

## Title 4

### EXECUTIVE

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#### Chapter 01

### GOVERNOR AND LIEUTENANT GOVERNOR

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Reviser’s Comment: PL 15-23 § 1 (1977) provided:

This chapter shall be known and may be cited as the Omnibus Local Governor Act of 1977.

#### **4.0101 Election of Governor.**

The Governor and the Lieutenant Governor shall be elected at the same time as the

U.S. Presidential year general elections.

**History:** 1977, PL 15-23 § 1.

**Case Notes:**

Territorial election statutes provide no right of appeal to board of registration from chief election officer's determination that a person is ineligible to run for elective office. A.S.C.A. §§ 4.0101 et seq., 6.0101 et seq. *Siofele v. Shimasaki*, 9 A.S.R.2d 3 (1988).

**4.0102 Qualifications of Governor and Lieutenant Governor.**

(a) Candidates for the office of Governor and Lieutenant Governor shall be:

(1) either a United States citizen or a United States national:

(2) a bona fide resident of American Samoa for 5 years immediately preceding the election; and

(3) at the time of assuming office, 35 years of age or older.

(b) Persons otherwise qualified for nomination as candidates for either Governor or Lieutenant Governor are not precluded from nomination for reasons of not qualifying under paragraph (a) (2) of this section if by reasons of absence from American Samoa the absence occurred in connection with:

(1) service with the armed services of the United States;

(2) service with the United States Government or any of its agencies or instrumentalities;

(3) service with the government or any of its agencies or instrumentalities; or

(4) while in the pursuit of his or her education.

(c) Persons who are serving as the incumbent appointed Governor and Lieutenant Governor at the effective date of this chapter are not eligible for election to the office of Governor or Lieutenant Governor at the first gubernatorial election in American Samoa.

(d) Any person convicted of a felony under the laws of American Samoa, the United States, or the laws of any state of the United States is not eligible for election to the Office of the Governor or Lieutenant Governor unless the convicted person has been pardoned and has had his civil rights restored.

(e) Any person separated from the Armed Forces of the United States under conditions other than honorable is not eligible for election to the Office of the Governor or Lieutenant Governor.

(f) Candidates for the offices of Governor and Lieutenant Governor who are employees of the government in whatever capacity and for either the executive, or judicial branches, must resign their position with the government before commencing active campaigning. "Active campaigning" includes but is not limited to: the acceptance of a petition from the election official charged with that responsibility; any effort whatsoever that is designed to influence or obtain votes from qualified electors; and any activity that would cause a conflict of interest at the candidate's position of employment with the government. In any event, candidates must resign no later than 60 days prior to the election date even if the events above have not occurred.

**History:** 1977, PL 15-23 § 1; amd 1977, PL 15-31 § 1.

**Amendments:** 1977 Subsection (f): added.

**4.0103 Nomination procedures.**

The candidates for the offices of Governor and Lieutenant Governor shall be nominated jointly by filing a petition in the same manner as candidates for members of

the House of Representatives except that the nominating petition for candidates for Governor and Lieutenant Governor shall be signed by at least 300 qualified electors without regard to their representative districts.

**History:** 1977, PL 15-23 § 1.

#### **4.0104 Election procedures.**

The Governor and Lieutenant Governor shall be elected jointly, by a majority of the votes cast by qualified electors. Each vote shall be applicable to both candidates. If no candidates receive a majority of the votes cast in any election, on the fourteenth day thereafter a runoff election shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes cast.

**History:** 1977, PL 15-23 § 1.

#### **4.0105 Term of office.**

The first elected Governor and Lieutenant Governor shall serve terms of 3 years each from 12 noon on 3 January 1978 until 12 noon 3 January 1981 and until their successors are elected and qualified. All succeeding Governors and Lieutenant Governors shall serve terms of 4 years each commencing on 12 noon on 3 January next after their election and terminating at 12 noon on 3 January 4 years later, and until their successors are elected and qualified.

**History:** 1977, PL 15-23 § 1.

#### **4.0106 Line of succession.**

(a) In case of temporary disability or temporary absence of the Governor, the Lieutenant Governor has the powers of the Governor.

(b) In case of permanent vacancy in the office of Governor, arising by reason of the death, resignation, removal by recall, removal by impeachment, permanent disability of the Governor or the death, resignation, or permanent disability of the Governor-elect or for any other reason, the Lieutenant Governor or Lieutenant Governor-elect shall become the Governor, to hold office for the unexpired term and until he or his successor shall have been duly elected and qualified at the next regular election for Governor.

(c) In case of temporary disability or temporary absence of the Lieutenant Governor, or during any period when the Lieutenant Governor is acting as Governor, the powers of the acting Lieutenant Governor shall be exercised by the Attorney General, then the Treasurer.

(d) In case of temporary disability or temporary absence of both the Governor and Lieutenant Governor, the powers of the Governor shall be exercised, as acting Governor, by a person as the law may prescribe. In case of a permanent vacancy in the offices of both the Governor and Lieutenant Governor, the office of Governor shall be filled by the Speaker of the House for the unexpired term.

(e) In case of permanent vacancy in the office of Lieutenant Governor, arising by reason of the death, resignation, removal by impeachment, or permanent disability of the Lieutenant Governor, or because the Lieutenant Governor or Lieutenant Governor-elect has succeeded to the office of Governor, the Governor shall appoint a new Lieutenant Governor, subject to confirmation by Legislature, at a special session called immediately for that purpose, to hold office for the unexpired term and until he or his successor shall

have been duly elected and qualified at the next regular election for Lieutenant Governor.

**History** 1977, PL 15-23 § 1.

**4.0107 Right of succession.**

No person who has been elected Governor for 2 full successive terms may be again eligible to hold that office until one full term has intervened unless otherwise provided by law.

**History:**1977, PL 15-3 § 1.

**4.0108 Recall procedure.**

(a) Governors of American Samoa may be removed from office by a referendum election in which at least 2/3 of the number of persons voting for Governor in the last preceding general election at which a Governor was elected, vote in favor of recall and in which those so voting constitute a majority of all those participating in the referendum election.

(b) The referendum election shall be initiated by the Legislature following:

(1) a 2/3, or more, vote of the members of each house of the Legislature in favor of a referendum; or

(2) a petition for the referendum to the Legislature by qualified electors equal in number to at least 50 percent of the whole number of votes cast for Governor at the last general election at which a Governor was elected preceding the filing of the petition.

**History:**1977, PL 15-23 § 1.

**4.0109 Impeachment.**

(a) The Governor and the Lieutenant Governor are subject to impeachment and, upon conviction, shall be removed from office.

(b) The Legislature shall provide for the manner, procedure, and causes for impeachment including for conviction of felonies and for a course of conduct amounting to a gross abuse of power, as defined by law.

(c) The House of Representatives has the sole power to bring articles of impeachment upon a vote of at least 2/3 of the entire membership. The Senate has the sole power to try impeachment, with the Chief Justice presiding, and, may not convict unless at least 2/3 of the entire membership concur. The members when sitting for that purpose shall be on oath or affirmation.

(d) Conviction shall extend only to removal from office and disqualification to hold and enjoy any office of trust, honor, or profit under the Territory. The party, whether convicted or acquitted, is also liable to other prosecution under the law.

(e) At the appropriate time and in the appropriate manner, this section or its substance should be considered as a Constitutional Amendment to the Revised Constitution of American Samoa.

**History:**1977, PL 15-23 § 1.

**4.0110 Compensation and perquisites-Allowances for former Governor and surviving spouses-“Former Governor” defined.**

(a) The Governor is entitled to an annual salary of \$85,000 and other perquisites provided by law including but not limited to: the rent-free use of Government House (the Governor’s official residence in Fagatogo); the free use of vehicles for executive,

ceremonial duties and family use; and a reasonable food, beverage and entertainment budget for the official residence specified by line item in the Governor's annual fiscal budget.

(b) The Lieutenant Governor is entitled to an annual salary of \$75,000 a year and other perquisites as provided by law including rent-free government quarters, and free use of a vehicle for executive, ceremonial duties and family use.

(c) Each former Governor shall be entitled, for the remainder of his life, to receive from the American Samoa Government a monetary allowance at the rate per annum of 60% of his highest salary during his last year in office, payable monthly by the treasurer of American Samoa Government. However, such allowance is not payable for any period during which such former Governor holds an appointive or elective office or position in or under the American Samoa Government or the Federal Government to which is attached a rate of pay other than a nominal rate.

(d) The surviving spouse of each former Governor shall be entitled to receive from the American Samoa Government a monetary allowance at the rate per annum of 30% of the former Governor's highest salary during his last year in office, payable monthly by the Treasurer of the American Samoa Government. The monetary allowance of such surviving spouse;

- (1) commences on the day after the former Governor dies;
- (2) terminates on the last day of the month before such widow;
- (A) dies; or
- (B) remarries; and

(3) is not payable for any period during which such widow holds an appointive or elective office or position in or under the American Samoa Government or the Federal Government to which is attached a rate of pay other than a nominal rate.

(e) As used in this section, the term "former Governor" means a person:

- (1) who, on or after January 1, 1978, shall have held the office of the Governor of the Territory of American Samoa for a full term of at least 4 years;
- (2) whose service in such office shall have terminated other than by removal pursuant to A.S.C.A., 4.0109 of this chapter; and
- (3) who does not then currently hold such office.

(f) Funds shall be made available from the Office of the Governor's budget.

**History:** 1977, PL 15-23 § 1; 1982, PL 17-52 § 1; amd 1985, PL 19-6 § 1; 2001, PL 27-3; 2001, PL 27-6.

**Amendments:** 1982 Raised compensation.

1985 Subsection (b): added "including rent-free government quarters".

#### **4.0111 Powers of Governor-Appointment and confirmation.**

(a) The elective office of the Governor of American Samoa is created. The Governor is responsible for the faithful execution of the laws. The Governor has powers and duties and responsibilities as delegated to him from time to time by the President of the United States or his designee, those portions of the U.S. Constitution applicable to American Samoa, the U.S. law applicable to American Samoa, the Revised Constitution of American Samoa, the American Samoa Code and by the direction of his own executive rules.

(b) The Governor has general supervision and control of all departments, offices, divisions, bureaus, agencies or instrumentalities of the executive branch of the government.

**History:** 1977, PL 15-23 § 1.

**Case Notes:**

Because the Governor has general supervision and control of all executive departments, agencies and instrumentalities of the Government, personnel decisions are subject to his direction as long as his actions are in accordance with applicable territorial and federal laws and rules. Rev. Const. Am. Samoa. Art. II § 7; A.S.C.A. § 7.0110; A.S.C.A. §§ 4.0102, 4.0111(b). *Sala v. American Samoa Government*, 21 A.S.R.2d 14 (1992).

**4.0112 Appointive powers and confirmation procedures.**

(a) Appointive powers of the Governor and the legislative confirmation procedures are as follows: directors of cabinet departments (those under 4.0301), and the heads of bureaus or offices who do not report either to the head of a cabinet department or to the head of a bureau or office whose appointment is subject to confirmation by the Legislature, shall be appointed by the Governor, and confirmed by a majority vote of the entire membership of each house of the Legislature. All other appointments shall be by the Governor unless by law that particular position is subject to confirmation by the Senate or by the Legislature.

(b) Nominations of appointments made during an adjournment of the Legislature or less than 5 legislative days from the end of a legislative session shall be acted upon at the next regular session convened.

(c) Appropriated funds shall not be used to pay employees for service in positions requiring confirmation if their names are not submitted for confirmation prior to the end of the next regular session after they begin service in those positions, and no person shall serve as an acting director of a department, office, or bureau for more than 90 days whether consecutive or not, without confirmation by the Legislature.

(d) If a nomination of appointment is rejected, the authority to serve in office ceases immediately. Failure to confirm a nominee at a session at which his confirmation is considered does not preclude the Governor from resubmitting that name for the same position, at the next succeeding session.

(e) The head of each executive department, bureau, or office subject to confirmation may hold office during the continuance in office of the Governor by whom he is appointed and until his successor is appointed and qualified unless sooner removed by the Governor.

(f) It is the specific intent of this chapter to empower the newly elected Governor to select his own team of department, bureau, and office heads, subject to confirmation.

(g) All department heads incumbent upon the first day of the administration of the newly elected Governor, 3 January 1978, shall automatically tender their resignations effective that day. This resignation procedure shall be followed by incumbent department, bureau, and office heads, subject to confirmation, by tendering their resignations effective on the first day of a new Governor's administration.

**History:** 1977, PL 15-23 § 1; 1978, PL 15-80; amd 1986, PL19-36 § 1.

**Amendments:** 1978 Section amended generally to add provisions relating to legislative confirmation procedures.

1986 Subsection (b): deleted "or special". Subsection (C): replaced "may" with "shall"; deleted "or special"; and added provisions for length of term.

**4.0130 Powers of Lieutenant Governor.**

The elective office of the Lieutenant Governor of American Samoa is created. The Lieutenant Governor has executive powers and duties as prescribed by the revised

Constitution of American Samoa, the American Samoa Code or delegated by the Governor. The Lieutenant Governor has no legislative duties or functions.

**History:** 1977, PL 15-23 § 1.

**4.0131 Delegation of executive authority.**

Authority but not the responsibility vested in the Governor or any other persons in the executive branch of the government may be delegated by that person to other officers and employees of the executive branch.

**History:** 1977, PL 15-23 § 1.

**4.0140 Authorization to borrow money and incur indebtedness.**

The Governor is authorized to allow the American Samoa Telecommunications Authority (ASTCA) in the name of the American Samoa Government, to borrow money and incur indebtedness for infrastructure projects, and mortgage, assign, hypothecate and give security interests in ASTCA property and earned revenue to secure such indebtedness. Such authority to borrow shall be limited to only funds from the U.S. Department of Agriculture Rural Utilities Service (RUS) made available on July 2, 2009 under the American Recovery and Reinvestment Act. This authorization to borrow money and incur indebtedness shall in no event exceed a total aggregate amount of ten million dollars (\$10,000,000.00) and shall be limited for the purposes set out in ASTCA's application for funding dated August 21, 2009.

**History:** 2010, PL 31-13 § 1.

**Chapter 02**

**(RESERVED)**

**Chapter 03**

**EXECUTIVE DEPARTMENTS, BOARDS, AND AGENCIES**

**Sections:**

- 4.0301 Required departments.**
- 4.0302 Appointment-Investigative proceedings.**
- 4.0320 Public Defender-Office created.**
- 4.0321 Assistant Public Defender.**
- 4.0325 Territorial Registrar.**
- 4.0330 Registrar of Vital Statistics.**
- 4.0335 Director of Manpower Resources.**
- 4.0340 Department of Human Resources.**

**4.0301 Required departments.**

(a) There are, within the Executive branch of the territorial government, the following departments:

- (1) a department of legal affairs;

- (2) a department of health;
- (3) a department of public works;
- (4) a department of education;
- (5) a department of agriculture;
- (6) a department of administrative services;
- (7) a department of port administration;
- (8) a department of local government;
- (9) a department of public safety;
- (10) a department of parks and recreation;
- (11) a department of human resources;
- (12) a department of treasury;
- (13) a department of marine and wildlife resources;
- (14) a department of commerce;
- (15) a department of human and social services;
- (16) a department of youth and women's affairs; and
- (17) a department of homeland security.

(b) Each department has such responsibilities as are prescribed by law or assigned by the Governor.

**History:** 1962, PL 7-28; 1965, PL 9-25; amd 1976, PL 14-31; amd 1979, PL 16-39; amd 1980, PL 16-55 § 6; 1987, PL 20-14 § 1; PL 20-29 § 1; 1988 PL 20-62; amd 1997 PL 25-4, 2008, PL 30-35.

**Amendments:** 1976 Substituted department of health” for “department of medical services”, and “department of administrative service” for “department of administration services”.

1979 Added provision that the departments were within the executive branch, added department of public safety, and divided section into 2 subsections.

