

Preface - 1993 Edition

Revising this Manual for Administrative Law Judges, which was originally written by an Administrative Law Judge of Merritt Ruhlen's stature, presented a unique challenge. To begin with, there was a natural reluctance to tamper with the voice of experience. Moreover, Judge Ruhlen's little book had become something of a standard in its field. An article in one law journal described it as "an admirable handbook [which] reflects his long experience . . . with the CAB."^{iv} In fact, Judge Ruhlen's Manual has been cited in several scholarly articles,^v and in a number of agency and administrative law judge decisions^{vi}. Recognizing this, the present edition has tried to

^{iv} W. H. Allen, *Twilight or Just an Overcast Afternoon*, 1986 DUKE L.J. 276, 278, n. 10.

^v F. Anderson, *Negotiation and Informal Agency Action: The Case of Superfund*, 1985 DUKE L.J. 261, 356, n.357; Breger, *The APA: An Administrative Conference Perspective*, 72 VA. L. REV. 337, n.4 (1986); Graham, *Evidence and Procedure for the Future: Application of the Rules of Evidence in Administrative Agency Formal Adversarial Adjudications: A New Approach*, 1991 U. ILL. L. REV. 353, 370, n. 125; Kauper, *Note: Protecting the Independence of Administrative Law Judges: A Model Administrative Law Judge Corps Statute*, 18 U. MICH. J.L. REF. 537, n. 1 (1985); Whiteside, *Comment: Administrative Adjudications: An Overview of the Existing Models and Their Failure to Achieve Uniformity and a Proposal for a Uniform Adjudicatory Framework*, 46 OHIO ST. L.J. 355, 371, n.139 (1985).

^{vi} *E.g.*, In the Matter of Benedict P. Cottone, 63 FCC 2d 596, 605 (1977) (citing 1974 edition of the Manual); D. Federico Co., 3 OSHC (BNA) 1970, 1971, 1975-76 (1976) (Occupational Safety & Health Review Commission: majority citing 1974 edition of the Manual, describing it as "[a] highly respected guide for Administrative Law Judges," at 1971, and dissent citing other passages from the Manual, at 1975-76); Emery Richardson v. Department of Justice, 11 MSPR 186, Docket No. SF07528110018 (1982); Department of Veteran's Affairs, Veterans Administration Medical Center, Boise, Idaho (Respondent) and AFGE, Local 1273 (Charging Party/Union), 40 FLRA 992, Case No. 9-CA-90575 (1991)

leave intact as much of the original as possible. Special efforts have been made to preserve the spirit of Judge Ruhlén's text, and sometimes the exact words, where they address the actual process of judging and conducting administrative proceedings.

However, important changes in administrative law have occurred since 1982. For instance, the Administrative Dispute Resolution Act (Pub. L. No. 101-552, 104 Stat. 2736 (1990)) incorporated alternative dispute resolution (ADR) into federal administrative law and amended the Administrative Procedure Act to remove any doubt that ADR could be an integral part of agency adjudications.

Even before that watershed, the administrative adjudication landscape had changed significantly. Legislation had reduced several agencies' economic regulatory authority over such matters as routes, rates, and licensing in industries such as trucking (Motor Carrier Act, Pub. L. No. 96-296, 92 Stat. 793 (1980)), the railroads (Staggers Rail Act, Pub. L. No. 96-448, 94 Stat. 1895 (1980)), and natural gas (Natural Gas Policy Act, Pub. L. No. 95-621, 92 Stat. 335 (1978)). Under the Airline Deregulation Act, Pub. L. No. 95-204, 92 Stat. 1705 (1978), route and price regulation in the airlines industry met the same fate, and Judge Ruhlén's old agency (the Civil Aeronautics Board (CAB)) was phased out.

These enactments hastened an ongoing evolution in administrative law. The number, and type, of cases decided by administrative law judges had already changed drastically between 1946 and the 1980's. In 1946, there were fewer than 200 federal administrative law judges (then hearing examiners) and 60 per cent of these were employed by agencies engaged primarily in the regulation of routes, rates, and other economic aspects of various industries^{vii}. After 1982, there were almost 1200 federal administrative law judges, but only about seven per cent of them were in the old-line regulatory agencies. More than ninety per cent were employed in agencies where contested benefits claims

(ALJ decision).

^{vii} Palmer, *The Evolving Role of Administrative Law Judges*, 19 NEW ENG. L. REV. 755, 784-85 (1984), citing and giving appropriate credit to Lubbers, *A Unified Corps of ALJs: a Proposal to Test the Idea at the Federal Level*, 65 JUDICATURE 266, 268-69 (Nov. 1981).

MANUAL FOR ADMINISTRATIVE LAW JUDGES

and law enforcement adjudications were the norm,^{viii} agencies such as the Social Security Administration, the U. S. Department of Labor, the National Labor Relations Board, and the Occupational Safety and Health Review Commission.

Since 1982, the center of gravity for cases decided by administrative law judges has continued to shift away from economic regulatory agencies such as the old CAB, the ICC, and the FCC.^{ix}

Revisions to Judge Ruhlen's 1982 edition of the Manual were therefore needed. In fact, these revisions became somewhat more extensive than originally planned. In many respects, it simply was not enough to update citations and revise the 1982 text to correlate with current practices. Too many changes and too much evolution had occurred since 1982.

Nevertheless, Judge Ruhlen's 1982 Manual was not necessarily obsolete. Although much of the 1982 edition refers to agencies like the CAB, and much of it speaks in the immediate context of economic regulation cases, the process of judging remains at the center of the book. Complex, multi-party cases are not limited to litigation over rates, licenses, and routes. Judge Ruhlen still provided a sound point of departure and sound ideas concerning how to manage complex, difficult cases. That is where the need for a Manual for Administrative Law Judges is most acute. And that is one reason why special efforts were made, despite considerable revision and updating, to preserve much of Judge Ruhlen's text.

Now for the customary acknowledgments and thank-you's. (That these acknowledgments are traditional in no way reduces the sincerity with which they are expressed.) As always, the staff of the Administrative Conference have gone out of their way to be helpful and responsive to the needs of the revision process. Special thanks, of course, are extended to Jeffrey Lubbers, ACUS Research Director, and the Administrative Conference. Several Administrative Law Judges have been particularly helpful, and at some risk of inadvertent omission, let me mention in particular Acting Chief Administrative Law Judge Jose A. Anglada (SSA), Judge Ivan Smith (NRC), Chief Administrative Law Judge Curtis Wagner (FERC), and Deputy Chief Administrative Law Judge John Vittone (USDOL). Thanks also are in order for Peter Dowd,

^{viii} *Id.*, at 785.

^{ix} Holmes, *ALJ Update: A Review of the Current Role, Status, and Demographics of the Corps of Administrative Law Judges*, 38 FEDERAL BAR NEWS AND J. 202 (May, 1991).

MANUAL FOR ADMINISTRATIVE LAW JUDGES

Director, Division of Field Practices and Procedure (SSA), and Judge Moody R. Tidwell, U.S. Claims Court. This list would be incomplete, of course, without appropriately recognizing Danny R. Williams, a tireless research assistant (and third-year student at UALR School of Law), Melba Myers for all of that "hurry-up-I-need-it-now" secretarial support earlier in this project, and Juaniece Ammons for her help in completing it.

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