission</li> </ul>
Office of the Lieutenant Governor	<ul style="list-style-type: none"> <li>• Notaries</li> </ul>
Departments of --	
Administration	<ul style="list-style-type: none"> <li>• Retirement and Benefits</li> <li>• Contract and Procurement</li> <li>• Claims for Reimbursement</li> <li>• Violent Crime Compensation</li> <li>• Breach of Security Involving Personal Information</li> </ul>
Commerce, Community and Economic Development	<ul style="list-style-type: none"> <li>• Licensing (Corporations, Businesses and Professions)</li> <li>• Banking and Securities</li> <li>• Insurance</li> <li>• Alcoholic Beverage Control</li> <li>• Marijuana Control</li> </ul>
Education and Early Development	<ul style="list-style-type: none"> <li>• Teacher Certification</li> <li>• PFD Execution</li> </ul>
Environmental Conservation	<ul style="list-style-type: none"> <li>• Environmental Permitting</li> <li>• Food Safety</li> </ul>
Health and Social Services	<ul style="list-style-type: none"> <li>• Facilities Licensing</li> <li>• Child Protection<sup>11</sup></li> <li>• Medicaid Benefits, Audits &amp; Rates</li> <li>• Public Assistance Benefits</li> <li>• PFD Execution</li> </ul>
Labor and Workforce Development	<ul style="list-style-type: none"> <li>• Occupational Safety and Health</li> <li>• PFD Execution</li> </ul>
Natural Resources	<ul style="list-style-type: none"> <li>• Land Sale Contracts</li> <li>• Water Rights</li> </ul>
Transportation and Public Facilities	<ul style="list-style-type: none"> <li>• Construction Procurement (portion<sup>12</sup>)</li> </ul>

<sup>11</sup> The administrative child protection cases OAH hears for the Department of Health and Social Services relate to substantiation of abuse or neglect findings that may affect facility or foster care licensing or other decisions concerning children. These adjudications serve a purpose different from that of child protection cases heard by the court system.

<sup>12</sup> OAH hears only some of the Department of Transportation and Public Facilities' construction-related procurement cases under its mandatory jurisdiction. Construction cases subject to arbitration are exempted from OAH's mandatory jurisdiction. DOT&PF also sends some additional cases to OAH on a voluntary basis.

Revenue	<ul style="list-style-type: none"> <li>• Tax (original jurisdiction<sup>13</sup>)</li> <li>• Child Support</li> <li>• PFD Eligibility, Charitable Contribution &amp; Fine/Forfeiture</li> <li>• Charitable Gaming</li> <li>• Unclaimed Property</li> </ul>
University of Alaska	<ul style="list-style-type: none"> <li>• PFD Execution</li> </ul>

## 2. Caseload

During 2020, OAH’s active cases – that is, the number of cases that were open or being managed in some fashion at some point during the year – totaled approximately 1,341. New cases that came in during the year totaled 1,009.

### a. Raw active case numbers

The table below focuses on OAH’s overall active caseload (which is a larger universe than case intake), to give a sense of the distribution of our case types over the course of the year. The “active cases” table below is divided into twelve groups of case types. The first (Business, Professional & Occupational Licensing/Regulation) crosses several departments. The “Other” group does as well, encompassing occupational safety and health, environmental conservation, violent crime victim’s compensation, and adjudication services provided to municipalities and school districts, among others.

The chart below shows the number of active cases in each category during 2020, and that number as a percentage of all open cases that calendar year.

*OAH Active Cases 2020*

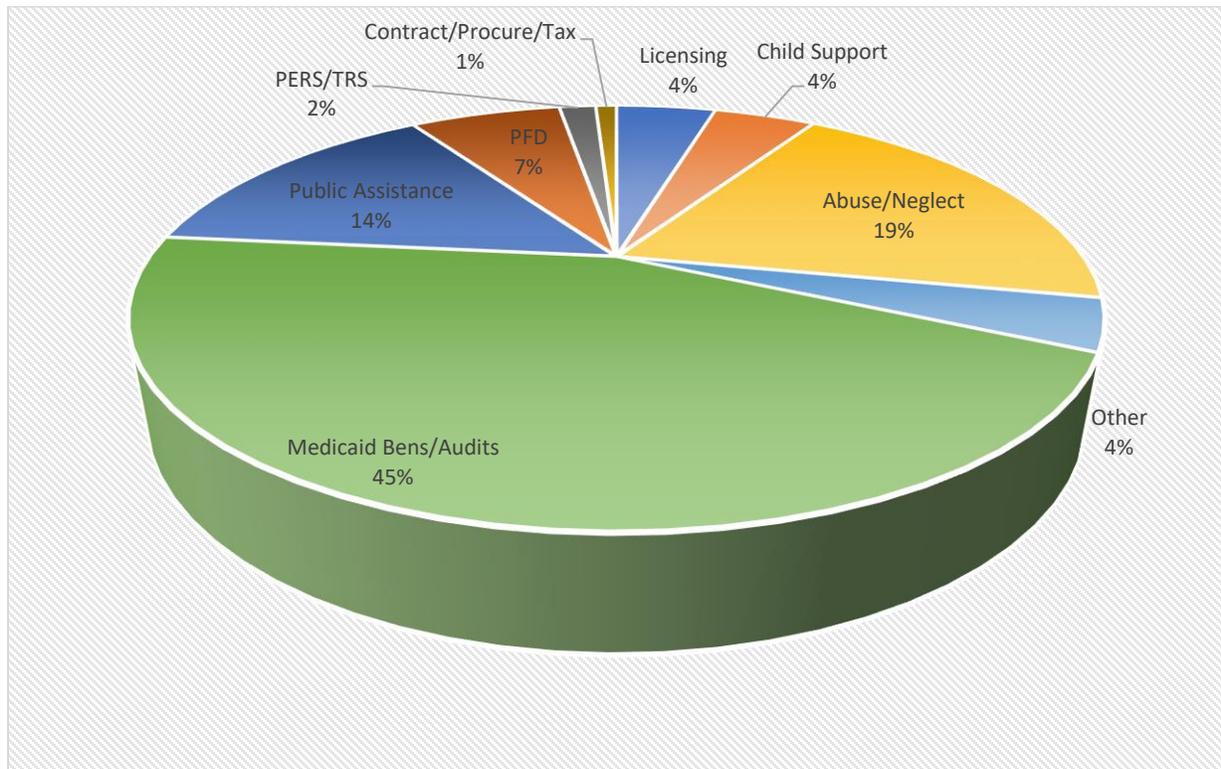
<b>Case Type</b>	<b>Active cases</b>	<b>% of total number of active cases</b>
Business, Professional, & Occupational Licensing/Regulation	57	4%
Child Support	58	4%
Contracts and Procurement	12	1%
Health & Social Services-related Licensing/Certification	9	0.5%
Human Rights	5	0.5%
Medicaid Benefits, Audits & Rates	581	43%
Public Assistance Benefits	186	14%
PFD Eligibility, Charitable Contribution, Execution & Fine	86	6%
Retirement and Benefits	21	2%
Substantiation of Child Abuse and Neglect	253	19%
Tax	22	2%

<sup>13</sup> Under AS 43.05.405, OAH has original jurisdiction over most tax appeals. In this area, OAH functions as the approximate state equivalent of the United States Tax Court.

Other <sup>14</sup>	51	5%
<b>Total</b>	<b>1,341</b>	

The chart below depicts the relative number of cases on which OAH actively worked in 2020, divided into general subject areas groups. The chart is derived from the data in the above table.

