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# TEN YEARS LATER: THE PROGRESS OF STATE CENTRAL PANELS

Allen C. Hoberg\*

In January of 1990, the State of Maryland established an Office of Administrative Hearings.<sup>1</sup> In May of 1991, the State of Texas established a State Office of Administrative Hearings.<sup>2</sup> In July of 1991, the state of North Dakota established an Office of Administrative Hearings.<sup>3</sup> Shortly thereafter, I began writing an article entitled *Administrative Hearings: State Central Panels in the 1990s*.<sup>4</sup> That article briefly reviewed the background, history, jurisdiction, and structure of state central panels in the United States.<sup>5</sup> The article closely examined the establishment of the central panels of Maryland, North Dakota, and Texas; the first three central panels in the 1990s.<sup>6</sup> The article also identified some “by-products” of the central panel movement.<sup>7</sup> Finally, it forecasted the future of central panels in the states.<sup>8</sup> It has been about ten years since the establishment of central panels in those three states. Much has happened relating to the central panels in those three states as well as to the central panel movement in the rest of the United States in the last ten years. The primary purpose of this article is to compare the current status of the Maryland, North Dakota and Texas central panels to what existed upon establishment, and to measure their progress. Additionally, this article will also briefly assess the progress of the central panel movement and forecast the future of central panels.

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1. 1989 MD. LAWS 788; MD. CODE ANN., STATE GOV'T §§ 9-1601 to -1610 (1999).

2. 1991 TEX. GEN. LAWS 591; TEX. GOV'T CODE ANN. §§ 2003.001-.051 (Vernon 2000).

3. 1991 N.D. LAWS 637; N.D. CENT. CODE § 54-57 (Supp. 2001).

4. Allen Hoberg, *Administrative Hearings: State Central Panels in the 1990s*, 46 ADMIN. L. REV. 75, 75-94 (1994), reprinted in 14 J.NAALJ 107, 107-36 (1994).

5. *Id.* at 107-17.

6. *Id.* at 117-29.

7. *Id.* at 129-34.

8. *Id.* at 134-36.

## MARYLAND

The Maryland central panel was a “Cadillac” when it was established, is still a “Cadillac,” and will probably always be a “Cadillac.”<sup>9</sup> It is easy to imagine that all directors or chief administrative law judges of newly established central panel agencies live in fear of being disestablished or at least losing jurisdiction over some agencies. In Maryland, it seems that these fears never existed. Most likely, the greatest concern for the Maryland Office of Administrative Hearings (OAH) after its establishment was losing a desirable building.<sup>10</sup>

The current jurisdiction of the Maryland OAH appears to be approximately the same as in 1990,<sup>11</sup> but it has grown to include several types of hearings for the Maryland Department of Health and Mental Hygiene.<sup>12</sup> In 1990 and 1991, OAH docketed 80,639 and 76,190 cases respectively.<sup>13</sup> In calendar year 1996, OAH docketed 43,345 cases; 27,571 actually resulted in a hearing.<sup>14</sup> In calendar year 2000, OAH docketed 48,346 cases, 12,542 of which resulted in full hearings.<sup>15</sup> In 2000, OAH conducted fair and timely hearings in contested cases for more than twenty-five state agencies for over two hundred different programs, with over five hundred types of hearings.<sup>16</sup> In 1991, OAH employed seventy-two Administrative Law Judges (“ALJs”),<sup>17</sup> whereas in

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9. *Id.* at 120. At the time the previous article was written, Maryland had the “broadest jurisdiction and the largest case load of administrative hearings of any central panel agency in any state.” *Id.* Thus, Maryland is a “Cadillac” in size compared to other states with more narrow jurisdictions.

10. 2000 MD. OFF. ADMIN. HEARINGS ANN. REP. 15, available at [http://www.oah.state.md.us/main\\_Selections\\_of\\_Home\\_page/About-OAH/2000\\_OAH\\_Annual\\_Report.pdf](http://www.oah.state.md.us/main_Selections_of_Home_page/About-OAH/2000_OAH_Annual_Report.pdf) (last visited Feb. 16, 2002) [hereinafter 2000 MD. ANN. REP.]. Sometime in 1996, OAH moved from a new Administrative Law Building built for OAH, to a remodeled warehouse in Hunt Valley that currently serves as its Administrative Law Building. The former building was impressive; the new building is adequate.

