

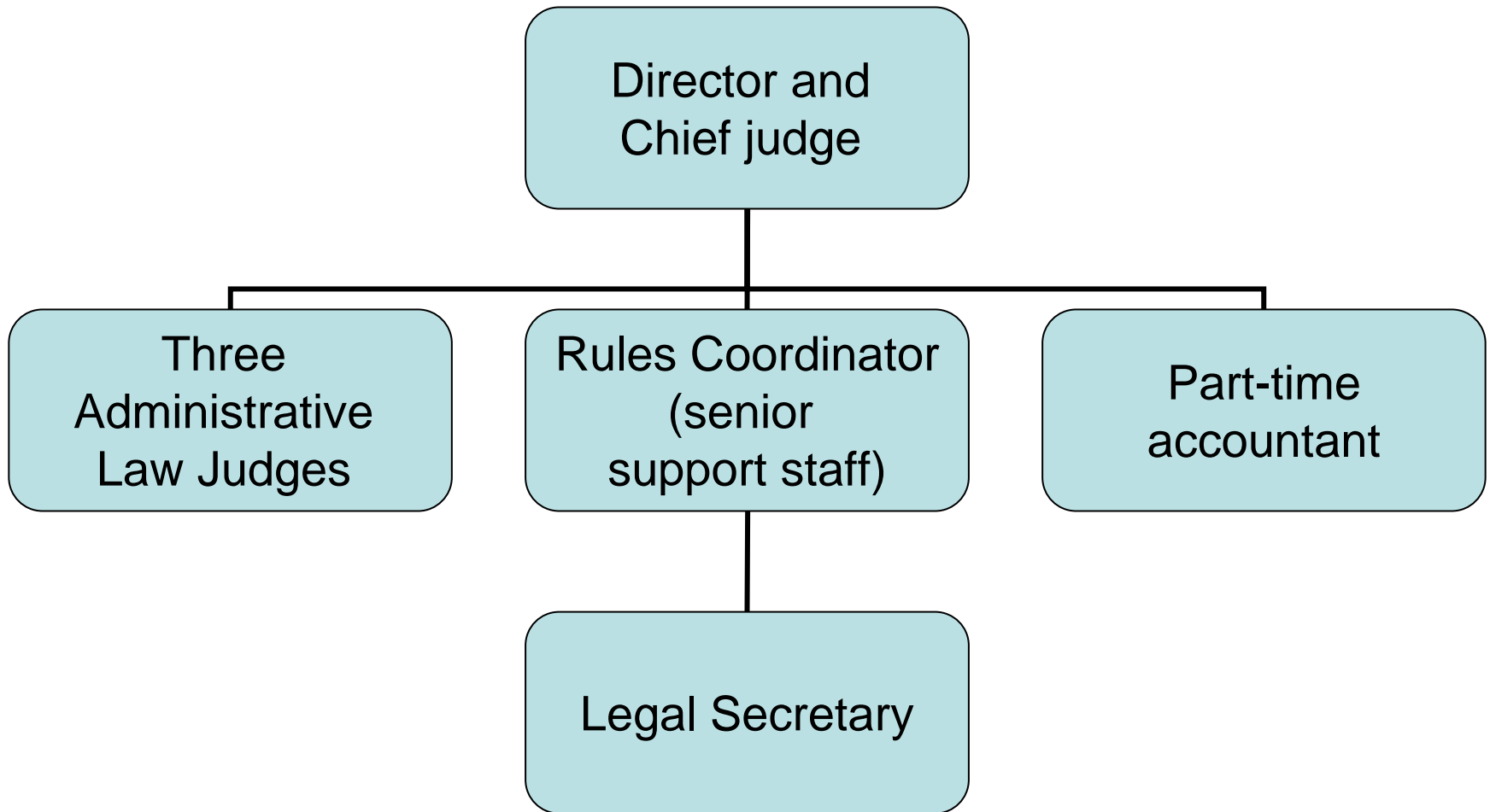
Structure of the Administrative Law Division

