Mann and Felter proposal for new Article 4A office of administrative hearings

Text of proposal

[For Sections 401A to 405A non italicized language is taken from existing MSAPA draft language, and italicized language is added by the proponents of the proposal. For sections 406A to 419A, all language is italicized, even though most of the language tracks the existing language of Article 4, with notable exceptions for section 408A dealing with ex parte communications.]

[ARTICLE] 4A

OFFICE OF ADMINISTRATIVE HEARINGS

SECTION 401A. CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS (COURTS).[1]

(a) In this [article], office means the [Office of Administrative Hearings (Courts)].

(b) The [Office of Administrative Hearings (Courts)] is created in the executive branch of state government [within the [ ] agency].

(c) The provisions of this Article shall apply to all contested cases conducted by administrative law judges and shall apply to all agencies except:

SECTION 402A. CHIEF ADMINISTRATIVE LAW JUDGE; APPOINTMENT; **QUALIFICATIONS; TERM; REMOVAL**.

(a) The office is headed by a chief administrative law judge appointed by [the Governor] [with the advice and consent of the Senate].

(b) A chief administrative law judge serves a term of [five] years, and until a successor is appointed and qualifies for office, is entitled to the salary provided by law, and may be reappointed.

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[1] *An executive branch court, an idea for which the time has come. In Colorado, the central panel is designated as the "Office of Administrative Courts."*

(c) At the time of appointment, the chief administrative law judge must have been admitted to the practice of law in this state for at least five years and have substantial experience in administrative law.

(d) A chief administrative law judge:

(1) must take the oath of office required by law before beginning the duties of the office;

(2) shall devote full time to the duties of the office and may not engage in the private practice of law; and

(3) is subject to the code of conduct for administrative law judges adopted pursuant to Section 604(7).

(e) A chief administrative law judge may be removed from office only for cause and only after notice and an opportunity for a contested case hearing *before an impartial adjudicator.*[2]

SECTION 403A. ADMINISTRATIVE LAW JUDGES; APPOINTMENT; QUALIFICATION, DISCIPLINE.

(a) The chief administrative law judge shall appoint administrative law judges pursuant to the [state merit system].

(b) In addition to meeting other requirements of the [state merit system], to be eligible for appointment as an administrative law judge, an individual must have been admitted to the practice of law in this state for at least [three] years.

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[2] *This added language is from ABA resolution 101.B (2001), supporting the independence and accountability of administrative law adjudicator. Indeed, without the "impartial adjudicator," the requirement of notice and an opportunity to be heard holds out an empty promise.*

(c) An administrative law judge:

(1) shall take the oath of office required by law before beginning duties as an administrative law judge;

(2) is subject to the code of conduct for administrative law judges adopted pursuant to Section 604(7);

(3) is entitled to the compensation provided by law; and

(4) may not perform any act inconsistent with the duties and responsibilities of an administrative law judge.

(d) An administrative law judge:

(1) is subject to the administrative supervision of the chief administrative law judge, *but shall be decisionally independent in adjudicating contested cases;*[3]

(2) may be disciplined pursuant to the [state merit system law];

(3) Except as otherwise provided in paragraph (4), may be removed from office only for cause and only after notice and an opportunity for a contested case hearing; and

(4) is subject to a reduction in force in accordance with the [state merit system law].

(e) On the [effective date of this [act]], administrative law judges employed by agencies to which this [article] applies are transferred to the office and, regardless of the minimum qualification imposed by this [article], are administrative law judges in the office.

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[3] *Although this is dealt with below, it is very important to charge the chief judge with the responsibility of protecting the decisional independence and to make this policy clear to user agencies.*

SECTION 404A. CHIEF ADMINISTRATIVE LAW JUDGE; POWERS; DUTIES.

