

**RECOMMENDATIONS
OF THE
CONFERENCE ON ADMINISTRATIVE
PROCEDURE**

Called by the
PRESIDENT OF THE UNITED STATES

Adopted November 23 - 24, 1953

ADMINISTRATIVE CONFERENCE OF U.S.

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OF THE
CONFERENCE ON ADMINISTRATIVE
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CALLED BY THE
PRESIDENT OF THE UNITED STATES
ON APRIL 29, 1953

RECOMMENDATIONS ADOPTED NOVEMBER 23-24, 1953

A. The Conference recommends to the President of the United States:

Office of Administrative Procedure. The Conference recommends to the President of the United States the establishment of an Office of Administrative Procedure, and that provision be made:

1. That the Office perform the following functions:
 - (a) carry on continuous studies of the adequacy of the procedures by which Federal agencies determine the rights, duties, and privileges of persons;
 - (b) initiate cooperative effort among the agencies and their respective bars to develop and adopt as far as practicable uniform rules of practice and procedure;
 - (c) collect and publish facts and statistics concerning the procedures of the agencies;
 - (d) assist agencies and this Conference in the formulation and improvement of their administrative procedures.
2. That the Office be established in the Department of Justice under the supervision of the Attorney General.
3. That the Office consist of a Director and a staff.
4. That the Director be appointed for an indefinite term.
5. That the Director make appropriate arrangements for securing the advice of representatives of the agencies, the bar, and

other interested persons, in connection with the performance of his duties.

6. That it be the duty of each agency promptly to furnish to the Director all information on its administrative procedures which he may request and to assist him by all appropriate means.

B. The Conference recommends to the Judicial Conference of the United States:

1. *Exclusion of Evidence.* That the United States Courts be urged to encourage hearing officers and agencies in formal administrative proceedings to exclude irrelevant, immaterial and repetitious evidence.

2. *Certification and Filing of Record.* That the several United States Courts of Appeals be urged to adopt a uniform rule providing, in all cases where a petition to review an order of an agency of the Federal Government has been filed:

- (a) the time within which the certified record is to be filed;
- (b) that except where the applicable statute otherwise requires, the record certified may be shortened or abbreviated

- (i) as the petitioner and the agency involved may by written stipulation designate, or
- (ii) as the court on motion of any party or on its own motion may order,

to encompass only that part of the record before the agency which is necessary to enable the court to pass upon the questions and issues raised by the appeal;

- (c) that a supplemental record may be certified
 - (i) as the petitioner and the agency involved may by written stipulation designate, or
 - (ii) as the court on motion of any party or on its own motion may order.

3. *Filing of Briefs Prior to Printing of Record.* That the several United States Courts of Appeals be urged to adopt a uniform rule providing in all cases where a petition to review an order of an agency of the Federal Government has been filed:

- (a) that there may be filed in the case on stipulation of petitioner and respondent agency, or on order of the court on motion of any party or on its own motion, a joint printed appendix containing the matters of record relied on by the parties in their briefs and which the parties desire the court to read, such joint printed appendix to be filed within the time provided in paragraph (e) hereof;

- (b) that when the petitioner or petitioners and the respondent agency so stipulate to the use of the procedure provided in (a) above, or when the court requires its use, such procedure shall be binding on all parties to the proceeding;
- (c) that responsibility for the printing of the joint printed appendix shall be upon petitioner, but such petitioner shall have no responsibility to include in the joint printed appendix any part of the record on behalf of any other party when such other party fails or neglects to supply to petitioner, not later than five days after the time prescribed by paragraph (e) hereof for the filing of the final brief in the cause in question, a clear and specific designation of the record to be printed on behalf of such other party; provided, however, that nothing in this rule shall be interpreted as altering any rule or practice with respect to costs;
- (d) that the joint printed appendix shall be so indexed and paged as to make ready reference to the certified record accurate and clear;
- (e) that the time for filing briefs and the joint printed appendix under this rule, except as otherwise permitted by the court, shall be as follows: petitioner's brief, within 40 days after the filing of the transcript of record with the court; respondent's brief, within 30 days after the filing of the brief for petitioner; petitioner's reply brief, within 15 days after filing of the brief for respondent; and the joint printed appendix, not later than 10 days prior to the time set for oral argument in the case;
- (f) that when the above practice is not agreed to by the parties, the court's rules, otherwise applicable, shall govern.

C. The Conference recommends to the agencies:

1. *Elimination of Unnecessary Delay, Expense and Volume of Records.* That every agency consider unnecessary delay, expense, and volume of records in adjudicatory and rule-making proceedings to be detrimental to the public interest.

2. *Study of Procedure.* That every agency having adjudicatory or rule-making functions make a comprehensive and intensive study of its own procedure in order to discover and eliminate any unnecessary delay, expense, or volume of records which may presently occur in its proceedings.