1980 Added paragraph (a) (10).

1987 Public Law 20-14: added paragraph (a) (11). Public Law 20-29: capitalized the word “executive”; added “the” before “territorial government;” added paragraph (a) (12).

**Reviser’s Comment:** Section 2 of PL 16-39. provided:

The office of public safety, administratively created, is abolished and such functions as are assigned by law are transferred to the department of public safety. Wherever the words “office of public safety” appear in the Code, the words ‘department of public safety” or “department”, if appropriate, are substituted.

#### **4.0302 Appointment-Investigative proceedings.**

(a) The Governor may appoint such boards, commissions, and executive agencies as he deems advisable.

(b) Any board of investigation which may be appointed shall have full authority to subpoena witnesses, administer oaths, and report contempt to the High Court, which shall punish as for contempt in open court. The proceedings and reports of a board of investigation shall be as designated by the Governor in the order convening any such board.

**History:** 1962, PL 7-28.

#### **4.0320 Public Defender-Office created.**

(a) The office of Public Defender is created as an independent agency of the executive branch of the government.

(b) The Public Defender shall be appointed by the Governor of American Samoa and confirmed by the Legislature, for a term of 4 years and shall serve until his successor is appointed and qualified. He may be reappointed for 1 or more subsequent 4-year terms.



Vacancies in the office shall be filled by the Governor for the unexpired term. The first Public Defender appointed pursuant to this section shall be appointed for a term commencing 1 January 1978.

(c) The Public Defender shall be a qualified attorney who is a graduate of an accredited law school with at least 3 years of experience in criminal trial work, licensed to practice law in this territory, and shall be removed from office only for good cause by the Governor.

(d) The Public Defender shall devote full time to the performance of his duties and shall not engage in the private practice of law. The compensation of the territorial Public Defender shall be at the same grade as that of the Deputy Attorney General and shall not be reduced during the term of his appointment.

**History:** 1977, PL 15-57 § 1.

#### **4.0321 Assistant Public Defender.**

(a) Subject to the approval of the Governor, the Public Defender shall employ 1 or more Assistant Public Defenders, and at least 1 investigator, 1 secretary, 1 file clerk, and any other employees necessary to discharge the function of the office.

(b) The Assistant Public Defender shall serve at the pleasure of the Public Defender, be employed on a full time basis, and not engage in the practice of law.

(c) The compensation of an Assistant Public Defender shall be at the same grade as that of an Assistant Attorney General.

**History:** 1977, PL 15-57 § 2.

#### **4.0325 Territorial Registrar.**

(a) The Governor of American Samoa or his authorized representative shall create and establish the position of Territorial Registrar.

(b) The Territorial Registrar shall be a part of the executive branch and shall have his offices where the Governor or his authorized representative shall designate.

**History:** 1968, PL 10-53.

#### **4.0330 Registrar of Vital Statistics.**

The Governor of American Samoa or his authorized representative shall create and establish the position of Registrar of Vital Statistics. The Registrar of Vital Statistics shall be under the control and supervision of the Director of Homeland Security.

**History:** 1968, PL 10-53; 2008, PL 30-35.

#### **4.0335 Director of Manpower Resources.**

Repealed by PL 25-40 § 2.

#### **4.0340 Department of Human Resources.**

Repealed by PL 25-40 § 2.

## TERRITORIAL AUDIT OFFICE

### Sections:

- 4.0401 Definitions.
- 4.0402 Office established.
- 4.0403 Territorial auditor.
- 4.0404 Appointment and term of office.
- 4.0405 Removal.
- 4.0406 Salary.
- 4.0407 Employees.
- 4.0408 Outside specialists may be hired.
- 4.0409 Annual plan.
- 4.0410 Clearance of all auditing services required by government agencies.
- 4.0411 Audit standards.
- 4.0412 Audit procedures and requirements.
- 4.0413 Audit reports.
- 4.0414 Investigation reports.
- 4.0415 Annual report.
- 4.0416 Funding for the territorial audit office.
- 4.0417 Budget.
- 4.0418 Prohibitions.
- 4.0419 Access to records.
- 4.0420 Transition.

### 4.0401 Definitions.

As used in this chapter unless the context requires otherwise:

(a) “Agencies” or “agency” means any board, department, office, commission, committee, or agency created by the Constitution, statutes, or executive orders of the Governor.

(b) “Audit” means an independent examination of books, performance, documents, records and other evidence relating to the receipt, possession, obligation, disbursement, expenditure, or use of public funds by any agency or any activity of any agency or relating to any contract or grant to which any agency is a party, including any operations relating to the transactions. “Audit” includes financial compliance audits, economy and efficiency audits, and program results audits or any combination thereof as the territorial auditors may deem appropriate.

(c) “Investigation” means an inquiry into specified acts or allegations of impropriety, malfeasance, misfeasance, or nonfeasance in the obligation, expenditure, receipt or use of public funds or into specified financial transactions or practices which may involve impropriety, malfeasance, misfeasance, or nonfeasance.

(d) “Public funds” means any money, credit, or gifts in kind, from whatever source derived, used directly or indirectly for the support of any agency.

**History:** 1985, PL 19-21 § 1.

### 4.0402 Office established.

There is established as an independent agency a territorial audit office, which shall be under the direction of the Territorial Auditor. The office includes the Territorial Auditor

and his staff.

**History:**1985, PL 19-21 § 1.

#### **4.0403 Territorial auditor.**

The Territorial Auditor must be a person experienced and competent in governmental auditing, financial management, or government operations and budgeting. The Territorial Auditor shall be a certified public accountant or a certified internal auditor holding a current certificate from any state of the United States.

**History:**1985, PL 19-21 § 1.

#### **4.0404 Appointment and term of office.**

The Governor appoints the Territorial Auditor, who shall be confirmed by the Legislature. The Territorial Auditor shall serve a term of 4 years from the date of his appointment by the Governor. No person shall serve as Territorial Auditor for more than 8 years, whether consecutive or not. No person shall serve as Territorial Auditor, or as Acting Territorial Auditor without being confirmed by the Legislature, for more than 180 days, whether consecutive or not, in any calendar year.

**History:**1985, PL 19-21 § 1.

#### **4.0405 Removal.**

The Territorial Auditor can be removed from office only by the Governor and with the affirmative vote of two-thirds of the members of each House of the Legislature, and only for one or more of the following causes: conviction of a misdemeanor or a felony, mental or physical incapacity, malfeasance, misfeasance, nonfeasance or unethical actions or conduct, or pursuant to subsection 4.0418 of this chapter.

**History:**1985, PL 19-21 § 1.

#### **4.0406 Salary.**

The salary of the Territorial Auditor shall not be reduced during his term of office.

**History:** 1985, PL 19-21 § 1.

#### **4.0407 Employees.**

Other than contract employees, such assistants and other staff as may be necessary shall be career employees within the limits of appropriations.

**History:** 1985, PL 19-21 § 1.

#### **4.0408 Outside specialists may be hired.**

The Territorial Auditor may obtain the services of independent certified public accountants, qualified management consultants or other professional persons, as he deems necessary to assist him in carrying out his duties. Independent specialists shall be used for any audit involving the territorial audit office, or with respect to which the Territorial Auditor or the territorial audit office has a conflict of interest, including an audit of any agency, contract, or grant for which the Territorial Auditor has had

management responsibility or in which he was employed during 2 years preceding the time period covered by the audit, or during the 2 years preceding or subsequent to the audit time period.

**History:** 1985, PL 19-21 § 1.

#### **4.0409 Annual plan.**

The annual workplan of the territorial audit office may be amended at any time by the Territorial Auditor within the limits of available appropriations, without advance notice or permission from any person or agency.

**History:** 1985, PL 19-21 § 1.

#### **4.0410 Clearance of all auditing services required by government agencies.**

All audits required for or sought by a government agency shall be cleared through the territorial audit office.

**History:** 1985, PL 19-21 § 1.

#### **4.0411 Audit standards.**

(a) The audit standards shall be consistent with the provisions of this act and with generally accepted auditing standards. The audit standards shall incorporate the standards for audit of governmental organizations. Programs, activities, and functions published from time to time by the United States General Accounting Office, including those standards issued by the American Institute of Certified Public Accountants referred to therein.

(b) All audits conducted or caused to be conducted by the Territorial Auditor shall be performed with the highest degree of professionalism and with strict avoidance of any degree of partisanship or bias.

**History:** 1985, PL 19-21 § 1.

#### **4.0412 Audit procedures and requirements.**

(a) At the conclusion of an audit, the Territorial Auditor or his designee shall discuss the audit with the officials whose agency, grant, contract, or activity was subjected to the audit and submit to them a list of his proposed findings which may be included in the audit report. The preliminary audit and proposed findings shall not be made public prior to the receipt of comments from the agencies solicited. If the officials are not available for personal receipt of the list of audit findings, then delivery shall be deemed made when it is delivered to the agency. The agency shall submit to the Territorial Auditor within 30 days after the receipt of the list of findings its written statement of explanation or rebuttal concerning any of the adverse or critical audit findings, including any corrective action to be taken to preclude a recurrence of any adverse findings. The Territorial Auditor shall publish the substance of the agency response in the audit report.

(b) An audit report shall make special mention of:

- (1) any apparent violation of laws within the scope of the audit; and
- (2) any improper expenditures, any improper accounting procedures, all failures to properly record financial transactions, and all other inaccuracies, irregularities, shortages, and defalcations.

(c) Specific allegations naming a person involved in improper or illegal acts found in

connection with an audit shall be included in a separate confidential special report which shall be transmitted only to the attorney general and federal agencies when applicable.

**History:** 1985, PL 19-21 § 1.

**4.0413 Audit reports.**

Each report on a financial and compliance audit or an economy and efficiency performance audit must include a statement of the scope of the audit, the findings resulting from the audit the underlying cause and the significance thereof, and an explanation or rebuttal submitted by the agency audited. A copy of each report must be submitted to the Governor, the President of the Senate, the Speaker of the House, and the head of the audited agency. If the audit discloses an apparent violation of a criminal statute, a copy of the report shall also be submitted to the Attorney General. Audit reports are public records.

**History:** 1985, PL 19-21 § 1.

**4.0414 Investigation reports.**

Each report on an investigation must be submitted to the Governor, the President of the Senate, the Speaker of the House, the head of the agency or agencies investigated, and the Attorney General.

**History:** 1985, PL 19-21 § 1.

**4.0415 Annual report.**

The Territorial Auditor shall report on his activities and findings to the Legislature and the Governor at least once every calendar year, and this report shall be made public.

**History:** 1985, PL 19-21 § 1.

**4.0416 Funding for the territorial audit office.**

Adequate funds will be provided to allow the territorial auditor to carry out the responsibilities of the territorial audit office.

**History:** 1985, PL 19-21 § 1.

**4.0417 Budget.**

(a) The Territorial Auditor shall prepare a budget in the same form as other agencies of the American Samoa government and shall be subject to the same budget ceilings. The budget of the Territorial Audit Office shall be included in the Governor's budget submission to the Legislature. The Territorial Auditor shall have authority within budget limitation to approve expenditures.

(b) If it should be necessary to obtain funds in excess of the balance in the budget account, a supplemental budget request shall be submitted to the Governor for presentation to the Legislature.

**History:** 1985, PL 19-21 § 1.

**4.0418 Prohibitions.**

(a) The Territorial Auditor and the managers may not;

- (1) become a candidate for elective public office;
  - (2) hold any other public office, by appointment or otherwise, except for appointments on governmental advisory boards or study commissions or as otherwise expressly authorized by law;
  - (3) be actively involved in the affairs of a political party;
  - (4) actively participate in a political campaign for a public office;
  - (5) hold a legal, equitable, creditor or debtor interest in a partnership, firm, or other entity which contracts with the territorial audit office during his term of office;
  - (6) have a direct or indirect financial or economical interest in the transaction of an agency audited by the territorial audit office during his term of office (written disclosure of any such interest and formal disqualification from participation in a post audit involving that agency may constitute compliance with this paragraph if the interest is either insubstantial or results directly from an interest held before assuming the position in the territorial audit office);
  - (7) conduct or supervise a post audit of any agency for which he was responsible or by which he was employed or with which he contracted during the preceding two years; or
  - (8) make or report publicly any charges of nonfeasance, misfeasance or malfeasance in office of a public official or illegal conduct of a person unless he knows of reasonable grounds, based on accepted auditing and accounting standards, for such charges.
- (b) A violation of this section is cause for removal from office.

**History:**1985, PL 19-21 § 1.

#### **4.0419 Access to records.**

The Territorial Auditor, or an employee or contractor of the Territorial Audit Office so designated in writing by the Territorial Auditor, shall have the power to inspect and make copies of books, records or files of all territorial agencies, and any and all instruments and documents pertaining to the functions of the Territorial Audit Office. This includes computerized records. If such records are classified as confidential by any laws of the territory, the territorial audit office shall be required to maintain their confidentiality and to use such records only for the purpose of developing general statistics and evaluations or other necessary findings.

**History:**1985, PL 19-21 § 1.

#### **4.0420 Transition.**

The existing Territorial Audit Office is terminated 10 days after the effective date of this act, and all office space, appropriations, equipment and records of the existing territorial audit office are then transferred to the newly created Territorial Audit Office. Within 10 days of the effective date of this act, the Governor shall designate a person as Territorial Auditor or acting Territorial Auditor to take office upon the termination of the existing Territorial Audit Office. Within 30 days after the new Territorial Auditor or acting Territorial Auditor takes office, persons to serve as section managers and other employees must be appointed, and a workplan for the remainder of the current fiscal year must be prepared.

**History:**1985, PL 19-21 § 1.

## **Chapter 05**

## DEPARTMENT OF TREASURY

### Sections:

- 4.0501** Department of treasury.
- 4.0502** Treasurer of American Samoa.
- 4.0503** Treasurer-Powers and duties.
- 4.0504** Uniform accounting.
- 4.0505** Annual report.
- 4.0506** Rules.
- 4.0507** Unpaid workers compensation awards.

### **4.0501** Department of treasury.

There is established within the Executive branch of the government a Department of Treasury, headed by the Treasurer of American Samoa.

**History:** 1987, PL 20-29 § 19.

### **4.0502** Treasurer of American Samoa.

The Treasurer of American Samoa shall possess sufficient professional qualifications and experience in governmental finance and accounting or equivalent private sector experience, to carry out the purposes of this chapter.

**History:** 1987, PL 20-29 § 19.

### **4.0503** Treasurer—Powers and duties.

- (a) Unless otherwise provided by law, the Treasurer has the powers and duties to:
- (1) collect and deposit all locally raised revenues from any source, including income taxes, excise taxes, other taxes, license fees and payments for services;
  - (2) receive and deposit all funds from the federal government and any other sources;
  - (3) disburse funds pursuant to authority of law;
  - (4) establish and maintain the books of account of the government;
  - (5) provide and administer the financial management system of the government;
  - (6) manage trust funds and related receipts of the government;
  - (7) establish and maintain special revenue and disbursement accounts on behalf of public corporations of the government;
  - (8) provide financial data to the Governor, Legislature, departments, offices, and other agencies of the government;
  - (9) supervise and manage the government financial management information system;
  - (10) conduct customs and baggage inspections and other related matters; and
  - (11) engage in all other activities which may be reasonably necessary or incidental to carrying out the provisions of this chapter.
- (b) Nothing in this section prevents departments, offices or other agencies of the government from collecting revenues with the approval of the Treasurer. Unless otherwise provided by law, all receipts so collected shall be transmitted to the Department of Treasury.

**History:** 1987, PL 20-29 § 19.

### **4.0504** Uniform accounting.

The Treasurer, with the concurrence of the Territorial Auditor, shall establish a

uniform system of accounting. An accrual method of accounting that meets generally accepted principles of governmental accounting must be maintained.

**History:** 1987, PL 20-29 § 19.

**4.0505 Annual report.**

Promptly after the close of each fiscal year, the Treasurer shall publish and issue a detailed report on the financial affairs of the government for such fiscal year and submit copies to the Governor, Legislature, and Territorial Auditor.