The chief administrative law judge has the powers and duties specified in this section. The chief administrative law judge:

(1) shall supervise and manage the office;

(2) shall assign ~~randomly~~ administrative law judges *to preside in contested cases. In any case referred to the office, may refer the case based on the expertise of the administrative law judge*;

(3) shall assure the decisional independence of each administrative law judge;

(4) shall establish and implement standards for equipment, supplies, and technology for administrative law judges;

(5) shall provide and coordinate continuing education programs and services for administrative law judges and advise them of changes in the law concerning their duties;

(6) shall adopt rules pursuant to this [act] to implement this[article] *including procedural rules that govern all contested case adjudications conducted by administrative law judges and rules governing the creation of a hearings' record.*

(7) shall adopt a code of *ethics* ~~conduct~~ for administrative law judges;

(8) shall monitor the quality of *contested case* adjudications conducted by administrative law judges;

(10) shall discipline [pursuant to the [state merit system law] administrative law judges who do not meet appropriate standards of conduct and competence;

(11) administrative law judges who are subject to discipline are entitled to notice and an opportunity to be heard by an impartial adjudicator;

(12) may accept grants and gifts for the benefit of the office; and

(13) may contract with other public agencies for the services of the office.

SECTION 405A. COOPERATION OF AGENCIES.

(a) All agencies shall cooperate with the chief administrative law judge in the discharge of the duties of the office.

(b) Subject to Section 402 ~~(g)~~, an agency may not reject a particular administrative law judge for a particular hearing.

SECTION 406A. ADMINISTRATIVE LAW JUDGES; POWERS; DUTIES;

DECISION MAKING AUTHORITY.

(a*) ~~[Except as otherwise provided in subsection (d), unless] [Unless] [the agency head elects to conduct the hearing, in which case the agency head shall render a final order under Section 413(a) in a contested case.~~ The chief administrative law judge shall assign an administrative law judge to be the presiding officer in the contested case. The administrative law judge shall issue an initial ~~order,~~decision pursuant to Section 413, unless granted final decision authority by this act, by law other than this act, or by delegation of the agency head*.

(b) ~~*[Except as provided by law other than this [act], if a matter is referred to the office by and agency,]*~~ *T*he agency may not take further action with respect to the proceeding, except as a party, until an ~~*a recommended or*~~ initial decision*or final* order is issued. [This subsection does not prevent an

appropriate interlocutory review by the agency or an appropriate termination or modification of the proceeding by the agency when authorized by law other than this [act].]

(c) In additional to acting as the presiding officer in contested cases under this [act], subject to the direction of the chief administrative law judge, an administrative law judge may perform such other duties as are authorized by law other than this [act].

[~~(d) This section does not apply to the following agencies: [list agencies exempted]]~~.]

SECTION 406A. DISQUALIFICATION

(a) An administrative law judge is subject to disqualification for bias, prejudice, financial interest, ex parte communications, or any other factor that would cause a reasonable person to question the impartiality of the presiding officer. An administrative law judge, after making a reasonable inquiry, shall disclose to all parties any known facts related to grounds for disqualification that would be material to the impartiality of the administrative law judge in the contested case proceeding.

(b) Any party may petition for the disqualification of an administrative law judge promptly after notice that the person will preside or, if later, promptly upon discovering facts establishing a ground for disqualification. The petition must state with particularity the ground upon which it is claimed that a fair and impartial hearing cannot be accorded or the applicable rule or canon of practice or ethics that requires disqualification. The petition shall be supported by an affidavit of the party seeking disqualification or a verified petition shall be filed. Upon the filing by a party of such motion all other proceedings in the case shall be suspended until a ruling is made thereon. Unless the judge grants the motion for personal reasons, the judge shall issue a written order stating the reasons for granting or denying the motion. In ruling on the motion, the judge must accept the evidentiary or basic fact allegations in the motion as true on their face, however, if the motion is denied the judge may refer the

motion to another judge for an evidentiary hearing on the factual allegations contained in the affidavit.[10] *The petition may be denied if the party fails to exercise due diligence in requesting disqualification after discovering a ground for disqualification.*

(c) An administrative law judge whose disqualification is requested shall determine whether to grant the petition and state facts and reasons for the determination in a record. An administrative law judge's decision to deny disqualification is not subject to interlocutory judicial review.