*OAH Active Cases 2020*



b. Alternative dispute resolution

Of cases active during 2020, approximately 508 were diverted to ADR, including 426 cases diverted to the fast-track Medicaid mediation program, and 82 diverted to formal ADR (usually mediation) supervised or presided over by an administrative law judge. Altogether, nearly 40% of active OAH cases were provided some form of formal ADR. Many others were resolved through efficient case management techniques, including informal ADR used to reach agreement on consent orders or stipulations, as well as through voluntary dismissal due to agency concession or private party withdrawal.

OAH also tracks how many cases were closed in a given calendar year. Case closures occur when a matter settles or when a final decision is issued. In 2020 OAH closed 1,073 cases.

<sup>14</sup> The catch-all “other” category includes occupational health and safety, environmental conservation, vocational rehabilitation, municipal referrals, and violent crime victim compensation. Both municipal referrals and occupational health and safety referrals dropped in 2019, and continued in low numbers in 2020. OAH received no vocational rehabilitation or violent crime victim compensation referrals in 2020.

c. Decisions and other orders

Of those cases that did not resolve through mediation or dismissal, 246 full-dress decisions were issued (in addition to thousands of lesser orders). Of note, because this number only tracks full decisions that result in a case closure, it fails to capture those often large and complex OAH matters handled in which a significant decisional document is prepared, and the parties then resolve the case. Many of the most complex and time-consuming matters heard and managed by OAH do not ultimately result in a full decision measured by this metric.

d. Appeals

Very few OAH decisions are appealed to the courts, and the affirmance rate for such appeals is generally high. 2020 was no exception to these longstanding patterns.

Nine OAH decisions were appealed to the Superior Court in 2020 – the same number as in 2019. This represents less than four percent of the total number of decisions issued in 2020. There were also three new appeals filed in the Alaska Supreme Court in 2020. All three were appeals of Superior Court decisions upholding decisions by OAH.

Thirteen Superior Court appeals were closed in 2019. Of these, nine were affirmed on the merits, and another three were dismissed before being decided on the merits. One was partially affirmed and partially reversed.

In 2020 the Alaska Supreme Court issued two decisions arising out of OAH decisions. Of these, one was affirmed, and another partially affirmed and partially reversed.

In summary, in 2020 OAH closed nearly 1,100 cases, including issuing 246 decisions, and was reversed on appeal only twice (and both times were only partial reversals). This was an infinitesimal reversal rate.

3. *Time Devoted to Hearings and Related Work*

The previous section detailed the distribution of new and open cases across case categories. In considering this distribution, however, one must remember that not all cases are equal in terms of the ALJ time and effort required. A typical procurement, contracting, or professional licensing case requires about five times as much ALJ time as a typical Medicaid services case, which in turn requires about five times as much ALJ time as a typical Food Stamps case.

And even within a case category, an atypically complicated case can require five times as much time as a more routine matter. At the same time, a matter from a typically time-intensive case category might resolve quickly, and another matter from a typically straightforward case category might become unexpectedly complex and time-consuming.

All of these factors contribute to some degree of uncertainty in ALJ workload. Staff resources – as opposed to ALJ resources – are burdened approximately equally regardless of the case type.

OAH's ALJs collectively devoted 9,988 hours to hearing or mediating cases and to related work, such as reviewing evidence, researching the law, ruling on motions, and writing decisions.

The commitment of hours in the charts below is broken out below into twelve areas; these are the same as the groupings used in the case intake data in the preceding section.

In some respects, the trends do not track the case intake and active cases trends shown above because, on a case-by-case basis, some case varieties are more time-consuming than others. Thus, the Medicaid component is far less dominant in this metric than in the case count metrics, because Medicaid cases tend to be simpler and more quickly resolved than, for example, occupational licensing or tax cases (although some Medicaid cases can be quite complex and require considerably greater resources than is typical for that case type).

The first chart shows how the number of active cases compares with the number of ALJ hours spent in different case categories. Some case categories take a larger percentage of ALJ hours than others. Thus, while Medicaid-related cases are 43% of all OAH cases by sheer case numbers, they account for only 23% of case billings. Professional licensing cases, by contrast, represent only 4% of active cases, but nearly 9% of billings, because they tend to involve lengthy hearings and complex legal and factual issues. Tax, contracts, and procurement cases are, on average, similarly more involved.<sup>15</sup> There are exceptions on both sides of this general rule, but the overall picture is represented below.

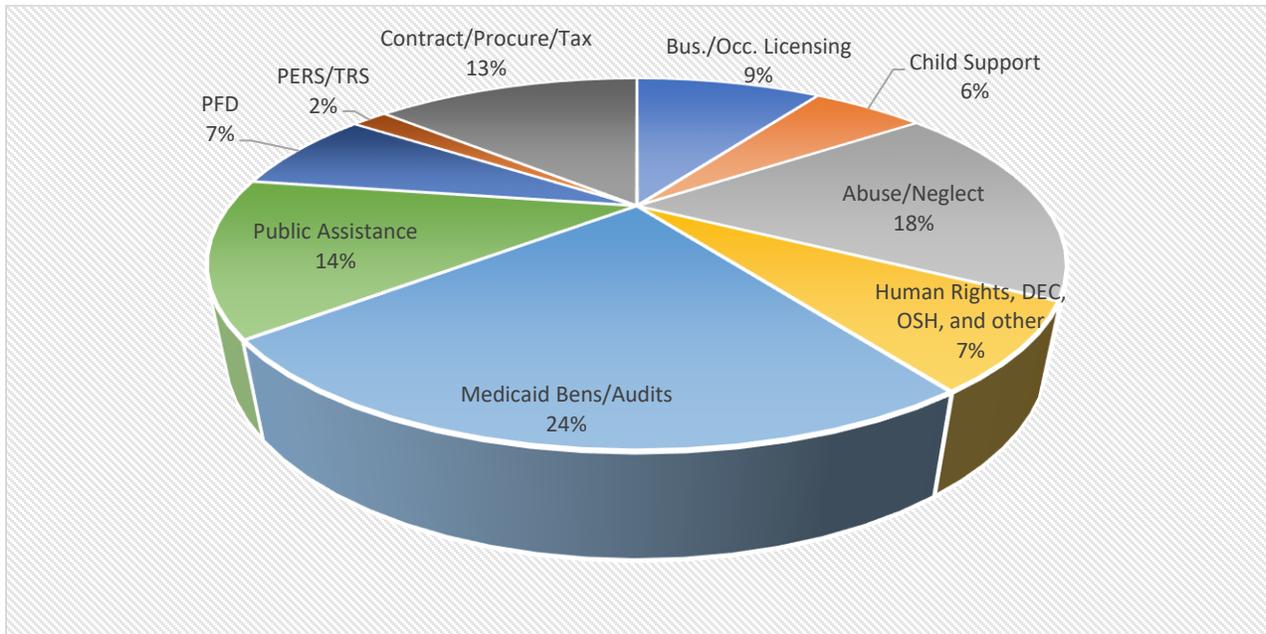
<b>Case Type</b>	<b>2020 Active OAH cases</b>	<b>% of 2020 active cases</b>	<b>2020 ALJ Hours</b>	<b>% of 2020 Total ALJ hours</b>
Business, Professional & Occupational Licensing/Regulation (includes police standards)	57	4%	924	9%
Child Support	58	4%	528	5.3%
Contracts and Procurement	12	1%	1,267	13%
Health & Social Services-related Licensing/Certification	9	0.5%	150	2%
Human Rights	5	0.5%	30	<1%
Medicaid Benefits, Audits and Rates	581	43%	2,223 <sup>16</sup>	23%
Public Assistance Benefits	186	14%	1,268	13%
PFD Eligibility & Execution	86	6%	691	7%
Retirement and Benefits	21	2%	167	2%
Substantiation of Child Abuse and Neglect	253	19%	1,689	17%
Tax	22	2%	234	2%
Other	51	5%	691	7%

<sup>15</sup> The strong divergence between percentage of active cases and percentage of ALJ hours in contracts and procurement cases was primarily due to two particularly complex matters.

