

LOUISIANA REVISED STATUTES, TITLE 49  
CHAPTER 13-B. DIVISION OF ADMINISTRATIVE LAW  
PART A. ADMINISTRATIVE LAW

**§991. Creation of division of administrative law**

The division of administrative law, hereafter referred to as "division", is created in the Department of State Civil Service.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1162, §2, eff. July 1, 1998; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: SEE ACTS 1995, NO. 947, §8 AND NO. 739, §§3, 4.

**§992. Applicability; exemptions; attorney fees; court costs**

A.(1) Prior to October 1, 1996, the provisions of the Administrative Procedure Act shall apply to all adjudications as defined by that Act.

(2) On and after October 1, 1996, the division shall commence and handle all adjudications in the manner required by the Administrative Procedure Act provided that the provisions of that Act are not inconsistent with the provisions of this Chapter.

B.(1) Notwithstanding any other provision of the law to the contrary except as provided by R.S. 49:967 and the provisions of this Section, all adjudications shall be resolved exclusively as required by the provisions of this Chapter and the Administrative Procedure Act.

(2) Except in the instance of adjudications initiated pursuant to Items (D)(2)(b)(iii), (vi), and (vii) of this Section, in an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order. Upon the issuance of such a final decision or order, the agency or any official thereof shall comply fully with the final order or decision of the administrative law judge.

(3) Nothing in this Section shall affect the right to or manner of judicial appeal in any adjudication, irrespective of whether or not such adjudication is commenced by the division or by an agency. However, no agency or official thereof, or other person acting on behalf of an agency or official thereof, shall be entitled to judicial review of a decision made pursuant to this Chapter.

C. The positions appointed by the director pursuant to this Chapter shall be in the classified service.

D.(1) Except as provided in Paragraphs (2) through (9) of this Subsection, the provisions of this Chapter shall apply to any board, commission, department, or agency of the executive branch of state government.

(2)(a) Except as otherwise provided in Subparagraph (b) of this Paragraph, any board, commission, department, or agency which is required, pursuant to a federal mandate and as a condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(b) This Subparagraph shall apply to the Department of Health and Hospitals, the Department of Children and Family Services, the Department of Education, and any agency within these departments:

(i) If the department or an agency within the department is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means its fair hearings function, then such fair hearings

shall be exempt from the provisions of this Chapter to the extent of the federal mandate; however, if such federally mandated hearings function may be delegated by contract or other means, the department or agency shall delegate such function to the division. If the department or agency claims a federal mandate exemption, the department or agency shall have the burden of proving such exemption.

(ii) If the department or an agency within the department is prohibited, pursuant to a federal mandate or as a condition of federal funding, from delegating by contract or other means both its fair hearings function and its authority to render a final decision or order in an adjudication proceeding, then such fair hearings and adjudication proceedings shall be exempt from the provisions of this Chapter to the extent of the federal mandate; however, if such federally mandated hearings function and authority to render a final decision or order in an adjudication proceeding may be delegated by contract or other means, the department or agency shall delegate such function and authority to the division. If the department or agency claims a federal mandate exemption, the department or agency shall have the burden of proving such exemption.

(iii)(aa) If a department or an agency within the department may delegate its fair hearings function but is required by federal mandate to render the final decision or order in an adjudication proceeding, then in those cases, the division shall conduct the hearing and issue a recommended decision. The recommended decision shall be mailed or delivered to the head of the agency, who shall have, upon receipt of the recommended decision, thirty-five days to reject, modify, or approve the decision. If he rejects or modifies the recommended decision, he shall specify in writing the findings of fact or conclusions of law which are being rejected or modified which shall be considered to be the final decision or order in the adjudication proceeding. A copy of the department or agency's rejected or modified decision shall be forwarded to the division on the day it is issued. If the agency head does not reject or modify the recommended decision within thirty-five days, or if he approves the recommended decision, then the recommended decision of the division shall be certified as the final decision or order of the department or agency in the adjudication proceeding.