11. Hoberg, *supra* note 4, at 118.

12. OFFICE OF ADMIN. HEARINGS, STATE OF MD., 1996 BROCHURE, Insert D (1996). Insert B lists the jurisdictional caseload, by agency or types of agencies for 1996. *Id.* Inserts C through M describe all of the different programs, agencies and types of cases, in OAH’s jurisdictional caseload. *Id.* Except for the additions noted in the text, the jurisdictional caseload appears to be about the same as in 1990-91, and, essentially, the same agencies are exempt that were exempt in 1991. *Id.*; Cf. Hoberg, *supra* note 4, at 118-19.

13. Hoberg, *supra* note 4, at 120.

14. OFFICE OF ADMIN. HEARINGS, STATE OF MD., 1996 BROCHURE (1996).

15. 2000 MD. ANN. REP., *supra* note 10, Attachment F. From this attachment it appears that considerably more docketed cases had other disposition short of a full hearing in 2000. *Id.*

16. *Id.* at 15.

17. Hoberg, *supra* note 4, at 120.

2000, OAH employed only about sixty ALJs.<sup>18</sup> Clearly, the docketed caseload is significantly down from the early years. At least over the last five years, there has also been a significant decrease in the number of hearings.<sup>19</sup> Consequently, fewer ALJs are necessary to handle the caseload.

In addition to managing cases and conducting hearings, OAH has been busy providing additional structure for the administrative hearings process.<sup>20</sup> OAH has undertaken many new initiatives. Since 1998, OAH has engaged in Alternative Dispute Resolution (“ADR”).<sup>21</sup> This program is predominantly a mediation program.<sup>22</sup> During calendar year 2000, OAH scheduled approximately forty mediation sessions per month, in addition to settlement conferences.<sup>23</sup> OAH has also begun using video conferencing as a means of conducting and recording its hearings.<sup>24</sup> OAH has established a large library that contains a database of several thousand decisions.<sup>25</sup> OAH also enhanced its website in 2001 to provide citizens access to many items about the administrative hearing process and decisions.<sup>26</sup>

By-products of Maryland’s establishment of an OAH include a Code of Ethics for ALJs,<sup>27</sup> Uniform Rules of Procedure,<sup>28</sup> and a revised state APA.<sup>29</sup>

Further, Maryland’s OAH has a strong history of involvement nationally in central panel matters.<sup>30</sup> Maryland’s chief ALJ and its other ALJs have been significantly involved in the central panel movement, sponsoring conferences and meetings, writing articles, serving on boards of

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18. 2000 MD. ANN. REP., *supra* note 10, at 7.

19. *See supra*, notes 13-15.

20. 2000 MD. ANN. REP., *supra* note 10, at 13.

21. *Id.* at 10-11.

22. *Id.*

23. *Id.* at 12. Many of these mediation sessions are in the area of special education, where mediation has greatly reduced the number of special education due process hearings. *Id.* at 11-12

24. *Id.* at 16.

25. *Id.* at 19. All OAH decisions are now available for searches on OAH’s computer network. *Id.*

26. *Id.* at 4 (For the website, *see also* Maryland Office of Administrative Hearings, at <http://www.oah.state.md.us> (last visited Feb. 16, 2002)).

27. *Id.* at 13.

28. *Id.* at 13 (adopted in 1991).

29. *Id.* (adopted in 1993). Although it is likely impossible to state that none of these by-products would have occurred without OAH, the fact that they did occur after the establishment of OAH must mean something.

30. *Id.* at 7-12.

various organizations, and otherwise participating in national central panel endeavors and related events and activities.<sup>31</sup> Clearly, Maryland has maintained its “Cadillac” standing.

### NORTH DAKOTA

In my previous article, I placed North Dakota in the “middle” regarding its support of a central panel.<sup>32</sup> North Dakota established a central panel with somewhat broad jurisdiction, but exempted several sizable agencies from its jurisdiction.<sup>33</sup> The legislation establishing the North Dakota Office of Administrative Hearings (“OAH”) and exempting agencies from its jurisdiction has not changed in regard to jurisdiction since 1991.<sup>34</sup> However, the actual jurisdiction of OAH has changed by voluntary agreement with exempted agencies. Since 1991, the Public Service Commission,<sup>35</sup> the Industrial Commission,<sup>36</sup> the Insurance Commissioner,<sup>37</sup> the Workers Compensation Bureau,<sup>38</sup> Job Service

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31. *Id.* at 7-9, 20-22. Maryland recently hosted a central panel Leadership Conference at its Administrative Law Building attended by central panel directors and others from several states and three cities. This conference was for the purpose of discussing and focusing on possible solutions to the many issues and concerns currently facing central panels.