**History:** 1987, PL 20-29 § 19.

**4.0506 Rules.**

The Treasurer shall adopt rules pursuant to section 4.1001 A.S.C.A., et seq. to accomplish the purposes of this chapter.

**History:** 1987, PL 20-29 § 19.

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**4.0507 Unpaid workers compensation awards.**

Workers compensation awards approved by the commission for government employees that remain unpaid because the government did not have insurance coverage shall be transferred to the government treasury as accounts payable. The Treasurer shall pay these awards out of funds earmarked to pay prior debts of the government.

**History:** 1997, PL 25-14.

## **Chapter 06**

### **OFFICE OF ADMINISTRATIVE LAW JUDGE**

**Sections:**

- 4.0601 Short title.**
- 4.0602 Administrative Law Judge-Office created-Qualifications.**
- 4.0603 Authority of Administrative Law Judge.**
- 4.0604 Jurisdiction of the Administrative Law Judge.**
- 4.0605 Record keeping.**
- 4.0606 Cost and fees.**
- 4.0607 Rules and procedures and evidence.**
- 4.0608 Budget.**

**4.0601 Short title.**

This act shall be known as the Administrative Law Judge Act of 1998.

**History:** 1998, PL 25-37.

**4.0602 Administrative Law Judge-Office created-Qualifications.**

(a) The Office of Administrative Law Judge is created as an independent agency of the Executive branch of government. The head of this office shall be known as the Administrative Law Judge. In a contested case, as defined in 4.1001, or other grievance or controversy before



(b) any agency, as defined in 4.1001, the Administrative Law Judge shall conduct and either make or recommend decisions in original proceedings, in accordance with the Administrative Procedures Act 4.1025 - 4.1037. Any agency may utilize the administrative law judge to conduct or otherwise assist its authorized rule making under 4.1001 - 4.1020.

(c) The Administrative Law Judge shall be appointed by the Governor and confirmed by the Senate for a term of six (6) years and shall serve until his successor is appointed and qualified or until reappointed for one or more terms, provided that the first Administrative Law Judge appointed pursuant to this section shall serve for a limited term commencing upon passage and approval of this act and ending on September 30, 2000. The first six-year term of office shall commence October 1, 2000. Vacancies in the office shall be filled by the Governor for the unexpired term if less than two (2) years shall remain in said term.

(d) The Administrative Law Judge shall be a qualified attorney at law, licensed to practice in the Territory with at least 6 years experience in the practice of law within the Territory and may be removed from office by the Governor only for good cause.

(e) The Administrative Law Judge shall devote full time to the performance of his duties and shall not otherwise engage in the private or public practice of law during the term of his appointment. The annual compensation of the Administrative Law Judge shall be at a rate equal to the compensation of the district court judge and shall not be reduced during the term of his appointment.

(f) The Office of Administrative Law Judge shall be staffed by career service employees including, but not limited to, hearing clerks, a hearing reporter, a translator, a secretary and marshal.

(g) The Administrative Law Judge shall adopt uniform rules governing the procedures for the operation of his office in accordance with the provisions of the Administrative Procedures Act.

(h) One or more attorneys at law may be designated and appointed pursuant to this section to serve as Administrative Law Judge pro tempore when so appointed by the Governor when the Administrative Law Judge is unavailable, incapacitated, or ethically unable to conduct a particular contested case or other grievance or controversy. An Administrative Law Judge pro tempore has all the powers and duties of a full-time Administrative Law Judge while sitting as assigned by the Governor.

**History:** 1998, PL 25-37.

#### **4.0603 Authority of Administrative Law Judge.**

(a) The Administrative Law Judge and judges pro tempore shall have the power to preserve and enforce order during any proceedings, issue subpoenas, administer oaths, compel the attendance of witnesses and the production of books, papers, documents and other evidence, compel the taking of depositions before any designated individual competent to administer oaths, examine witnesses, and to all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

(b) The Administrative Law Judge shall have the power and authority to issue process and necessary writs to enforce its own decisions, which shall be known as "administrative ruling".

(c) The Administrative Law Judge shall have the power and authority to affirm, reverse, modify or remand the decision or order of an agency if it finds that such order or decision is:

- (1) outside the range of discretion delegated to the agency by law;
- (2) inconsistent with an agency rule, official position, or prior practice, unless the agency explains the inconsistency by stating facts and reasons which demonstrate a rational basis for

the inconsistency;

(3) in violation of an applicable statutory provision; or

(4) unsupported by substantial evidence in the agency record. Substantial evidence exists when the agency record, viewed as a whole, would permit a reasonable person to make the finding made by the agency.

**History:** 1998, PL 25-37; 2004, PL 28-17.

#### **4.0604 Jurisdiction of the Administrative Law Judge.**

The Office of Administrative Law Judge shall have jurisdiction to conduct hearings and issue decisions, with regards to the following matters:

(a) claims for workmen's compensation in accordance with the procedures set forth in sections 32.0635 to and including 32.0646. All other authorities of the Workmen's Compensation Commission under Chapter 06 of Title 32 A.S.C.A., shall remain with the commission.

(b) Controversies, grievances and administrative appeals by government employees on matters pertaining to employment, including matters pertaining to hiring, termination, suspension and discipline. The responsibilities formerly held by the Personnel Advisory Board pursuant to section 7.0102, with regards to the said matters are now transferred to the Office of Administrative Law Judge. All other functions of the Personnel Advisory Board not otherwise affected herein shall remain with the board.

(c) Appeals from the decisions of the Immigration Board in all matters except decisions with respect to deportation of aliens as provided in section 41.0208 - 41.0212. Appeal of deportation decisions of the board shall be made to the Appellate Division of the High Court as provided by law. All other decisions of the board may be appealed to the Administrative Law Judge.

(d) All disputes and controversies pertaining to claims for unpaid or improperly paid wages and hours pursuant to Chapter 03 of Title 32 A.S.C.A., except in matters relating to the rulemaking authority of the wage and hour board.

(e) All appeals filed by applicants and notaries public pursuant to the Notary Act of 2007, Title 31, Chapter 03, sections 31.0309(e) and 31.0358(c) A.S.C.A.

(f) To take appeals of procurement officer's final decision in a procurement bidding dispute as described in section 10.0282 A.S.C.A. The Governor's authority to appoint a three member board to hear disputes of matters pertaining to procurement disputes is hereby repealed.

(g) Any other contested case, grievance or controversy that agencies, offices and departments of the government may be referred to the Office of Administrative Law Judge for disposition providing that the Office of Administrative Law Judge has jurisdiction over such matter.

(h) All appeals from administrative rulings or decisions of any administrative agency, except those matters specifically exempted herein or by statute, of a department, office, agency, commission, board or committee of the Executive branch or the American Samoa Government, shall first be made to the Office of Administrative Law Judge. Decisions of the Administrative may be appealed to the Appellate Division of the High Court of American Samoa.

(i) In cases involving the administrative suspension of drivers licenses pursuant to Title 22, Chapter 06 of this Code, the Administrative Law Judge shall have jurisdiction to hold hearings and issue decisions regarding the suspension of drivers licenses for refusal to submit to testing

pursuant to A.S.C.A., 22.0601 et. seq.

**History:** 1998, PL 25-37; 2004, PL 28-17, 2008, PL 30-18.

**4.0605 Record keeping.**

The Office of Administrative Law Judge shall be a court of record and shall keep and maintain complete records of its proceedings and shall transmit the record to the High Court of American Samoa upon the filing of an appeal of said matter to the High Court.

**History:** 1998 PL 25-37.

**4.0606 Cost and fees.**

(a) The Administrative Law Judge shall fix all fees for services, filing fees and other costs assessed by the Office of Administrative Law Judge in connection with services rendered and not otherwise provided for in this code, provided, however, that such fees shall be set in an amount which is reasonable, fair and just compensation for the service rendered, at least in part to defray the cost of such service, and does not exceed the actual cost of providing the service.

(b) The cost of transcript of proceedings in any hearings or trial shall be fixed at no more than the rate charged for transcript with the District Court of American Samoa.

**History:** 1998, PL 25-37.

**4.0607 Rules of procedures and evidence.**

(a) Proceedings before the Administrative Law Judge shall be in the form of a hearing on the evidence and issues presented to the agency notwithstanding the nature of the controversy or dispute, supplemented by any additional evidence allowed under section 4.0608. It shall be the obligation of the Administrative Law Judge to preserve as complete a record as possible for purposes of appeal.

(b) In proceedings before the Administrative Law Judge, the Rules of Civil Procedure and Rules of Evidence applicable in the High Court of American Samoa shall be used as a guide. These rules may be supplemented or modified by the Administrative Law Judge with any additional rules promulgated in accordance with provisions of the Administrative Procedures Act.

**History:** 1998, PL 25-37; 2004, PL 28-17.

**4.0608 New evidence issues limited.**

(a) The Administrative Law Judge may permit new evidence in addition to that taken by the agency only if it relates to the validity of the agency action at the time it was taken and is needed to decide issues regarding:

(1) improper constitution as a decision making body or grounds for disqualification of those taking the agency action; and

(2) unlawfulness of procedure or decision making process; and

(3) the completeness of the factual record before the Administrative Law Judge.

(b) Issues not raised before the agency may not be raised on appeal to the Administrative Law Judge, except to the extent that:

(1) The party appealing the agency decision did not know and was under not duty to discover or could not have reasonably discovered facts giving rise to the basis of the appeal;

(2) The agency action subject to review is a rule and the person has not been a party in an adjudicative agency proceeding;

(3) The agency action subject to review is an order and the party was not notified of the adjudicative proceeding in substantial compliance with this chapter or the rules of the agency; or

(4) The interests of justice would be served by resolution of an issue arising from a change in controlling law occurring after the agency action.

**History:** 2004, PL 28-17

**4.0609 Budget.**

The Office of the Administrative Law Judge shall be included in the Governor's annual budget submission to the Legislature.

**History:** 1998, PL 25-37; 2004, PL 28-17.

## Chapter 07

### DEPARTMENT OF HUMAN RESOURCES

**Sections:**

**4.0701 Establishment.**

**4.0702 Director.**

**4.0703 School-to-work program established—Program director.**

**4.0704 Program manager--Supportive service.**

**4.0705 School-to-work council.**

**4.0706 Council membership--President--Meetings.**

**4.0707 Functions of school-to-work program.**

**4.0701 Establishment.**

There is established within the Executive branch of the government a Department of Human Resources.

**History:** 1998, PL 25-40.

**4.0702 Director.**

The head of the department is a Director who shall be responsible for the development and management of the human resources of the government. He shall be thoroughly familiar with the principles and practices of public personnel administration on a merit basis.

**History:** 1998, PL 25-40.

**4.0703 School work program established--Program director.**

(a) There is established in the employee development and training division of the Department of Human Resources a school-to-work program for the Territory. The school-to-work program is charged with the responsibility of developing and implementing a transition program for public school students grades K-postsecondary levels to prepare such students first in career awareness, career choice, and eventual gainful employment. Students bound for college abroad and for advanced technical skills are also encouraged to participate in the program. The Deputy Director for employee development and training division shall appoint a staff person to serve as director of the school-to-work program.

**History:** 1998, PL 25-40.

**4.0704 Program manager--Supportive services.**

(a) A program manager shall be recruited and hired pursuant to government procedure to manage the school-to-work program for the Territory. It is the primary duty of the program manager to facilitate the implementation and operation of the school-to-work program pursuant to policies, plans, and actions of the council and program director. The program manager or his designee must attend council meetings and is responsible for providing council members with pertinent information concerning matters scheduled for the council's review.

(b) Basic support services for the school-to-work program shall be provided by the employees of development and training division of the Department of Human Resources and supplemented by the Department of Education and American Samoa Community College. All government agencies are required to cooperate fully with the school-to-work program and to provide information, resources, and service needed by the program.

**History:** 1998, PL 25-40.

**4.0705 School-to-work council.**

There is created the American Samoa school-to-work partnership council. The council shall formulate policies to guide the development of the territorial school-to-work implementation plans and to monitor activities of the school-to-work program. Issues of considerable consequence planned for or encountered by the program shall be referred to the council for resolution. Routine problems of less significance may be resolved by the program director or program manger.

**History:** 1998, PL 25-40.

**4.0706 Membership--President--Meetings.**

(a) The school-to-work partnership council consists of thirteen members who are appointed by the Governor to serve terms of three years each. To maintain perspective of the council's mission, selection to the council membership should include individuals familiar with education to employment transition and committed to the achievement of the program objectives. For example, dedicated individuals from the following segments of the Territory should serve in the council: Legislature, women and youth office, community college, Department of Education-counseling and special projects divisions, private business sector, churches and the community at large, chamber of commerce, Department of Commerce, Department of Human Resources, Department of Public Works and parents and teachers associations.

(b) The officers of the council are elected pursuant to the council's by-laws as approved.

(c) The council shall hold monthly meetings at a place and date designated by the program director. Special meetings of the council may be called as often as may deem necessary by the president or board.

**History:** 1998, PL 25-40.

**4.0707 Functions of the school-to-work program.**

(1) Education reform. The school-to-work program shall assist the department of education to carry out periodic assessments of the status of our education system, reviewing the core

academic and vocational curriculum across grades K-14 but especially at high schools and community college to determine if the level of knowledge attained by the students can lead to effective job skills and successful employment or further education and training. If the program director finds that the standard of knowledge and skills received by the students received by the students does not provide them with the type of skills demanded by the job market, the program director shall promptly advise the school-to-work council of such finding. Accordingly, the program director shall prepare forthwith and present to the council a comprehensive education reform plan that will more effectively integrate career planning and employability skills into curriculum and work-based learning. The reform plan must assure that all American Samoa public school students are provided with an excellent system of education so that the elementary school students and the high school and community college graduates can be fully prepared for gainful employment or entry into institutions of higher learning.

(2) Workforce development. The school-to-work program shall develop and implement a workforce development program that coordinates all the Territory's education and training. Basically, the program should serve to link students moving from all levels of education including the community college to pursue and acquire gainful employment. The program should have a database that can provide youths who need information and training to improve their skills in order to find and secure jobs.

(3) Youth apprenticeship. A youth apprenticeship program shall be established and administered by the school-to-work program. The program director shall coordinate and consult with the department of education when developing policies and procedures for the youth apprenticeship program. The policies must establish standards that employers desiring to participate in the youth apprenticeship program must meet.

(4) Tax credit. There is allowed a credit against income tax in an amount equal to ten percent of the qualified investment made by an employer who employs a youth apprentice in a qualified school-to-work program.

(A) A "qualified investment" is defined as money directly spent for wages, workers' compensation insurance, and training expenses.

(B) A "youth apprentice" is defined as someone between the ages of 16 and 21 who is enrolled in a public or private secondary or postsecondary school.

(5) Workers compensation. An employer who employs a youth apprentice in a qualified school-to-work program must provide workers' compensation insurance coverage for the youth. A youth in a school related work experience performing services without pay or who is otherwise not covered by workers' compensation insurance shall be deemed an employee of the government for purposes of workers' compensation.

(6) Occupational safety. It shall be the responsibility of the employer to provide a safe work site and to furnish equipment and gear required to undertake the functions of the work to be performed by the student. The school-to-work program shall adopt safety guidelines and safety inspection procedures of facilities where students are placed. A thorough safety inspection of each facility must be conducted prior to placing a student with such facility.

(7) Budget. The program director shall prepare the annual budget for the school-to-work program with input from the school-to-work council as part of the budget submission of the Department of Human Resources. The council shall review the budget proposed by the program director and make recommendations where appropriate. The school-to-work program shall apply to all federal grants and aids from which American Samoa's education to employment transition initiative may be entitled to receive financial assistance. When local and non local funds are not sufficient to cover annual operation costs of the school-to-work

program, the program director shall request local funding through the department budgets of human resources, department of education and the college to supplement financial assistance received from federal funding.