(bb) In Temporary Assistance for Needy Families (TANF) cases, if the secretary of the Department of Children and Family Services approves, rejects, or modifies the recommended decision of the division, that approved, rejected, or modified decision shall be issued by the division as the final decision of the Department of Children and Family Services.

(iv) The provisions of this Subparagraph shall not apply to any board which is exempt from this Chapter pursuant to Paragraph (5) of this Subsection or to any board or commission which chooses to continue to conduct hearings pursuant to Subsection G of this Section.

(v) The division shall adjudicate within seventy-two hours of receipt all stay requests related to involuntary discharges from nursing homes. The division shall adjudicate all appeals related to involuntary discharges from nursing homes within thirty days of receipt.

(vi) Notwithstanding any provision of law to the contrary, an adjudication of a decision by the Department of Health and Hospitals to deny, suspend, or revoke the license of an outpatient abortion facility, ambulatory surgical center, home health agency, hospital, or nursing home, pursuant to R.S. 40:2009.7, 2110, 2116.37, 2141, or 2175.6 shall be heard by a three member panel of division of administrative law judges. This panel shall be deemed to meet the requirements of a panel appointed by the secretary of the Department of Health and Hospitals. The three member panel shall issue a final decision or order. The final decision or order shall be appealable to the district court for the parish of East Baton Rouge.

(vii) The provisions of this Subparagraph shall apply to hearings involving the Department of Education required under the Individuals with Disabilities Education Act, and the provisions of the Administrative Procedure Act shall not apply to these hearings. Hearings involving the Individuals with Disabilities Act shall proceed in accordance with regulations promulgated by the Board of Elementary and Secondary Education. Only an administrative law judge who has received

training on the federal and state statutes and regulations with respect to children with disabilities and on educational placements in Louisiana's school systems shall conduct hearings pursuant to this Item. Any party aggrieved by the findings and decisions of the administrative law judge in hearings conducted pursuant to the Individuals with Disabilities Education Act, including local educational authorities, shall have a right to bring a civil action in state or federal court pursuant to federal law or regulation.

(3) The office of workers' compensation administration in the Louisiana Workforce Commission shall be exempt from the provisions of this Chapter.

(4) The office of regulatory services in the Louisiana Workforce Commission shall be exempt from this Chapter.

(5) State professional and occupational licensing boards shall be exempt from the provisions of this Chapter.

(6) The Department of Agriculture and Forestry shall be exempt from the provisions of this Chapter.

(7) All adjudications by the assistant secretary of the office of conservation pursuant to Chapters 1 and 7 of Subtitle I of Title 30 of the Louisiana Revised Statutes of 1950, except determinations of violations of laws, rules, regulations, and orders, and determinations of penalties for such violations, shall be exempt from the provisions of this Chapter.

(8) The Public Service Commission and any entity which by law has its adjudications handled by the Public Service Commission shall be exempt from the provisions of this Chapter.

(9) Adjudications filed pursuant to R.S. 46:51.2 with the Department of Children and Family Services shall be exempt from the provisions of this Chapter.

E. In the event that a person files a civil action to require that a state department, division, office, agency, board, commission, or other entity of state government conduct an adjudication as required by this Chapter and judgment is rendered in his favor, he shall be entitled to an award of reasonable attorney fees to be taxed as costs in the matter.

F. The provisions of this Chapter shall apply to all adjudications as defined in the Administrative Procedure Act pursuant to the Procurement Code.

G. Any board or commission authorized by law to conduct hearings may continue to hold such hearings.

H.(1) If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

(2) Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

(3) All payments for litigation expenses required by this Subsection shall be paid from the agency's regular operating budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the previous fiscal year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 1997, No. 1172, §9, eff. June 30, 1997; Acts 1997, No. 1484, §1, eff. July 16, 1997; Acts 1999, No. 1332, §1, eff. July 12, 1999; Acts 2001, No. 527, §1; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2003, No. 1271, §1, eff. July 11, 2003; Acts 2005, No. 204, §1; Acts 2008, No. 743, §7, eff. July 1, 2008; Acts 2009, No. 47, §2, eff. June 15, 2009; Acts 2010, No. 683, §1; Acts 2010, No. 877, §3, eff. July 1, 2010.