(d) If a substitute administrative law judge is required, the substitute must be appointed by the chief administrative law judge.

SECTION 407A. CONTESTED CASE PROCEDURE.

(a) This section does not apply to emergency adjudications.

(b) ~~By reference to its internet website~~ The office shall make available to the person to which an agency action is directed a copy of the agency procedures governing the case on its internet website.

(c) In a contested case, the administrative law judge shall give all parties a timely opportunity to file pleadings, motions, and objections. The administrative law judge shall give all parties the opportunity to file briefs, proposed findings of fact and conclusions of law, and recommended, interim, or final orders. The administrative law judge may refer the parties in a contested case proceeding to mediation or other dispute resolution procedure.

(d) In a contested case, to the extent necessary for full disclosure of all relevant facts and issues, the administrative law judge shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

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[10] *See Colorado Rules of Civil Procedure (CRCP), Rule 97.*

(e) Except as otherwise provided by law other than this [act], the administrative law judge may conduct all or part of an evidentiary hearing or a pre-hearing conference by telephone, television, video conference, or other electronic means. The hearing may be conducted by telephone (or other method by which the witnesses may not be seen) only if the parties consent [or the administrative law judge finds that this method will not impair reliable determination of the credibility of testimony]. Each party to the proceeding must be given an opportunity to attend, hear, speak, and be heard at the proceeding as it occurs. Nothing in this subsection prevents the chief administrative law judge from providing for electronic hearings by rule.

(f) Except as otherwise provided in subsection (g), a hearing in a contested case must be open to the public. A hearing conducted by telephone, television, video conference, or other electronic means is open to the public if members of the public have an opportunity to attend the hearing at the place where the administrative law judge is located or they have an opportunity to hear or see the proceeding as it occurs, unless prohibited by law other than this act.

(g) An administrative law judge may close a hearing to the public on a ground on which this state may close a judicial proceeding to the public or pursuant to a statute other than this [act].

(h) An administrative law judge must ensure that a hearing record is created.

(i) The decision in a contested case must be prepared electronically or, upon request, in writing, based on the hearing record, and include a statement of the factual and legal bases of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(j) Unless precluded by law, the parties may make an informal disposition of any contested case by stipulation, agreed settlement, consent order, or default.

SECTION 408A. EVIDENCE IN CONTESTED CASE.

The following rules apply in contested cases:

(1) Except as otherwise provided by law, the administrative law judge assigns the burden of proof in a contested case. The burden of proof in a contested case is by a preponderance of the evidence unless a statute provides that it shall be by clear and convincing evidence. The proponent of a proposition shall have the burden of proof.

(2) Upon proper objection, the administrative law judge shall exclude evidence that is irrelevant, immaterial, unduly repetitious, excludable on constitutional or statutory grounds, or excludable on the basis of an evidentiary privilege recognized in the courts of this state. Any other relevant evidence [including hearsay evidence] may be received if it is of a type commonly relied upon by reasonably prudent individuals in the conduct of their affairs. Except as otherwise provided in this section or provided by law other than this [act], the rules of evidence as applied in the courts of this state shall be followed.

(3) An objection must be made at the time the evidence is offered. In the absence of an objection, the administrative law judge may exclude evidence at the time it is offered. A party may make an offer of proof when evidence is objected to or before the administrative law judge's decision to exclude evidence.

(5) Evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to a party. Documentary evidence may be received in the form of excerpts or copies if the original is not readily available or by incorporation by reference. Upon request, parties shall be given an opportunity to compare the copy with the original.

(6) Testimony must be made under oath or affirmation.

(7) Evidence must be made a part of the hearing record of the case. Information or evidence may not be considered in determining the case unless it is part of the hearing record. If the hearing record contains information that is confidential, the administrative law judge may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

(8) The administrative law judge may take official notice of all facts of which judicial notice may be taken and of scientific, technical or other facts within the specialized knowledge of the agency. Parties must be notified at the earliest practicable time of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties must be afforded an opportunity to contest any officially noticed facts before the decision becomes final.

SECTION 409A. NOTICE IN CONTESTED CASE.