**History:** 1998, PL 25-40.

## **Chapter 08**

### **INDEPENDENT PROSECUTOR**

#### **Sections:**

- 4.0801**            **Applicability of provisions of this chapter.**
- 4.0802**            **Preliminary investigation and application for appointment of an independent prosecutor.**
- 4.0803**            **Duties of the division of the court.**
- 4.0804**            **Authority and duties of an independent prosecutor.**
- 4.0805**            **Legislative oversight.**
- 4.0806**            **Removal of an independent prosecutor—Termination of office.**
- 4.0807**            **Relationship with the Office of the Attorney General.**
- 4.0808**            **Severability.**
- 4.0809**            **Assignment of judges to division to appoint independent prosecutors.**

#### **4.0801            Applicability of provisions of this chapter.**

(a) Preliminary investigation with respect to certain covered persons. The Attorney General shall conduct a preliminary investigation in accordance with section 4.0802 whenever the Attorney General receives information sufficient to constitute grounds to investigate whether any person described in subsection (b) may have violated any Territorial criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

(b) Persons to whom subsection (a) applies.

The persons referred to in subsection (a) are:

- (1) the Governor and Lieutenant Governor;
- (2) any appointed contract, or career service director, office/agency head, or other public official;
- (3) any member of the Legislature;
- (4) any Justice Associate Judge or Judge;
- (5) any Assistant Attorney General and any individual working in the Office of the Attorney General;
- (6) any individual who held an office or position described in paragraphs (1)-(5) for 1 year after leaving the office or position.

(c) Preliminary investigation with respect to other persons.

When the Attorney General determines that an investigation or prosecution of a person by the Office of the Attorney General may result in a personal financial, or political conflict of interest, the Attorney General may conduct a preliminary investigation of such person in accordance with section 4.0802 if the Attorney General receives information sufficient to constitute grounds to investigate whether that person may have violated Territorial criminal law other than a violation classified as a Class B or C misdemeanor or an infraction.

- (d) Examination of information to determine need for preliminary investigation.
  - (1) Factors to be considered. In determining under subsection (a) or (c) or section 4.0802(c)(2), whether grounds to investigate exist, the Attorney General shall consider only:
    - (A) the specificity of the information received; and
    - (B) the credibility of the source of the information.
  - (2) Time period for making determination. The Attorney General shall determine whether grounds to investigate exist not later than 30 days after the information is first received. If within that 30-day period the Attorney General determines that the information is not specific or is not from a credible source, the Attorney General shall, upon making that determination, commence a preliminary investigation with respect to that information. If the Attorney General is unable to determine, within that 30-day period, whether the information is specific and from a credible source, the Attorney General shall, at the end of that 30-day period, commence a preliminary investigation with respect to that 30-day period, commence a preliminary investigation with respect to that information.
- (e) Recusal of Attorney General
  - (1) When recusal is required.
    - (A) If information received under this chapter involves the Attorney General, the most senior Assistant Attorney General in the Office of the Attorney General, assigned as a prosecutor, who is not also recused shall perform the duties assigned under this chapter to the Attorney General.
    - (B) If information received under this chapter involves a person with whom the Attorney General has a personal or financial relationship, the Attorney General shall recuse himself or herself by designating the most senior Assistant Attorney General in the Office of the Attorney General assigned as a prosecutor, who is not also recused to perform the duties assigned under this chapter to the Attorney General.
  - (2) Requirements for recusal determination. Before personally making any other determination under this chapter with respect to information received under this chapter, the Attorney General shall determine under paragraph (1)(B) whether recusal is necessary. The Attorney General shall set forth this determination in writing, identify the facts considered by the Attorney General, and set forth the reasons for the recusal. The Attorney General shall file this determination with any notification or application submitted to the division of the court under this chapter with respect to such information.

**History:** 2000, PL 26-30.

#### **4.0802 Preliminary investigation and application for appointment of an independent prosecutor.**

- (a) Conduct of Preliminary Investigation.
  - (1) In general. A preliminary investigation conducted under this chapter shall be of such matters as the Attorney General considers appropriate in order to make a determination, under subsection (b) or section 4.0807, on whether further investigation is warranted, with respect to each potential violation, or allegation of a violation, of criminal law. The Attorney General shall make such determination not later than 90 days after the preliminary investigation is commenced, except that, in the case of a preliminary investigation commenced after a legislative request under section 4.0810, the Attorney General shall make such determination not later than 90 days after the request is received. The Attorney General shall promptly notify the division of the court specified in section 4.0811(a) of the commencement of such preliminary investigation and the date of such commencement.



(2) Limited authority of Attorney General. (A) In conducting preliminary investigations under this chapter, the Attorney General shall have no authority to convene plea bargain, grant immunity or issue subpoenas.

(B)(i) The Attorney General shall not base a determination under this chapter that information with respect to a violation of criminal law by a person is not specific and from a credible source upon a determination that such person lacked the state of mind required for the violation of criminal law.

(ii) The Attorney General shall not base a determination under this chapter that there are no reasonable grounds to believe that further investigation is warranted, upon a determination that such person lacked the state of mind required for the violation of criminal law involved, unless there is clear and convincing evidence that the person lacked such state of mind.

(3) Extension of time for preliminary investigation. The Attorney General may apply to the division of the court for a single extension, for a period of not more than 60 days of the 90-day period referred to in paragraph (1). The division of the court may, upon a showing of good cause, grant such extension.

(b) Determination that further investigation not warranted.

(1) Notification of division of the court. If the Attorney General upon completion of a preliminary investigation under this chapter determines that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court, and the division of the court shall have no power to appoint an independent prosecutor with respect to the matters involved.

(2) Form of notification. Such notification shall contain a summary of the information received and a summary of the results of the preliminary investigation.

(c) Determination That Further Investigation is Warranted.

(1) Application for appointment of independent prosecutor. The Attorney General shall apply to the division of the court for the appointment of an independent prosecutor if:

(A) the Attorney General upon completion of a preliminary investigation under this chapter, determines that there are reasonable grounds to believe that further investigation is warranted; or

(B) the 90-day period referred to in section 4.0805(a)(1), and any extension granted under subsections (a)(e), have elapsed and the Attorney General has not filed a notification with the division of the court under section 4.0807(a). In determining under this chapter whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with the written or other established policies of the Office of the Attorney General with respect to the conduct of criminal investigations.

(2) Receipt of additional information. If, after submitting a notification under section 4.0807(a), the Attorney General receives additional information sufficient to constitute grounds to investigate the matters to which such notification related, the Attorney General shall:

(A) conduct such additional preliminary investigation as the Attorney General considers appropriate for a period of not more than 90 days after the date on which such additional information is received; and

(B) otherwise comply with the provisions of this section with respect to such additional preliminary investigation to the same extent as any other preliminary investigation under this section.

(d) Contents of Application.

Any application for the appointment of an independent prosecutor under this chapter shall contain sufficient information to assist the division of the court in selecting an independent prosecutor and in defining that independent prosecutor's prosecutorial jurisdiction so that the

independent prosecutor has adequate authority to fully investigate and prosecute the subject matter and all matters related to that subject matter.

(e) Disclosure of information.

Except as otherwise provided in this chapter or as is deemed necessary for law enforcement purposes, no officer or employee of the Office of the Attorney General or an office of independent prosecutor may, without leave or the division of the court, disclose to any individual outside the Office of the Attorney General, or such office of independent prosecutor, any notification, application, or any other document, materials, or memorandum supplied to the division of the court under this chapter.

(f) Limitation on Judicial Review.

The Attorney General's determination under this chapter to apply to the division of the court for the appointment of an independent prosecutor shall not be reviewable in any court.

(g) Legislative request.

(1) By judiciary committee or members thereof. The committee on the judiciary of either chamber of the Legislature or members of either such committee, may request in writing that the Attorney General apply for the appointment of an independent prosecutor.

(2) Report by Attorney General pursuant to request. Not later than 30 days after the receipt of a request under paragraph (1), the Attorney General shall submit, to the committee making the request, a report on whether the Attorney General has begun or will begin a preliminary investigation under this chapter of the matters with respect to which the request is made, in accordance with subsection (a) or (c) of section 4.0801, as the case may be. The report shall set forth the reasons for the Attorney General's decision regarding such preliminary investigation as if relates to each of the matters with respect to which the legislative request is made. If there is such a preliminary investigation, the report shall include the date on which the preliminary investigation began or will begin.

(3) Submission of information in response to legislative request. At the same time as any notification application, or any other document, material, or memorandum is supplied to the division of the court pursuant to this section with respect to a preliminary investigation of any matter with respect to which a request is made under paragraph (1), such notification, application, or other document, material or memorandum shall be supplied to the committee making the request. If no application for the appointment of an independent prosecutor is made to the division of the court under this section pursuant to such a preliminary investigation, the Attorney General shall submit a report to that committee stating the reasons why such application was not made, addressing each matter with respect to which the legislative request was made.

(4) Disclosure of information. Any report, notification, application, or other document, material, or memorandum supplied to a committee under this subsection shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such report, notification, application, document, material, or memorandum as will not in the committee's judgment prejudice the rights of any individual.

**History:** 2000, PL 26-29; 2000, PL 26-30.

#### **4.0803 Duties of the division of the court.**

(a) Reference to division of the court.

The division of the court to which this chapter refers is the division established under section 4.0809 of this chapter.

(b) Appointment and jurisdiction of Independent Prosecutor.

(1) Authority. Upon receipt of an application under section 4.0802(c), the division of the court shall appoint an appropriate independent prosecutor and shall define that independent prosecutor's prosecutorial jurisdiction.

(2) Qualifications of independent prosecutor. The division of the court shall appoint as independent prosecutor an individual who has appropriate experience and who will conduct the investigation and any prosecution in a prompt, responsible, and cost-effective manner. The division of the court shall seek to appoint as independent prosecutor an individual who will serve to the extent necessary to complete the investigation and any prosecution without undue delay.

(3) Scope of prosecutorial jurisdiction. In defining the independent prosecutor's prosecutorial jurisdiction, the division of the court shall assure that the independent prosecutor has adequate authority to fully investigate and prosecute the subject matter with respect to which the Attorney General has requested the appointment of the independent prosecutor, and all matters related to that subject matter. Such jurisdiction shall also include the authority to investigate and prosecute Territorial crimes other than those classified as Class B or C misdemeanors or infractions, that may arise out of the investigation or prosecution of the matter with respect to which the Attorney General's request was made, including perjury obstruction of justice, destruction of evidence, and intimidation of witnesses.

(4) Disclosure of identity and prosecutorial jurisdiction. An independent prosecutor's identity and prosecutorial jurisdiction (including any expansion under subsection (c) may not be made public except upon the request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent prosecutor would be in the best interests of justice. In any event, the identity and prosecutorial jurisdiction of such independent prosecutor shall be made public when any criminal complaint or information is filed pursuant to the independent prosecutor's investigation.

(c) Expansion of jurisdiction.

(1) In general. The division of the court, upon the request of the Attorney General, may expand the prosecutorial jurisdiction of an independent prosecutor, and such expansion, may be in lieu of the appointment of another independent prosecutor.

(2) Procedure for request by independent prosecutor.

(A) If the independent prosecutor discovers or receives information about possible violation of criminal law by persons as provided in section 4.0801 who are not covered by the prosecutorial jurisdiction of the independent prosecutor, the independent prosecutor may submit such information to the Attorney General. The Attorney General shall then conduct a preliminary investigation of the information in accordance with the provisions of section 4.0802, except that such preliminary investigation shall not exceed 30 days from the date such information is received. In making the determinations required by section 4.0802 the Attorney General shall give great weight to any recommendations of the independent prosecutor.

(B) If the Attorney General determines, after according great weight to the recommendations of the independent prosecutor, that there are no reasonable grounds to believe that further investigation is warranted, the Attorney General shall promptly so notify the division of the court and the division of the court shall have no power to expand the jurisdiction of the independent prosecutor or to appoint another independent prosecutor with respect to the matters involved.

(C) If:

(i) the Attorney General determines that there are reasonable grounds to believe that further investigation is warranted; or

(ii) the 30-day period referred to in subparagraph (A) elapses without a notification to the division of the court that no further investigation is warranted, the division of the court shall expand the jurisdiction of the appropriate independent prosecutor to include the matters involved or shall appoint another independent prosecutor to investigate such matters.

(d) Return for further explanation. Upon receipt of a notification under section 4.0807 or section (b)(d)(2) of this section from the Attorney General that there are no reasonable grounds to believe that further investigation is warranted with respect to information received under this chapter, the division of the court shall have no authority to overrule this determination but may return the matter to the Attorney General for further explanation of the reasons for such determination.

(e) Vacancies. If a vacancy in office arises by reason of the resignation, death, or removal of an independent prosecutor, the division of the court shall appoint an independent prosecutor to complete the work of the independent prosecutor whose resignation, death, or removal caused the vacancy, except that in the case of a vacancy arising by reason of the removal of an independent prosecutor, the division of the court may appoint an acting independent prosecutor to serve until any judicial review of such removal is completed.

(f) Attorneys' fees.

(1) Award of fees. Upon the request of an individual who is the subject of an investigation conducted by an independent prosecutor pursuant to this chapter, the division of the court may if no criminal complaint or information is brought against such individual pursuant to that investigation, award reimbursement for those reasonable attorneys' fees incurred by that individual during that investigation which would not have been incurred but for the requirements of this chapter. The division of the court shall notify the independent prosecutor who conducted the investigation and the Attorney General of any request for attorneys' fees under this subsection.

(2) Evaluation of fees. The division of the court shall direct such independent prosecutor and the Attorney General to file a written evaluation of any request for attorneys' fees under this subsection, addressing:

(A) the sufficiency of the documentation;

(B) the need or justification for the underlying item;

(C) whether the underlying item would have been incurred but for the requirements of this chapter; and

(D) the reasonableness of the amount of money requested.

(g) Disclosure of information. The division of the court may, subject to section 4.0804(h)(2), allow the disclosure of any notification, application, or any other document, material, or memorandum supplied to the division of the court under this chapter.

(h) Amicus Curiae Briefs. When presented with significant legal issues, the division of the court may disclose sufficient information about the issues to permit the filing of timely amicus curiae briefs.

**History:** 2000, PL 26-30.

#### **4.0804 Authority and duties of an independent prosecutor.**

(a) Authorities.

Notwithstanding any other provision of law, an independent prosecutor appointed under this chapter shall have, with respect to all matters in such independent prosecutor's prosecutorial

jurisdiction established under this chapter, full power and independent authority, to exercise all investigative and prosecutorial functions and powers of the Office of the Attorney General, the Attorney General, and any other officer or employee of the Office of the Attorney General except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action at common law or by statute. Such investigative and prosecutorial functions and powers shall include:

- (1) conducting investigations;
- (2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent prosecutor considers necessary;
- (3) appealing any decision of a court in any case or proceeding in which such independent prosecutor participates in an official capacity;
- (4) reviewing all documentary evidence available from any source;
- (5) determining whether to contest the assertion of any testimonial privilege;
- (6) making applications to the court for warrants, subpoenas, or other court orders;
- (7) granting immunity to any witness;
- (8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with applicable statutes and regulation, and, for purposes of section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder and the American Samoa Income Tax Act, exercising the powers vested in the Attorney General;
- (9) initiating and conducting prosecutions in the High Court of American Samoa in accordance with the procedures contained in Title 46 A.S.C.A., framing and signing criminal complaints and indictments, and handling all aspects of any case, in the name of the American Samoa Government.

(b) Compensation.

(1) In general. An independent prosecutor appointed under this chapter shall receive compensation at the level of the Attorney General.

(2) Travel expenses. Except as provided in paragraph (3), an independent prosecutor and persons appointed under subsection (c) shall be entitled to the payment of travel expenses, per diem and subsistence expenses in accordance with the regulations and policies of the government and Treasurer.

(3) Travel to primary office.