<sup>16</sup> This figure includes 1,390 hours on program eligibility cases (such as eligibility for Medicaid waiver, the amounts of PCS services, or the types of services provided under a waiver plan); 539 hours on Medicaid benefits coverage cases; and 293 hours on Medicaid audit cases.

<b>Total</b>	<b>1340</b>		<b>9890</b>	
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With some simplification, the distribution of 2020 ALJ work time across case types is shown on the following chart:



The next chart compares ALJ hours in different case categories over a several year period.

Case Type	2020 ALJ Hours	% of Total ALJ hours		
		2018	2019	2020
Business, Professional & Occupational Licensing/Regulation (including police standards)	924	9%	13%	9%
Child Support	528	6%	10%	5%
Contracts and Procurement	1,267	2%	5%	13%
Health & Social Services-related Licensing/Certification	150	1%	2%	2%
Human Rights	30	1%	<1%	<1%
Medicaid Benefits, Audits and Rates	2,223	29%	28%	23%
Public Assistance Benefits (excluding Medicaid)	1,268	15%	12%	13%
PFD Eligibility & Execution	691	5%	6%	7%
Retirement and Benefits	167	3%	4%	2%
Child Abuse and Neglect	1,689	12%	13%	17%
Tax	234	6%	2%	2%
Other	691	11%	7%	7%

As the view over time reflects, OAH sees some variation from year to year in terms of how much of the office's workload is devoted to particular case types. A change in the number of

matters referred, or even the referral of particularly complex matters, can cause variability of these percentages from year to year.

#### 4. *Deadlines*

Swift resolution is a key goal in administrative adjudication. Parties have an interest in obtaining a timely final agency decision resolving their dispute. Because this important principle is recognized in both state and federal law, OAH cases are subject to many deadlines.

The OAH-specific deadlines imposed by AS 44.64.060 apply to most, but not all, of OAH cases.<sup>17</sup> The most important of these is the 120-day time limit to take a case from hearing request all the way to issuance of a proposed decision. This time frame is substantially shorter than the amount of time it takes a matter to be heard and resolved in the trial courts.

In addition to deadlines imposed by the OAH statute, other statutes and regulations establish deadlines that apply to certain types of cases. For instance, cease and desist order cases, summary license suspension actions, some insurance cases, securities matters, some procurement matters, child support appeals, and education-related facility grant cases are subject to shorter deadlines than those imposed by AS 44.64.060. Some case types have shorter or different deadlines for bringing the case to hearing, for issuing the decision, or for both.

Additionally, public benefits cases under the Department of Health and Social Services are subject to short timelines for the agency to reach its final decision. These final decision deadlines are generally driven by federal program requirements, which set short timeframes from the filing of an appeal to issuance of a final agency decision. In Food Stamps cases, the agency's final decision is due 60 days after the appeal is filed; for Medicaid benefits and most other public assistance benefits cases, the final decision is due 90 days after the hearing request is filed. Within this time frame, the OAH ALJ must hear the case and issue a proposed decision, the parties must be allowed an opportunity to comment, and the final decisionmaker must then decide the case. In these cases, the 120-day state deadline for proposed decision still applies, but is almost always subsumed in the shorter federal deadline unless the latter is extended by special circumstances.

Historically, the key deadline OAH monitored for purposes of this report has been the 120-day deadline from the date of the hearing request to the issuance of a *proposed decision*. Under AS 44.64.060(d), the 120-day deadline to proposed decision can be extended only by agreement of both parties, together with the consent of the Chief ALJ. This extension-on-consent tool is used in the more complex or unusual cases in which 120 days from filing of the hearing request does not allow adequate time for the case to be heard and a proposed decision to be issued.<sup>18</sup>

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<sup>17</sup> The following categories of cases were exempted from the AS 44.64.060 deadlines: tax appeals, Human Rights Commission cases, occupational safety and health cases, Violent Crimes Compensation Board cases, and Professional Teaching Practices Commission cases. In addition, voluntary referrals from agencies not required to send cases to OAH may be exempted from the AS 44.64.060 deadlines if the referral agreement between the Chief ALJ and the referring agency so provides.

<sup>18</sup> In addition to the complexity of a case, other factors that have led to use of the extension-on-consent tool are the unavailability of the parties, witnesses or legal counsel, the need to await conclusion of a related case to make for a more efficient or consistent result, and late referral of the case by the referring agency.

In 2020, the 120-day deadline was met or not applicable in more than 98% percent of the total number of cases OAH closed. The 120-day decision deadline was exceeded in less than two percent of all cases closed, which corresponded to roughly 7 percent of the 246 full decisions issued during the year.

Because of the pandemic, the legislature passed SB 241, which allowed OAH to extend deadlines in certain case categories, but not in cases from the Department of Health and Social Services, where the majority of OAH's cases arise. Decision deadlines were tolled under this provision twice during 2020.

Most cases reached final resolution — not just a proposed decision — within much less than 120 days, often within fewer than 50 days for fast-track cases such as child support and public assistance benefits. For cases resolved prior to hearing, the average time to final resolution was under 90 days (and was often considerably shorter); for cases resolved through a full decision, the average time to resolution was just over 120 days, with many cases still resolving in under 90 days or less.<sup>19</sup>

In OAH's high-volume Health and Social Services "Fair Hearings" cases, and the short final decision deadlines they bring, OAH has also monitored these *final decision* deadlines. For such a case to meet its final decision deadline, the agency must refer it without delay, OAH must process it on an expedited basis, and the Commissioner's Designee in the Department of Health and Social Services must act swiftly once the proposed decision is transmitted. In 2020, final decisions were issued after the applicable deadline in just twelve cases, an amount that represents roughly 1.7 percent of all cases closed in which a final decision deadline applied.

OAH ended the calendar year with only two pending overdue decisions as of December 31, 2020.

##### 5. *Work for Additional Governmental Units*

OAH's services have always been available to municipalities, school districts, and other governmental agencies, provided they reimburse the state for the full cost of services provided. Increasingly, such entities are becoming aware of the opportunity for cost containment coupled with a more consistent delivery of services. In 2020, OAH provided adjudication services to several municipalities, boroughs, and school districts. OAH has also continued to provide a substantial amount of adjudicative services to executive branch agencies that are not required to route their cases to OAH, such as the University of Alaska, the Department of Transportation and Public Facilities (in connection with construction matters), and the Alaska Police Standards Council. During 2020, OAH provided adjudication services in multiple complex matters for these agencies.

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<sup>19</sup> This timeframe involves cases whose time to final decision was extended significantly either by a time that the parties were engaged in ADR efforts, or, in the case of matters heard on behalf of boards or commissions, a period of months between when the OAH proposed decision was issued and when the next board or commission meeting was held. Both of these factors can extend the period of time that a case is technically open before OAH.

## **B. Fast-Track Medicaid Mediation Program**

Since 2016, OAH has offered an award-winning fast-track mediation program to parties in Medicaid Fair Hearings cases. The success of that program continued this year.

In 2020, 426 Medicaid Services cases were entered into the fast-track mediation program. Of these, over 90% went to mediation, with 85% of fast-track mediations then resolving through either a settlement agreement or a withdrawal by the participant.

The success of the fast-track mediation program continues to contribute significantly to speedy resolution of Medicaid Services appeals, while yielding considerable cost savings to the Medicaid program. The fast-track mediation program continues to be well received by recipients, care providers, and agency personnel. The program is valued by parties for its expediency and the ability of parties on both sides to come together in an informal and transparent setting.

The program's one-hour mediation sessions are conducted by a contract mediator under OAH supervision. While not all Medicaid Services appeals are amenable to resolution through a fast-track mediation and some ultimately must be resolved through the hearing process, the availability of the mediation program enables speedy resolution of many cases without ALJ involvement. The program has resulted in a notable reduction in OAH's billings to the Department of Health and Social Services (DHSS), as well as providing additional program savings for DHSS because disputed services are resolved more quickly.

