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Problem of Procedural Delay in Contested Case Hearings under the North Carolina Administrative Procedures Act

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I. INTRODUCTION

In its zeal to insure basic fairness to citizens dealing with state administrative entities, the 1973 North Carolina General Assembly enacted a comprehensive and precise statement of public rights and governmental duties destined to become the core of North Carolina administrative law. The North Carolina Administrative Procedures Act (hereinafter cited as "APA") covers all aspects of administrative rulemaking, contested case adjudication, judicial review, and the publication of agency rules for state government departments having no prior statutory guidance. The thrust of the new law is to establish by statute rights to the principal characteristics of due process in administrative hearings—notice, and a fair hearing.

In accomplishing this goal, the authors of the APA have provided private parties with numerous avenues of appeal, both administrative and judicial. In practical effect, this policy could enable private parties (particularly those involved in regulatory and licensing matters) to stall administrative functions for long periods of time. The present case backlogs in the court systems, both state and federal, strongly suggest a similar fate for administrative agencies unless the possibilities for deliberate delay are minimized insofar as the demands of due process permit.

The problem of delay in contested case hearings brought under the new APA is threefold. First, delay may permit dangerous, shoddy, or otherwise unfit merchandise or inadequate services to be foisted upon the public. Moreover, where business activities are involved, delay may allow firms violating agency regulations a competitive advantage over firms which choose to comply. Second, long delays in administrative proceedings may tend to weaken the regulatory scheme by forcing agencies to consider dropping contested case charges rather than facing the possibility of costly drawn-out proceedings that might ultimately be decided in the defendant party's favor. Finally, administrative delay presents a serious problem of waste of the resources of the agency, the time of agency personnel, and consequently, the taxpayer's money.

The APA introduces new complexities to administrative law in North Carolina. Complexity in procedure, coupled with the difficulty of finding and interpreting agency rules, will probably mean that more and more parties to contested case hearings will be represented by attorneys. Furthermore, by sensing the General Assembly's concern that private

parties be guaranteed due process in administrative actions, reviewing courts probably will demand greater protection of defendant parties' rights. In order to meet these advancements in the law, administrators must learn to deal with the problems of procedural delay in a legal context.

II. THE TACTICS OF DELAY

Four primary areas are vulnerable to tactics of procedural delay under the APA: postponements of hearing dates for cause or convenience;[1] objections to the place of the hearing (venue);[2] petitions for the disqualification of hearing officers for bias;[3] and, the contesting of subpoenas.[4]

Postponement of trial dates are a constant source of trouble for judges, parties, and attorneys alike in the judicial system. While postponements are beneficial in some cases and necessary in others, it is evident that the potential for using them to wear down the opposition's resistance is enormous. This threat carries over directly from the judicial sphere to the administrative, and although one must usually justify requests for continuances, such postponements are often granted on insignificant bases in order to insure the fairness of the proceeding.

There are many possibilities open to one who would delay a contested case hearing by moving for a postponement. The APA provides for the filing of answers by parties to a hearing.[5] Since the time allowed for the filing of such answers is generally a "reasonable" time,[6] it would be necessary to consider the complexity of the case, the relative positions of the parties, and other factors in order to arrive at a date upon which answers would be due. All of these decisions are matters of discretion with the hearing officer and, accordingly, are subject to judicial review.

Additionally, continuances can be had for the personal convenience of a party, his attorney, or his witnesses.[7] Such postponements are common in courts of law, although their use is usually limited to a very few times per case. Illness of a party constitutes another acceptable reason for delay of a contested case. Instances of using sickness as a

1. N.C. GEN. STAT. § 150A-33(4) (Supp. 1974).
2. N.C. GEN. STAT. § 150A-24 (Supp. 1974).
3. N.C. GEN. STAT. § 150A-32(b) (Supp. 1974).
4. N.C. GEN. STAT. § 150A-27 (Supp. 1974).
5. N.C. GEN. STAT. § 150A-25(b) (Supp. 1974).
6. *Id.; See also* C. DAYE, *North Carolina Administrative Procedures Act Manual* § 18.04 (1975) [hereinafter cited as DAYE].
7. *See generally*, Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D. N.C. 1958), *aff'd*, 265 F.2d 95 (4th Cir. 1958), *cert. denied*, 361 U.S. 818 (1959). The case holds, in part, that witnesses are indispensible parties to administrative proceedings, and must be given every reasonable opportunity to testify.

delaying mechanism can be diminished by requiring a supporting statement from a physician to accompany any petition for delay; however, to proceed with a contested case hearing in the absence of a party who had claimed sickness, even absent a physician's statement, may cast doubt upon the basic fairness of the proceeding.