(A) In general. Should the independent prosecutor not reside in American Samoa, after 1 year of service under this chapter, an independent prosecutor and persons appointed under subsection (c) shall not be entitled to the payment of travel, per diem, or subsistence expenses for the purpose of commuting to or from the city in which the primary office of the independent prosecutor or person is located. The 1-year period may be extended for successive 6-month periods if the independent prosecutor and the division of the court certify that the payment is in the public interest to carry out the purposes of this chapter.

(B) Relevant factors. In making any certification under this paragraph with respect to travel and subsistence expenses of an independent prosecutor or person appointed under subsection (c), the independent prosecutor and the division of the court shall consider, among other relevant factors:

- (i) the cost to the government of reimbursing such travel and subsistence expenses;
- (ii) the period of time for which the independent prosecutor anticipates that the activities of the independent prosecutor or person, as the case may be will continue;
- (iii) the personal and financial burdens on the independent prosecutor or person, as the case may be, of relocating (should the independent prosecutor or appointed person not reside in American Samoa) so that travel and subsistence expenses would not be incurred, and

(iv) the burdens associated with appointing a new independent prosecutor, or appointing another person under subsection (c), to replace the individual involved who is unable or unwilling to so relocate should the independent prosecutor or person not reside in American Samoa.

(c) Additional personnel.

(1) For the purposes of carrying out the duties of an office of independent prosecutor, such independent prosecutor may appoint, fix the compensation, and assign the duties of such employees, in accordance and commensurate with government personnel classification and compensation laws and regulations, as such independent counsel considers necessary (including investigators, attorneys, and part-time consultants). Such employees shall be exempt from competitive service.

(2) Prior to such appointment, the independent prosecutor shall make a written determination that such personnel are not available for assignment from the Office of the Attorney General, the Department of Public Safety or other departments within the government due to specialized need or conflict of interest .

(d) Assistance of the Office of the Attorney General.

(1) In carrying out functions. An independent prosecutor may request assistance from the Office of the Attorney General in carrying out the functions of the independent prosecutor, and the Office of the Attorney General shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent prosecutor's duties. At the request of an independent prosecutor, prosecutors administrative personnel, and other employees of the Office of the Attorney General may be detailed to the staff of the independent prosecutor.

(2) Payment of and reports on expenditures of independent prosecutor. The Office of the Attorney General shall pay all costs relating to the establishment and operation of any office of independent prosecutor. The Attorney General shall include within the budget of the Department of Legal Affairs such sums reasonable estimated to be necessary to support the office of independent prosecutor. The Attorney General shall submit to the Legislature, not later than 30 days after the end of each fiscal year a report on amounts paid during that fiscal year for expenses of investigations and prosecutions by any independent prosecutor. Each such report shall include a statement of all payments made for activities of independent prosecutor but may not reveal the identity or prosecutorial jurisdiction of any independent prosecutor which has not been disclosed under section 4.0803(b)(4).

(e) Referred of other matters to an independent prosecutor. An independent prosecutor may ask the Attorney General or the division of the court to refer to the independent prosecutor matters related to the independent prosecutor's prosecutorial jurisdiction, and the Attorney General or the division of the court, as the case may be, may refer such matters. If the Attorney General's own initiative, the independent prosecutor may accept such referral if the matter relates to the independent prosecutor's prosecutorial jurisdiction. If the Attorney General refers any matter to the independent prosecutor pursuant to the independent prosecutor's request, or if the independent prosecutor accepts a referral made by the Attorney General on the Attorney General's own initiative, the independent prosecutor shall so notify the division of the court.

(f) Compliance with policies of the Office of the Attorney General. An independent prosecutor shall, except to the extent that to do so would be inconsistent with the purposes of this chapter, comply with the written or other established policies of the Office of the Attorney General respecting enforcement of the criminal laws. To determine these policies and policies

under 4.0802 (c)(1)(B), the independent prosecutor shall, except to the extent that doing so would be inconsistent with the purposes of this chapter, consult with the Attorney General.

(g) Dismissal of matters.

The independent prosecutor shall have full authority to dismiss matters within the independent prosecutor's prosecutorial jurisdiction without conducting an investigation or on any subsequent time before prosecution, if to do so would be consistent with the written or other established policies of the Office of the Attorney General or the laws of the Territory with respect to the enforcement of criminal laws.

(h) Reports by Independent Prosecutor.

(1) Required reports. An independent prosecutor shall:

(A) file with the division of the court, with respect to the 6-month period beginning on the date of his or her appointment and with respect to each 6-month period thereafter until the office of that independent prosecutor terminates, a report which identifies and explains major expenses, and summarizes all other expenses, incurred by that office during the 6-month period with respect to which the report is filed, and estimates future expenses of that office; and

(B) before the termination of the independent prosecutor's office under section 4.0806(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent prosecutor, including the disposition of all cases brought.

(2) Disclosure of information in reports. The division of the court may release to the Legislature, the public, or any appropriate person, such portions of a report made under this subsection as the division of the court considers appropriate. The division of the court shall make such orders as re appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a final report filed under paragraph (1)(B) available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may, in the discretion of the division of the court, be included as an appendix to such final report.

(3) Publication of reports. At the request of an independent prosecutor, the Department of Administrative Services shall cause to be printed any report previously released to the public under paragraph (2). The independent prosecutor shall certify the number of copies necessary for the public, and the Department of Administrative Services shall place the cost of the required number to the debit of such independent prosecutor.

Additional copies shall be made available to the public through the deposit in the Feleti Barstow Public Library and the Territorial Office of Archives.

(i) Independence from Office of the Attorney General.

Each independent prosecutor appointed under this chapter, and the persons appointed by that independent prosecutor under subsection, (c) are separate from and independent of the Office of the Attorney General.

(j) Standards of conduct applicable to Independent Prosecutor, persons serving in the Office of an Independent Prosecutor, and their law firms.

(1) Restriction on employment while independent prosecutor and appointees are serving.

(A) During the period in which an independent prosecutor is serving under this chapter:

(i) such independent prosecutor, and

(ii) any person associated with a firm with which such independent prosecutor is associated, may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(B) During the period in which any person appointed by an independent prosecutor under subsection (c) is serving in the office of independent prosecutor, such person may not represent in any matter any person involved in any investigation or prosecution under this chapter.

(2) Past employment restrictions on independent prosecutor and appointees.

(A) Each independent prosecutor and each person appointed by that independent prosecutor under subsection (c) may not for 3 years following the termination of the service under this chapter of that independent prosecutor or appointed person, as the case may be, represent any person in any matter if that individual was the subject of an investigation or prosecution under this chapter that was conducted by that independent prosecutor.

(B) Each independent prosecutor and each person appointed by that independent prosecutor under subsection (c) may not, for 1 year following the termination of the service under this chapter of that independent prosecutor or appointed person as the case may be, represent any person in any matter involving any investigation or prosecution under this chapter.

(3) One-year ban on representation by members of firms of independent prosecutor. Any person who is associated with a firm with which an independent prosecutor is associated or becomes associated after termination of the service of that independent prosecutor under this chapter may not, for 1 year following such termination, represent any person in any matter involving any investigation or prosecution under this chapter.

(4) Definitions. For purposes of this subsection:

(A) the term “firm” means a law firm whether organized as a partnership or corporation; and

(B) a person is “associated” with a firm if that person is an officer, director, partner, or other member or employee of that firm.

(5) Enforcement. The High Court of American Samoa shall have authority to enforce compliance with this subsection.

(k) Custody of Records of an Independent Prosecutor.

(1) Transfer of records. Upon termination of the office of an independent prosecutor, that independent prosecutor shall transfer to the Office of Archives all records which have been created or received by that office.

(2) Maintenance, use, and disposal of records. Records transferred to the Archivist under this chapter shall be maintained, used, and disposed of in accordance with rules and regulations of the Office of Archives, but in any event shall be retained for a minimum of five years following their delivery.

(3) Access to records.

(A) In general. Subject to paragraph (4), access to the records transferred to the Archivist under this chapter shall be governed by rules and regulations of the Archivist and the Attorney General. In the event of conflict between the rules of the Archivist and the Attorney General the rules of the Attorney General shall prevail.

(B) Access by Office of the Attorney General. The Archivist shall, upon written application by the Attorney General, disclose any such records to the Office of the Attorney General for purposes of an ongoing law enforcement investigation or court proceeding.

(C) Exception. Notwithstanding any restriction on access imposed by law, the Archivist and persons employed by the Office of Archives who are engaged in the performance of normal archival work shall be permitted access to the records transferred to the Archivist under this chapter.

(4) Records provided by the Legislature. Records of an investigation conducted by a committee of the House of Representatives or the Senate which are provided to an independent



prosecutor to assist in an investigation or prosecution conducted by that independent prosecutor:

(A) shall be maintained as a separate body of records within the records of the independent prosecutor; and

(B) shall, after the records have been transferred to the Archivist under this chapter, be made available, except as provided in paragraph (3)(B) and (C), in accordance with the rules governing release of the records of the Chamber of the Legislature which provided the records to the independent prosecutor. Subparagraph (B) shall not apply to those records which have been surrendered pursuant to court proceedings.

(1) Cost and Administrative Support.

(2) Cost controls.

(A) In general. An independent prosecutor shall:

(i) conduct all activities with due regard for expense;

(ii) authorize only reasonable and lawful expenditures; and

(iii) promptly upon taking office, assign to a specific employee the duty of certifying that expenditures of the independent prosecutor are reasonable and made in accordance with law.

(B) Liability for invalid certification. An employee making a certification under subparagraph (A)(iii) shall be personally liable for an invalid certification.

(C) Expenditure of funds. An independent prosecutor shall comply with the laws and regulations of the government respecting expenditures of funds, except to the extent that compliance would be inconsistent with the purposes of this chapter.

(2) Administrative support. The Treasurer and the Director of the Office of Planning and Budget shall provide administrative support and guidance to each independent prosecutor regarding expenditures and cost controls. No officer or employee of the Department of Treasury or Office of Planning and Budget shall disclose information related to an independent prosecutor's expenditures, personnel, or administrative acts or arrangements without the authorization of the independent prosecutor.

(3) Office space. The Director of the Department of Administrative Services shall promptly provide appropriate office space for each independent prosecutor. Such office space shall be within a government building unless the Director of the Department of Administrative Services determines that other arrangements would cost less or that adequate government office space is not available.

**History:** 2000, PL 26-30.

#### **4.0805 Legislative oversight.**

(a) Oversight of Conduct of Independent Prosecutor.

(1) Legislative oversight. The appropriate committees of the Legislature shall have oversight jurisdiction with respect to the official conduct of any independent prosecutor appointed under this chapter, and such independent prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(2) Reports to Legislature. An independent prosecutor appointed under this chapter shall submit to the Legislature annually a report on the activities of the independent prosecutor, including a description of the progress of any investigation or prosecution conducted by the independent prosecutor. Such report may omit any matter that in the judgment of the independent prosecutor should be kept confidential, but shall provide information adequate to justify the expenditures that the office of the independent prosecutor has made.

(b) Oversight of Conduct of Attorney General. Within 15 days after receiving an inquiry about a particular case under this chapter, which is a matter of public knowledge, from a committee of the Legislature with jurisdiction over this chapter, the Attorney General shall provide the following information to that committee with respect to that case.

(1) When the information about the case was received.

(2) Whether a preliminary investigation is being conducted, and if so, the date it began.

(3) Whether an application for the appointment of an independent prosecutor or a notification that further investigation is not warranted has been filed with the division of the court, and if so, the date of such filing.

(c) Information Relating to Impeachment. An independent prosecutor shall advise the House of Representatives of any substantial and credible information which such independent prosecutor receives, in carrying out the independent prosecutor's responsibilities under this chapter, that may constitute grounds for an impeachment. Nothing in this chapter or section 4.0810 of this title shall prevent the Legislature or either Chamber thereof from obtaining information in the course of an impeachment proceeding.

**History:** 2000, PL 26-30.

#### **4.0806 Removal of an independent prosecutor-Termination of office.**

(a) Removal, report on removal.

(1) Grounds for removal. An independent prosecutor appointed under this chapter may be removed from office only by the personal action of the Attorney General and only for good cause, physical or mental disability (if not prohibited by law protecting persons from discrimination on the basis of such a disability), or any other condition that substantially impairs the performance of such independent prosecutor's duties.

(2) Report to division of the court and Legislature. If an independent prosecutor is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution postpone or refrain from publishing any or all of the report. The division of the court may release any or all of such report in accordance with section 4.0804(h)(2).

(3) Judicial review of removal. An independent prosecutor removed from office may obtain judicial review of the removal in a civil action commenced in the High Court of American Samoa. A member of the division of the court may not hear or determine any such civil action or any appeal of a decision in any such civil action. The independent prosecutor may be reinstated or granted other appropriate relief by order of the court.

(b) Termination of Office.

(1) Termination by action of independent prosecutor. An office of independent prosecutor shall terminate when:

(A) the independent prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent prosecutor or accepted by such independent prosecutor under section 4.0804(e), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Office of the Attorney General to complete such investigations and prosecutions; and

(B) the independent prosecutor files a final report in compliance with section 4.0804(h)(1)(B).

(2) Termination by division of the court. The division of the court, either on its own motion or upon the request of the Attorney General, may terminate an office of independent prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of such independent prosecutor or accepted by such independent prosecutor under section 4.0804(c), and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Office of the Attorney General to complete such investigations and prosecutions. At the time of such termination the independent prosecutor shall file the final report required by section 4.0804(h)(1)(B). If the Attorney General has not made a request under this paragraph, the division of the court shall determine on its own motion whether termination is appropriate under this paragraph no later than 2 years after the appointment of an independent prosecutor, at the end of the succeeding 2-year period, and thereafter at the end of each succeeding 1-year period.

(c) Audits.

(1) On or before June 30 of each year, an independent prosecutor shall prepare a statement of expenditures for the 6 months that ended on the immediately preceding March 31. On or before December 31 of each year, an independent prosecutor shall prepare a statement of expenditures for the fiscal year that ended on the immediately preceding September 30. An independent prosecutor whose office is terminated prior to the end of the fiscal year shall prepare a statement of expenditures on or before the date that 90 days after the date on which the office is terminated.

(2) The Territorial Auditor shall:

(A) conduct a financial review of a mid-year statement and a financial audit of a year-end statement and statement on termination, and

(B) report the results to the Committees on the Judiciary of the Senate and House of Representatives not later than 90 days following the submission of each such statement.

**History:** 2000, PL 26-30.

#### **4.0807 Relationship with Office of the Attorney General.**

(a) Suspension of other investigations and proceedings. Whenever a matter is in the prosecutorial jurisdiction of an independent prosecutor or has been accepted by an independent prosecutor under section 4.0804(e), the Attorney General, and all other officers and employees of the Office of the Attorney General shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 4.0804(d)(1), and except insofar as such independent prosecutor agrees in writing that such investigation or proceedings may be continued by the Office of the Attorney General.

(b) Presentation as Amicus Curiae Permitted. Nothing in this chapter shall prevent the Attorney General from making a presentation as amicus curiae to the court as to issues of law raised by any case or proceeding in which an independent prosecutor participates in an official capacity or any appeal of such a case or proceeding, except in the event the Attorney General is the subject of the case or proceeding.

**History:** 2000, PL 26-30.

#### **4.0808 Severability.**

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by such invalidation.

**History:** 2000, PL 26-30.

**4.0809 Assignment of judges to division to appoint independent prosecutor.**

(a) Appointing division. Beginning with the two-year period commencing on the effective date of this section, three justices, associate judges or district court judges shall be assigned for each successive two-year period to a division of the High Court of American Samoa to be the division of the court for the purpose of appointing independent prosecutors. The Clerk of the High Court shall serve as the clerk of such division of the court and shall provide such services as are needed by such division of the court.

(b) Other judicial assignments. Except as provided under subsection (e) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

(c) Assignment. The Chief Justice shall designate and assign three justices, associate judges or District Court judges to such division of the court. The Chief Justice may assign himself and/or retired justices and judges to the division.