## **C. Peer Review**

OAH's ALJs seek to promote excellency in the adjudication of disputes, including the preparation of proposed decisions. OAH employs a peer review process to assist newer ALJs as they become familiar with the range of the OAH case load, and to assist all ALJs in improving their work product.

Peer review at OAH serves two purposes: it promotes consistency in decision-making and it provides informal training opportunities (for both the reviewed and the reviewing ALJ). OAH's peer review system consists of selectively assigning an ALJ to review the proposed decision and/or to observe the hearing conducted by another ALJ on a case-specific basis. The reviewing ALJ provides feedback to the reviewed ALJ, and is available for consultations on questions of law or procedure.

Formal peer review assignments are made with the goal of ensuring that an ALJ venturing into a new subject area receives the benefit of informal training from a peer who has already worked in the subject area. This type of peer review has been, and continues to be, a key part of the training process for new ALJs.

In addition to peer review serving a valuable training function, OAH also employs peer review for ALJs handling particularly complex cases. Again, one of the benefits of a central panel of administrative law judges as opposed to isolated or siloed hearing officers is the ability to share knowledge, skills, and resources. Peer review occurs in complex cases to enhance the quality of the final product. The peer reviewer may point out analytical or legal weak spots, suggest

structural or language changes, or assist the assigned ALJ in reasoning through a complex problem. However, the assigned ALJ retains complete decisional autonomy.

OAH has increased its formal peer review assignments over the last several years. This is due to multiple factors, including the retirement of many longer-term judges, hiring and training three new ALJs from mid-2019 to mid-2020, an increase in complex case referrals, and an increased internal focus on training and rigorous internal reviews for complex matters. In 2020, a formal peer review assignment was made in roughly 45 percent of new cases. However, not all peer review assignments lead to time spent or billed conducting peer reviews, since many cases resolve through mediation or other pre-hearing means.

In addition to formal peer review assignments made as part of the training process or for complex decisions, group peer review of decisions or case management strategy is conducted when appropriate, such as when an ALJ faces an issue of first impression. Group peer review promotes consistency among ALJs on both legal issues as well as best practices in case management.

#### **D. Publication**

OAH is required to “make final agency decisions reached after administrative hearings available online through an electronic data base.” AS 44.64.090(a). In 2020, OAH added 102 new decisions to our online publications database.

#### **E. Regulations**

OAH’s Chief ALJ was given authority to “adopt regulations ... to carry out the duties of the office” as well as to “review and comment on regulations proposed by state agencies to govern procedures in administrative hearings.” AS 44.64.020(a)(8) & (11). In particular, the Chief ALJ was required to adopt a hearing officer code of conduct, which applies to hearing officers of all agencies, not just to OAH ALJs. Regulations on procedures for OAH cases and for the Code of Hearing Officer Conduct have been adopted and took effect on July 2, 2006. It is anticipated that after OAH’s proposed statutory changes are adopted by the legislature, a comprehensive regulations review project will commence. No amendments to the 2006 regulations were proposed in 2020.

OAH is also tasked by statute with tracking notices of other state agencies’ proposed regulations, looking for those that have the potential “to govern procedures in administrative hearings.” However, no formal comment letters were issued in 2020.

#### **F. Monitoring and Surveys**

OAH is required to “survey administrative hearing participants and use other methods to monitor the quality of administrative hearings held by the office and other state agencies[.]” AS 44.64.020(a)(7). The purpose of the surveys and other monitoring is to enable the Chief ALJ to include in the annual report recommendations for statutory changes.

OAH sends a survey to all hearing participants when a final decision in a case is issued, and surveys can be completed online or returned in the mail. As in prior years, survey responses during 2020 were broadly positive, and narrative comments were more often than not constructive.

Even when a litigant was not satisfied with the outcome of the case, the vast majority of people responding were satisfied with the adjudication process overall.

### **G. Training**

OAH's training mandate extends beyond providing training to OAH ALJs and state-employed or retained hearing officers. It requires that OAH:

make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication, substantive law, alternate dispute resolution, and technical matters for administrative law judges *and other administrative adjudicators*[.]<sup>20</sup>

To satisfy this mandate, OAH's training plan consists of the following components:

- Informal training for OAH ALJs through peer review assignments, conferences among the ALJs on a periodic basis, and circulation of case decisions and other materials of interest;
- Formal training for OAH ALJs by attendance at continuing education courses offered by professional associations and the National Judicial College;
- Formal training for non-OAH administrative adjudicators through participation by OAH representatives in periodic, agency-specific conferences; and
- Formal training for administrative adjudicators in the form of programs made available by OAH.

OAH was disappointed in 2019 to be denied approval for its newest ALJs to travel out of state to attend the National Judicial College's introductory training for Administrative Law Judges, which is the only training course for administrative law judges in the country. In 2020, because NJC moved this training online due to the pandemic, two of the three newest ALJs were able to complete the course online.

During 2020, OAH continued its successful in-house training program for ALJs. While this program is not a replacement for formal judicial training through the National Judicial College, it is a useful mechanism for continuing education and for training focused with particularity on issues germane to OAH. OAH has obtained continuing education credit approval by the Alaska Bar Association for these trainings, approximately six of which were held in 2020.

In addition to the above, a number of ALJs used their own funds to take part in continuing education, or took advantage of free courses presented by various groups, including: attending webinars offered by the National Association of Administrative Law Judges in conjunction with the National Judicial College; attending webinars offered by the National Center for State Courts, and participating in the Central Panel Director's Conference, a national conference central panels like OAH (and which was held online this year due to the pandemic).

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<sup>20</sup> AS 44.64.020(a)(6) (emphasis added).

In addition, the OAH management team also provided training to other administrative adjudicators and to final decisionmakers throughout 2020.

## **H. Administration of the Code of Hearing Officer Conduct**

By statute, complaints alleging violation of the Code of Hearing Officer Conduct must be considered by OAH's Chief ALJ, who determines whether they meet the standard for referral to the Attorney General for investigation.<sup>21</sup> Under the code, mitigation of an alleged violation may exist if the accused hearing officer relied upon a written opinion from the Chief ALJ or the Attorney General.<sup>22</sup> The Chief ALJ, therefore, must field questions from hearing officers about code compliance requirements and, in appropriate circumstances, issue written opinions.

No formal ethics opinions were issued during 2020, and there were no complaints of violations of the Code of Hearing Officer Conduct filed with the Chief ALJ.

## **I. Workers' Compensation Appeals Commission Recruitment**

Under AS 23.30.007, the Chief ALJ has the duty to recruit for vacancies on the Workers' Compensation Appeals Commission and to appoint persons to serve as the *pro tempore* chair of that commission if the chair is absent or cannot hear an appeal due to a conflict. The Chief ALJ reviews the qualifications of the applicants for commission positions and must forward to the Governor at least three names for consideration when the attorney-chair position is vacant, and at least two names for each commissioner vacancy.

In 2020, the Chief ALJ worked with Boards and Commissions regarding the reappointment of Deirdre Ford to a five-year term as Chair of the Workers' Compensation Appeals Commission.

## **III. Recommendations of the Chief Administrative Law Judge**

In addition to the description of activities, the Legislature has directed OAH to include in its annual report "recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other state agencies." AS 44.64.020(a)(7).