As an additional delaying tactic, a defendant party might petition for a pre-hearing conference, or for a reinspection of conditions previously determined to be in violation of agency rules and regulations. From the agency's standpoint, the former situation would usually be desirable as an alternative to a full hearing. Occasionally, however, issues may not be solved at a pre-hearing conference, thus necessitating the rescheduling of the original hearing date. In the latter instance, denial of a reinspection request would provide excellent grounds for judicial review and a possible showing of vindictiveness on the part of the agency.

Finally, delay of administrative hearings could be effected by the default of a party at the original hearing,[8] followed by a petition for reopening for cause. Although all of the foregoing possibilities for the postponement of contested case hearings can be defeated by a ruling of the administrator in charge of the hearing, it should be noted that any such denial of continuance is purely discretionary,[9] and accordingly, upon judicial review, can be attacked for administrative abuse.

Venue questions are also available when parties to contested case hearings wish to delay.[10] The APA provides several means for objecting for cause to the place of the hearing; such objections may tend to cause the administrator in charge to grant delays while a new location is found. An allegation that a change in location of the hearing to promote the ends of justice would necessitate close scrutiny of the facts surrounding the case by the administrator in charge.[11] His findings would, of course, be reviewable as a discretionary matter. Furthermore, the convenience of witnesses should be of primary importance in ruling on a party's application for change of venue.[12]

The APA provides that a hearing on a contested case conducted by a single hearing officer or less than a majority of the agency designated to hear the case must be held in the county where the opposing party has

8. N.C. GEN. STAT. § 150A-25(a) (Supp. 1974).

9. Rabinstein v. State Workmen's Ins. Fund, 15 Pa. 160, 325 A.2d 681 (1974). The body of North Carolina law regarding administrative matters has many gaps; consequently, the writer has included decisions from other jurisdictions indicating general rules and the suspected path North Carolina courts might take after February 1, 1976. All cases from other jurisdictions citing such general provisions are from states having an Administrative Procedures Act similar to that of North Carolina.

10. N.C. GEN. STAT. § 150A-24 (Supp. 1974).

11. *Id.*

12. *Id.*; *cf.* Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D. N.C. 1958).

his residence.[13] The importance of this provision is maximized when one realizes that many, if not most, state departments hold their adjudicated contested case hearings before boards or commissions.[14] The implication to be drawn from this is that many agencies may be forced either to consolidate hearing dates so that cases might be heard in multi-day marathon sessions or alternatively, that they designate "mini-boards" to hold hearings in the defendant party's county of residence.

Finally, it must be noted that the APA deletes waiver of objection as to location of hearings from the legal arsenal available to administrative agencies upon judicial review.[15] This effectively permits parties to remain silent during administrative hearings, then charge abuse of discretion as to venue upon judicial review. Administrators should be keenly aware of this, and other problems associated with venue, in order to avoid embarrassing remands from courts of review and the resultant weakening of agency policy.

The right of defendant parties to challenge the qualification of hearing officers on grounds of bias provides yet another potential for delay.[16] A "hearing officer" under the APA may be any of the following; an agency; one or more members of the agency; a person or group of persons designated by statute; or one or more hearing officers designated and authorized by the agency to handle contested cases.[17] Challenges for bias in a contested case are initiated by an affidavit stating grounds for the charge and requesting an investigation and separate hearing on the question.[18] Although the APA states that such affidavits must be "timely,"[19] it is implied that a charge of bias can be timely even after the original hearing has begun. The hearing officer in charge of the proceeding cannot rule on his own fitness to hear the case.[20] Thus, assuming there is no one designated by statute or regulation to proceed with the hearing (for example, in the case of the disqualification of an entire three-man board acting as a hearing officer), the chief executive officer of the governmental agency would be obliged to appoint someone to investigate the charges of bias and to conduct a separate hearing

13. N.C. GEN. STAT. § 150A-24 (Supp. 1974).

14. Some examples of administrative boards with adjudicative authority are the following: Gas and Oil Board (Agriculture), Structural Pest Control Committee (Agriculture), Board of Water and Air Resources (Natural and Economic Resources), Wildlife Commission (Natural and Economic Resources), Municipal Board of Control (Treasurer), Local Government Commission (Treasurer), Banking Commission (Commerce), and Rural Electrification Authority (Commerce).