32. Hoberg, *supra* note 4, at 126.

33. N.D. CENT. CODE § 54-57-03(1) (1991).

34. *Id.* There have been two attempts by agencies to become exempt from OAH jurisdiction. In 1995, the Department of Human Services attempted to become exempt. *See* H.B. 1161, 54th Leg. Reg. Sess. (N.D. 1995). In 2001, the Tax Department attempted to become exempt. *See* H.B. 1455, 57th Leg. Reg. Sess. (N.D. 2001). Neither bill attempting to amend N.D. CENT. CODE § 54-57-03(1) (1991) was successful.

35. *See* NORTH DAKOTA PUBLIC SERV. COMM’N, at <http://www.psc.state.nd.us> (last visited Feb. 16, 2002). Beginning in 1991, the PSC began using OAH to conduct some of its hearings. Since 1995, the PSC has been using OAH to conduct virtually all of its hearings. North Dakota has a unique provision that allows an agency head to issue the decision when the agency head is present at the hearing; the ALJ merely conducts the hearing and related proceedings. N.D. CENT. CODE § 28-32-08.5 (Supp. 1999). *See* N.D. ADMIN. CODE § 69-02 (1992). The PSC has made use of this statute using ALJs mostly in this regard as “procedural hearing officers,” assuring that a fair hearing is conducted. None of the current three Public Service Commissioners is an attorney.

36. *See* INDUST. COMM’N OF NORTH DAKOTA, at <http://www.state.nd.us/ndic> (last visited Feb. 16, 2002). In 1992, the Industrial Commission began using OAH to conduct some of its hearings. Since 1995, the Industrial Commission used OAH to conduct hearings on student loan defaults, as well as for other types of hearings. *See* 20 U.S.C. § 1095(a) (2001); 34 C.F.R. § 682.41(b)(10) (1999).

37. *See* NORTH DAKOTA DEP’T OF INS., at <http://www.state.nd.us/ndins> (last visited Feb. 16, 2002). Since 1991, the Insurance Commissioner has been using OAH to conduct many of its hearings, including all of its insurance agent disciplinary hearings. *See* N.D. CENT. CODE § 26.1-.26 (1997). The Insurance Commissioner was exempted from OAH jurisdiction in 1991, mainly because of a promise to voluntarily use OAH to conduct all of its insurance agent disciplinary hearings. However, over the years, the Commissioner has also voluntarily

North Dakota,<sup>39</sup> and the Labor Commissioner<sup>40</sup> have all agreed to voluntarily use the services of OAH administrative law judges to conduct all or a portion of their hearings. All of these agencies continue their voluntary agreements with OAH into the 2001-2003 biennium. Accordingly, notwithstanding the several statutory exemptions, North Dakota's central panel has increased its jurisdiction substantially in the last ten years, because of voluntary use by exempt agencies.

Early in its existence, upon the advice of its State Advisory Council for Administrative Hearings ("SAC"),<sup>41</sup> OAH decided not to aggressively seek to include agencies within its jurisdiction by amending the statute, but rather to seek to encourage agencies to voluntarily use OAH and to cooperate with exempt agencies as much as possible. This policy has obviously been successful for OAH. Also, by voluntary agreement, OAH has conducted hearings for some local governmental bodies.<sup>42</sup>

Recently, the SAC has requested meetings with exempt agencies to explore the future of administrative hearings in North Dakota.<sup>43</sup> The Governor, the Attorney General, and several agencies have agreed to examine, with OAH and representatives of the SAC, such questions as the advisability of continued voluntary usage versus mandatory jurisdiction,

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used OAH to conduct many other types of hearings.