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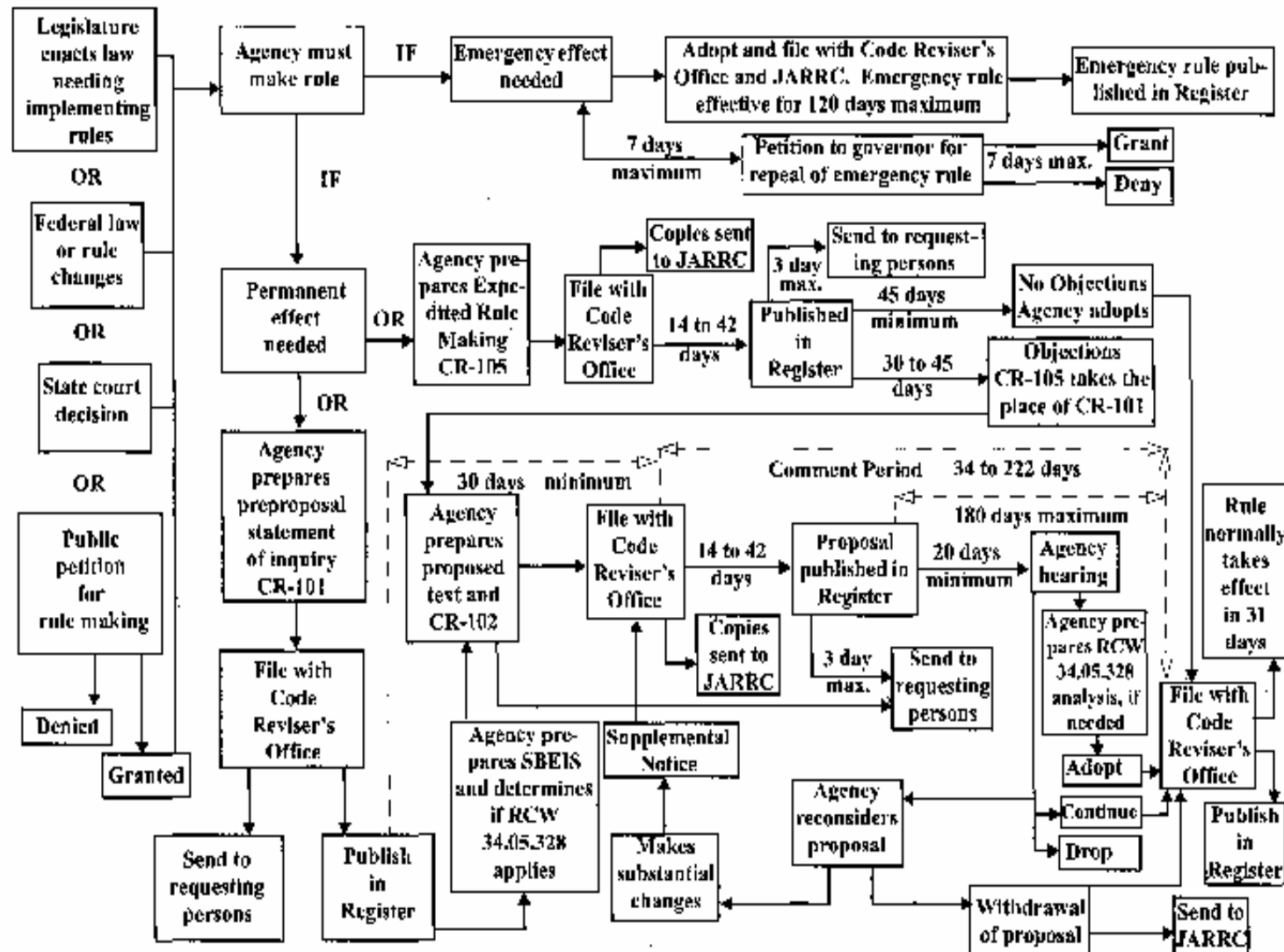
But, What Do We DO?