(d) Vacancies. Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy occurs and in the same manner as initial assignments to such division were made.

(e) Recusal. Except as otherwise provided in this chapter, no member of such division of the court who participated in a function conferred on the division under this chapter involving an independent prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such independent counsel while such independent prosecutor is serving in that office of which involves the exercise of such independent prosecutor's official duties regardless of whether such independent prosecutor is still serving in that office.

**History:** 2000, PL 26-30.

**Chapter 09**

**(RESERVED)**

**Chapter 10**

**ADMINISTRATIVE PROCEDURES**

**Sections:**

- 4.1001 Definitions.**
- 4.1002 Duty to make rules.**
- 4.1003 Publication of rules.**
- 4.1004 Notice of intended action.**
- 4.1005 Hearing.**
- 4.1006 Petitions for issuance, amendment, or repeal of rules.**

- 4.1007 Statute of limitations.**
- 4.1008 Filing requirements.**
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**4.1001 Definitions.**

As used in this chapter:

(a) “Agency” means each board, commission, department or officer of the government, other than the legislature or the courts, authorized by law to make rules or to determine contested cases.

(b) “Contested case” means a proceeding including but not limited to ratemaking, price fixing and licensing, in which the legal rights, duties, or privileges of a party are determined.

(c) “License” includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.

(d) “Licensing” includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(e) “Party” means each person or agency named or admitted as a party, or person seeking and entitled as of right to be admitted as a party.

(f) “Person” means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character, other than an agency.

(g) “Rule” means each agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practical requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, or intraagency memoranda.

**History:** 1969, PL 11-55.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1002 Duty to make rules.**

Each agency of the government shall:

(1) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(2) adopt rules stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1003 Publication of rules.**

The Secretary of American Samoa shall compile, index, and publish all effective rules adopted by each agency. Revised or supplemented compilations shall be published at least once every 2 years. Compilations shall be made available upon request to agencies and officials of the government free of charge and to other persons at prices fixed by the Secretary to cover mailing and publication costs.

**History:** 1969, PL 11-55.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1004 Notice of intended action.**

Prior to the adoption, amendment, or repeal of any rule, the agency shall give at least 20 days notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings and shall be publicized in all news or broadcasting media operated by the government.

**History:** 1969, PL 11-55.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1005 Hearing.**

Prior to the adoption, amendment, or repeal of any rule, the agency shall afford all interested persons reasonable opportunity to submit data, views, and arguments, orally or in writing. In case of substantive rules, opportunity for oral hearings shall be granted if requested by 25 persons, by a governmental subdivision or agency or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule.

**History:** 1969, PL 11-55.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1006 Petitions for issuance, amendment, or repeal of rules.**

Each agency shall afford any interested person the opportunity to petition for the issuance, amendment, or repeal of a rule.

**History:** 1969, PL 11-55.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1007 Statute of limitations.**

A contest of any rule on the ground of noncompliance with the procedural requirements of 4.1002 and 4.1004 through 4.1010 and 4.1020 must be commenced within 2 years from the effective date of the rule.

**History:** 1969, PL 11-55.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1008 Filing requirements.**

Each agency shall file with the Secretary of American Samoa, the clerk of the House of Representatives, and the secretary of the Senate a certified copy of each rule adopted by it, and of all rules in effect on the effective date of this chapter.

**History:** 1969, PL 11-55; 1972, PL 12-38 § 1.

**Case Notes:**

An administrative rule adopted pursuant to the rulemaking process in the Administrative Procedure Act has the force and effect of law. A.S.C.A. §§ 1.0201(3), 4.1001-4.1010. *Bryant v. Southwest Marine of Samoa, Inc.*, 23 A.S.R.2d 55 (1992).

**4.1009 Validity and effect of rules—Recommendations of Legislature.**

(a) No rule adopted after the effective date of this chapter is valid unless adopted in substantial compliance with 4.1002 and 4.1004 through 4.1010, and 4.1020.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as required in 4.1020. This provision is not applicable in favor of any person or party who has actual knowledge of the rule, order or decision.

(c) Each rule adopted after the effective date of this chapter shall be effective 20 days after filing, except that:

(1) If a later date is required by statute or specified in the rule, the later date shall be the effective date.

(2) Subject to applicable constitutional or statutory provisions, an emergency rule adopted pursuant to 4.1010 shall be effective immediately upon filing with the Secretary of American Samoa, the Clerk of the House of Representatives and the Secretary of the Senate, or at a stated date less than 20 days thereafter, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of the reasons therefor shall be filed with the rule.

(d) The Legislature may by letter or resolution make appropriate suggestions for changes, amendments, repeals, or additions to the rules.

**History:**1969, PL 11-55; 1972, PL 12-38 § 1.

#### **4.1010 Emergency rules.**

(a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing, pursuant to subparagraph (2) of 4.1009 (c), or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, and an identical rule may be adopted under sections 4.1004 and 4.1005.

(b) The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

**History:**1969, PL 11-55; 1972, PL 12-38 § 1.

#### **4.1011 Administrative manual.**

The Governor shall cause to be prepared and maintained an administrative manual, which sets forth the duties, responsibilities, objectives, purposes and internal operations of each of the executive departments, boards, commissions, and agencies and instrumentalities. It shall also contain the rules adopted by the Governor under any law. The Governor shall provide for the distribution of the manual to the officials who need it.

**History:**1977, PL 15-23 § 1.

#### **4.1020 Public inspection rights and requirements.**

(a) Each agency shall make available for public inspection all rules and all written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions, and all final orders, decisions, and opinions.

(b) The Secretary of American Samoa shall keep a permanent register of the rules adopted by the various agencies, which shall be open to public inspection.

**History:**1969, PL 11-55; 1972, PL 12-38 § 1.

#### **4.1025 Contested case—Hearing—Notice.**



(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of the time, place and nature of the hearing and a short and plain statement of the matters asserted.

**History:**1969, PL 11-55.

**Case Notes:**

Both the territorial Administrative Procedure Act and the Department of Public Safety's Standard Operating Procedure, a statement of internal management not defined as an administrative rule under the APA, afford a person under investigation the basic due-process rights of notice of the hearing, including a concise statement of allegations, and a right to a hearing at which there is an opportunity to respond and present evidence and argument on all issues involved and conduct cross-examination. A.S.C.A §§ 4.1025, 4.1026; SOP §§ 4.1.3, 4.1.4. *Sala v. American Samoa Gov't*, 21 A.S.R.2d 50.

**4.1026 Right to hearing.**

All parties shall be afforded the opportunity to respond and present evidence and argument on all issues involved, and to conduct such cross-examination as is necessary for a full and true disclosure of the facts.

**History:**1969, PL 11-55.

**Case Notes:**

Both the territorial Administrative Procedure Act and the Department of Public Safety's Standard Operating Procedure, a statement of internal management not defined as an administrative rule under the APA, afford a person under investigation the basic due-process rights of notice of the hearing, including a concise statement of allegations, and a right to a hearing at which there is an opportunity to respond and present evidence and argument on all issues involved and conduct cross-examination. A.S.C.A §§ 4.1025, 4.1026; SOP §§ 4.1.3, 4.1.4. *Sala v. American Samoa Gov't*, 21 A.S.R.2d 50.

**4.1027 Rules of evidence.**

Strict rules of evidence need not be followed, but the receipt of evidence shall be guided by the rules of evidence applicable in the trial division of the High Court of American Samoa.

**History:**1969, PL 11-55.

**4.1028 Effect to rules of privilege.**

Agencies shall give effect to the rules of privilege recognized by law.

**History:**1969, PL 11-55.

**4.1029 Official notice of facts.**

Official notice may be taken of judicially cognizable facts.

**History:**1969, PL 11-55.

**4.1030 Findings, decisions, and orders.**

(a) A final decision or order adverse to a party in a contested case shall be in writing and stated in the record.

(b) A final decision shall include findings of fact and conclusions of law.

(c) If findings of fact are set forth in statutory language, they shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(f) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. An agency's experience, technical competence, and specialized knowledge may be used in the evaluation and interpretation of the evidence.

**History:** 1969, PL 11-55.

**4.1031 Notice of decision or order to parties.**

All parties shall be notified, either personally or by mail, of any decision or order and shall, upon request, be furnished with a copy of the same.

**History:** 1969, PL 11-55.

**4.1032 Contents of record.**

In a contested case, the record shall include:

- (1) all pleadings, motions, proposed findings, exceptions, objections, briefs, and memoranda filed by the parties;
- (2) a summary of the evidence received or considered and of matters officially noticed at any stage of the proceedings;
- (3) any intermediate rulings and any decision, opinion or report by the officer presiding at the hearing;
- (4) the final decision or order; and
- (5) any other relevant material ordered into the record by the agency or its hearing officer.

**History:** 1969, PL 11-55.

**4.1033 Communications prohibited and allowed.**

(a) Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency, who are assigned to render a decision or to make findings of fact or conclusions of law in a contested case, may not communicate, directly or indirectly, with any person or party in connection with any issue of fact, or with any party or representative of a party in connection with any issue of law, except upon notice and opportunity for all parties to participate.

(b) Except as provided in 4.1034 and subsection (a), an agency member may communicate with other members of the agency and may have the aid and advice of any disinterested employee of the agency.

**History:** 1969, PL 11-55.

**4.1034 Separation of functions.**

No officer, employee, or agent engaged in the performance of any investigative or prosecuting function for an agency in a contested case may, in that or any factually related case, participate or advise in any final or recommended agency decision, except as witness or counsel in proceedings where all parties have notice and the opportunity to participate.

**History:** 1969, PL 11-55.

**Case Notes:**

The Attorney General's Office may not simultaneously act as both counsel and legal advisor to a government agency. A.S.C.A. § 4.1034. *Leiato v. Personnel Advisory Board*, 21 A.S.R.2d 25.

**4.1035 Expiration of license sought to be renewed.**

When a licensee has made timely application for the renewal of a license, the existing license shall not expire until the application has been finally determined by the agency, or, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order.

**History:** 1969, PL 11-55.

**4.1036 Prerequisites to revocation, suspension, annulment, or withdrawal of license.**

No revocation, suspension, annulment, or withdrawal of any license shall be lawful unless the agency gave the licensee reasonable notice of facts or conduct which warrant the intended action and an opportunity to show compliance with all lawful requirements for the retention of the license.

**History:** 1969, PL 11-55.

**4.1037 Emergency suspensions of license.**

If an agency finds that the public health safety, or welfare requires emergency action, and incorporates such a finding in its order, the agency may order a summary suspension of a license for a period not to exceed 120 days, pending revocation proceedings or other action.

**History:** 1969, PL 11-55.

**4.1040 Right to judicial review—Other means of review not limited.**

(a) A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case shall be entitled to judicial review under this section and 4.1041 through 4.1044.

(b) This section does not limit the utilization of, or the scope of, judicial review available under other means of review, redress, relief or trial de novo provided by law, and judicial review may not be sought under this section and 4.1041 through 4.1044 of any proceeding for which, or by any person for whom, the law specifically provides other adequate means of judicial review.

(c) A preliminary, procedural or intermediate agency action or ruling shall be immediately reviewable only if review of the final agency decision would not provide an adequate remedy.

**History:** 1969, PL 11-55.

**Case Notes:**

Appeal under provisions of 4.1040 et seq. From the final decision of the personnel advisory board permitted. *Reed v. Personnel Advisory Board*, ASR (1977)

Employer's appeal from decision of Workmen's Compensation Board awarding benefits to claimant could not be had under this subchapter where 32.0652 specifically provided for review of a decision of the board if the decision was not in accordance with the law. *In re Westerlund v. Scanlan*, 4 ASR 998 (1975).

Insofar as territorial statute prescribing final decision by administrative agency as prerequisite to judicial review simply gave the agency the right to insist on exhaustion of its internal review procedures, it was waivable by the agency, but insofar as it incorporated the rule that courts should decide real controversies it could not be waived. *A.S.C.A. § 4.1040(a). Pago Petroleum Products, Inc, v. American Samoa Power Authority*, 10 A.S.R.2d 75 (1989).

Administrative agency decision is final, for the limited purpose of giving rise to a justifiable controversy, even if there were procedural defects in the process by which it was made, provided that it is meant to reflect the settled position of the agency and leaves the parties genuinely adverse. A.S.C.A. § 4.1040(a). *Pago Petroleum Products, Inc., v. American Samoa Power Authority*, 10 A.S.R.2d 75 (1989).

Decision by board of directors of administrative agency to reject bidder's claim of entitlement to fuel supply contract was final and gave rise to a justifiable controversy, notwithstanding the absence of a quorum at the board meeting, where (1) agency's chief executive officer implemented the decision by canceling the original award and issuing an invitation for new bids, and (2) in subsequent litigation, agency did not assert its continuing discretion to review the decision but instead sought a judicial order that the new bidding process go forward. A.S.C.A. § 4.1040(a). *Pago Petroleum Products, Inc., v. American Samoa Power Authority*, 10 A.S.R.2d 75 (1989).

Administrative agency decision to issue a new invitation for bids for fuel supply contract was a final decision rejecting bidder's contention that it had a right to the contract as a result of being the low bidder in the original bidding procedure. A.S.C.A. § 4.1040(a). *Pago Petroleum Products, Inc., v. American Samoa Power Authority*, 10 A.S.R.2d 75 (1989).

Whether an administrative agency decision was lawfully and whether it was final are separate questions; a decision may be substantively illegal and yet be the real and settled position of the agency. A.S.C.A. § 4.1040(a). *Pago Petroleum Products, Inc., v. American Samoa Power Authority*, 10 A.S.R.2d 75 (1989).

An interlocutory appeal of an agency action or ruling is available only if review of the final agency decision would not provide an adequate remedy. A.S.C.A. § 4.1040(c). *Sala v. American Samoa Government*, 20 A.S.R.2d 80 (1992).

Being an extraordinary remedy, a preliminary injunction is granted only when clearly warranted and may be denied when administrative remedies have not been exhausted. A.S.C.A. § 4.1040. *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

A preliminary injunction is unwarranted when an environmental organization fails to plead specific harm to itself or its members and when it did not seek a stop order from the territorial Development Planning office. A.S.C.A. §§ 4.1040, 24.0505(c). *Le Vaomatua v. American Samoa Government*, 23 A.S.R.2d 11 (1992).

#### **4.1041 Petition-Stay of agency decision.**

(a) Proceedings for review may be instituted by filing a petition in the appellate division of the High Court of American Samoa within 30 days after the issuance of the decision to be reviewed, or if rehearing or reconsideration is requested, within 30 days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

(b) The filing of a petition under this section shall not stay enforcement of the agency's decision. The agency may grant, or the court may order, a stay on appropriate terms.

**History:** 1969, PL 11-55.

#### **4.1042 Transmission of record.**

Within 30 days after service of the petition, or within further time allowed by the court, the agency shall transmit to the court the original or a certified copy of the record of the proceeding under review.

**History:** 1969, PL 11-55.

#### **4.1043 Review.**

(a) The review shall be confined to the record. Upon request by any party, the court shall receive briefs and hear oral argument. On motion of any party, the court may, in its discretion, receive any evidence necessary to supplement the record.

(b) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. In reviewing the agency's interpretation of the evidence, its factual inferences, and its conclusions of law, the court shall give

appropriate weight to the agencies experience, technical competence, and specialized knowledge.

**History:** 1969, PL 11-55.

#### **4.1044 Reversal or modification of decision.**

The court may reverse or modify the decision of the agency, or remand the case for further proceedings, if substantial rights of the petitioner have been prejudiced because the decision of the agency is;

- (1) in violation of applicable constitutional or statutory provisions;
- (2) in excess of the statutory authority of the agency;
- (3) made upon unlawful procedure;
- (4) affected by other error of law;
- (5) clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record; or
- (6) arbitrary, capricious or characterized by abuse of discretion.