38. See NORTH DAKOTA WORKERS COMP., at <http://www.nd.workerscomp.com> (last modified Jan. 30, 2002). In 1991, the Workers Compensation Bureau began using OAH to occasionally conduct hearings. However, beginning in September 1995, the Bureau agreed to have OAH conduct all of its hearings. OAH uses both permanent full-time ALJs and temporary part-time ALJs to conduct Bureau hearings.

39. See JOB SERV. NORTH DAKOTA, at <http://www.state.nd.us/jsnd> (last visited Feb. 16, 2002). Job Service North Dakota only occasionally uses OAH to conduct some of its unemployment compensation cases. It requests ALJs only for cases in which its hearing officers have a conflict as well as for more complex cases.

40. See NORTH DAKOTA DEP'T OF LABOR, at <http://www.state.nd.us/labor> (last visited Feb. 16, 2002). In 2001, the Legislative Assembly gave the Labor Commissioner authority to hold hearings on human rights violations. N.D. CENT. CODE § 14-02.4 (Supp. 2001). The Labor Commissioner has voluntarily agreed to use OAH ALJs to conduct these hearings. See NORTH DAKOTA DEP'T OF LABOR, HUMAN RIGHTS, at <http://www.state.nd.us/labor/services/human-rights> (last visited Feb. 16, 2002). The commission has no hearing officers on staff to conduct these hearings. *Id.*

41. N.D. CENT. CODE § 54-57-08 (2001). The State Advisory Council for Administrative Hearings is comprised of attorneys appointed by the president of the State Bar Association of North Dakota. It meets at least twice annually to advise OAH on policy and rulemaking. *Id.*

42. Since 1991, OAH has conducted a few nuisance abatement hearings for District Health Units. Since 1997, OAH has conducted tobacco ordinance enforcement hearings for the City of Minot pursuant to Section 23-33 of the City of Minot Code of Ordinances (1997).

43. Minutes, North Dakota State Advisory Council (Nov. 28, 2000) (on file with author).

the use of temporary ALJs versus permanent ALJs, and final decision-making authority versus recommended decisionmaking authority for ALJs. The Governor has suggested that OAH and the SAC engage in long-range planning to help determine the future of administrative hearings in North Dakota in five to seven years.<sup>44</sup>

Even with the expanded authority of OAH to conduct additional state agency hearings for those agencies that use OAH on a voluntary basis, OAH still conducts fewer than one-half of the total administrative hearings conducted in North Dakota each year. Just the hearings of the Department of Transportation,<sup>45</sup> Job Service North Dakota,<sup>46</sup> and the North Dakota Industrial Commission<sup>47</sup> alone involve more hearings than those conducted by OAH.<sup>48</sup> However, the vast majority of state agencies now use OAH to conduct their hearings. Only two of these agencies, the Department of Human Services and the Workers Compensation Bureau, have large numbers of hearings. The rest of the state agencies and local entities either make requests for hearings only a few times a year or make no requests at all.

Although OAH has made progress increasing its jurisdiction by voluntary agreements over the years, it still seems to be in the middle category. As long as a large number of some of the larger agencies' hearings remain outside of OAH's mandatory jurisdiction, it will continue to be considered in the middle. Counting the number of agencies that use OAH (mandatorily or voluntarily), it is approaching maximum capacity, but counting the number of hearings not heard by its ALJs, OAH is far

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44. Also, recently, the SAC has begun a more aggressive study of its own. It will study, in cooperation with the State Bar Association of North Dakota, Administrative Law Committee, and perhaps, the Governor's office, and other agencies or groups, issues that have arisen in the last year that may affect OAH and its client agencies in the 2003 session. Minutes, North Dakota State Advisory Council (May 15, 2001) (on file with author).

45. *Id.* Implied consent and drivers license suspension or revocation hearings. N.D. CENT. CODE §§ 39-20-05, 39-06-33 (2001).

46. Referring to Unemployment compensation hearings not conducted by OAH and other types of Job Service hearings. N.D. CENT. CODE §§ 52-06-13, 52-06-20; *see generally* N.D. CENT. CODE § 52 (2001).

47. Most of the Industrial Commission hearings are Oil and Gas Division hearings. No Oil and Gas Division hearings are conducted by OAH. N.D. CENT. CODE § 38-08 (2001); N.D. ADMIN. CODE § 43-02 (1997). However, OAH has conducted other types of hearings for the North Dakota Industrial Commission, including all student loan hearings for garnishment of wages when borrowers are not making payment on student loans. 20 U.S.C. § 1095a (1999); 34 C.F.R. § 682.410(b)(10) (1999).