### **A. Recommendation: Adopt legislative revisions to OAH's statute**

In the fall of 2016, OAH embarked on a comprehensive review of the statutes and regulations affecting administrative hearings. Based on this review, OAH recommended certain specific statutory changes, with sample language offered in an Appendix to the 2017 annual report. In 2019, Senator Micciche introduced SB 88, encompassing many of those proposed changes. The bill was referred to the Finance Committee in March 2020 but was unable to have a hearing before the pandemic-related end of the legislative session. OAH continues to believe that legislative adoption of the changes identified in prior annual reports and in SB 88 would improve both efficiency and due process; a substantially similar draft of prior legislation is attached hereto as Appendix B.

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<sup>21</sup> AS 44.64.050(c). Complaints alleging violations by the Chief ALJ are considered by the Attorney General. AS 44.64.050(e).

<sup>22</sup> 2 AAC 64.060(c).

In brief, the major improvements in SB88 and as set out in Appendix B would be to address the following:

- OAH's statute has a deadline for proposed decisions, and a deadline for agency heads to then make final decisions. The final decision deadline applicable to agency heads, though reasonable in concept, is counted from the wrong event – namely, it is counted from the date the proposed decision is issued, instead of the date that the matter is transmitted to the agency head. This has caused some agency heads to have less than a reasonable time to consider proposals for action and deliberate on their final action. SB 88 addresses this in Section 14 by starting the decision clock for final decisionmakers from the point at which the proposed decision is actually transmitted to them.
- The lack of a provision allowing parties to respond to one another's proposals for action, in appropriate cases, has led to due process concerns in some instances. SB 88 addresses this concern in Section 14.
- The lack of opportunity for the ALJ to revise a proposed decision based on errors pointed out in proposals for action has led to delay and inefficiency in a number of cases. SB 88 addresses this in Section 14 with a time-saving mechanism for ALJs to correct proposed decisions before transmitting them to the final decisionmaker.
- The current statute provides a one-size-fits-all period of 45 days for remanded cases. This timeline is simultaneously too relaxed in instances of simple clarifications or redrafts, and too tight for more complex remands. In Section 14, SB 88 provides a mechanism whereby the final decisionmaker can set deadlines appropriate to the circumstances of a case.
- Although the Chief ALJ can employ administrative staff, the statute inadvertently was written in such a way that an Associate Attorney I (law clerk) cannot be hired by OAH even though such a hire might result in cost-savings to OAH. SB 88 addresses this in Sections 2 and 4 by allowing the hiring of professional staff.
- OAH currently has subpoena power of some kind in the great majority of its cases, drawn from a patchwork of dozens of sources scattered across many statutory titles. At the same time, there is no subpoena power in a few important case categories. It is time for OAH subpoena authority to be consolidated into a single, uniform provision of AS 44.64. The patchwork of subpoena authorities causes uncertainty, inefficiency, and extra cost. Although subpoenas are issued in only a very small percentage of cases, situations in which the authority to issue them is absent or questionable disrupt orderly and effective adjudication, and can lead to waste and injustice. The modified draft legislation in Appendix B addresses this issue in Section 16 by providing uniform subpoena authority except in a narrow and clearly identified category of cases.
- At the time OAH's statute was enacted, there was debate over how much experience an ALJ should have before being hired by OAH. Given the complexity of some of the

cases now before OAH, having at least four years of practice overall as the minimum standard for hiring now makes sense. (In actuality, OAH ALJs average closer to twenty years of law practice experience). However, experience in other jurisdictions should be countable. The inability to count experience in other jurisdictions has caused severe recruiting difficulties in the tax docket. SB 88 addresses this in Section 7 by allowing OAH to count legal practice in other jurisdictions towards the tax-qualified ALJ position's practice requirements.

- Like the court system, OAH needs to have a means of reopening decisions that were entered in error, such as when a party failed to appear but the failure later turns out to be because the party was incapacitated, or because the agency sent the notice to the wrong person. OAH currently has no mechanism that allows a case to be reopened, even in the presence of frank and obvious error. SB 88 addresses this in section 16 by allowing OAH to reopen cases for the same reasons allowed in the court system.

*The Chief Administrative Law Judge recommends that the legislature enact legislation to fix the issues in AS 44.64 that have been identified by experience.*

**B. Recommendation: Provide OAH with a broader range of final decision-making authority**

Currently, OAH functions as the final decision maker in the following types of cases: (1) cases involving administrative fines against contractors and home inspectors; (2) most retirement and disability appeals; (3) tax cases involving oil and gas, corporation income, fisheries, and cigarette taxes; and (4) public benefits cases, PFD appeals, and child support cases where no proposal for action has been filed and the case does not raise issue of first impression on an important policy issue.

For other types of cases, OAH issues a proposed decision which is then sent to the final decisionmaker, who is generally a board, commission, commissioner or an individual to whom a commissioner delegates such duties. The final decisionmaker can adopt, reject, or remand the case to the ALJ within 45 days after the ALJ issues the proposed decision. This process inserts additional delay in bringing finality to the parties and allowing them the option to appeal, results in additional administrative time and concomitant costs, and is unnecessary in most categories of cases, other than cases which are governed by the Administrative Procedure Act, AS 44.62.330-640.<sup>23</sup>

OAH's low rate of cases appealed to the Superior Court and its infinitesimal reversal rate at the Superior Court and Supreme Court levels demonstrate that there is simply no need for an additional layer of administrative review beyond the ALJ's decision in cases that are not governed by the APA. During the seven-year period from 2013 through 2019, less than 5% of the decisions issued by OAH were appealed to the Superior Court, which is a very low appeal rate.

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<sup>23</sup> Cases governed by the Administrative Procedure Act (APA) include, *inter alia*, cases involving professional licensing boards, the Alaska Public Offices Commission (APOC), the Alaska Police Standards Council, and the State Commission on Human Rights. A list of the entities whose cases are governed by the APA can be found in AS 44.62.330. In general, APA cases need a proposed decision process, although the particular process prescribed by AS 44.64.040 is not the only one that could be adopted in a statutory redesign.

There would be a considerable cost savings to the State if OAH served as the final decisionmaker in more types of cases. The commissioner or his/her delegee would not need to review the decision, review proposals for actions, or consult with OAH regarding the legal issues in the case. It is only rarely that a commissioner does not adopted OAH's decision. Saving time translates into saving money and increased efficiencies. OAH's track record demonstrates that its decisions are seldom reversed so that oversight by a commissioner or his/her designee is not warranted in most instances. OAH believes this proposal would streamline and shorten the decision-making process while allowing for truly serious errors to be corrected at the Superior Court level. This has been done successfully in other states.

**C. Recommendation: Transfer Special Education Adjudications and Mediations to OAH**

One notable area of state administrative adjudication currently not assigned to OAH is special education hearings. These matters arise when parents or school districts request a hearing to determine whether a student requires special education services and/or whether the services being provided are appropriate. A majority of States with central panels like OAH handle special education adjudications and mediations that originate in school districts. OAH's statute (AS 44.64.055) also permits OAH to handle special education cases.

OAH's ALJs are experienced adjudicators and litigators who historically have charged substantially less per hour than private hearing officers, a cost savings which is passed onto the municipalities and school districts.<sup>24</sup> These circumstances warrant a hard look at whether special education hearing officer responsibilities should be assigned to OAH by statute, rather than to DEED.

Additionally, many special education disputes can be mediated to a successful resolution without costly litigation. Currently, DEED administers a mediation contract with an out-of-state mediator for this purpose. However, all three of OAH's ALJs who have completed DEED's introductory special education course are experienced mediators who would be able to handle special education mediations.

In order to effect this change, the following statutory provisions would need to be revised: AS 44.64.030(a), which is OAH's statute addressing the mandatory jurisdiction of OAH; AS 14.30.193, which addresses the process for selecting and appointing hearing officers when a due process hearing has been requested in a special education matter; and AS 14.30.194, which addresses appointing mediators for special education cases. Overall, transferring these cases to OAH would result in a pool of trained judges and mediators within a centralized governmental agency and would allow school districts to benefit from OAH's efficiencies and reduced costs for these services as compared to private hearing officers and mediators.