(a) Except as otherwise provided for <u>in</u> an emergency adjudication under Section 407~~8~~, an agency shall give notice as provided in subsections (b) and (c). .

(b) In a contested case initiated by a person other than an agency, within 5 days after filing, the agency shall give initial notice to all parties that an action has been commenced. The notice must include:

(1) the agency reference number, the name of the proceeding, and a general description of the subject matter;

(2) a statement that the official notice of the time, place, and nature of the prehearing conference or hearing will be provided by the office.

(3) contact information for communicating with the office, including the office mailing address, internet website, and telephone number;

(4) the name, official title, mailing address, and telephone number of any attorney or employee who has been designated to represent the agency; and

(c) In a contested case initiated by the agency, the agency must give an initial notice to the party against which the action is brought. The notice shall include:

(1) notification that an action that may result in an order has been commenced against the party;

(2) a short and plain statement of the matters asserted, including the issues involved;

(3) a statement of the legal authority under which the hearing is held citing the statutes and any rules involved;

(4) a statement that the party served may request a hearing and instructions in plain language about how to request a hearing with the office;

(5) contact information for communicating with the office, including the office mailing address, internet website, and telephone number;

(6) a statement that the official notice of the time, place, and nature of the prehearing conference or hearing will be provided by the office.

(7) the name, official title, mailing address, and telephone number of any attorney or employee who has been designated to represent the agency;

(8) a statement that a party that fails to attend or participate in any subsequent proceeding in a contested case may be held in default; and

(9) the names and last known addresses of all parties and other persons to which notice is being given by the agency.

(d) When a hearing or a pre-hearing conference is scheduled by the administrative law judge assigned to the contested case, the office shall give all parties notice of the date, time, and place of the hearing or pre-hearing conference, not less than 120 days after filing of the notice by the agency and at least 14 days before the hearing or pre-hearing conference.

(e) Notice shall include contact information for the administrative law judge and may include other matters that the administrative law judge considers desirable to expedite the proceedings.

SECTION 410A. HEARING RECORD IN CONTESTED CASE.

(a)The office shall maintain the hearing record created by the administrative law judge in each contested case.

(b) The hearing record must contain:

(1) a recording of the proceeding;

(2) notices of all proceedings;

(3) any pre-hearing order;

(4) any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(5) evidence admitted, received, or considered;

(6) a statement of matters officially noted

(7) proffers of proof and objections and rulings thereon;

(8) proposed findings, requested orders, and exceptions;

(9) an[13]y transcript of all or part of the hearing;

(10) any initial decision, final order, or order on reconsideration; and

(c) The hearing record constitutes the exclusive basis for agency action in a contested case.

SECTION 411A. NO EX PARTE COMMUNICATIONS.

Unless required for disposition of an ex parte matter authorized by law, the administrative law judge may not communicate directly or indirectly in connection with any issue of fact, or question of law, with any person or party or representative, except on notice and opportunity for all parties to participate. A prohibited ex parte communication is a communication made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, which the judge reasonably believes will give a party a procedural, substantive, or tactical advantage as a result of the ex parte communication.

SECTION 411A. INTERVENTION.

[13] *See* Rule 2.9, ABA Model Code of Judicial Conduct (2007).

(a) An administrative law judge shall grant a timely petition for intervention in a contested case if:

(1) the petitioner has a statutory right under law other than this act to initiate or to intervene in the proceeding in which intervention is sought; or

(2) the petitioner has an interest that may be adversely affected by the outcome of the proceeding and that interest is not adequately represented by existing parties.

(b) An administrative law judge may grant a timely petition for intervention if the petitioner has a permissive statutory right under law other than this act to intervene or if the petitioner's claim or defense is based on the same transaction or occurrence as the contested case.

(c) An administrative law judge may impose conditions at any time upon the intervener's participation in the proceedings.

(d) An administrative law judge may permit intervention provisionally and, at any time later in the proceedings or at the end of the proceedings, may revoke the provisional intervention.