48. OAH received 444 requests for hearing officer services in 2000. OAH closed 502 files on requests for hearing in 2000. The Department of Transportation ("DOT") received 1324 requests for hearings; Job Service received about 1850 requests; and the NDIC Oil and Gas Division received 268 requests in 2000.

from maximum capacity. Counting only the number of agencies that must use its services, OAH has progressed no further than when it was established in 1991.

North Dakota's OAH now operates under uniform administrative rules,<sup>49</sup> an amended, expanded administrative agencies practice act,<sup>50</sup> and a Code of Judicial Conduct for Administrative Law Judges.<sup>51</sup>

The North Dakota central panel has attempted to move into the Alternative Dispute Resolution ("ADR") area. Although OAH has trained third party neutrals and offers a full range of ADR services to governmental entities, it has conducted few ADR sessions and no mediation sessions for state agencies or other governmental entities.<sup>52</sup> OAH has implemented ADR in only two areas: providing an arbitrator for hearings of the North Dakota Seed Arbitration Board;<sup>53</sup> and providing an arbitrator to arbitrate attorney fee disputes for the Workers Compensation Bureau.<sup>54</sup>

North Dakota's OAH's permanent staff has only grown slightly since 1991. It still has only three full-time ALJs, but has increased from two to three support staff members.<sup>55</sup> Since OAH began conducting all hearings of the Workers Compensation Bureau, it has contracted with temporary, part-time ALJs to conduct the bulk of the Bureau's hearings.<sup>56</sup> It now contracts with eight temporary ALJs located in various parts of the state.<sup>57</sup>

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49. The UNIFORM RULES OF ADMINISTRATIVE PROCEDURE FOR ADJUDICATIVE PROCEEDINGS was adopted February 1992 and amended in January 1994 and April 1998. N.D. ADMIN. CODE § 98-02 (2001). These rules were adopted with the participation of the SAC.

50. N.D. CENT. CODE §§ 28-32-05 to 28-32-21.3 (Supp. 1999) (codified as §§ 28-32-21 to 28-32-50). See H. 1030, 57th Leg., 1st Day (N.D. 2001). This bill was introduced by OAH with participation by the SAC.

51. CODE OF JUDICIAL CONDUCT FOR ALJ (Nov. 1, 1999), available at <http://www.state.nd.us/oah/ethics.htm> (last visited Feb. 16, 2002). The SAC also participated in the adoption of this code. *Id.*

52. STATE OF NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS, ALTERNATIVE DISPUTE RESOLUTION, available at <http://www.state.nd.us/oah/adr.htm> (last visited Feb. 16, 2002).

53. N.D. CENT. CODE § 4-09-20.2 (Supp. 2001). OAH ALJs have conducted four arbitration hearings for the Board.

54. N.D. CENT. CODE § 65-02-08 (Supp. 2001). The same ALJ who heard the original dispute in which the attorney was involved in representing a claimant is, if possible, required to arbitrate the attorney fee dispute arising from that claim. *Id.*

55. H. 2018, 55th Leg. (N.D. 1997).

56. N.D. CENT. CODE § 54-57-02 (Supp. 2001).

57. *Id.* These temporary ALJs are referred to as "Temps." They are attorneys in private practice located in the major cities around the state. They contract with OAH on a case-by-case basis. *Id.* At the height of the caseload for the Bureau when OAH was helping the Bu-

## TEXAS

In my previous article, I placed Texas at the lower end of established central panels, stating that they took a “minimal approach” and that they had “so much further [sic] to go and [had] a lot more turf still in dispute.”<sup>58</sup> The Texas State Office of Administrative Hearings (“SOAH”) may have taken a minimal approach, but it has come a long way relatively quickly. From a central panel whose jurisdiction was not determined as of May 1992, and had only six ALJs and three support staff members in August of 1992, it has grown substantially both in jurisdiction and in number of central panel ALJs.<sup>59</sup> As of February 29, 2000, it had fifty-eight ALJs and sixty-two support staff members.<sup>60</sup> SOAH operates from its headquarters in Austin, with nine field offices located throughout the state and twenty-nine remote sites necessary for Administrative License Revocation hearings.<sup>61</sup>