15. N.C. GEN. STAT. § 150A-24 (Supp. 1974).

16. N.C. GEN. STAT. § 150A-32(b) (Supp. 1974).

17. N.C. GEN. STAT. § 150A-32(a) (Supp. 1974).

18. N.C. GEN. STAT. § 150A-32(b) (Supp. 1974).

19. *Id.*

20. DAYE, *supra* note 6, § 13.02; *but see* Yamada v. Natural Disaster Claims Comm., 54 Hawaii 621, 513 P.2d 1001 (1973).

on the matter.[21] As an alternative to an investigation and hearing on bias charges, the agency might dismiss the administrative proceeding without prejudice to the party, thereby leaving open the door to future adjudication. This action, however, results in *increased* delay and cost to the agency, while at the same time it defeats the purpose of the original hearing—the protection of agency clientele.

While the problem of disqualification for bias is one of the areas most open to delaying tactics by parties to contested cases, it is also one of the most difficult to resolve from the perspective of the administrator. One may assume that North Carolina courts will zealously guard against administrative bias—both real and imagined—in their protection of the citizen. Failure to treat the disqualification question adequately in administrative proceedings could result in reversal or remand upon judicial review, even if a party's allegations are substantially unproven.[22]

Finally, administrators may expect delaying tactics in contested cases through the issuance of challenges to administratively issued subpoenas.[23] The APA approves of two kinds of subpoenas—the general subpoena, in which a party or witness is required to testify; and the *subpoena duces tecum*, which requires a party or witness to produce documents and records and to testify.[24]

Administratively issued subpoenas are especially troublesome since the APA gives governmental agencies no right of enforcement.[25] Upon the failure of a party to comply with a subpoena, an agency must apply to superior court for a show cause order.[26] Only upon default or the defendant party's failure to demonstrate why the subpoena should be revoked, will the court order compliance or cite for contempt. The *subpoena duces tecum* presents the greatest single opportunity for delay, especially in rate-making and regulatory matters, since it can often be attacked successfully as being insufficiently specific.[27] Accordingly, administrators who issue subpoenas should take care that such documents are limited in scope to matters essential for disposition of the case.

Courts tend to guard business records from administrative scrutiny except in cases of well documented need. Furthermore, since the personal appearance of witnesses may be necessary to the fair and

21. N.C. GEN. STAT. § 150A-32(b) (Supp. 1974); DAYE, *supra* note 6, § 13.02.

22. *See generally* Russ v. Board of Educ. of Brunswick County, 232 N.C. 128, 59 S.E.2d 632 (1950); Mank v. Board of Fire and Police Comm'rs of Granite City, 71 Ill. App. 3d 479, 288 N.E.2d 49 (1972).

23. N.C. GEN. STAT. § 150A-27 (Supp. 1974).

24. *Id.*

25. DAYE, *supra* note 6, § 14.03.

26. *Id.*

27. N.C. GEN. STAT. § 150A-27 (Supp. 1974).

orderly conduct of an administrative proceeding,[28] it is incumbent upon the administrator in charge to draft required subpoenas in a manner that can be sustained by courts of review.

Aside from the foregoing dangers inherent in issuing administrative subpoenas, the APA provides for an agency proceeding to determine whether a given subpoena should be revoked for cause upon the motion of a party to the action.[29] The statute requires that, upon written request, a party is entitled to a separate administrative hearing for the purpose of demonstrating immateriality or vagueness of an agency subpoena.[30] As in other cases of agency discretion, decisions not to revoke subpoenas or grant hearings for challenges are ripe grounds for allegations of abuse of power.

III. Other Possibilities for Delay

Besides the aforementioned major avenues for delay in administrative hearings, many other possibilities for procedural delay exist, and are either spelled out in the statute or are matters of common knowledge to most attorneys. Among these delaying tactics are petitions for intervention;[31] objections to the consolidation of cases or common issues;[32] and evidentiary objections.[33] Petitions for any of the three forms of intervention (intervention of right, permissive intervention, or discretionary intervention) must be timely; however, as in the case of a challenge for bias directed against a hearing officer, a petition must be recognized as timely if received at any point before the conclusion of the hearing.[34] The denial of a petition for intervention is always subject to judicial review as an abuse of discretion.

