

PREFACE AND INTRODUCTION: 2001 INTERIM INTERNET EDITION

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Background

Almost a decade ago, I was the principal revisor for the Third Edition of the Manual for Administrative Law Judges (Manual or 3rd Edition), which was prepared and published under the auspices of the Administrative Conference of the United States (ACUS or Administrative Conference). As noted in the Preface to the Third Edition, the Manual had become something of a standard in its field.ⁱⁱ Although the Third Edition has been out of print

ⁱ Previous editions of this Manual were published by the United States Government, under the auspices of the now-defunct Administrative Conference of the United States. This edition has been prepared in a spirit of public service, and copyright in original government materials is not claimed. Copyright in this edition is asserted primarily to prevent commercial piracy. Permission is hereby given for any noncommercial use of this Manual (including, but not limited to, noncommercial or not-for-profit educational use and noncommercial use by any governmental entities), as long as the law school and I are appropriately credited.

ⁱⁱ Agency decisions citing the 3rd and earlier editions of this Manual include In the Matter of Pepperell Associates, 1999 EPA ALJ LEXIS 16 (DOCKET NO. CWA-2-I-97-1088, Feb. 26, 1999) (United States Environmental Protection Agency, Office of Administrative Law Judges) (discussing ALJ's affirmative duty to ensure complete and accurate record, even if ALJ must raise issue *sua sponte*); In the Matter of Woodcrest Manufacturing, 1997 EPA ALJ LEXIS 81, Docket No. 5-EPCRA-96-007, June 13, 1997) (United States Environmental Protection Agency; Office of Administrative Law Judges) (importance of impartial decision-maker); In re David Harriss, Ruling on Certified Questions filed May 1, 1991, 50 Agric. Dec. 683 (P.Q. Docket No. 91-27) (noting that ALJ is required to follow policies set out in agency's published opinions) (citing 1982 edition of Manual); Department of Veteran's Affairs, Veterans Administration Medical Center, Boise Idaho, 40 F.L.R.A. 992, 1991 FLRA LEXIS 339 (May 24, 1991) (ALJ decision) (noting ALJ's responsibility to call agency's attention an important problem of law or policy) (citing 1982 edition of this Manual); In the Matter of Sequoyah Fuel Corporation and General Atomics, 41 N.R.C. 253, n. 20, 1995 NRC LEXIS 13 (April 18, 1995) (citing Form 19-d in the Manual). Cites in law review

for several years, the Office of Administrative Law Judges, U.S. Department of Labor (OALJ DOL), made a modified version of that edition available in 1998 at:

<http://www.oalj.dol.gov/public/apa/refrnc/aljmantc.htm>

The OALJ DOL is owed a double debt of gratitude for this public service. First, it kept the Manual available to the public, after it was no longer in print.ⁱⁱⁱ

Second, the OALJ site provided the inspiration for this particular, and experimental, edition of the Manual the 2001 Interim Internet Edition. For various reasons, a complete textual overhaul was not feasible, and probably was not necessary. However, a few textual revisions to the 3rd Edition were needed. In addition, citations to the CFR had become outdated. Some of the regulations cited in the 3rd Edition had been amended. Others had been repealed. Moreover, there had been significant developments during the 1990's which are described below.

The OALJ DOL site therefore provided the inspiration for a less conventional format a webpage publication. Using a webpage format for some modest updating and upgrading seemed to be not only an intriguing experiment, but also a simpler and more efficient way to do the needed revisions.

Developments Since 1991

As for federal administrative adjudication itself, developments in the past decade have evolutionary, rather than revolutionary. For example, alternative dispute resolution (ADR) continues to flourish and grow in the administrative law setting. Also, the shift away from old line economic regulatory agencies continues, as typified by the termination of the Interstate

articles include Michael Frost, *The Unseen Hand in Administrative Law Decisions: Organizing Principles for Findings of Fact and Conclusions of Law*, 17 J. NAALJ 151 (1997); Alan W. Heifitz, *The Continuing Need for the Administrative Conference: Fairness, Adequacy, and Efficiency in the Administrative Process*, 8 ADMIN. L.J. AM. U. 703 (1994) (Testimony before Congressional Committee of Chief Administrative Law Judge, U.S. Department of Housing and Urban Development, discussing at 704 the value of the Manual to ALJs); James M. Timony, *Demeanor Credibility*, 49 CATH. U.L. REV. 903 (2000) (quoting 3rd Edition in fn. 117, regarding standards for resolving credibility issues).

ⁱⁱⁱ Because of the OALJ DOL site, I have been able to respond to requests for copies of the Manual in the last few years including representatives of at least three state agencies wanting to use it for training purposes by referring callers to that site.

Commerce Commission. Interstate Commerce Commission Termination Act of 1995 ("ICCTA"), Pub. L. No. 104-88, 109 Stat. 803 (codified as amended at scattered sections of 49 U.S.C.).