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<sup>24</sup> OAH charges an hourly rate for its adjudication and mediation services. This hourly rate is determined by a statewide cost analysis plan (SWCAP) and is reviewed by the Department of Administration. The SWCAP rate is recalculated on an annual basis.

**D. Recommendation: Consolidate the Workers Compensation Appeals Commission's Function Under OAH**

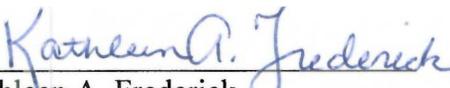
The Chief ALJ, in conjunction with Boards and Commissions, is involved in the recruitment and vetting of applicants for the labor and management members of the Commission and for the Chair position. Final selection of the candidates is made by the Governor. During the four-year period from 2016 through 2019, the Commission has averaged between 20 and 26 new cases a year. In terms of total case load (new cases plus cases carried over from a prior year and cases that have been remanded), the Commission has had between 43 and 49 cases on its docket each year. Currently, the Commission has two full-time employees: The Chair and a staff member.

Since 2014, there have been on-and-off discussions between the Department of Labor and the Department of Administration and, more particularly, between OAH and past Chairs of the Commission concerning consolidating the Commission under OAH so that the Chair would have a full-time docket consisting of OAH cases and cases for the Commission. Certain cost savings would result from such a consolidation given the small docket of the Commission.

**IV. Conclusion**

In 2020, OAH's activities continued to focus on its core function — adjudication of executive branch cases — as well as on resolving disputes between agencies and private parties using alternative dispute resolution techniques. In the coming year, OAH will continue to search for opportunities to improve the delivery of fair, efficient, and cost-effective hearings and alternative dispute resolution processes for the benefit of all Alaskans.

Submitted effective the 31<sup>st</sup> day of January 2021.

  
Kathleen A. Frederick  
Chief Administrative Law Judge

## Appendix A

ALJ Survey Results: January 2020-December 2020

### Demographics of Hearing Participants Responding<sup>25</sup>

Question	Number Responding			
	Attorney	Party	Agency Representative	Other
<i>Define your participation</i>	8	11	87	2
<i>Did you attend in person or by telephone?</i>	<i>Attended in person</i>		<i>Attended by telephone</i>	
	1		105	
<i>Where do you live?</i>	<i>Rural Alaska</i>	<i>City in Alaska</i>	<i>Outside Alaska</i>	
	21	83	4	
<i>What was the final ruling of your hearing?</i>	<i>In your favor</i>	<i>Not in your favor</i>	<i>Other</i>	
	67	10	33	
<i>Including this one, how many hearings at the Office of Administrative Hearings have you participated in?</i>	<i>One</i>	<i>2 to 10</i>	<i>More than 10</i>	
	11	22	75	

<b>Hearing Evaluation for Administrative Law Judge (ALJ)</b>	<b>Excellent</b>	<b>Adequate</b>	<b>Poor</b>
ALJ's preparation for the case	82	20	2
ALJ's courtesy toward both parties	81	15	7
ALJ's impartiality toward both parties	75	21	7
ALJ's efficiency	79	23	2
ALJ explained the hearing process	84	16	3

<b>Written Decision Evaluation</b>	<b>Excellent</b>	<b>Adequate</b>	<b>Poor</b>
ALJ's promptness issuing order	78	24	5
Decision clearly explained the issues and ruling	77	24	4

<b>Overall Evaluation</b>	<b>Agree</b>	<b>Disagree</b>	<b>No Comment</b>
Office of Administrative Hearing Clerks were courteous and helpful	103	1	4
Overall, I was satisfied with the hearing process and felt it was a positive experience	95	7	5

<sup>25</sup> Note: not all respondents answered every question.

## APPENDIX B

**SB \_\_\_\_: "An Act relating to the office of administrative hearings; relating to the types of proceedings handled by the office of administrative hearings; relating to the entities that may use the services of the office of administrative hearings; relating to the duties of the chief administrative law judge, including the power to hire professional staff; relating to the qualifications and powers of administrative law judges, including subpoena power; relating to the compensation of the chief administrative law judge; relating to complaints against administrative law judges and hearing officers; relating to reimbursement for costs incurred by the office of administrative hearings; relating to procedures for requesting and conducting proceedings of the office of administrative hearings; and providing for an effective date."**

00 SENATE BILL NO. \_\_\_\_

01 "An Act relating to the office of administrative hearings; relating to the types of  
02 proceedings handled by the office of administrative hearings; relating to the entities that  
03 may use the services of the office of administrative hearings; relating to the duties of the  
04 chief administrative law judge, including the power to hire professional staff; relating to  
05 the qualifications and powers of administrative law judges, including subpoena power;  
06 relating to the compensation of the chief administrative law judge; relating to  
07 complaints against administrative law judges and hearing officers; relating to  
08 reimbursement for costs incurred by the office of administrative hearings; relating to  
09 procedures for requesting and conducting proceedings of the office of administrative  
10 hearings; and providing for an effective date."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 \* **Section 1.** AS 18.80.120(b) is amended to read:

01 (b) The commission shall request the chief administrative law judge to  
02 appoint, under AS 44.64.020, an administrative law judge employed or retained by the  
03 office of administrative hearings to preside over a hearing conducted under this  
04 section. AS 44.64.040 and 44.64.050 [AS 44.64.040 - 44.64.055], 44.64.070 -  
05 44.64.200, and the procedures in AS 44.62.330 - 44.62.630 (Administrative Procedure  
06 Act) apply to the hearing except as otherwise provided in this chapter.

07 \* **Sec. 2.** AS 39.25.120(c)(20) is amended to read:

08 (20) the chief administrative law judge, [AND] administrative law  
09 judges, and professional staff of the office of administrative hearings;

10 \* **Sec. 3.** AS 44.64.010(d) is amended to read:

11 (d) The chief administrative law judge shall receive a monthly salary that is  
12 **equal to a step in** [NOT LESS THAN STEP A NOR MORE THAN STEP F,] Range  
13 27 [,] of the salary schedule in AS 39.27.011(a) [FOR JUNEAU, ALASKA]. The  
14 chief administrative law judge is in the partially exempt service.

15 \* **Sec. 4.** AS 44.64.020 is amended to read:

16 **Sec. 44.64.020. Powers and duties of chief administrative law judge.** (a)

17 The chief administrative law judge shall

18 (1) supervise the office;

19 (2) employ administrative staff, who shall be in the classified service;

20 (3) employ administrative law judges **and professional staff**, who

21 shall be in the partially exempt service;

22 (4) preside over administrative hearings **and other proceedings**

23 handled by the office or, based **on** [UPON] the qualifications and expertise of the

24 administrative law judges, assign administrative law judges to preside over hearings

25 **or other proceedings handled by the office**, and protect, support, and enhance the

26 decisional independence of the administrative law judges;

27 (5) establish and implement performance standards, including

28 provision for timeliness, and peer review programs for administrative law judges

29 employed or retained by the office;

30 (6) make available and facilitate training and continuing education

31 programs and services in administrative procedure, administrative adjudication,

01 substantive law, **alternative** [ALTERNATE] dispute resolution, and technical matters

02 for administrative law judges and other administrative adjudicators;

03 (7) survey administrative hearing participants and use other methods to

04 monitor the quality of administrative hearings held by the office and other [STATE]

05 agencies, and submit to the governor and the legislature on January 31 of each year the

06 results of the survey along with a report that includes a description of the activities of

07 the office and recommendations for statutory changes that may be needed in relation

08 to the administrative hearings held by the office or other [STATE] agencies;

09 (8) review and comment on regulations proposed by [STATE]

10 agencies to govern procedures in administrative hearings;

11 (9) enter into contracts as necessary to carry out the functions of the

12 office;

13 (10) annually prepare and submit to the commissioner of  
14 administration a budget for the office for the next fiscal year that **must** [SHALL]  
15 include and separately identify funding for training and continuing education; a copy  
16 of the budget submitted to the commissioner under this paragraph shall also be  
17 submitted to the **finance committee** [FINANCE COMMITTEE] of each house of the  
18 legislature;

19 (11) after consulting with affected agencies, adopt regulations under  
20 [AS 44.62](#) (Administrative Procedure Act) to carry out the duties of the office and  
21 implement this chapter;

22 (12) receive and review applications from individuals seeking  
23 appointments to the Workers' Compensation Appeals Commission and submit the  
24 names of individuals to the governor for appointment as provided in [AS 23.30.007\(d\)](#);  
25 and

26 (13) appoint a chair pro tempore for the Workers' Compensation  
27 Appeals Commission as provided in [AS 23.30.007\(m\)](#).