In 1991, SOAH’s jurisdiction was restricted to conducting administrative hearings for those “agencies that did not employ at least one individual whose only duty was to preside as a hearing officer over matters to come as cases before the agency.”<sup>62</sup> In the 1990’s, SOAH expanded its jurisdiction by voluntary hearing referral in lieu of hiring ALJs and by legislative enactment which transferred jurisdiction of hearings to SOAH.<sup>63</sup> Although SOAH’s ALJs do not conduct every administrative

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reau work through a huge backlog, OAH contracted with nineteen Temps, but the backlog was reduced and the caseload has substantially decreased. OAH now contracts with eight Temps. OAH’s permanent ALJs also conduct Bureau hearings.

58. Hoberg, *supra* note 4, at 126-29.

59. *Id.* at 128.

60. STATE OF TEXAS OFFICE OF ADMINISTRATIVE HEARINGS, AGENCY STRATEGIC PLAN, INTERNAL ASSESSMENT, CURRENT WORKFORCE PROFILE, FIG.1 (June 1, 2000), available at <http://www.soah.state.tx.us/StratPlan/Title&TOC.htm> (last modified Aug. 16, 2001).

61. *Id.*

62. See S.B. 884, 72nd Leg., 1991 Reg. Sess. (Tex. 1991).

63. H.B. 826, 76th Leg., 1999 Reg. Sess. (Tex. 1999); H.B. 2085, 76th Leg., 1999 Reg. Sess. (Tex. 1999); H.B. 2617, 76th Leg., 1999 Reg. Sess. (Tex. 1999); S.B. 474, 76th Leg., 1999 Reg. Sess. (Tex. 1999); S.B. 35, 75th Leg., 1997 Reg. Sess. (Tex. 1997); S.B. 359, 75th Leg., 1997 Reg. Sess. (Tex. 1997); S.B. 694, 75th Leg., 1997 Reg. Sess. (Tex. 1997); H.B. 1089, 74th Leg., 1995 Reg. Sess. (Tex. 1995); H.B. 2644, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 1, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 3, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 12, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 366, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 372, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 373, 74th Leg., 1995 Reg. Sess. (Tex. 1995); S.B. 3, 74th Leg., 1995 Reg. Sess. (Tex. 1995); H.B. 1445, 73d Leg., 1993 Reg. Sess. (Tex. 1993); H.B. 1461, 73d Leg., 1993 Reg. Sess. (Tex. 1993); H.B. 1835, 73d Leg., 1993 Reg. Sess. (Tex. 1993); S.B. 1, 73d Leg., 1993 Reg. Sess. (Tex. 1993); S.B. 1425, 73d Leg., 1993 Reg. Sess. (Tex. 1993); S.B. 1426, 73d Leg., 1993 Reg. Sess. (Tex. 1993). See also STATE OF TEXAS OFFICE OF ADMINISTRATIVE HEARINGS,

hearing in Texas, it appears Texas has moved into the middle group of central panel states, if not into the "Cadillac" division.<sup>64</sup>

In the fall of 1999, the work of SOAH's hearings divisions was reorganized into seven teams: Administrative Licensing Revocation and Field Enforcement, Alternative Dispute Resolution, Economic, Licensing and Enforcement, Medical, Natural Resources, and Utilities.<sup>65</sup> A team leader heads each team focusing on work from various agencies with similar subject areas.<sup>66</sup> The ALJs on each team are trained in the technical knowledge, statutes, and rules relating to each agency their team handles.<sup>67</sup> Teams may handle multiple numbers of agencies, cases of varying complexity, and various sizes of caseloads, depending upon numerous factors.<sup>68</sup>

SOAH has also moved into the area of ADR; one of its teams is an ADR team.<sup>69</sup> This team provides mediation, arbitration, and other customized ADR processes to state agencies and other governmental units that contract with SOAH for ADR services.<sup>70</sup>

SOAH also has a website that is continuously available to the citizens of Texas.<sup>71</sup> Among other things, it includes information on the docket, decisions, procedural rules, the agency strategic plan, and office loca-

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AGENCY STRATEGIC PLAN, APPENDIX H, available at <http://www.soah.state.tx.us/StratPlan/apndxH/appendix%20H.htm> (last visited Feb. 20, 2002); Shelia Bailey Taylor, *The Growth and Development of a Centralized Administrative Hearings Process in Texas*, 17 J.NAALJ 113, 113-50 (1997) (discussing the history of SOAH).