As for matters outside the immediate realm of administrative adjudication, two developments warrant special mention in this Preface. First, the demise of the Administrative Conference (ACUS). Congress ended funding for ACUS during the 1990's, in effect terminating that agency. The termination of ACUS was statutorily recognized under Public Law 104-52, title IV, 109 Stat. 480 (Nov. 19, 1995). The legislative process leading to the demise of ACUS was treated at length in Toni M. Fine's article, *A Legislative Analysis of the Demise of the Administrative Conference of the United States*, 30 ARIZ. ST. L.J. 19 (1998). A number of other articles about the extinction of ACUS appeared in the same issue of that law journal, and in other law journals. In general, the loss of ACUS was a serious blow to the study of federal administrative law. In particular, for purposes of this Manual, the loss of ACUS meant that there was no longer any government organization readily available to sponsor and publish a new edition of this Manual.

Second, the 1990's saw substantial growth among organizations of Administrative Law Judges and hearing officers, both federal and state. These important organizations include the Federal Administrative Law Judges Conference (FALJC) (<http://www.faljc.org/>); the National Association of Administrative Law Judges (NAALJ) <http://www.naalj.com/>); the National Conference of Administrative Law Judges (NCALJ, ABA Judicial Division, <http://www.abanet.org/jd/ncalj/home.html>), and the Association of Administrative Law Judges (AALJ, <http://www.aalj.org/>). Moreover, there are many state-level organizations of state ALJs and hearing officers, such as the Oregon Association of Administrative Law Judges, <http://www.efn.org/~oaalj/> . The growth of these organizations has facilitated communication among, and increased the influence of, the ALJ and hearing officer community. The websites and web pages mentioned above are manifestations of this development. Another offshoot of this development has been publications such as the JOURNAL OF THE NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, which is frequently cited in this edition of the Manual. These organizations, their activities, and their publications, will be an important source of growth and change in administrative law during the next decade.

Contents of the 2001 Interim Internet Edition

In terms of contents, this 2001 Interim Edition is a modest updating, or upgrading, of the 3rd Edition. Revisions have been made to text, of course, where warranted. Citations to the Code of Federal Regulations (CFR or C.F.R.) and U.S. Code have been

revised or updated. Law review articles were added to footnotes and to the bibliographical appendices. Many of these articles deal with state administrative adjudications, and a separate section has been devoted to state materials in one of the bibliographies. Cases have been added to various footnotes.

Form of the 2001 Interim Internet Edition

The substantive contents of the Manual have not been changed dramatically. In terms of *form*, however, the 2001 Interim Edition is an experiment.

Hopefully, this electronic format will have a number of advantages over the traditional print media. Readers can download, view, print, and search the Manual from most internet capable workstations. Obviously, the electronic format is a lot cheaper for the user. With this electronic format, the revision and updating processes are much easier. Finally, errors can easily be called to our attention contact malj@ualr.edu .

The Future

As the title indicates, the 2001 Interim Internet Edition is an effort to update the 3rd Edition of the Manual. It is, to put it bluntly, something of a stop-gap. A more extensive revision, in the form of a full-fledged 4th edition which contains materials on state administrative adjudication, is certainly a possibility for the future. In the meantime, suggestions and ideas for future development of this Manual are welcome.

Thanks and Acknowledgments

Special thanks relative to the 2001 Interim Internet Edition are in order to David Loyall, my computer consultant who prepared the 2001 Interim Internet Edition for publication in this format, and to Steve Hyatt, Melissa Serfass, and the UALR Computing Services for their assistance in putting it on the UALR William H. Bowen School of Law site. Likewise, I want to thank Dean Charles W. Goldner for his enthusiastic support of this project.

Special thanks also are in order to my recently-graduated research assistant Erin Vinett not only for her work, but also for her assurance that substantial revisions of the text were not needed. I also wish to thank Ken Gallant and Sheila Freidman for their assistance in updating the ADR materials. Very Special Thanks also are extended to Deborah Schick Laufer, for her assistance and her permission to use in the appendices a substantial amount of her bibliographical material regarding ADR in the federal government. Ms. Laufer (BA, Barnard College, Columbia University; JD, Georgetown University Law Center) is an attorney and mediator, who also is Director of the Federal ADR

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Network and is co-editor of the Federal Administrative Dispute Resolution Deskbook (ABA 2001).

I also want to thank from Chief Judge John M. Vittone, Office of Administrative Law Judges, U.S. Department of Labor and Acting Chief Judge Ronnie Yoder, Office of Hearings, U.S. Department of Transportation, for their helpful suggestions and information in preparing the 2001 Interim Internet Edition.

Finally, I want to recognize, again, all of those whom I acknowledged and thanked in the Preface to the 3rd Edition, because that Edition forms so much a part of this one.