**History:** 1969, PL 11-55.

#### **Case Notes:**

Court will examine administrative decision to determine if it is “arbitrary, capricious, or characterized by abuse of discretion”. Pan Am v. Barnett, ASR (1977).

An agency's head may only reassign an employee involuntarily with the concurrence of the Director of Human Resources and with a finding that the reassignment be in the best interests of the government; failure to follow the regulatory standard is arbitrary and an error of law. A.S.C.A. § 4.1044(6); A.S.A.C. § 4.0804(b). Leiato v. Personnel Advisory Board, 21 A.S.R.2d 25 (1992).

## **Chapter 11**

### **PUBLIC RECORDS**

#### **Sections:**

- 4.1101 Duties.**
- 4.1102 Definitions.**
- 4.1103 Oaths and acknowledgments.**
- 4.1104 Rejection of offered instruments.**
- 4.1105 Records to be public-Inspection.**
- 4.1106 Appeal to High Court.**
- 4.1110 Duties.**
- 4.1111 Records to be provided by clerk of High Court.**
- 4.1112 Oaths and acknowledgments.**

#### **4.1101 Duties.**

(a) The Territorial Registrar shall have the following duties:

(1) He shall keep full and true records of all instruments authorized to be registered, recorded, or filed in his office, provided that the person offering any instrument for registration, recording or filing shall pay in advance the fee required by law.

(2) When any instrument is delivered to him for registration, filing, or recording, he shall endorse thereon the date and hour of such delivery and shall, as soon as possible, register, file, or record the same in full, including the endorsement, in the proper manner in a book kept for that purpose, with an alphabetical index.

(3) He shall keep a seal of office with which he shall stamp all instruments registered and all copies of records certified by him.

(4) He shall be the custodian of the archives of, and register volumes of, the government, including but not limited to, the registers of native land titles, land transfers, court grants, miscellaneous, matai titles, native leases, corporations, and all other related documents and registers of the government.

(5) He shall be the secretary and a member of the land commission.

(6) He shall have all of the duties formerly attached to the registrar of titles and all the duties of the clerk of the High Court and or the registrar of titles as described in 1.0401 et seq., 4.0325, 4.1101 et seq., 27.1510, 27.1511, Title 30, 37.0101 — 37.0113, 37.0120, and 37.0210.

(b) In addition to the duties described in subsection (a), the Territorial Registrar shall have such other duties as the Governor or his authorized representative may from time to time designate.

**History:** 1962, PL7-31, 1968, PL 10-53; 1968, PL 10-48.

**Research Guide:** For provisions regarding articles of incorporation being filed with the registrar, see 30.0111 — 30.0115, 30.0202, 30.0301 and 30.0306.

For provisions regarding matai title, powers and duties, see 1.0401 et seq.

#### **4.1102 Definitions.**

“Instrument,” when used in this chapter, unless the context clearly indicates a different meaning, includes any grant, certificate of title, conveyance, transfer, assignment, mortgage, lease, power of attorney, will, exemplification of will, letters testamentary or of administration, judgment, execution, sequestration, attachment, or a certified copy of any of the enumerated writings.

**History:** 1962, PL 7-31.

#### **4.1103 Oaths and acknowledgments.**

The Territorial Registrar and his authorized deputies may give oaths and take acknowledgments.

**History:** 1968, PL 10-53.

#### **4.1104 Rejection of offered instruments.**

The Territorial Registrar may reject any instrument appearing to be illegal or not entitled under the law to be registered, filed, or recorded.

**History:** 1962, PL7-31; 1968, PL 10-8.

#### **Case Notes:**

Under territorial statutes providing that the registrar should not record any instrument appearing to be illegal, but that any person aggrieved by any official action of the register could apply to the court "at any time" for direction or redress, a lessor would not prevail in an action for eviction based on non-recording of a lease where (1) the lease was initially recorded by the registrar's office; (2) an acting registrar later attempted retroactively to reject the lease, citing certain alleged illegalities; (3) upon trial of the eviction action, defendant invoked its right to judicial review of the registrar's action and the court found that the lease was not illegal and was therefore properly accepted for recordation. A.S.C.A. §§ 4.1104, 4.1106. *American Samoa Government v. Samoa Aviation, Inc.*, 11 A.S.R.2d 144 (1989).

#### **4.1105 Records to be public—Inspection.**

All books of registry, the records contained in them and the indexes of their contents shall be public records and open to the inspection of the public at the registration office, in the presence of the territorial registrar or one of his assistants during office hours.

#### **4.1106 Appeal to High Court.**

The Territorial Registrar or any person aggrieved by any official action of his may, at any time, apply to the High Court for direction or redress.

**History:** 1962, PL 7-31.

#### **Case Notes:**

Under territorial statutes providing that the registrar should not record any instrument appearing to be illegal, but that any person aggrieved by any official action of the register could apply to the court "at any time" for direction or redress, a lessor would not prevail in an action for eviction based on non-recording of a lease where (1) the lease was initially recorded by the registrar's office; (2) an acting registrar later attempted retroactively to reject the lease, citing certain alleged illegalities; (3) upon trial of the eviction action, defendant invoked its right to judicial review of the registrar's action and the court found that the lease was not illegal and was therefore properly accepted for recordation. A.S.C.A. §§ 4.1104, 4.1106. *American Samoa Government v. Samoa Aviation, Inc.*, 11 A.S.R.2d 144 (1989).

Assuming that deputy territorial registrar had the power to cancel the prior recordation of a lease had there been something genuinely wrong with it, an aggrieved party would have the right at any time to apply to the court for direction or redress, and the aggrieved party could exercise such right by alleging and proving in an action for eviction that the substantive bases for the cancellation were without merit. A.S.C.A. § 4.1106. *American Samoa Government v. Samoa Aviation, Inc. (Mem)*, 13 A.S.R.2d 65. A.S.C.A. § 37.2020 (1989).

#### **4.1110 Duties.**

The Registrar of Vital Statistics shall:

(1) be the custodian of and accurately maintain registers of all marriages, divorces, births, deaths, and adoptions, and such other registers as the Governor or his authorized representative may from time to time designate;

(2) upon request and payment of proper fees, furnish certified copies of such documents as he may have in his custody; and

(3) issue marriage licenses.

**History:** 1968, PL 10-53.

#### **4.1111 Records to be provided by clerk of High Court.**

The Clerk of the High Court shall forward to the Registrar of Vital Statistics certified copies of all decrees of the court related to divorce, adoption, or any other matter which directly relates to vital statistics, for the use of the Registrar of Vital Statistics in the maintenance of accurate records.

**History:** 1968, PL 10-53.

#### **4.1112 Oaths and acknowledgments.**

The Registrar of Vital Statistics and his authorized deputies may give oaths and take acknowledgments.

**History:** 1968, PL 10-53.

## Chapter 12

### ARCHIVES AND RECORDS MANAGEMENT

#### Sections:

- 4.1201 **Definitions.**
- 4.1202 **Office of archives and records management-Position of archivist created.**
- 4.1203 **Archivist-Appointment.**
- 4.1204 **Archives identified.**
- 4.1205 **Archivist-Duties and responsibilities.**
- 4.1206 **Heads of agencies— Responsibilities.**
- 4.1207 **Governor to accept gifts.**
- 4.1208 **Penalty.**

**Reviser’s Comment:** Section 1 of PL 17-32 created chapter 12 in Title 4.

#### **4.1201 Definitions.**

As used in this chapter, unless the context otherwise requires, the following meanings apply:

(1) “Agency” means a department, office, agency, board, commission, institution, instrumentality, or other organization, in the executive, legislative, or judicial branch of the government.

(2) “Archives” means those official records or other items that have been determined in accordance with this chapter to have sufficient historical or other value to warrant their continued preservation by the government, and have been deposited or offered for deposit with the national archives and records service, pending establishment of a government archives.

(3) “Archivist” means the archivist of American Samoa.

(4) “National Archives and Records Service” means the national archives and records service of the General Services Administration of the government of the United States of America.

(5) “Public records” as defined by subsection 46.4601(g) includes the definition of archives and records of this chapter.

(6) “Records” means a document, written or printed book, drawing, map or plan, photograph, microfilm, sound recording, magnetic media or other documentary materials, regardless of physical form or characteristic, made or received by an agency of the government in pursuance of law or in connection with the transaction of public business and preserved or appropriated to be preserved by that agency or its legitimate successor as evidence of the organization functions, policies, decisions, procedures, operations, or other activities of the government or because of the informational value of data in them. Excluded from this definition are library and museum materials made or acquired and preserved solely for reference or exhibit, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents.

(7) “Records management” means all phases of management from the creation of records to final disposition, including transfer to the national archives and records service.

**History:** 1982, PL 17-32 § 2.



**4.1202 Office of Archives and Records Management—Position of archivist created.**

There is established within the office of the Governor the position of the archivist of American Samoa, who exercises program responsibility for records management. These program responsibilities include maintenance and disposition of records; identification of the government; vital records management; management of records equipment and supplies; and communications management under subparagraph 4.1205(1) (G) of this chapter.

**History:** 1982, PL 17-32 § 3.

**4.1203 Archivist—Appointment.**

The archivist possesses sufficient technical knowledge, skill, experience and other managerial qualifications required to carry out purposes of this chapter. The archivist functions under the program direction of the Governor.

**History:** 1982, PL 17-32 § 4.

**4.1204 Archives identified.**

The archivist identifies the archives of the government, which will be transferred from any agency to the national archives and records service pending establishment of an archive of the government, and he is responsible for the management of all other materials transferred to his custody.

**History:** 1982, PL 17-32 § 5.

**4.1205 Archivist—Duties and responsibilities.**

The archivist shall adopt rules under the Administrative Procedure Act, 4.1001 et seq., which:

- (1) establish standards, regulations, and procedures for:
    - (A) the economical and efficient use and maintenance of records;
    - (B) the identification and selection of records for transfer to the national archives and records service, documents, material or items of whatever kind and from any source, that have sufficient historical or other value to warrant their preservation by the government;
    - (C) the disposal of records which do not, or will not after a lapse of time, possess sufficient administrative, legal, fiscal, historical or other research value to warrant their further retention; except that, records known to pertain to unsettled accounts, claims, incomplete investigations, audits, or litigation may not be destroyed until resolution has been made;
    - (D) the selection and protection of records essential for the continuity of government operations and the protection of the rights and interests of individuals in the event of an emergency;
    - (E) the reproduction and maintenance of records by micrographic, photographic, magnetic or other processes. Reproductions made in compliance with these standards have the same force and effect as the originals would have and are treated as originals for audit, admissibility in evidence, and other similar purposes;
    - (F) the standardization of equipment and supplies necessary for records maintenance;
- and

(G) the efficient management of communications, including directives, correspondence, printing and publications, reports, forms, mail and all paperwork processes and systems;

(2) identify, and select the archives of the government as a part of the records retention program;

(3) establish, maintain, and operate a government records center for storing and servicing records for agencies pending disposition records for agencies pending disposition as authorized in accordance with paragraphs (1) and (2) of this section;

(4) inspect or survey the records and records maintenance and disposition practices of all agencies, and report and make recommendations thereon to the head of the agency, with copies of the report provided to the Governor and the Legislature. Records, the use or access of which is restricted by law or rule for reasons of security or the public interest, may be inspected or surveyed by the archivist subject to the same restrictions imposed upon employees of the agency holding the records.

**History:** 1982, PL 17-32 § 6.

#### **4.1206 Heads of agencies—Responsibilities.**

(a) The heads of agencies submit to the archivist for administration, disposition, and preservation the records in their custody not needed for the transaction of current business, in accordance with standards and policies established under paragraphs (1) and (2) of 4.1205 of this chapter. In addition the agency head shall:

(1) establish and maintain an active continuing program in accordance with standards and procedures established by the archivist for the economical and efficient management, maintenance, and disposition of the records of the agency;

(2) make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency necessary and designed to provide direction, guidance, and information, or to protect the legal and financial rights of the government, and of persons directly affected by the agency's activities.

(b) Notwithstanding any other provision of law, an official of the government who is authorized to certify on the basis of records in his custody may certify the facts on the basis of records that have been transferred by him or a predecessor to the archivist, and may direct the archivist to certify the facts and to make administrative determinations on the basis of records that have been transferred by him or a predecessor to the archivist, and may direct the archivist to certify the facts and to make administrative determinations on the basis of records transferred to the national archives and records service.

**History:** 1982, PL 17-32 § 7.

#### **4.1207 Governor to accept gifts.**

The Governor may accept as archives any gifts, devises, bequests, or contributions of documents, materials or other items of historical or other value and offer them for transfer to the national archives and records service.

**History:** 1982, PL 17-32 § 8.

#### **4.1208 Penalty.**

A person violating a provision of this chapter commits the crime of tampering with a public record under 46.4612 punishable as a class A misdemeanor.

History: 1982, PL 17-32 § 9.

## Chapter 13

### DEVELOPMENTAL DISABILITIES

#### Sections:

- 4.1301 Findings and purpose.
- 4.1302 Definitions.
- 4.1303 Territorial developmental disabilities planning council.
- 4.1304 Membership on the territorial council.
- 4.1305 Community services for the developmentally disabled.
- 4.1306 Other systems within the developmental disability system.
- 4.1307 Rights of persons with developmental disabilities.
- 4.1308 Authority of director to enter into agreements--Make dispositions of territorial resources.
- 4.1309 Limitation of liability.
- 4.1310 Standards for services.

#### 4.1301 Findings and purpose.

The Legislature finds that:

(a) The Territory of American Samoa has a responsibility to provide services for its developmentally disabled citizens in order to aid them in living as complete and normal lives as possible.

(b) Several departments of the Territory are responsible for various services to the developmentally disabled, namely the department of health provides health services, the department of education provides educational services, and the department of human resources provides vocational rehabilitation and other social services.

(c) Lack of coordination among the services and planning activities of the various departments of the Territory results in gaps in the spectrum of needed services, duplication of services, lack of clarity in responsibility for services, and poorly articulated inter-agency programs, thereby reducing the quality of programs for the developmentally disabled.

(d) Because of specific mandates of the departments, it is essential that a body responsible for coordinating services and planning for the developmentally disabled be established outside the departments responsible for services.

(e) There exists within the Department of Human Resources for administrative purposes only, a territorial planning council on developmental disabilities appointed by the Governor and mandated by federal legislation, supported in large part by federal moneys and required by federal law to provide coordination and planning in the field of developmental disabilities.

(f) The purpose of this chapter is to establish the territorial planning council on developmental disabilities and the agency responsible for coordinating services to the developmentally disabled residents of American Samoa.

History: 1991, PL 22-17.

#### 4.1302 Definitions.

As used in this chapter unless the context requires otherwise:

(a) "Active treatment" means provision of services as specified in an individualized service plan. These services may include, but are not limited to, activities, experiences, and therapy which are part of a professionally developed and supervised program of health, social, habilitative, and developmental services.

(b) "Case management services" means services to persons with developmental

disabilities that assist them in gaining access to needed social, medical, legal, educational, and other services, and includes:

(1) Follow-along services which assure, through a continuing relationship between an agency or provider and a person with a developmental disability and the person's parent, if the person is a minor, or guardian, if a guardian has been appointed for the purpose, that the changing needs of the person and the family are recognized and appropriately met.

(2) Coordinating and monitoring services provided to persons with developmental disabilities by two or more persons, organizations, or agencies.

(3) Providing information to persons with developmental disabilities about availability of services and assisting the persons in obtaining the services.

(c) "Department" means the Department of Human Resources.

(d) "Developmental disabilities" means a severe, chronic disability of a person which;

(1) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) is manifested before the person attains age twenty-two;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic sufficiency; and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(e) "Director" shall mean the director of the Department of Human Resources.

(f) "Habilitation" means the process by which the staff of an agency assists an individual to cope more effectively with the demands of his or her own person and environment and to raise the level of his or her physical, mental, and social functioning. Habilitation includes, but is not limited to, programs of formal structured education and treatment.