(e) Upon request by the interveners or existing parties or by action of the administrative law judge, the presiding officer may hold a hearing on the intervention petition.

(f) An administrative law judge shall promptly give notice of an order granting, denying or revoking intervention to the petitioner for intervention and to all parties. The notice must be given at a reasonable time to allow parties to reasonably prepare for the hearing on the merits.

SECTION 412A. SUBPOENAS.

(a) After the commencement of a contested case, subpoenas may be issued and served in the manner provided by law for the service and enforcement of subpoenas in a civil action.

Upon motion of a party and the opportunity to be heard, the administrative law judge may quash any subpoena for any reason sufficient in law

(b) Witness fees shall be paid by the party requesting the subpoena in the manner as provided by law for witness fees in a civil action

SECTION 413A. DISCOVERY.

(a) Parties to a contested case may engage in discovery in accordance with the rules of civil procedure, unless otherwise provided by the procedural rules of the office.

(b) A party to a contested case, upon written notice to another party at least [ ] days before an evidentiary hearing, and a showing of need unless otherwise provided by the procedural rules of the office may:

(1) obtain the names and addresses of witnesses the disclosing party will present at the hearing to the extent known to the other party; and

(2) inspect and copy any of the following material in the possession, custody, or control of the other party:

(A) statements of parties and witnesses then proposed to be called;

(B) all records, including reports of mental, physical, and blood examinations, and other evidence the party proposes to offer;

(C) investigate reports made by or on behalf of the agency or other party pertaining to the subject matter of the adjudication;

(D) statements of expert witnesses proposed to be called;

(E) any exculpatory material in the possession of the agency; or

(F) other materials for good cause shown.

(3) Parties to a contested case proceeding have a duty to supplement responses provided under subsection (a) and (b) to include information thereafter acquired to the extent that information will be relied upon in the hearing.

(c) Upon petition, an administrative law judge may issue a protective order for any material for which discovery is sought under this section that is exempt, privileged, or otherwise made confidential or protected from disclosure by law, including material subject to the attorney-client privilege, attorney work product, and [executive] [deliberative process] privilege, and material the disclosure of which would result in annoyance, embarrassment, oppression, or undue burden or expense to any person or party.

(d) Upon petition, the administrative law judge may issue an order compelling discovery for refusal to comply with a discovery request unless good cause exists for refusal. Failure to comply with the discovery order may be enforced according to the rules of civil procedure.

SECTION 414A. DEFAULT.

(a) Unless otherwise provided by law other than this [act], if a party without good cause fails to attend or participate in a pre-hearing conference or hearing in a contested case, the administrative law judge may issue a default order. If a default order is issued, the administrative law judge may conduct any further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party. An initial or final

order issued against a defaulting party may be based on the defaulting party's admissions or other evidence that may be used without notice to the defaulting party. If the burden of proof is on the defaulting party to establish that the party is entitled to the agency action sought, the administrative law judge may issue an initial or final order without taking evidence.

(b) Not later than [ ] days after the date of notifying a party subject to a default order that an initial or final order has been rendered against that party, that party may petition the administrative law judge to vacate the initial or final order. If good cause is shown for the party's failure to appear, the administrative law judge shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for the party's failure to appear, the administrative law judge shall deny the motion to vacate.

SECTION 415A. ORDERS: FINAL AND INITIAL.

(a) If the administrative law judge is granted final order [agency action] authority by law other than this [act], the administrative law judge shall render a final order.

(b) Except as otherwise provided by law other than this [act], if the administrative law judge has not been granted final decisional authority, the administrative law judge shall render an initial ~~order.~~ decision. The initial ~~order~~ decision becomes a final order within 15 days after issuance, unless reviewed by the agency head on its own motion or on petition of a party.

(c) An initial decision or final order must be served in a record upon each party and the agency head within 90 days after the hearing ends, the record closes, or memos, briefs, or proposed findings are submitted, whichever is later. The time may be extended by stipulation, waiver, or upon a showing of good cause.

