4.5 THE OFFICE OF ADMINISTRATIVE HEARINGS AND THE ADMINISTRATIVE LAW JUDGE (ALJ)

All hearings of state agencies required to be conducted under the APA must be conducted by an administrative law judge (ALJ) assigned by the chief ALJ of the state Office of Administrative Hearings (OAH).[1] The office is under the direction of a chief ALJ who must be learned in the law.[2] The chief ALJ is appointed by the governor, is subject to Senate confirmation, and serves a six-year term.[3] OAH's full-time ALJs serve in the classified service of the state and are therefore removable only for just cause.[4] The office contracts with private attorneys who are available to serve as contract ALJs on a part-time basis.[5] The APA requires that all ALJs have a demonstrated knowledge of administrative procedures and be free of any political or economic association that would impair their ability to function officially in a fair and objective manner.[6] Only ALJs learned in the law can be assigned to contested case hearings.[7]

Like other state employees, ALJs are subject to a code of ethics applicable to employees in the executive branch of state government.[8] The executive branch code deals with such topics as acceptance of gifts or favors and conflicts of interest.[9] All administrative law judges and workers compensation judges employed by the office of administrative hearings are also subject to the code of judicial conduct.[10] The chief administrative law judge is statutorily directed to apply the provisions of the judicial code to OAH judges consistent with interpretations of the board of judicial standards.[11] The chief ALJ was made subject to the Board of Judicial Standards directly.[12]

According to an OAH rule, the ALJ must not communicate directly or indirectly, in connection with any issue of fact or law, with any person or party concerning a pending case except on notice and opportunity for all parties to participate.[13] Although the rule prohibits improper ex parte communications, it specifically does not apply to purely procedural matters.[14] It requires that all communications made to the ALJ that are intended to influence a decision be made known to all parties. Improper ex parte contacts with a fact-finder concerning the merits of a case may also be a violation of due process, since the essence of procedural due process is notice and the opportunity to be heard.[15] However, not all ex

1 MINN. STAT. § 14.50 (2014).
2 *Id*. § 14.48, subd. 2.
3 *Id.*
4 *Id*., subd. 3 .
5 *Id*. § 14.49 .
6 *Id.* § 14.48, subd. 3
7 *Id.* § 14.50..
8 *Id.* § 43A.38..
9 *Id*.
10 *Id*. § 14.48, subd. 3. .
11 *Id*.
12 *Id*., subd. 2. . subd. 2..
13 MINN. R. 1400.7700 (2013).
14 *Id*.
15 Camero v. United States, 375 F.2d 777, 780-81 (Ct. Cl. 1967); Crosby-Ironton Fed'n of Teachers, Local 1325 v. Indep. Sch. Dist. No. 182, 285 N.W.2d 667, 670 (Minn. 1979); *see also* Meinzer v. Buhl 66 C & B

parte contacts violate due process. It has been held that any notion of due process that would place an absolute prohibition on ex parte contacts would be in error.[16] When an improper ex parte contact occurs in an administrative agency case, the reviewing court will consider whether or not the contact was prejudicial to a party.[17]

The United States Supreme Court has observed that the role of the modern federal ALJ is functionally comparable to that of a judicial branch judge.[18] Accordingly, the Court has granted absolute immunity from damages liability for the judicial acts of ALJs and has stated that those who complain of error in agency proceedings must seek agency or judicial review.[19] The immunity applies only when the ALJ is acting as an impartial arbiter of a case in controversy over which he or she has jurisdiction.[20] The immunity may not apply to acts involving office administrative duties.[21] Generally, the privilege extends to hearings before a tribunal with quasi-judicial powers such as the issuance of subpoenas, the administration of oaths, and the production of books and papers.[22] Other jurisdictions have specifically held that state agency decision makers and administrative hearing officers who act in a quasi-judicial position also have absolute immunity for their discretionary acts when they are acting within their jurisdiction.[23]

The permissible jurisdiction of administrative judges was the subject of a decision of the Minnesota Supreme Court in *Holmberg v. Holmberg*.[24] The *Holmberg* court found that a statute empowering executive branch administrative law judges to make final decisions about child support that were appealable only under an abuse of discretion standard to the court of appeals violated the separation of powers clause of the Minnesota Constitution.[25] The court held that the legislature cannot infringe on the original family law jurisdiction of the district courts and cannot delegate the district courts' inherent equitable power.[26]

Later in the same year, the Minnesota Supreme Court issued another decision limiting the delegation of quasi-judicial functions to executive branch agencies.[27] The court held that a statutorily imposed limitation on workers' compensation attorney fees

Warehouse Dist., Inc., 584 N.W.2d 5, 6-7 (Minn. Ct. App. 1998) (concluding that ex parte communication between reemployment insurance judge and employer's representative constitutes reversible error).

16 Simer v. Rios, 661 F.2d 655, 679 (7th Cir. 1981)..

17 *Id.* at 680; Doe v. Hampton, 566 F.2d 265, 276□77 (D.C. Cir. 1977).

18 Butz v. Economou, 438 U.S. 478, 513 (1978).

19 *Id*. at 513-14.

20 Strothman v. Gefreh, 552 F. Supp. 41, 44 (D. Colo. 1982), *rev'd in part on other grounds*, 739 F. 2d 515 (10th Cir. 1984).

21 *Id*.

22 Jenson v. Olson, 273 Minn. 390, 393, 141 N.W.2d 488, 490 (1965) (civil service commission); Matthis v. Kennedy, 243 Minn. 219, 223 [illegible] 67 N.W.2d 413, 417 (1954) (private court); Erie Sch. Dist. No. 197, 356 N.W.2d 724, 728 [illegible] 29 (Minn. Ct. App. 1984) (school board).

23 Vakas v. Rodriguez, 728 F.2d 1293, 1296-97 (10th Cir. 1984); Loran v. Iszler, 373 N.W.2d 870, 876 (N.D. 1985) ("[S]tate administrative proceedings are sufficiently comparable to judicial proceedings to warrant the extension of immunity to an administrative hearing officer engaging in a function that is quasi-judicial in nature."); *In re* Dwyer, 486 Pa. 585, 594-97, 406 A.2d 1355, 1359-61 (1979).

24 588 N.W.2d 720 (Minn. 1999).

25 *Id.* at 721.

26 *Id.* at 725.

27 Irwin v. Surdyk's Liquor, 599 N.W.2d 132 (Minn. 1999).

violated the separation of powers doctrine because it was not subject to review by a court and therefore granted final authority over attorney fees to a non-judicial body.[28] The court observed that delegations of quasi-judicial powers to executive branch agencies are constitutional as long as the determinations of those agencies lack judicial finality and are subject to judicial review.[29]

28 *Id.*

29 *Id.* at 140-141.