NOTE: See Acts 1995, No. 947, §8.

NOTE: See Acts 1999, No. 1332, §2 relative to the remedial nature of Act.

NOTE: See Acts 2010, No. 683, §§2 and 3, relative to memorandums of understanding and transfers.

**§992.1. Applicability; ethics complaints**

All adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be resolved as required by the provisions of this Chapter and the Administrative Procedure Act to the extent that such provisions do not conflict with Part III of Chapter 15 of Title 42 of the Louisiana Revised Statutes of 1950.

Acts 2008, 1<sup>st</sup> Ex. Sess., No. 23, §2, eff. Aug. 15, 2008.

**§993. Definitions; rules**

A. The definitions for terms as provided by R.S. 49:951 shall apply to such terms used in this Chapter.

B. The division may promulgate rules according to the Administrative Procedure Act to insure compliance with the provisions of this Chapter.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

**§994. Administrative law judges**

A. The director of the division shall employ the administrative law judges for the division, each of whom shall have the following qualifications:

(1) An administrative law judge shall be a resident of Louisiana.

(2) An administrative law judge shall be licensed to practice law in Louisiana.

(3) An administrative law judge shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B. An administrative law judge shall be an employee of the division.

C. Notwithstanding the provisions of this Section, all persons employed in affected agencies on October 1, 1996, who handle adjudications and whether or not they meet the qualifications of this Chapter shall, unless the person declines, be transferred to and employed in the division created by this Chapter to handle adjudications in the manner provided in this Chapter. However, no person other than those provided for in this Subsection shall be employed as an administrative law judge who does not meet the requirements of this Section.

D. The administrative law judge shall have the authority to:

(1) Regulate the adjudicatory proceedings assigned to him.

(2) Issue such decisions and orders as are necessary to promote a fair, orderly, and prompt adjudication.

(3) Exercise those powers vested in the presiding officer in the Administrative Procedure Act.

(4) If the parties do not object, conduct adjudications or conferences in person or by telephone, video conference, or similar communication equipment, and administer oaths in such proceedings.

(5) Continue an adjudication in any case when a party or subpoenaed necessary witness has been called to service in the uniformed services as defined in R.S. 29:403, including but not limited to a proceeding pursuant to R.S. 32:667.

E. All adjudications involving alleged violations of any provision of law under the jurisdiction of the Board of Ethics shall be heard by administrative law judges who are licensed to practice law in Louisiana.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2001, No. 84, §1; Acts 2001, 2nd Ex. Sess., No. 7, §2, eff. Oct. 16, 2001; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2008, 1<sup>st</sup> Ex. Sess., No. 23, §2, eff. Aug. 15, 2008.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§995. Director**

A. The governor shall appoint, and the Senate shall confirm, a director for the division, who shall have the following qualifications:

- (1) The director shall be a resident of Louisiana.
- (2) The director shall be licensed to practice law in Louisiana.
- (3) The director shall have been engaged in the actual practice of law for at least five years prior to his

appointment.

B.(1) The director shall serve a six-year term and may be reappointed and confirmed for subsequent six-year terms without limitation.

(2) If a vacancy occurs during the director's term, the governor shall appoint a successor to fill the remainder of the vacant term.

(3) The first director shall be appointed on July 1, 1996, and shall take such action in compliance with this Chapter as necessary to ensure that the provisions of this Chapter are implemented by October 1, 1996.

C. The director shall be a full-time unclassified employee of the division and he shall not accept or engage in additional employment of any kind.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§996. Duties of the director**

The director of the division shall take the following actions:

(1) Administer and cause the work of the division to be performed in such a manner and pursuant to such a program as may be appropriate.