(d) An initial decision or final order must include separately stated findings of fact and conclusions of law on all material issues of fact, law, or discretion, the remedy prescribed, and, if applicable, the action taken on a petition for stay. A party may submit proposed findings of fact and conclusions of law. A final order must also include a statement of the procedures and time limits for seeking judicial review. An initial ~~order~~ decision must also include a statement of the procedures and time limits for petitioning for review by the agency head and the circumstances under which the initial ~~order~~ decision~~,~~ without further notice, may become a final order.

_____ *(e) Findings of fact must be based exclusively on the evidence in the hearing record in the~~e~~ contested case and on matters officially noticed.*

Alternative A

_____*Hearsay evidence may be used to supplement or explain other evidence, but on timely objection, is not sufficient by itself to support a fact finding unless it would be admissible over objection in a civil action.*

Alternative B

Hearsay evidence is sufficient to support ~~fact~~ findings of fact if it constitutes reliable, probative, and substantial evidence.

(f) An order is issued under this section when it is signed by the administrative law judge.

SECTION 416A. AGENCY REVIEW OF INITIAL ~~ORDER.~~DECISION

(a) An agency head may review an initial ~~order~~ decision on its own motion if permitted by statute.

(b) A party may petition an agency head to review an initial ~~order.~~ decision. Upon petition by a party, the agency head may review an initial ~~order~~ decision~~,~~ except as otherwise provided by law other than this [act].

(c) A petition for review of an initial ~~order~~ decision must be filed with the agency head, or with any person designated for this purpose by agency rule not later than 15 days after the initial ~~order~~ decision is issued, or from the date that the parties are notified of the ~~order~~decision, whichever is later. If the agency head decides to review an initial ~~order~~ decision on its own motion, the agency head shall give notice in a record of its intention to review the ~~order~~ decision within 15 days after it is issued, or from the date that the parties are notified of the ~~order~~decision~~,~~ whichever is later.

(d) The 15 day period in subsection (c) for a party to file a petition or for the agency head to notify the parties of its intention to review an initial ~~order~~decision~~,~~ is tolled by the submission of a timely petition under Section 417A for reconsideration. If ~~an order~~decision is subject both to a timely petition for reconsideration and to a petition for review by the agency head, the petition for reconsideration must be disposed of first, unless the agency head determines that action on the petition for reconsideration has been unreasonably delayed.

(e) Failure to file a petition to review of an initial decision shall result in a waiver of the right to judicial review of the final order of the agency.

(e)(f) When reviewing an initial ~~order~~ decision, ~~the agency head shall exercise all the decision-making power that the agency head would have had if the agency head had conducted the hearing that produced the order, except to the extent that the issues subject to review are limited by a provision of law other than this [act] or by order of the agency head upon notice to all the parties. In reviewing findings of fact in an initial order by an administrative law judge, the agency head shall consider the administrative law judge's opportunity to observe the witnesses and to determine the credibility of

~~*witnesses. The agency head shall consider the hearing record or parts that are designated by the parties.*~~ *The findings of evidentiary fact, as distinguished from ultimate conclusions of fact, made by the administrative law judge or the hearing officer shall not be set aside by the agency on review of the initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence or not based on substantial evidence. The agency may remand the case to the administrative law judge or the hearing officer for such further proceedings as it may direct, or it may affirm, set aside, or modify the order or any sanction entered therein, in conformity with the facts and the law.*[11]

~~*(f)*~~ *(g) An agency head shall render a final order disposing of the proceeding within 120 days after the initial order is issued or may remand the matter for further proceedings with instructions to the presiding officer who rendered the initial order. The remand proceedings must be completed within 45 day of receipt of the remand order. Thereafter, the agency head is prohibited from issuing a second remand order to the presiding officer who rendered the initial* ~~*order*~~*decision. Upon remanding a matter, the agency head may order such temporary relief as is authorized and appropriate.*

(~~*g*~~*) (h) A final order or an order remanding the matter for further proceedings must identify any difference between the order and the initial* ~~*order*~~ *decision and must state the facts of record that support any difference in findings of fact, the source of law that supports any difference in legal conclusions, and the policy reasons that support any difference in the exercise of discretion. Findings of fact must be based exclusively on the evidence in the hearing record in the contested case and on matters officially noticed. A final order under this section must include, or incorporate by express reference to the initial* ~~*order,*~~*decision, all the matters required by Section 415A (d). The agency head shall deliver the final order or remand order to the administrative law judge and all parties.*

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[11] *See* § 24-4-105 (15) (b), Colorado Revised Statutes (2009); *State Board of Medical Examiners v. McCroskey*, 880 P.2d 188 (Colo. 1994).