- Advisory functions
 - Answer legal questions as needed
- Open meetings:
 - Participate, review, support
- Rulemaking:
 - Manage the process
- Adjudications:
 - Manage the process, decide, draft orders

ALD organization



RULE-MAKING PROCESS



Rulemaking responsibilities

- Rules coordination
 - Educate staff
 - Maintain schedule
 - Code Reviser Liaison
 - Answer process questions
 - Draft documents
 - Regular meetings
 - File and publish documents
- Legal advisory
 - Review documents before filing
 - Answer staff's legal questions about process
 - Identify possible text problems
 - Identify possible legal problems with drafts

Open meetings

- Open meetings law
 - Decisions in public
 - Cs don't discuss privately
- Agenda prepared
 - Meet twice monthly
 - Most items routine
- Exemptions from OPMA
 - Adjudications
 - Rulemaking
 - Internal matters
- ALD role limited
 - Attend meetings
 - Answer process questions
 - Assist with memos and orders

ADJUDICATIONS

- Adjudications are matters that are decided according to adjudicative rules, including--
 - Notice of hearing on identified matters
 - Right to an unbiased judge
 - Opportunity to respond and present evidence
 - Right to know the decision and reasoning that supports it
 - Right to further review

What must be adjudicated

- Right to a hearing by law or rule
- Right to a hearing under constitution
 - “Due process” before deprivation of right or property – permit or penalty
- Right before denial of tariff or application
- Any matter agency decides to adjudicate

Adjudicative functions – I

- Intake and manage process
 - Identify and put into system
 - Monitor for action and time frames
 - Determine legal sufficiency
- Process decisions
 - ALJ assignment; Commissioners preside?
 - Time frame
 - Location of hearing
- Notice of hearing
 - Statement of issues
 - Legal basis
- Prehearing conference

Adjudicative functions – 2

- Hearing schedules
 - Summary motions
 - Schedule of evidentiary filings
 - Time and place for hearing
 - Post-hearing process
 - Decision conferences
 - Prepare order
- Order review
 - Review initial order
 - Reconsider final order

Process tracks

- Brief adjudications
 - Minimal matter at issue, minimal process
 - Short hearing
- Simple adjudication
 - Hearing ½ day or less, perhaps no briefs
 - No prehearing conference
- Complex hearings
 - Many issues, many parties
 - Long hearings, briefs

Process decisions

- Do the Commissioners preside?
 - Must preside at some hearings
 - May preside at any hearing
 - Always with administrative law judge
 - Focus on the evidence
 - Don't worry about legal technicalities
- Record of proceedings
 - Why have a record?
 - Court reporter transcript or audio recording

Role of advocacy staff

- Advocacy staff takes a position and makes a record
 - Separated from commissioners by “ex parte wall”
 - Acts independently in public interest
 - Submits testimony and evidence – basis for decision
 - Argues and briefs issues

Role of advisory staff

- Advisory staff assists the judge and the commissioners in evaluating the evidence
 - Contrast: evaluation, not evidence
 - Bring subject expertise to decision conference
 - Assist in analyzing and evaluating evidence
 - Assist in explaining and writing decision
 - Accountant, economist, energy specialist
 - Identify questions to ask, or bench requests

Role of administrative law judge

- A trial is like a symphony. The judge is the conductor, the lawyers the musicians, and the witnesses the instruments.
- The ALJ –
 - Maintains order
 - Keeps things moving
 - Sets a schedule
 - Makes procedural rulings
 - Admits or rejects evidence
 - Maintains exhibit list and keeps exhibits

The ALJ also –

- Leads the advisory team
- Writes or leads writing of memoranda for the Commissioners
- Writes or leads writing of the decision

Initial orders / final orders

- When Commissioners do not preside with an ALJ –
 - The ALJ enters an “initial” order
 - Any party may appeal to the commissioners
 - The commissioners may change the order
 - If no appeal or change, the order becomes final
- An appeal from an initial order –
 - Any party may appeal
 - Must explain why order is wrong
 - Other parties may answer
 - Another ALJ reviews and recommends result to commissioners
 - Commissioners decide
 - Second ALJ writes order for Commissioners

Summary

- Each outcome has required inputs
 - For example, transparency requires isolation of judges except when others may be there
 - Decision credibility requires good record, plus knowledgeable Director or staff assistance
- Decide what outcomes you want, then decide what inputs will produce them.
 - Pick and choose from among our features
 - Be creative and develop your own

Thank You!

Are there any questions?