(g) "Individualized service plan" means the written plan required by section 4.1307.

(h) "Individually appropriate" means responsive to the needs of the person as determined through interdisciplinary assessment and provided pursuant to an individualized service plan.

(i) "Interdisciplinary team" means a group of persons that is drawn from or represents those professions, disciplines, or service areas that are relevant to identifying an individual's needs and designing a program to meet them, and is responsible for evaluating the individual's needs, developing and individualized service plan to meet them, periodically reviewing the individual's response to the plan, and revising the plan accordingly. A complete team includes the individual being served, unless clearly unable to participate; the individual's family, unless their participation has been determined to be inappropriate; those persons who work most to provide service to the individual, including direct-care or direct-contact staff; and any other persons whose participation is relevant to identifying the needs of the individual and devising ways to meet them.

(j) "Least restrictive" means the least intrusive and least disruptive intervention into the life of a person with developmental disabilities that represents the least departure from normal patterns of living that can be effective in meeting the person's developmental needs.

(k) "Least restrictive environment" means that environment that represents the least departure from normal patterns of living that can be effective in meeting the individual's needs.

(l) "Monitor" means to conduct a systematic, coordinated, objective, qualitative review of services provided by any person, agency, or organization.

(m) "Representative" means any individual who can advise and advocate for a person with developmental disabilities and who shall serve at the request and pleasure of such

person; provided that if the person with developmental disabilities is a minor or is legally incapacitated and has not requested a representative, the parent or guardian of the person may request a representative to assist on behalf of the person with developmental disabilities.

(n) "Residence" or "residential" means the living space occupied by the person with a developmental disability, including single-person homes, natural family homes, care homes, group homes, foster homes, institutional facilities, and all other types of living arrangements.

(o) "Services" means appropriate assistance provided to a person with a developmental disability in the least restrictive, individually appropriate environment to provide for basic living requirements and continuing development of independence or interdependent living skills of the person. These services include, but are not restricted to: case management; residential, developmental, and vocational support; training; habilitation; active treatment; day treatment; day activity; respite care; domestic assistance; attendant care; rehabilitation; speech, physical, occupational and recreational therapy; recreational opportunities; counseling, including counseling to the person's family, guardian, or other appropriate representative; development of language and communications skills; interpretation; transportation; and equipment.

**History:** 1991, PL 22-17.

#### **4.1303 Territorial developmental disabilities planning council.**

The territorial developmental disabilities planning council shall be placed in the Department of Human Resources for administrative purposes only and assigned the following responsibilities:

(a) Planning. The territorial council shall:

(1) develop, prepare, adopt, and periodically review and revise, as necessary, the territorial plan for developmentally disabled (hereinafter called the territorial plan) in conformance with federal substantive and procedural requirements therefor. The territorial council shall transmit the territorial plan to the Governor for approval, and upon approval shall be submitted to the U.S. Department of Health and Human Services-Administration on Development Disabilities and any other concerned federal government department for appropriate approval. The territorial plan and revisions thereto shall be effective upon the Governor's approval thereof. The territorial plan shall include establishment of goals and priorities of the Territory in meeting the needs of the developmentally disabled, including the establishment of priorities for the distribution of public funds for comprehensive services to the developmentally disabled within the Territory and other matters deemed necessary to achieve normalization of lives of the developmentally disabled. The territorial plan shall in addition provide for coordinated delivery and establishment of comprehensive services, facilities, and programs for the developmentally disabled;

(2) review and comment upon implementation plans prepared and carried out by the various departments of the Territory in carrying out the territorial plan for the developmentally disabled; and

(3) review and comment upon any other territorial plans which affect services to the developmentally disabled.

(b) Coordination of services provided by departments and private agencies. The council shall:

(1) identify services duplicated by departments and private agencies and coordinate and assist in the elimination of unnecessary duplication;

(2) encourage efficient and coordinate use of federal, territorial, and private resources in the provision of services;

(3) designate areas of responsibility for services to both public and private agencies serving developmentally disabled clients, reviewing such designations as necessary. Identify gaps in services to the developmentally disabled and coordinate responsibilities of various public or private agencies for such missing services; and

(4) insure that implementation planning by the various departments is effectively coordinated and that interdepartmental programs receive the full support of all departments involved.

(c) Evaluation. The council shall:

(1) developmentally disabled; and

(2) monitor, evaluate, and comment upon implementation plans of the various public and private agencies for the monitor all ongoing projects relating to developmental disabilities of the various public and private agencies.

(d) Advocacy. The council shall:

- (1) advocate for the needs of the developmentally disabled before the Legislature and the public and to the Governor; and
- (2) act in an advisory capacity to the Governor, the Legislature, and all concerned department heads on all issues affecting the developmentally disabled.
- (3) Report. The council shall:
- (4) prepare and submit annual reports to the Governor, the Legislature, and all concerned department heads on the implementation of the territorial plan. The report presented to the Legislature shall be submitted ten days prior to the convening of the Legislature;
- (5) prepare and submit to the United States Secretary of Health, Education and Welfare, through the Governor, any periodic reports the Secretary may reasonably request;
- (6) prepare other reports necessary to accomplish its duties under this chapter.
- (7) rules. The council shall adopt, amend, and repeal rules necessary for the implementation of this chapter.

**History:** 1991, PL 22-17.

#### **4.1304 Membership on the territorial council.**

The Territorial council shall be appointed by the Governor and shall be residents of the Territory. The council shall at all times include in its membership representatives of the principal territorial agencies (including the territorial agency that administers funds provided under the Federal Rehabilitation Act of 1973, the territorial agency that administers funds provided under the Federal Education of the Handicapped Act, the territorial agency that administers funds provided under the Federal Older Americans Act of 1965, and the territorial agency that administers funds provided under Title XIX of the Federal Social Security Act for persons with developmental disabilities), higher education training facilities, each university affiliated program or satellite center in the Territory, the territorial protection and advocacy system established under section 142 of the developmental disabilities act, local agencies, and nongovernmental agencies and private nonprofit groups concerned with services for persons with developmental disabilities.

- (a) At least one-half of the membership of the council shall consist of consumers who:
  - (1) are persons with developmental disabilities or their parents; or
  - (2) immediate relatives or guardians of such persons, and who are not employees of a territorial agency which receives funds or provides services under the territorial council, or managing employees, or persons with an ownership or controlling interest of any other entity which receives funds or provides services under the territorial council.
- (b) Of the members of the council described in paragraph (a):
  - (1) at least one-third shall be persons with developmental disabilities; and
  - (2) at least one-third shall be immediate relatives or guardians of such person, of which at least one shall be an immediate relative or guardian of an institutionalized person with developmental disabilities.
- (c) The members of the Territorial Council shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their duties under this chapter.

**History:** 1991, PL 22-17.

#### **4.1305 Community services for the developmentally disabled.**

The department shall develop and administer a community service delivery system which may design, implement, administer, coordinate, monitor, and evaluate the programs and services administered by the department for persons with developmental disabilities.

**History:** 1991, PL 22-17.

#### **4.1306 Other systems within the developmental disability system.**

The department may create other systems as required to implement the services necessary for persons with developmental disabilities.

**History:** 1991, PL 22-17.

**4.1307 Rights of persons with developmental disabilities.**

- (a) Persons with developmental disabilities shall have the following rights:
- (1) to receive the least restrictive, individually appropriate services, including a program of activities outside the residence in accordance with the person's individualized service plan;
  - (2) to reside in the least restrictive, individually appropriate residential alternative located as close as possible to the person's home community within the Territory;
  - (3) to the extent it is individually appropriate, to:
    - (A) interact with nondisabled persons in a nontreatment, nonservice-oriented setting;
    - (B) live with or in close proximity to nondisabled persons; and
    - (C) live in a setting which closely approximates those conditions available to nondisabled persons of the same age;
  - (4) to have reasonable access to review medical, service, and treatment files and to be informed of diagnosis;
  - (5) to participate in the development of the individualized service plan, if able to participate, or to be represented by a parent, guardian, or other representative as appropriate;
  - (6) to receive a copy of the person's individualized service plan; and
  - (7) to privacy and confidentiality, to the extent possible, in connection with services provided to the person.
- (b) Rights listed in this chapter shall not be construed to replace or limit any other rights, benefits, or privileges, including other statutory and regulatory due process rights and protection, to which a person with a developmental disability or mental retardation may be entitled.
- (c) The enumeration or granting of these rights does not guarantee the provision of services.

**History:** 1991, PL 22-17.

**4.1308 Authority of director to enter into agreements--Make dispositions of territorial resources.**

- (a) The director may:
- (1) enter into agreements with the federal government, other territorial departments and agencies, and the counties;
  - (2) enter into assistance agreements with private persons, groups, institutions, or corporations;
  - (3) purchase services required or appropriate under this chapter from any private persons, groups, institutions, or corporations;
  - (4) allocate and expend any resources available for the purposes of this chapter; and
  - (5) do all things necessary to accomplish the purposes and provisions of this chapter.
- (b) To the extent the director deems it appropriate, the director may require a recipient of any territorial funds under this chapter to contribute moneys, facilities, or services for carrying out the program or project.
- (c) The director shall establish standards and review procedures to assure that private persons, groups, institutions, or corporations provide the services and facilities necessary to accomplish the purposes for which the funds are disbursed.

**History:** 1991, PL 22-17.

**4.1309 Limitation of liability.**

The responsibilities of the department to carry out this chapter shall be limited to the resources available to carry out the provisions of this chapter. When such resources are exhausted, no action may be brought by or on behalf of any person or organization in any court to compel the provision of further services.

**History:** 1991, PL 22-17.

#### **4.1310 Standards for services.**

The territorial council shall require appropriate standards of services to be met by its own services or contractual services including residential, day treatment, and related programs. These standards, including those for intermediate care facility services in facilities for the mentally retarded or persons with related conditions shall, wherever applicable and appropriate, conform to federal standards.

**History:** 1991, PL 22-17.

### **Chapter 14**

#### **OFFICE OF PROTECTION AND ADVOCACY FOR THE DISABLED**

##### **Sections:**

- 4.1401 Finding and purpose.**
- 4.1402 Definitions.**
- 4.1403 Office of Protection and Advocacy for the Disabled.**
- 4.1404 Powers and duties.**
- 4.1405 Advisory council for protection and advocacy.**
- 4.1406 Disabled individual rights.**
- 4.1407 Confidentiality of records.**
- 4.1408 Individualized service plan--Case management.**
- 4.1409 Rules.**

##### **4.1401 Finding and purpose.**

The legislature finds that:

(a) There is a large number of disabled individuals in American Samoa whose numerous and diverse needs and rights must be adequately addressed and protected.

(b) It is the purpose of this act to:

(1) Assure that persons with disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

(2) Establish and operate a system which coordinates, monitors, plans, and evaluates services which ensures the protection of the legal and human rights of persons with disabilities.

**History:** 1991, PL 22-9.

##### **4.1402 Definitions.**

(a) "Act" means this act plus the federal legislation under which these programs are authorized such as; the 1964 Bill of Rights; Public Law 99-319 Protection and Advocacy for the Mentally Ill Individuals (PAMII); Public Law 95-602 Protection and Advocacy for the Developmentally Disabled (PADD); and Public Law 98-516 (Rehabilitation Act of 1973, Amended 1986, Client Assistance Program (CAP).

(b) "Developmental disability" means a severe, and chronic mental or physical disability that is manifested before age 22, which is likely to continue indefinitely, and will substantially limit three or more of the following areas of major functional activities:

- (1) self-care;
- (2) language;
- (3) learning;
- (4) self-direction;
- (5) mobility;
- (6) capacity for independent living; and
- (7) economic self-sufficiency;

(c) "Mentally ill individual" means a person who has significant mental illness or



emotional impairment, as determined by a certified mental health professional.

(d) "Client assistance program" means a program that assists the disabled individuals who are either clients or client applicants of the vocational rehabilitation program.

(e) "Service provider" means any agency which provides care, treatment, employment or other necessary services to the disabled.

(f) "Abuse" means any act or failure to act by an employee of a service provider which causes, or may cause injury to a disabled individual.

(g) "Neglect" means a negligent act or omission by a service provider which causes or may cause injury to a disabled person, or which places a disabled person at risk of injury. It also includes the act or omission such as failure to establish or carry out an appropriate individualized program plan or treatment plan, or adequate care for the disabled.

(h) "Client" means an individual who is receiving services from this program, and who has already been determined to qualify for service from a service provider.

(i) "Client applicant" means an individual who has submitted an application for assistance to a service provider, and is waiting to qualify for such assistance.

**History:** 1991, PL 22-9.

#### **4.1403 Office of Protection and Advocacy for the Disabled.**

There is created within the Executive branch of the government an Office of Protection and Advocacy for the Disabled. The head of that office is a director appointed by the Governor and confirmed by the Legislature. The director shall be an individual qualified by knowledge, skill and ability to administer and direct the provisions of this law, and shall employ a qualified staff to include legal counsel and others as needed. This office shall be independent of all agencies that are considered service providers.

**History:** 1991, PL 22-9.

#### **4.1404 Powers and duties.**

The office may:

(1) investigate incidents of abuse and neglect of the disabled, if the incidents are reported or if there is probable cause to believe that the incidents occurred;

(2) pursue legal, administrative and other appropriate remedies to ensure efficient services and the protection of the disabled's rights;

(3) have access to service providers' sites and records of the disabled;

(4) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, including but not limited to, contracts with the federal government and other agencies;

(5) to accept grants from the United States, the local government and agencies and instrumentalities thereof, and any other sources, and to comply with conditions contained therein;

(6) collect, analyze, and disseminate information relating to the advocacy services and the rights of the disabled to the disabled, their families, service providers and the community at large;

(7) keep records necessary to monitor clients' grievances, progress and performance of the service providers pertaining to clients; and

(8) in coordination with local government and service agencies, conduct briefings to improve services to the disabled, and to better protect their rights.

**History:** 1991, PL 22-9.

**4.1405 Advisory council for protection and advocacy.**

There is established a council who advises the program on matters that affect the performance of the program and the services rendered to the disabled. The council consists of 12 members who are appointed by the Governor and confirmed by the Legislature. Three members shall be from the private sector, three shall be government employees, three shall be service providers, and three consumers.

**History:** 1991, PL 22-9.

**4.1406 Disabled individual rights.**

(a) The disabled individual has the following rights:

- (1) right to appropriate treatment;
- (2) right to an individualized written treatment or service plan;
- (3) right to participate in planning his own program;
- (4) right to refuse treatment or service plan;
- (5) right to refuse to participate in experimentation;
- (6) right to freedom from restraint or seclusion (except in case of valid emergency);
- (7) right to a safe and sanitary environment;
- (8) right to humane treatments;
- (9) right to confidentiality;
- (10) right to access to personal records;
- (11) right to privacy;
- (12) right to be properly informed upon admission to any facility or program;
- (13) right to assert grievances; and
- (14) right to referrals.

(b) Rights listed shall not be construed to replace or limit any other rights, benefits, or privileges, including statutory and regulatory due process rights and protections, to which a disabled person may be entitled.

**History:** 1991, PL 22-9.

**4.1407 Confidentiality of records.**

Records filed with the office and the information contained in them shall be confidential, and shall be released only upon the client's consent, and are for use in matters to resolve the client's grievances.

**History:** 1991, PL 22-9.

**4.1408 Individualized service plan--Case management.**

Each service provider is expected to have an individualized service plan for every disabled person it serves. The plan shall be in writing and shall include, at a minimum, the nature of the needs of the person, treatment, care, goals, and specific services to be offered to the disabled person to attain these goals.

**History:** 1991, PL 22-9.

**4.1409 Rules.**

The program director in consultation with the advisory council and in accordance with

all appropriate acts shall adopt rules of eligibility, standard of services, as specified by law and an impartial grievance procedure, so as to render the most timely and the best possible service to the disabled.

**History:** 1991, PL 22-9.