SECTION 417A. RECONSIDERATION BY ADMINISTRATIVE LAW JUDGE.

(a) Any party, not later than 15 days after the date of notification to the parties that notice of an initial decision or final order has been issued by an administrative law judge, may file a petition for reconsideration that states the specific grounds upon which relief is requested. The place of filing and other procedures, if any, must be specified by office procedural rule and must be stated in the initial ~~order~~decision.~~.~~

(b) If a petition for reconsideration of an initial ~~order~~decision is timely filed, and if the petitioner has complied with the office's procedural rule for reconsideration, if any, the time for filing a petition for review by the agency head under section 416A(d) does not begin until the administrative law judge disposes of the petition for reconsideration.

(c) If a petition for reconsideration of a final order is timely filed, and if the petitioner has complied with the office's procedural rule for reconsideration, if any, the time for filing a petition for judicial review under section 503(d) does not begin until the administrative law judge disposes of the petition for reconsideration.

(d) If a petition is filed under subsection (a), the administrative law judge shall issue a written order not later than 20 days after the filing denying the petition, granting the petition and dissolving or modifying the initial decision or final order, or granting the petition and setting the matter for further proceedings. If the administrative law judge does not respond to the petition within 30 days after filing, or a longer period agreed to by the parties, the petition is deemed denied. The petition may be granted only if the administrative law judge states findings of facts, conclusions of law, and the reasons for granting the petition.

SECTION 418A. RECONSIDERATION BY AGENCY HEAD

(a) Any party, not later than 15 days after the date of notification to the parties that notice of a final order that has been issued by an agency head may file a petition for reconsideration that states the specific grounds upon which relief is requested. The place of filing and other procedures, if any, must be specified by agency rule and must be stated in the final order.

(b) If a petition for reconsideration of a final order is timely filed, and if the petitioner has complied with the agency's procedural rule for reconsideration, if any, the time for filing a petition for judicial review under section 503(d) does not begin until the agency head disposes of the petition for reconsideration.

(d) If a petition is filed under subsection (a), the agency head shall issue a written order not later than 20 days after the filing denying the petition, granting the petition and dissolving or modifying the initial decision or final order, or granting the petition and setting the matter for further proceedings. If the agency head does not respond to the petition within 30 days after filing, or a longer period agreed to by the parties, the petition is deemed denied. The petition may be granted only if the agency head states findings of facts, conclusions of law, and the reasons for granting the petition.

SECTION 417A. STAY. *Except as otherwise provided by law other than this [act], a party, not later than seven days after the parties are notified of the final order, may request the presiding officer who issued that final order to stay the final order pending judicial review. The presiding officer may grant the request for a stay pending judicial review if the presiding officer finds that justice so requires. The presiding officer may grant or deny the request for stay of the order before, on, or after the effective date of the order.*

SECTION 419A. AVAILABILITY OF ORDERS; INDEX.

(a) Except as otherwise provided in subsections (b) and (c), the office shall create an index of all orders in contested cases and make the index and all orders available for public inspection and copying, at cost, in its principal office.

(b) Orders or decisions that are exempt, privileged, or otherwise made confidential or protected from disclosure by [the public records law of this state] are not public records and may not be indexed.

(c) An order may be excluded from an index and disclosure only by order of the administrative law judge with a written statement of reasons attached to the order. If the administrative law judge determines it is possible to redact an order that is exempt, privileged, or otherwise made confidential or protected from disclosure by [the public records law of this state] so that it complies with the requirements of that law, the redacted order may be placed in the index and published.