

**Practice Pointers Before Administrative Agencies**  
**Administrative Law Section**  
**Utah State Bar Annual Meeting**  
**July 2011**

**I. AGENCY ACTION**

**A. Applicability of Utah Administrative Procedures Act (“UAPA”)**

1. State Agency Action that determines legal rights, duties, privileges, immunities or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw or amend an authority, right or license and judicial review of the action. Utah Admin. Code 63G-4-102(1)(a) and (b).

a. Limitations – Does not apply to:

- (1) Rulemaking or judicial review, and 20 other exceptions.

**B. Agencies which have modified procedural rules from the UAPA**

**C. Agencies which are exempt from UAPA**

**II. ADJUDICATIVE PROCEEDINGS**

**A. Commencement** – Utah Code Ann. 63G-4-201.

**B. Designation** – Utah Code Ann. 63G-4-202.

**C. Informal** – Utah Code Ann. 63G-4-202 and 203.

**D. Formal** – Utah Code Ann. 63G-4-204.

**III. PLEADINGS** – Utah Code Ann. 63G-4-203 and 204 (Informal and Formal).

**A.** The agency’s file number or other reference number.

**B.** The name of the adjudicative proceeding.

**C.** A statement of the relief that the respondent seeks.

**D.** A statement of the facts.

**E.** A statement summarizing the reasons that the relief requested should be granted.

**F.** Response required within thirty (30) days for formal proceedings. Utah Code Ann. 63G-4-204(1).

- G. No answer necessary unless required by agency in informal proceedings. Utah Code Ann. 63G-4-203.

#### IV. **INTERVENTION**

- A. **Formal** – A person, not party, may petition to intervene. Must show facts demonstrating that the petitioner’s legal rights or interests are substantially affected by the formal adjudicative hearing and state relief the petitioners seek. The presiding officer shall grant intervention if the petitioner’s legal interests are substantially affected. Utah Code Ann. 63G-4-207.
- B. **Informal** – Intervention prohibited in informal proceedings. Utah Code Ann. 63G-4-203(g).

#### V. **DISCOVERY**

- A. **Formal** – The agency may by rule prescribe means of discovery adequate to permit the parties to obtain all relevant information necessary to support their claims and defenses. If the agency does not enact rules under this section, the parties may conduct discovery according to the Utah Rules of Civil Procedures. Subpoenas and other orders to secure attendance of witnesses or the production of evidence shall be issued when requested by a party or on the presiding officer’s own motion. Utah Code Ann. 63G-4-205.
- B. **Informal** – Discovery prohibited, but agency may issue subpoenas and other orders to compel production of necessary evidence. All parties shall have access to information contained in the agency’s files and to all materials and information gathered in any investigation, to the extent permitted by law. Utah Code Ann. 63G-4-203.

#### VI. **SETTLEMENTS**

Informal resolution by agreement of the parties of matters before administrative agencies are allowed and encouraged by some administrative agencies. Utah Code Ann. 54-7-1.

- A. An agency may approve any settlement agreement after considering the interests of the public and other affected persons to use a settlement proposal to resolve a disputed matter.
- B. An agency may adopt a settlement proposal if, the agency finds that the settlement proposal is just and reasonable in result; and the evidence, contained in the record, supports a finding that the settlement proposal is just and reasonable in result.
- C. When considering whether to adopt a settlement proposal, the agency must consider the significant and material facts related to the case.
- D. **Considerations:**

1. Timing of Settlements. Administrative agency must ensure evidence in the record sufficiently supports a settlement.
2. Support for Settlements. The testimony in support of the settlement must provide sufficient details for a finding that settlement is in the public interest.
3. Testimony in Support. Type of settlement testimony: pre-filed, live, panel discussions.
4. Contested Settlements. Are contested settlements in the public interest?

## **VII. HEARINGS**

**A. Formal** – Presiding officer shall regulate the course of the hearing. Some hearings are conducted by Commissions or Boards or Administrative Law Judges. Utah Code Ann. 63G-4-206.

1. May exclude evidence that is irrelevant, immaterial or unduly repetitious.
2. Shall exclude evidence privileged in the courts of Utah.
3. May receive documentary evidence in the form of a copy.
4. May take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence or other proceedings before the agency and of technical or scientific facts within the agency’s specialized knowledge.
5. May not exclude evidence solely because it is hearsay.
6. All parties have the opportunity to present evidence, argue, respond, conduct cross-examination and submit rebuttal evidence.
7. Non-parties may present oral or written statements.
8. All testimony offered as evidence to be considered in reaching a decision on the merits shall be given under oath.
9. The hearing shall be recorded at the agency’s expense.
10. Parties may order transcript at their expense.
11. All hearings shall be open to all parties.

**B. Informal** – Utah Code Ann. 63G-4-203.

1. The agency shall hold a hearing if required by a statute or rule or if requested by a party.

2. Parties shall be permitted to testify, present evidence or comment on the issues.
3. Hearings held only after timely notice to all parties.
4. All hearings shall be open to all parties.
5. The agency may record any hearing.

## **VIII. ORDERS**

**A. Formal** – Utah Code Ann. 63G-4-208. Orders must be issued within a reasonable time after hearing or within time required by any applicable statute or rule. Orders must include:

1. findings of fact based exclusively on evidence of record.
2. conclusions of law.
3. statement of reasons for decision.
4. statement of any relief.
5. a notice of the right to apply for reconsideration.
6. a notice of any right to administrative or judicial review.
7. time limits applicable to any reconsideration or review.
8. a finding of fact that was contested may not be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

**B. Informal** – Utah Code Ann. 63G-4-203. Orders issued within a reasonable time after the close an informal adjudicative proceeding. The order must:

1. be in writing.
2. state the decision.
3. state the reasons for the decision.
4. provide a notice of any right of administrative or judicial review available to parties.
5. provide the time limit for filing and appeal or requesting a review.
6. shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

7. copy shall be mailed to the parties.

**IX. AGENCY REVIEW -- RECONSIDERATION**

A. 30 days after the issuance of the order. Utah Code Ann. 63G-4-301.

B. 20 days after the issuance of the order. Utah Code Ann. 63G-4-302.

**X. JUDICIAL REVIEW**

A. **Exhaustion of administrative remedies.** Utah Code Ann. 63G-4-401.

B. **Informal** – Utah District Courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative hearings. Utah Code Ann. 63G-4-402.

C. **Formal** – Utah Supreme Court or the Court of Appeals has jurisdiction to review all final agency action resulting from formal adjudicative hearings. Utah Code Ann. 63G-4-403.

**XI. ORDERS AND ENFORCEMENT** – Utah Code Ann. 63G-4-501 et seq.

**PANELISTS:**

Brian W. Burnett  
Callister Nebeker & McCullough  
[brianburnett@cnmlaw.com](mailto:brianburnett@cnmlaw.com)

Gary R. Thorup  
Durham Jones & Pinegar  
[gthorup@djplaw.com](mailto:gthorup@djplaw.com)

Thad LeVar  
Department of Commerce, State of Utah  
[tleva@utah.gov](mailto:tleva@utah.gov)

Mark Moench  
PacifiCorp  
[Mark.Moench@PacifiCorp.com](mailto:Mark.Moench@PacifiCorp.com)