

**Effective 5/12/2015**

**19-1-301 Adjudicative proceedings.**

- (1) As used in this section, "dispositive action" means a final agency action that:
  - (a) the executive director takes following an adjudicative proceeding on a request for agency action; and
  - (b) is subject to judicial review under Section 63G-4-403.
- (2) This section governs adjudicative proceedings that are not special adjudicative proceedings as defined in Section 19-1-301.5.
- (3)
  - (a) The department and its boards shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
  - (b) The procedures for an adjudicative proceeding conducted by an administrative law judge are governed by:
    - (i) Title 63G, Chapter 4, Administrative Procedures Act;
    - (ii) this title;
    - (iii) rules adopted by the department under:
      - (A) Subsection 63G-4-102(6); or
      - (B) this title; and
    - (iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under Subsection (3)(b)(i), (ii), or (iii).
- (4) Except as provided in Section 19-2-113, an administrative law judge shall hear a party's request for agency action.
- (5) The executive director shall appoint an administrative law judge who:
  - (a) is a member in good standing of the Utah State Bar;
  - (b) has a minimum of:
    - (i) 10 years of experience practicing law; and
    - (ii) five years of experience practicing in the field of:
      - (A) environmental compliance;
      - (B) natural resources;
      - (C) regulation by an administrative agency; or
      - (D) a field related to a field listed in Subsections (5)(b)(ii)(A) through (C); and
  - (c) has a working knowledge of the federal laws and regulations and state statutes and rules applicable to a request for agency action.
- (6) In appointing an administrative law judge who meets the qualifications described in Subsection (5), the executive director may:
  - (a) compile a list of persons who may be engaged as an administrative law judge pro tempore by mutual consent of the parties to an adjudicative proceeding;
  - (b) appoint an assistant attorney general as an administrative law judge pro tempore; or
  - (c)
    - (i) appoint an administrative law judge as an employee of the department; and
    - (ii) assign the administrative law judge responsibilities in addition to conducting an adjudicative proceeding.
- (7)
  - (a) An administrative law judge:
    - (i) shall conduct an adjudicative proceeding;
    - (ii) may take any action that is not a dispositive action; and
    - (iii) shall submit to the executive director a proposed dispositive action, including:
      - (A) written findings of fact;

- (B) written conclusions of law; and
- (C) a recommended order.
- (b) The executive director may:
  - (i) approve, approve with modifications, or disapprove a proposed dispositive action submitted to the executive director under Subsection (7)(a); or
  - (ii) return the proposed dispositive action to the administrative law judge for further action as directed.
- (c) In making a decision regarding a dispositive action, the executive director may seek the advice of, and consult with:
  - (i) the assistant attorney general assigned to the department; or
  - (ii) a special master who:
    - (A) is appointed by the executive director; and
    - (B) is an expert in the subject matter of the proposed dispositive action.
- (d) The executive director shall base a final dispositive action on the record of the proceeding before the administrative law judge.
- (8) To conduct an adjudicative proceeding, an administrative law judge may:
  - (a) compel:
    - (i) the attendance of a witness; and
    - (ii) the production of a document or other evidence;
  - (b) administer an oath;
  - (c) take testimony; and
  - (d) receive evidence as necessary.
- (9) A party may appear before an administrative law judge in person, through an agent or employee, or as provided by department rule.
- (10)
  - (a) An administrative law judge or the executive director may not participate in an ex parte communication with a party to an adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and an opportunity to be heard are afforded to all parties.
  - (b) If an administrative law judge or the executive director receives an ex parte communication, the person who receives the ex parte communication shall place the communication into the public record of the proceedings and afford all parties an opportunity to comment on the information.
- (11) Nothing in this section limits a party's right to an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 441, 2015 General Session