

Change in Title for Hearing Officers of the Division of Administrative Hearings

For many years Florida has been considered a forerunner nationally in the use of an independent central panel to adjudicate disputes between Florida's citizens and its agencies. Over the years the number of states following Florida's lead and establishing central panels has increased. As a result, the National Conference of Administrative Law Judges of the Judicial Administration Division of the American Bar Association has adopted a model code for states establishing central panels and has recommended approval by the House of Delegates of the American Bar Association.

States currently using central panels call their adjudicative personnel Administrative Law Judges, except for Florida. Those states reserve the title hearing officer for those persons who are not attorneys and who hear only routine, non-complex matters. The proposed model code follows that format and uses the title administrative law judge for attorneys and only uses the title hearing officer for persons who are not attorneys and are not part of a central panel. This difference in titles also tracks the federal system.

Within the State of Florida, there are many different uses of the term hearing officer within both the judicial and executive branches of government. Child support enforcement dockets in the judicial branch are heard by hearing officers who then make recommendations to judges as to the proper disposition of those cases.

Within the executive branch, individual state agencies adjudicating non-complex matters "in-house" call their employees hearing those cases hearing officers whether those persons are entry-level attorneys or non-attorneys. Non-attorneys and newly-licensed attorneys called hearing officers adjudicate matters for the Department of Health and Rehabilitative Services, Department of Insurance, and the Department of Highway Safety and Motor Vehicles, for example. The Public Employees Relations Commission has its own hearing officers.

Local governments and school boards also refer administrative disputes, not within the jurisdiction of DOAH, to non-attorneys and entry-level attorneys called hearing officers.

The general public and pro se litigants are understandably confused as to the independence and legal background of persons known as hearing officers. DOAH hearing officers are routinely asked by litigants if they are attorneys. Even more important, however, is the fact that pro se litigants and attorneys with little experience in the formal hearing process available at DOAH appear at DOAH hearings expecting that they will simply be meeting with an employee of the agency to attempt to "work things out." They are dismayed to learn at the formal hearing that the expected meeting is, in reality, an adjudication of important legal rights for which they are ill-prepared.

Florida uses the term judge in its executive branch in one type of proceeding currently: worker's compensation cases are heard by judges of compensation claims, housed within the Department of Labor and Employment Security. Litigants before those adjudicators know in advance to expect a trial-like proceeding and are most likely to appear with witnesses and documentary evidence.

Perhaps as a result of the confusion caused by the different kinds of hearing officers in Florida, in the last few years appellate courts are careful to delineate within their opinions whether the administrative matter under consideration was heard by a DOAH hearing officer or a non-DOAH hearing officer. The various news media have fashioned their own remedy: as frequently as not, they simply call DOAH hearing officers "administrative law judges" in their reports concerning administrative proceedings.

Changing the title of DOAH hearing officers to administrative law judges is supported by the Administrative Law Section of The Florida Bar. During the last legislative session, the Governor's APA bill also included language changing the title of DOAH hearing officers to administrative law judges and directing the Division of Statutory Revision to make the necessary changes throughout the Florida Statutes. Further, the Governor's Administrative Procedure Act Review Commission recommends that the Legislature change the title of hearing officer at DOAH to administrative law judge.