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A BRIEF HISTORY OF THE MODEL ACT TO CREATE A STATE CENTRAL HEARING AGENCY

Ed. Schoenbaum*

The central hearing agency system was considered at the outset as a model for the federal system. The 1941 Report of the Attorney General's Committee on Administrative Procedure suggested that the "hearing commissions" be a "separate corps," not attached to specific agencies. As you all know, that recommendation was not adopted.

The Uniform Law Commissioners laid a foundation in its 1981 Model State Administrative Procedure Act for the Model Act adopted by the ABA House of Delegates on February 3, 1997. The 1981 MSAPA provided an alternative to the system adopted in the 1946 and 1961 Model State Administrative Procedure Act. The 1981 Model established an "office of administrative hearings" panel to balance due process concerns with administrative effectiveness while retaining administrative law independence. MSAPA §§ 4-301, 4-202(a).

The American Judicature Society and the Administrative Conference of the United States co-sponsored a workshop in the spring of 1981 to exchange information among the seven states that had central hearing agencies at that time and Washington, which was about to start. The collection of articles published in the November 1981 issue of *Judicature* was the best collection of articles for state bar associations and legislative committees to use in developing new central hearing agencies in the 1980s.

Many states adopted a state central hearing agency. See the attached chart showing when the states adopted a state central hearing agency. Kansas adopted a central panel that will go into effect July 1, 1998. There is almost a complete lack of uniformity in the legislative enactments.

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The National Conference of Administrative Law Judges held a west coast symposium entitled "Administrative Adjudication for the 21st Century -- Lessons from State Central Panels for State Administrative Adjudication and the Unified Federal Corps" on December 2, 1994, at the Hotel ANA, just a few blocks from where we meet.

Chief Administrative Law Judges Karl Engeman of California, Patricia DeJHueck of South Dakota, Edwin L. Felter of Colrado, John W. Hardwicke of Maryland, and William Dorsey, former administrative hearing officer in Florida, who had become a federal Administrative Law Judge at SSA, shared their perspectives. I moderated that program and Ronnie Yoder, Chair of the NCALJ, proposed, at the end of the day, during responses on what the Federal ALJs could learn from the state expereinces, that the NAALJ (of which I was President and John Hardwicke President-elect) and NCALJ work together to develop a Model Act to establish a State Central Hearing Office. We agreed that, while the 1981 Model State Administrative Act "bare bones language" encouraged a number of states to adopt the concept, a Model Act would assist states interested in this improvement. I appointed John to chair the NAALJ committee, and Ronnie appointed Ed to chair the NCALJ committee.

The first draft, based on the Maryland legislation adopted in 1989, was mailed to all Chief Judges of state central hearing agencies, Professors Asimow, Levinson, and Rosenblum; Jeff Lubbers of ACUS; Dean Jim Alfini, formerly of American Judicature Society when their big research project on the eight agencies existing in 1981; Malcolm Rich, formerly of AJS who conducted the study of the first eight central panels, which became a special issue of Judicature Vol. 65; and others interested in the operation of the central hearing agencies and in creating a corps at the federal level. Many sent specific suggestions based on their own experience and language from their statutes. A subcommittee of Chief Judges Felter and Hardwicke, ALJs Melanie Vaughn, Dorsey, and Errol Powell, and myself reviewed all of the comments and deliberated at the ABA midyear meeting February 1995 in Miami. We recommended revisions of language which were

circulated to all Central Panel Chief Judges, the executive committee of the NCALJ, the Board of Governors of the NAALJ and those who had seen the first draft. These groups discussed them at their annual meetings in 1995. Again specific changes were worked into another draft. This draft was sent to leaders of the Commissioners on Uniform Laws. Due to the differences in the existing central hearing agencies they determined that they were not interested in adopting a "uniform" law and saw no reason why the ABA should not adopt a Model Act.

The NAALJ Board adopted the draft at its midyear meeting and published it in the spring 1996 issue of the *Journal of the National Association of Administrative Law Judges*. The Judicial Division approved it at the annual meeting in Orlando.

I circulated the draft to the Chairs or Chairs-elect of relevant sections at the Section Officer's Conference in October 1996 with a request that they review it, make comments and hopefully join as co-sponsors of the Resolution.

Jim O'Reilly, Chair of the Administrative Law & Regulatory Practice Section, brought it to the Section Council fall meeting. Several concerns were raised, so he formed a committee to prepare a recommendation for action by the Council at the midyear meeting in San Antonio. The committee was chaired by Professor Michael Asimow and included: Chief Judge Karl Engeman of California, Chief Judge Kevin Johnson of Minnesota, former Chief Judge Jaynee Levechia of New Jersey, Professor Harold Levinson and myself. A copy was sent to Judge Ann Young, who contacted Professor Asimow to express strong opposition to a few comments of members of the Administrative Law Section.

The committee reviewed the concerns expressed at the fall meeting of the Council and reported minor changes but rejected others mentioned at the fall meeting. The proposed changes were shared with the leaders of the NAALJ and NCALJ who agreed to the improved language. The NAALJ Board ratified the changes made by the NCALJ and the Judicial Division of the American Bar Association at the annual meeting in Orlando, in August 1996 (except a provision that all

administrative law judges had to be attorneys). The Central Panel Directors agreed with the NCALJ draft presented by Chief Judges Felter and Hardwicke at its annual meeting November 1996 in Nashville. Professor Peter Strauss made a few additional suggested changes in the days before the midyear meeting in San Antonio. Professor Asimow wrote a very effective response against some of those changes.

The Section on Natural Resources, Energy and Environmental Law became a co-sponsor. The Board of Governors approved the language proposed by NCALJ and the Judicial Division. The Proposal was on the consent calendar, until the Administrative Law Section requested it be removed to work out some differences. Last minute negotiations occurred between Professor Strauss, Ed Grenier, Judges Felter and Hardwicke, Donald Jarvis, NCALJ Delegate to the ABA House, Young, Ann Breen-Greco, Jodi Levine, and myself. Final agreements on the language were reached, and the Administrative Law Section Council adopted the amended proposal. NCALJ, the Judicial Division, the Board of Governors, and the House of Delegates were notified of the minor amendments, which were submitted for the unanimous adoption by the House of Delegates on February 3, 1997.