

TOPIC 19.01 PRACTICE AND PROCEDURE

[ED. NOTE: This topic (19.01), as well as section 19.02 on Due Process, is generally applicable to Sections 19, 21, 23 and 27 of the LHWCA--the sections principally dealing with practice and procedure. The following is supplied as a roadmap and NOT intended to be a complete or detailed source. Please see appropriate sections, beginning with Topic 19, for detailed discussions.]

19.01 GENERALLY

The basic statutory provisions relating to procedure are set forth in Sections 19, 21, 23, and 27 of the LHWCA. 33 U.S.C. §§ 919, 921, 923, & 927. The adjudication provisions of the Administrative Procedure Act (APA) are incorporated by reference, and provide further guidance and authority for formal hearings before the administrative law judge. See 5 U.S.C. § 554. Many of the statutory directives are implemented and reiterated in the regulations of the Department of Labor in 20 C.F.R. Part 702, Subparts B and C. Finally, general rules of practice and procedure for adjudicatory proceedings before administrative law judges are contained in 29 C.F.R. Part 18.

Section 19 outlines the functions of the deputy commissioner (now the district director) **and** the ALJ. This section must be viewed in concert with Sections 23 and 27, which refer to procedures before, and the authority of, district directors and administrative law judges. Section 19(d) transfers the authority for conducting hearings from the district directors to administrative law judges effective October 27, 1972.

If informal procedures fail to resolve the claim, the district director must transfer the case to the Office of the Chief Administrative Law Judge. See 20 C.F.R. § 702.317. **Contrary to the regulatory language, evidence is not forwarded to the Office of Administrative Law Judges by the district director.**

Consequently, any party must submit proposed evidence in accordance with the provisions of 29 C.F.R. § 18.3 or the Pre-Trial Order of the presiding judge. A party may obtain some of the documents from the administrative file in accordance with the provisions of § 702.319. The regulations pertaining to formal hearings before the judge are set forth in 20 C.F.R. §§ 702.331-351. Pursuant to statute and regulation, formal hearings are conducted in accordance with the provisions of the APA. 5 U.S.C. § 554 et seq. See 33 U.S.C. § 919(d); 20 C.F.R. § 702.332. Only the provisions of the APA regarding adjudicatory functions are incorporated. For example, administrative law judges possess no rule-making authority.

The authority of the ALJ is recited in 29 C.F.R. § 18.29. It provides that the judge shall have all powers necessary to conduct a fair and impartial hearing, including, but not limited to, the following:

- (1) Conduct hearings.
- (2) Administer oaths and examine witnesses.
- (3) Compel the production of documents and witnesses.
- (4) Issue subpoenas.
- (5) Issue decisions and orders.
- (6) Exercise authority vested by the Administrative Procedure Act.
- (7) Exercise the powers of the Secretary of Labor necessary to the conduct of the hearing.
- (8) Act pursuant to the applicable Federal Rules of Civil Procedure.
- (9) Do all other things necessary to discharge the duties of the office.