3. *Status of Agency Counsel.* That the agencies define by rule the status of agency counsel in the following respects:

- (a) the authority of agency counsel to participate in the proceedings;
- (b) whether such participation is to be mandatory or permissive;
- (c) whether, and under what circumstances, agency counsel need be served with any notices or other papers;
- (d) the extent to which agency counsel may or should take an advocate position or should confine himself to development of relevant materials;
- (e) the authority of agency counsel to stipulate as to facts or testimony; and
- (f) the authority of agency counsel to settle controversies or transmit offers of settlement to the agency or its authorized officials.

4. *Definition of Issues before Hearing.* That the agencies require that in all proceedings the issues to be adjudicated be made initially as precise as possible, in order that hearing officers may proceed promptly to conduct the hearings on relevant and material matter only. Particularity should be required in complaints, answers, applications for rules or licenses, and petitions to intervene. In proceedings in which there is only one interested party besides the agency, the orders setting hearings should clearly specify the issues to be heard.

5. *Prehearing and Other Conferences.* That the agencies encourage hearing officers to call and conduct prehearing conferences and other conferences during hearings, with a view to the simplification, clarification, and disposition of the issues involved, and with a further view to the shortening of the proof on the issues.

6. *Prehearing Conference Rule.* That the agencies adopt the following rule or one of similar import:

In any proceeding the agency or its designated hearing officer upon its or his own motion, or upon the motion of one of the parties or their qualified representatives, may in its or his discretion direct the parties or their qualified representatives to appear at a specified time and place for a conference to consider

- (a) the simplification of the issues;
- (b) the necessity of amendments to the pleadings;
- (c) the possibility of obtaining stipulations, admissions of facts and of documents;
- (d) the limitation of the number of expert witnesses;
- (e) such other matters as may aid in the disposition of the proceeding.

The agency or its designated hearing officer shall make an order which recites the action taken at the Conference, the amendments allowed to the pleadings and the agreements made by the parties or their qualified representatives as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreements; and such order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

7. *Submission of Documentary Evidence in Advance.* That the agencies require with respect to all classes of proceedings in which it is practicable:

- (a) that all documentary evidence which is to be offered during the taking of evidence be submitted to the hearing examiner and to the other parties to the proceeding sufficiently in advance of such taking of evidence to permit study and preparation of cross-examination and rebuttal evidence;
- (b) that documentary evidence not submitted in advance in accordance with the requirement of paragraph (a) be not received in evidence in the absence of a clear showing that the offering party had good cause for his failure to produce the evidence sooner;
- (c) that the authenticity of all documents submitted in advance in a proceeding in which such submission is required, be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection.

8. *Excerpts from Documentary Evidence.* That the agencies adopt the following rule or one of similar import:

When portions only of a document are to be relied upon, the offering party shall prepare the pertinent excerpts, adequately identified, and shall supply copies of such excerpts, together with a statement indicating the purpose for which such materials will be offered, to the hearing examiner and to the other parties. Only the excerpts, so prepared and submitted, shall be received in the record. However, the whole of the original document should be made available for examination and for use by opposing counsel for purposes of cross-examination.

9. *Trial Briefs.* That the agencies require agency counsel to prepare in advance of hearing adequate detailed trial briefs in appropriate cases.

10. *Interlocutory Matters and Interlocutory Appeals.* That the agencies adopt the following practice:

- (a) broad authority should be granted hearing officers to rule upon interlocutory matters which arise during the course of hearings, and interlocutory appeals from rulings should be reduced to a minimum;
- (b) interlocutory appeals which the agency may entertain should be disposed of promptly.

11. *Indexing of Records.* That the agencies adopt the following practice:

- (a) In any formal proceeding in which it is anticipated that the record will exceed 2,500 pages, provision should be made either through counsel for the parties or the staff of the agency for a daily or current index of the record which will be available to the hearing officer and all counsel;
- (b) The index should be topical (not a digest), and as a minimum, each topic of testimony should be the heading of a card on which the name of each witness who testified upon the topic should be entered, the page of the record where each portion of his testimony appeared, and the number of each exhibit relating to the topic. The index should contain, on separate cards, the name of each witness and the topics on which he testified.

12. *Attorneys' Manual.* That the agencies maintain an adequate and detailed attorneys' manual for the guidance of agency counsel.

13. *In-Service Training.* That the agencies establish in-service training for agency counsel, including systematic regular instruction for newly-hired attorneys over a definite period of time and periodic, recurrent "refresher" courses or "trial clinics" for more experienced trial attorneys.

14. *Practice Manuals.* That the agencies publish for the use of practitioners before the agency, practice manuals of an advisory nature, detailing the procedural steps involved in all types of proceedings had under each statute administered by the agency, together with customary forms.

15. *Lawyers' Institutes.* That the agencies cooperate in all feasible ways with universities and local or national bar associa-

tions undertaking to conduct practicing lawyers' institutes or courses in specialized fields of administrative law.

16. *Conferences with Agency Bar.* That the agencies sponsor, arrange and conduct more or less informal meetings or conferences on a local, regional or national basis between responsible officials and members of the agency bar as an exercise of good public relations and to facilitate the creation of an atmosphere of understanding and cooperation.