In addition to intervention, the APA provides for the consolidation of cases or issues where such action might minimize unnecessary costs or delay.[35] While it is evident that a party would have the right to petition for partition of his case, the statute does not speak to the issue of whether parties have a right to separate hearings. In any event, delay is a distinct and necessary product of an objection to consolidation of two or more contested case hearings.

Finally, evidentiary objections present a fertile field upon which the seeds of delay in administrative proceedings can be sown. This is true

28. Holt v. Raleigh City Bd. of Educ., 164 F. Supp. 853 (E.D. N.C. 1958).
29. Daye, *supra* note 6, § 14.02.
30. N.C. Gen. Stat. § 150A-27 (Supp. 1974).
31. N.C. Gen. Stat. § 150A-23(d) (Supp. 1974); N.C. Gen. Stat. § 1A-1, Rule 24 (1967).
32. N.C. Gen. Stat. § 150A-26 (Supp. 1974).
33. N.C. Gen. Stat. § 150A-29 (Supp. 1974).
34. N.C. Gen. Stat. § 150A-23(d) (Supp. 1974); Daye, *supra* note 6, § 12.01.
35. N.C. Gen. Stat. § 150A-26 (Supp. 1974).

primarily because the APA provides that a party's right to object to evidence upon judicial review is automatically preserved whether or not an objection was made at the administrative hearing.[36] Although generally courts of review will not overturn evidentiary findings of administrative agencies, such findings are subject to scrutiny when shown to be clearly erroneous, incompetent,[37] insubstantial,[38] or found to be outside the proper purview of official notice.[39] Therefore, officers in charge of administrative hearings must insure that a substantial amount of competent and relevant evidence be admitted in order to substantiate charges against a party, and that the resultant agency opinion reflects reliance upon such evidence. In order to minimize delay brought about by evidentiary matters, it may be advisable for hearing officers to receive all evidence conditionally, then avoid the consideration of any excludable facts when reaching a decision.[40] If this procedure is not followed, a reviewing court might remand the decision for a rescheduled hearing for the exclusive purpose of admitting improperly excluded evidence.[41]

Each of the aforementioned possibilities for procedural delay contain elements of discretion; accordingly, each is subject to judicial review. It is incumbent upon the administrator in charge of the contested case hearing to tread his way carefully through the pitfalls contained therein in order to minimize delay and the possibility of reversible error.

IV. INJUNCTIVE REMEDIES FOR PROCEDURAL DELAY

Few remedies are available to administrative agencies to control deliberate delay of parties to contested case hearings. The injunction is the most frequently employed. However, in the past the legislature has strictly controlled the power to use injunctions in administrative matters, and only where specific statutes authorize their use have injunctions been sought with any regularity.[42]

Under the Federal Administrative Procedures Act (5 U.S.C. §§ 551 *ff.*), an agency generally cannot apply to the courts for an injunction until the administrative proceedings have been concluded. Furthermore, there must be a showing by the agency that unless the defendant

36. N.C. GEN. STAT. § 150A-29 (Supp. 1974).

37. N.C. GEN. STAT. § 150A-51(5) (Supp. 1974); *but see* Campbell v. North Carolina St. Bd. of A. B. C., 263 N.C. 224, 139 S.E.2d 197 (1964).

38. N.C. GEN. STAT. § 150A-29 (Supp. 1974); *see* Appeal of AMP, Inc., 23 N.C. App. 562, 210 S.E.2d 61 (1974); Worsley v. S. & W. Rendering Co., 239 N.C. 547, 80 S.E.2d 467 (1954); Application of Peterson, 499 P.2d 304 (Alas. 1972); Swindel v. Kelly, 499 P.2d 291 (Alas. 1972).

39. N.C. GEN. STAT. § 150A-30 (Supp. 1974).

40. DAYE, *supra* note 6, § 18.10.

41. *Id.*

42. *See, e.g.*, N.C. GEN. STAT. 106-123 (1939); N.C. GEN. STAT. § 130-165 (1903).

is enjoined, irreparable injury to the public will result. It is to be expected that this will be the general tenor of the courts toward injunctive relief granted to administrative agencies under the North Carolina APA. Thus the success of the agency seeking such an injunction will depend heavily upon the fact situation. For example, it would not be difficult to show potential irreparable injury to the public health, safety, and welfare if a packing plant is permitted to ship putrid chickens; it would be quite another thing to demonstrate that a pest exterminator's use of marginally effective methods could cause irreparable public harm.