64. Email from Deliese Kennedy to Allen C. Hoberg, Director of the North Dakota Office of Administrative Hearings, Inquiry of SOAH's Open Records Act Coordinator (June 14, 2001) (on file with author) (revealing that the following agencies are the only remaining Texas agencies that employ in-house ALJs or hearing examiners: Office of Comptroller, Board of Pardons and Paroles, Department of Mental Health and Mental Retardation, Texas Education Agency, Texas Finance Commission, Texas Real Estate Commission, Texas Rehabilitation Commission, Texas Railroad Commission, Texas Workforce Commission, and Texas Youth Commission). SOAH was unable to provide statistics about the percentage of hearings SOAH holds compared to the overall number of hearings statewide.

65. STATE OF TEXAS OFFICE OF ADMINISTRATIVE HEARINGS, AGENCY STRATEGIC PLAN AGENCY OVERVIEW HEARINGS DIVISION (June 1, 2000), available at <http://www.soah.state.tx.us/stratplan/Title&TOC.htm> (last modified Aug. 16, 2001).

66. *Id.*

67. *Id.*

68. *Id.*

69. STATE OF TEXAS OFFICE OF ADMINISTRATIVE HEARINGS, AGENCY STRATEGIC PLAN, AGENCY OVERVIEW, HEARINGS DIVISION, ALTERNATIVE DISPUTE RESOLUTION TEAM (June 1, 2000), available at <http://www.soah.state.tx.us/stratplan/Title&TOC.htm> (last modified Aug. 16, 2001).

70. *Id.*

71. STATE OF TEXAS OFFICE OF ADMINISTRATIVE HEARINGS, at <http://www.soah.state.tx.us> (last modified Oct. 19, 2001).

tions.<sup>72</sup> SOAH adopted new procedural rules effective January 2, 1998.<sup>73</sup>

### PROGRESS OF THE CENTRAL PANEL MOVEMENT

When I wrote the previous article, central panels had been established in seventeen states: California, Colorado, Florida, Iowa, Massachusetts, Maryland, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming, as well as in the city of New York.<sup>74</sup> Since then, central panels have been added in Alabama, Arizona, Georgia, Louisiana, Michigan, Oregon, South Carolina, and South Dakota, as well as in the cities of Chicago, and Washington, D.C.<sup>75</sup> The central panel movement continues to gain strength, but remains slow in developing.<sup>76</sup> As for jurisdictions in the various established central panel states, relying on Maryland, North Dakota and Texas as models, it appears that central panels continue to grow, in various ways, within each state. Growth most often focuses on legislative enactments usually transferring jurisdiction,<sup>77</sup> but can also occur by means of voluntary agreement<sup>78</sup> or executive order.<sup>79</sup>

### FUTURE OF CENTRAL PANELS

It is still reasonable to expect that central panels will continue to be established in the states and in some larger cities only as the demand exists for establishment with reference to the peculiar dynamics of each state.<sup>80</sup> It now appears unlikely that there will ever be a real surge in the establishment of central panels in the states. However, as noted in my previous article,<sup>81</sup> if central panel systems are established for federal administrative hearings and a large majority of states have already estab-

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72. *Id.*

73. 1 TEX. ADMIN. CODE § 155.41 (West 2001).

74. Hoberg, *supra* note 4, at 110.

75. Bruce H. Johnson, *Methods of Funding Central Panels: The Fiscal, Management, and Policy Implications*, 20 J.NAALJ 301, 316 (Fall 2000) (Attachment A).

76. *See* Hoberg, *supra* note 4, at 134.

77. N.D. CENT. CODE § 54-57 (Supp. 2001).

78. 2000 MD. ANN. REP., *supra* note 10, at 6.

79. The Michigan Bureau of Hearings was created by Executive Order of the Governor of Michigan in 1996. Michigan Survey and Informational Questionnaire, 14th Annual Central Panel Director's Conference (1997) (on file with author).