28 (b) In carrying out the responsibilities of the office, the chief administrative  
29 law judge shall seek to accomplish the following goals:

30 (1) provide for the delivery of high quality adjudication **and**  
31 **alternative dispute resolution** services in a timely, efficient, and cost-effective  
01 manner;

02 (2) ensure respect for the privacy and dignity of the individuals whose  
03 cases are being adjudicated and protect them from threats, intimidation, and  
04 harassment;

05 (3) foster open and clearly explained agency decisions and improve  
06 public access to the process of administrative adjudication;

07 (4) guarantee protection of all parties' due process rights, increase the  
08 public parties' perception of fairness in administrative adjudication, and foster  
09 acceptance of final administrative decisions by the public and affected parties;

10 (5) protect the integrity of the process of administrative adjudication  
11 and decisional independence of administrative adjudicators; and

12 (6) increase consistency in administrative procedures and decisions.

13 \* **Sec. 5. [AS 44.64.030\(b\)](#)** is amended to read:

14 (b) An agency **or entity** may request the office to conduct an administrative  
15 hearing, **arbitration**, or **alternative dispute resolution** [OTHER PROCEEDING] of

16 **the requesting** [THAT] agency **or entity** or to conduct several administrative  
17 hearings, **arbitrations**, or **alternative dispute resolutions** [OTHER  
18 PROCEEDINGS] under statutes **or ordinances** not listed in (a) of this section. The  
19 office may provide the service after entering into a written agreement with the  
20 **requesting** agency **or entity** describing the services to be provided **and procedures**,  
21 **which must be consistent with applicable law, to be applied** and providing for  
22 reimbursement by the **requesting** agency **or entity** to the office of the costs incurred  
23 by the office in providing the services.

24 \* **Sec. 6.** [AS 44.64.030](#)(c) is amended to read:

25 (c) To the extent otherwise permitted by law, the agency **or entity** may  
26 delegate to the administrative law judge assigned to conduct the hearing on behalf of  
27 the agency **or entity** the authority to make a final agency **or entity** decision in the  
28 matter. The final decision may be appealed to the superior court by any party.

29 \* **Sec. 7.** [AS 44.64.040](#)(a) is amended to read:

30 (a) An administrative law judge must be admitted to practice law in this state  
31 and must have been admitted to practice in this state for at least **four** [TWO] years  
01 before being employed or retained with the office, **except that, if the duties of an**  
02 **administrative law judge who is employed or retained by the office will include**  
03 **conducting a proceeding under AS 43.05.405 - 43.05.499, the administrative law**  
04 **judge must be admitted to practice law in this state and must have been admitted**  
05 **to practice in this state or another state for four years before being employed or**  
06 **retained with the office.** The chief administrative law judge shall establish additional  
07 qualifications for administrative law judges employed or retained by the office and for  
08 those administrative law judges that may be assigned to particular types of cases. An  
09 administrative law judge is in the partially exempt service. Notwithstanding  
10 [AS 39.25.120](#)(b), full-time administrative law judges employed by the office are  
11 subject to the personnel rules adopted under [AS 39.25.150](#)(7), (15), and (16).

12 \* **Sec. 8.** [AS 44.64.040](#)(b) is amended to read:

13 (b) An administrative law judge employed or retained by the office may, in  
14 conducting an administrative hearing **or other proceeding** for an agency **or entity**,  
15 exercise the powers authorized by law for exercise by that agency **or entity** in the  
16 performance of its duties in connection with the hearing **or other proceeding**. An  
17 administrative law judge may

18 (1) engage in alternative dispute resolution under regulations adopted

19 by the chief administrative law judge that is in addition to any **alternative**  
20 [ALTERNATE] dispute resolution procedure used by an agency **or entity** before the  
21 case is referred to the office;

22 (2) order a party, a party's attorney, or another authorized  
23 representative of a party to pay reasonable expenses, including attorney fees, incurred  
24 by another party as a result of actions done in bad faith or as a result of tactics used  
25 frivolously or solely intended to cause unnecessary delay;

26 (3) perform other necessary and appropriate acts in the performance of  
27 official duties.

28 \* **Sec. 9.** AS 44.64.040(c) is amended to read:

29 (c) An administrative law judge employed by the office must devote full time  
30 to the duties of the office unless **servicing** [APPOINTED TO A POSITION THAT IS]  
31 less than **full time** [FULL-TIME]. An administrative law judge employed by the  
01 office may not perform duties inconsistent with the duties and responsibilities of an  
02 administrative law judge.

03 \* **Sec. 10.** AS 44.64.050(c) is amended to read:

04 (c) Except as provided in (e) of this section, the chief administrative law judge  
05 shall receive and consider all complaints against administrative law judges or hearing  
06 officers employed or retained by the office or another agency alleging violations of (a)  
07 of this section or of the code of hearing officer conduct. The chief administrative law  
08 judge shall deliver the complaint to the attorney general when the chief administrative  
09 law judge determines that

10 **(1) the complaint alleges a violation that occurred**

11 **(A) not more than three years before the complaint was**

12 **filed; or**

13 **(B) in connection with an adjudication or other proceeding,**

14 **and the complaint was filed not more than two years after conclusion of**

15 **the adjudication or other proceeding, including resolution of all appeals;**

16 **and**

17 **(2) the conduct alleged, if true, would constitute a violation of**

18 **(A)** [(1) SUBSECTION] (a) of this section; or

19 **(B)** [(2)] the code and would warrant disciplinary action under

20 the regulations adopted under (b) of this section.

21 \* **Sec. 11.** AS 44.64.060(a) is amended to read:

22 (a) The chief administrative law judge shall, by regulation, establish  
23 procedures for administrative hearings conducted by the office. Each administrative  
24 hearing under the jurisdiction of the office or that has been transferred to the office by  
25 an agency **or entity** shall be conducted in accordance with statutes **or ordinances** that  
26 apply to that hearing, including, if applicable, [AS 44.62](#) (Administrative Procedure  
27 Act). In case of conflict between this section and another applicable statute **or**  
28 **ordinance** establishing procedures for administrative hearings, the other statute **or**  
29 **ordinance** prevails. However, **except as otherwise provided in AS 44.64.030(b)**, to  
30 the extent regulations adopted by an agency for the conduct of an administrative  
31 hearing conflict with regulations adopted by the chief administrative law judge under  
01 this subsection, the regulations adopted by the chief administrative law judge control  
02 to the maximum extent possible without conflicting with applicable statutes.