While an agency's ability to obtain an injunction to minimize delay is provisional, at best, a party to a contested case can easily obtain an order staying an agency decision pending full judicial review.[43] Indeed, in the case of licenses and license renewals, a party need not apply to the courts for a stay order—the APA confers that right upon him automatically. Hence, injunctive remedies available to administrators as a means of controlling deliberate delays by parties to contested cases seem to be inadequate at best, and weighted in favor of the defendant party in all but the extreme minority of cases where the potential for irreparable harm to the public can be demonstrated.

V. Judicial Review of Administrative Proceedings

The primary provision for judicial review in the North Carolina APA is stated as follows:

> Any person who is aggrieved by a final agency decision in a contested case, and who has exhausted all administrative remedies made available to him by statute or agency rule, is entitled to judicial review of such decision under this Article. . . . Nothing in this Chapter shall prevent any person from invoking any judicial remedy available to him under the law to test the validity of any administrative action not made reviewable under this Article.[44]

It is a general administrative law principle that courts, in reviewing contested case proceedings, will not disturb findings of fact but will concern themselves chiefly with the abuse of administrative discretion. In the past, North Carolina courts have followed these general rules.[45] However, the scope of judicial review has been greatly expanded by the

43. N.C. Gen. Stat. § 150A-48 (Supp. 1974). For provisions relating to stays of license revocation, *see* N.C. Gen. Stat. 150A-3(a) (Supp. 1974).

44. N.C. Gen. Stat. § 150A-43 (Supp. 1974).

45. For cases dealing with findings of fact, *see, e.g.*, State ex rel. Employ. Sec. Comm. v. Jarrell, 231 N.C. 381, 58 S.E.2d 403 (1950); Henry v. A. C. Lawrence Leather Co., 231 N.C. 477, 57 S.E.2d 760 (1950); In re Berman, 245 N.C. 612, 96 S.E.2d 836 (1957). For cases dealing with abuse of discretion, *see, e.g.*, Jarrell v. Snow, 225 N.C. 430, 355 S.E.2d 273 (1945); Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960); Mullen v. Town of Louisburg, 225 N.C. 53, 33 S.E.2d 484 (1945).

APA. The statute grants courts the right to affirm, remand, reverse, or modify an administrative decision upon a showing that substantial rights of the petitioners have been prejudiced by agency findings, inferences, conclusions, or decisions.[46] Areas in which rights may be compromised specifically include any violation of constitutional provisions, actions exceeding the statutory authority or jurisdiction of the agency, the use of unlawful procedure, reliance upon insubstantial or inadmissible evidence, issuance of arbitrary or capricious findings or conclusions, and the commission of any errors of law.[47]

When such broad standards of judicial review are available to petitioners, it is necessary that agencies scrupulously safeguard rights in order to avoid jeopardizing cases upon review.[48] Accordingly, administrators must remain acutely aware of administrative due process, the proscription of arbitrary and capricious conduct,[49] and the need to maintain a complete record. This latter provision is extremely important. The APA provides for the hearing *de novo* of any administrative proceeding in which the record of the hearing is either absent or inadequate.[50] Adequate training and experience, in addition to sound judgment, will be required to conduct contested case hearings successfully under the new statute.

VI. Minimizing the Problem of Delay

The primary tool for breaking the chain of delay inherent in resolving contested cases is to establish minimal qualifications for the individuals who conduct hearings. At every point in the proceeding—from the initial notice to parties, to the rendering of an opinion—they make rulings and decisions that are open to attack in the courts. In order to minimize the likelihood of judicial reversal—or the need for judicial review—one must minimize the mistakes made by the hearing officer.

The simplest and most economical way to accomplish this end is to create the position of Departmental Hearing Officer (some states and the federal government denote such officers as Administrative Law Judges). Ideally the Departmental Hearing Officer should be trained in

46. N.C. Gen. Stat. § 150A-51 (Supp. 1974).

47. *Id.*

48. N.C. Gen. Stat. § 150A-49 (Supp. 1974); *see* Russ v. Bd. of Educ. of Brunswick County, *supra* note 22; *see generally* Blesso v. Bd. of Plumbing and Piping Examiners, 30 Conn. Supp. 262, 310 A.2d 136 (1972); Stephens and Stephens Prop., Inc. v. State Tax Comm., 499 S.W.2d 798 (Mo. 1973).