80. Hoberg, *supra* note 4, at 121-24.

81. *Id.* at 134.

lished central panels, there could still be a surge in the establishment of central panels in those states yet to establish central panels. Yet, most observers of the central panel movement would probably agree that the establishment of a central panel is unique to each state.<sup>82</sup>

The turf battles regarding central panel jurisdiction will continue in each state after establishment of a central panel because no central panel has yet been established that has begun its existence conducting all of its states administrative hearings.<sup>83</sup> Unless long-range planning is contemplated and enacted, it is possible that a state central panel will eventually stagnate, jurisdictionally.<sup>84</sup>

The loose organization of the directors of central panel states continues to grow and meet annually.<sup>85</sup> There is no longer a central panel newsletter.<sup>86</sup> However, several state and city central panels publish office newsletters.<sup>87</sup> The American Bar Association's ("ABA") National Conference of Administrative Law Judges' ("NCALJ") Judicial Division, has actively sought ABA participation by state administrative adjudicators, particularly central panel ALJs.<sup>88</sup> It seems that additional central panel ALJs are also getting involved in the work of the National Association of Administrative Law Judges. There are also numerous state associations of administrative law judges.

In short, in the last ten years, the central panel movement has continued to grow, within each state as a function of increased jurisdiction of an established system (voluntary and mandated), in the number of state and city central panel systems that have been established, and in national prominence through ALJ participation in various professional organiza-

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82. See Johnson, *supra* note 75, at 311; Taylor, *supra* note 63, at 113.

83. Hoberg, *supra* note 4, at 112-14.

84. See, e.g., STATE OF TEXAS EDUCATION AGENCY, STRATEGIC PLANNING, at <http://www.tea.state.tx.us/stplan/index.html> (last modified Aug. 16, 2001); see also *supra* note 44 and accompanying text.

85. Hoberg, *supra* note 4, at 135.

86. *Id.*

87. See, e.g., THE OAH (the official Newsletter of the Arizona Office of Administrative Hearings (2000)), available at <http://www.azoah.com/OAH/Articles.html> (last visited November 18, 2001); OATH BENCHNOTES (the official newsletter of the New York City Office of Administrative Trials and Hearings), available at [http://www.ci.nyc.us/html/oath/html/bench\\_intro.html](http://www.ci.nyc.us/html/oath/html/bench_intro.html) (last visited November 18, 2001); see also Hoberg, *supra* note 4, at 120-21.

88. Telephone Interview with John Hardwicke, Chief Administrative Law Judge of Maryland's Office of Administrative Hearings (July 18, 2001). Administrative Law Judge Edwin Felton of Colorado is currently completing his term as chair of the National Conference of Administrative Law Judges ("NCALJ") at the ABA's Annual Meeting held in early August 2001. The central panel movement is well represented in the ABA's NCALJ.

tions.<sup>89</sup> Central panel directors and central panel ALJs have become increasingly organized and involved in the promotion of central panel systems.<sup>90</sup> Arguably, the central panel system is in the ascendancy in the states, though in some states where it has been established the system is not in the ascendancy in the state.<sup>91</sup> The central panel system is slowly gaining popularity amongst large cities, too.<sup>92</sup> There is still no federal central panel system.<sup>93</sup>

Perhaps in another ten years, I will be able to write an article recounting the history of central panels where all or almost all of the states and many large cities will have established central panels. Potentially, the federal government will have established a central panel, and in many states where central panels have already been established, the jurisdiction of those central panels will have grown so that there will be many more “Cadillac” central panels than currently exist. But whatever happens, the process will be unique to the locality, be it city, state, or nation.

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89. See *supra* notes 62-72 and accompanying text.

90. Over the years there have been numerous articles in the Journal of the National Association of Administrative Law Judges that have “promoted” central panel systems. See, e.g., Johnson, *supra* note 75, at 301; Taylor, *supra* note 63, at 113.

91. See, e.g., Hoberg, *supra* note 4, at 110, 112 (The California central panel was the first established but its jurisdiction remains small.).

92. Kenneth Nickolai, *Strengthening the Skills of Administrative Law Judges*, 20 J.NAALJ 263, 265 n.18 (Fall 2000) (noting that the cities of Chicago and Washington, D.C. have joined New York City as cities in which central panels have been established).

93. See Hoberg, *supra* note 4, at 111 n.14.