03 \* **Sec. 12.** [AS 44.64.060](#)(b) is amended to read:

04 (b) When an agency receives a request for a hearing that is subject to  
05 [AS 44.64.030](#), the agency shall, within 10 days and in writing, deny the request for  
06 reasons provided by law or grant the request and refer the case to the office **with a**  
07 **copy of the request for a hearing, the names, addresses, electronic mail addresses,**  
08 **and telephone numbers of all parties and their representatives, and the document**  
09 **containing the decision or other matter under review.** The agency shall  
10 immediately give notice of the denial or referral to the requesters and the office. If the  
11 request is denied, the denial may be appealed to the **office or** [SUPERIOR COURT]  
12 as provided by other law. If the request is granted, the agency shall, within **20** [15]  
13 days after receiving the request, compile and transmit to the office a copy of the  
14 [REQUEST FOR A HEARING, THE NAMES, ADDRESSES, AND TELEPHONE  
15 NUMBERS OF ALL PARTIES AND THEIR REPRESENTATIVES, AND THE  
16 AGENCY'S DECISION, IF ANY, TOGETHER WITH THE] record relied on to  
17 support the decision **or other matter**. Any information provided to the office that is  
18 confidential by law shall be identified by the agency as confidential and shall be kept  
19 confidential by the office.

20 \* **Sec. 13.** [AS 44.64.060](#)(d) is amended to read:

21 (d) An administrative law judge employed or retained by the office shall,  
22 within 120 days after the date the agency received the request for a hearing, prepare a  
23 proposed decision, unless another [TIME] period is provided by law or agreed to by  
24 the parties and the chief administrative law judge. **With the approval of the chief**

25 **administrative law judge, an administrative law judge may stay a proceeding to**  
26 **allow related criminal prosecutions or civil litigation to proceed first. The**  
27 **running of the 120-day deadline under this subsection is suspended during a stay**  
28 [THE ADMINISTRATIVE LAW JUDGE SHALL IMMEDIATELY SUBMIT THE  
29 PROPOSED DECISION TO THE AGENCY].

30 \* **Sec. 14. AS 44.64.060**(e) is amended to read:

31 (e) A proposed decision in an administrative hearing **must** [SHALL] be in a  
01 form that may be adopted as the final decision by the agency with authority to make  
02 the final decision. The proposed decision is a public record, except as otherwise  
03 provided by statute. A copy of the proposed decision shall be served by the office on  
04 each party in the case or on the attorneys representing those parties in the hearing.  
05 Unless the office has established a shorter [TIME] period **or, for good cause and with**  
06 **the consent of all parties to the hearing, a longer period,** or **unless** another statute  
07 has established a different [TIME] period, within 30 days after the proposed decision  
08 is served, a party may file with the **office** [AGENCY] a proposal for action under (1) -  
09 (5) of this subsection. **The administrative law judge may permit a party to reply to**  
10 **a proposal for action and shall, within 15 days after the final date for submission**  
11 **of proposals for action, transmit the proposed decision and any proposals for**  
12 **action and replies to the final decision maker or return the matter to the**  
13 **administrative law judge to prepare a revised proposed decision under (d) of this**  
14 **section.** The agency with authority to make a final decision in the case retains **the**  
15 [AGENCY] discretion in the final disposition of the case and shall, within 45 days  
16 after the date the **office transmits to the agency the proposed decision or revised**  
17 proposed decision [IS SERVED] or at the next regularly scheduled meeting that  
18 occurs at least **20** days after the **office transmits to the agency the proposed decision**  
19 **or the revised proposed decision** [PROPOSED DECISION IS SERVED], do one or  
20 more of the following:

21 (1) adopt the proposed decision as the final agency decision;  
22 (2) return the case to the administrative law judge to take additional  
23 evidence or make additional findings or for other specific proceedings, in which case  
24 the administrative law judge shall complete the additional work and return the revised  
25 proposed decision to the agency within 45 days after the original decision was  
26 returned under this paragraph **or within another period prescribed in the order**  
27 **returning the case to the administrative law judge;**

28 (3) exercise its discretion by revising the proposed enforcement action,  
29 determination of best interests, order, award, remedy, sanction, penalty, or other  
30 disposition of the case, and adopt the proposed decision as revised;  
31 (4) in writing, reject, modify, or amend a factual finding in the  
01 proposed decision by specifying the affected finding and identifying the testimony  
and  
02 other evidence relied on by the agency for the rejection, modification, or amendment  
03 of the finding, and issue a final agency decision;  
04 (5) in writing, reject, modify, or amend an interpretation or application  
05 in the proposed decision of a statute or regulation directly governing the agency's  
06 actions by specifying the reasons for the rejection, modification, or amendment, and  
07 issue a final agency decision.

08 \* **Sec. 15.** AS 44.64.060(f) is amended to read:

09 (f) If a final decision is not issued timely in accordance with (e) of this section,  
10 the administrative law judge's proposed decision **or, if the proposed decision has**  
11 **been revised under (e) of this section, the administrative law judge's revised**  
12 **proposed decision,** is the final agency decision.

13 \* **Sec. 16.** AS 44.64.060 is amended by adding new subsections to read:

14 (g) Except as otherwise provided by law, , and except in a hearing under AS 39.35.006  
or  
15 AS 14.25.006, an administrative law judge may, for good cause shown, issue a subpoena  
to  
16 compel the attendance and testimony of witnesses and the production of documents and  
17 records.

18 (h) After a final agency decision has been issued under (e) of this section, the  
19 maker of the final decision may reopen a proceeding for a reason provided in Rule  
20 60(b), Alaska Rules of Civil Procedure. This subsection does not supersede or modify  
21 authority to reopen a proceeding as otherwise provided by law.

22 \* **Sec. 17.** AS 44.64.080(c) is amended to read:

23 (c) After an administrative hearing is referred by an agency to the office for  
24 hearing, the agency may not take further adjudicatory action in the case, except **for**  
25 **agency staff acting** as a party litigant **and the official or body with authority to**  
26 **render a final decision taking action under AS 44.64.060(e)** [OR TO RENDER A  
27 FINAL DECISION AS PROVIDED BY LAW]. This subsection does not otherwise

28 limit the agency's authority to take action affecting a party to the case.  
29 \* **Sec. 18.** [AS 44.64.200](#)(1) is amended to read:  
30 (1) "administrative hearing" means a quasi-judicial hearing before an  
31 agency **or entity**; it does not include an informal conference or review held by an  
01 agency **or entity** before a [FINAL] decision is issued or a rate-making proceeding or  
02 other nonadjudicative public hearing;  
03 \* **Sec. 19.** [AS 44.64.200](#) is amended by adding new paragraphs to read:  
04 (6) "entity" means a municipality, school district, or other  
05 governmental entity;  
06 (7) "other proceeding" means an arbitration or alternative dispute  
07 resolution conducted under [AS 44.64.030](#)(b);  
08 (8) "school district" means a borough school district, a city school  
09 district, or a regional educational attendance area under [AS 14](#).  
10 \* **Sec. 20.** [AS 44.64.055](#) is repealed.  
11 \* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new  
12 section to read:  
13 APPLICABILITY. (a) The change in compensation made by [AS 44.64.010](#)(d), as  
14 amended by sec. 3 of this Act, applies only to an individual who is appointed on or after  
the  
15 effective date of sec. 3 of this Act.  
16 (b) The four-year admission requirement in [AS 44.64.040](#)(a), as amended by sec. 7 of  
17 this Act, applies to an individual whose employment or retention as an administrative law  
18 judge by the office of administrative hearings established under [AS 44.64.010](#) begins on  
or  
19 after the effective date of sec. 7 of this Act.  
20 (c) [AS 44.64.050](#)(c), as amended by sec. 10 of this Act, applies to a complaint against  
21 an administrative law judge or hearing officer received on or after the effective date of  
sec. 10  
22 of this Act.  
23 (d) In this section,  
24 (1) "administrative law judge" has the meaning given in [AS 44.64.200](#);  
25 (2) "hearing officer" has the meaning given in [AS 44.64.200](#).  
26 \* **Sec. 22.** Section 10 of this Act takes effect July 1, 2021.