49. Pharr v. Garibaldi, 252 N.C. 803, 115 S.E.2d 18 (1960).

50. N.C. Gen. Stat. § 150A-50 (Supp. 1974); *but see* City of Phoenix v. Superior Court in and for Maricopa County, 110 Ariz. 155, 515 P.2d 1175 (1973); Indiana A. B. C. v. Johnson, 303 N.E.2d 64 (Ind. 1973).

law and administration, and should be familiar with the specific governmental agency to which he is attached. With the assistance of a small supporting staff, the Hearing Officer would be responsible for conducting all rule-making and contested case hearings and all lesser included duties such as preparation of notices, preparation and maintenance of the record, preparation of subpoenas, *et cetera.* As provided in the APA, the Hearing Officer would, after conducting a proceeding, compose and submit to the board, commissioner, or division head having original jurisdiction over the matter, a "proposal for decision."[51] The proposal would contain findings of fact and conclusions of law and would not be binding upon the agency or official having original jurisdiction. Such officials would be required to decide whether to accept the proposal as their decision or to render a contrary decision.[52] The action of this administrator, or group of administrators, would represent the official resolution of the case.

Such a scheme for handling administrative hearings would defeat many of the problems of delay inherent under the APA. A professional Hearing Officer's time schedule would be more flexible than that of a division head, commissioner, or a multi-member board. Therefore, hearings could be scheduled in a flexible fashion to the advantage of the agency and the public. This would greatly mitigate the problem of prehearing delays and continuances.

Furthermore, since a single departmental Hearing Officer does not present the logistics problem of a multi-member board, or the problem of tying up key administrators in travel time, he could hold hearings freely in a defendant party's county, thereby negating challenges for venue. All appeals for claims of "promoting the ends of justice"—and the convenience of witnesses—could be turned aside in the hearing or effectively rebutted upon review.

Since a Hearing Officer would be independent of the regulatory functions of the department, challenges for bias could be minimized (i.e., denied without appeals charging abuse of discretion succeeding upon review). A supplemental benefit would flow to the agency from this proposition: division heads and members of agencies regulating defendant parties would be enabled to take part in prosecuting the case or testifying at the hearing without jeopardizing the fairness of the proceedings. This would allow more agency control over the case as a whole, while guaranteeing a fair and just hearing to all parties.

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51. N.C. GEN. STAT. § 150A-34 (Supp. 1974); *see also,* Schwere v. Sanders, 498 S.W.2d 775 (Mo. 1973).

52. N.C. GEN. STAT. § 150A-34 (Supp. 1974); N.C. GEN. STAT. § 150A-36 (Supp. 1974); DAYE, *supra* note 6, § 19.01.

Additionally, the Hearing Officer, by virtue of his legal training, would bring skill and speed to the resolution of delay on subpoenas. This would guarantee the legality and sufficiency of subpoenas, and the judicial proceedings necessary to enforce them. The Hearing Officer would also efficiently administrate hearings for the revocation of subpoenas for cause.

The expertise and availability of the Hearing Officer would further allow for the efficient and proper disposition of the handling of evidentiary matters, consolidation or partition of cases, applications for intervention, *et cetera*. As mentioned earlier, his training would suit him ideally for the task of writing proposals for decision, including findings of fact and conclusions of law.

The appointment of a full-time Departmental Hearing Officer would shift burdens of cost and time from the agency back to the defendant party. It would then be to the party's advantage to push for a speedy resolution of the problem so that he might continue his business or other endeavors within the rules and regulations of the agency. Such a shifting of the burden would reduce the hours top level administrators spend mired in procedural delay. It would further allow a reduction in agency expenditures and permit key administrators to take an active hand in the prosecution and resolution of the case. The further advantages of closer control of agency function, policy, publicity, and other matters would flow almost automatically from such a scheme.

VII. Conclusion

Procedural delay of administrative contested case hearings is both possible and imminently probable, under the new North Carolina Administrative Procedures Act. To minimize delay without jeopardizing agency actions or the regulatory scheme upon judicial review, the appointment of Departmental Hearing Officers seems the best course both from a logistics and economics standpoint. The results of such action would be fewer delays, tighter control of cases, a reduction of man-hours spent in adjudicatory and rule-making hearings by key administrators, and financial economy within the department.

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