(2) Organize the division into such sections as may be appropriate.

(3) Assign administrative law judges as appropriate to perform duties vested in or required by the division.

(4) Develop and maintain a program for the continual training and education of administrative law judges and agencies in regard to their responsibilities under this Chapter and the Administrative Procedure Act.

(5) Secure, compile, and maintain all records of adjudications held pursuant to this Chapter or the Administrative Procedure Act, and such reference materials and supporting information as may be appropriate.

(6) Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether or not a summary or ordinary hearing should be held, to regulate the conduct of adjudications.

(7) Promulgate and enforce rules for the prompt implementation and coordinated administration of this Chapter as may be appropriate.

(8) Administer and supervise the conduct of adjudications.

(9) Assist agencies in the preparation, consideration, publication, and interpretation of rules as appropriate pursuant to the Administrative Procedure Act.

(10) Employ the services of the several agencies and their employees in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003; Acts 2003, No. 1056, §1.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§997. Program of judicial evaluation**

A. The director shall develop and implement a program of judicial evaluation to aid in the performance of his duties.

B. The judicial evaluation shall focus on three areas of judicial performance including competence, productivity, and demeanor. It shall include consideration of the following:

(1) Industry and promptness in adhering to schedules.

(2) Tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses, and counsel and in presiding over adjudications.

(3) Legal skills and knowledge of the law and new legal developments.

(4) Analytical talents and writing abilities.

(5) Settlement skills.

(6) Quantity, nature, and quality of caseload disposition.

(7) Impartiality and conscientiousness.

C. The director shall develop standards and procedures for the judicial evaluation which shall include taking comments from randomly selected litigants and lawyers who have appeared before the administrative law judge under evaluation.

D. The judicial evaluation shall include a review of the methods used by the administrative law judge. The judicial evaluation shall not include a review of any result as determined by an administrative law judge in any adjudication.

E. Before implementing any action based on the findings of the judicial evaluation, the director shall discuss the findings and the proposed action with the affected judge.

F. The judicial evaluation and supporting documents shall be confidential and shall not be subject to open records provisions of R.S. 44:1 et seq.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§998. Prehearing conference**

A. The administrative law judge may conduct a prehearing conference pursuant to a motion of any party or on his own motion.

B. The administrative law judge shall set the time and place for the prehearing conference.

C. The administrative law judge shall give reasonable notice of the prehearing conference to all parties.

D. The prehearing conference may be conducted for the purpose of dealing with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on the identities and limitation on the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs.

(9) Schedules for the conduct of a hearing.

(10) Any other matter to promote the orderly and prompt conduct of the adjudication.

E. The administrative law judge shall issue a prehearing order, which he may direct one or more of the parties to prepare, incorporating the matters determined at the prehearing conference.

F. An administrative law judge assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.

#### **§999. Disqualification and withdrawal of administrative law judge**

A. An administrative law judge shall voluntarily disqualify himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, or when required to by applicable rules governing the practice of law in Louisiana.

B.(1) Any party may request the disqualification of an administrative law judge by filing an affidavit, promptly upon learning of the basis for the disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(2) The director shall promptly determine whether or not to disqualify an administrative law judge based on the request, or alternatively, he may hold a preliminary hearing at least ten calendar days prior to the hearing date for the purpose of receiving evidence relating to the grounds alleged for disqualification.

Acts 1995, No. 739, §2, eff. Oct. 1, 1996; Acts 2003, No. 956, §1, eff. July 1, 2003.

**NOTE: See Acts 1995, No. 947, §8 and No. 739, §§3, 4.**

**§999.1. Contract for adjudication services; other governmental entities**

**The division is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by this Chapter, and to conduct administrative hearings for such entity.**

**Acts 1999, No. 416, §1; Acts 2003, No. 956, §1, eff. July 1, 2003.**