

ALEC Independent Administrative Law Judges Act as of Aug 24, 2022

Whereas, due process of law, which is fundamental to ordered liberty in all dealings with the government, requires fair, unbiased, and independent adjudicators; and

Whereas, unbiased and independent hearings and final decisions of all contested matters is necessary to both the actual and perceived legitimacy of the adjudicatory system; and

Whereas, the ability of administrative law judges (ALJs) to decide issues fairly and impartially is seriously compromised when ALJs work within an agency that initiates the proceedings; and

Whereas, a central panel of independent ALJs will free decisionmakers from actual and perceived bias and undue influence by regulatory agencies initiating proceedings against private parties; and

Whereas, states implementing central panels have reported reduced regulatory clutter, increased efficiency in adjudicating cases, and significant cost savings.

Therefore, be it enacted:

Section 1. Creation and Function of the State Office of Administrative Hearings

(a) The State Office of Administrative Hearings (Office) is created as an independent agency in the executive branch([*** SEE FOOTNOTE](#)) of state government to serve as an independent forum for agency adjudications. The Office shall conduct:

[*** FOOTNOTE](#)

[States may want to consider placing the function of the Administrative Law Judges under the State Supreme Court or Judiciary rather than the Executive Branch](#)

(1) all administrative hearings in adjudications that are before a state agency;

(2) administrative hearings in all matters in which any executive agency or the Office is required to conduct the hearing under other law; and

(3) alternative dispute resolution procedures that any executive agency or the Office is required to conduct under law.

Section 2. Chief Administrative Law Judge

(a) The Office is under the direction of a chief administrative law judge appointed by the governor and confirmed by the [senate] for a [two-year term] that expires on [DATE] of each [even-numbered year]. The chief administrative law judge is eligible for reappointment.

(b) To be eligible for appointment as chief administrative law judge, an individual must:

(1) be licensed to practice law in this state; and

(2) for at least five years, have:

1. practiced administrative law;

~~1.~~—

2. conducted administrative hearings; or

~~2-3.~~ participated as lead counsel in an administrative hearing

~~3-4.~~ engaged in a combination of those two activities.

(c) The chief administrative law judge serves in a full-time position. The chief administrative law judge may not engage in the practice of law while serving as chief administrative law judge.

(d) The chief administrative law judge shall:

(1) supervise the Office;

(2) protect and ensure the decisional independence of each administrative law judge;

(3) adopt a code of conduct for administrative law judges that may be modeled on the Code of Judicial Conduct; and

(4) monitor the quality of administrative hearings conducted by the Office.

(5) set up a training and certification program for all administrative law judges

(e) It is ~~a~~ grounds for removal from the position of chief administrative law judge ~~if~~ that ~~an~~ appointee:

(1) does not maintain during service as chief administrative law judge an active law license to ~~practice law~~ in this state;

(2) cannot, because of illness or disability, discharge the appointee's duties for a substantial part of the appointee's term; or

(3) engages in the practice of law in violation of section 2(c).

Section 3. Administrative Law Judges

(a) The chief administrative law judge shall employ, ~~or administrative contract,~~ administrative law judges to conduct hearings for state agencies subject to this chapter.

(b) To be eligible for employment, or on a contractual basis, with the Office as an administrative law judge, an individual must be licensed to practice law in this state with subject knowledge of the issue to be decided and meet other requirements prescribed by the chief administrative law judge.

(b) The Chief Administrative Law Judge or an Administrative Law Judge shall not be a current employee or former employee of the Department or Agency involved in the action.

~~(d)~~ An administrative law judge employed, or contracted, by the Office is not responsible to or subject to the supervision, direction, or indirect influence of any person other than the chief administrative law judge or a senior administrative law judge designated by the chief administrative

law judge. In particular, an administrative law judge employed by the Office is not responsible to or subject to the supervision, direction, or indirect influence of an officer, employee, or agent of another state agency who performs investigative, prosecutorial, or advisory functions for the other agency.

Section 4. Agency Adjudications

(a) The state agency initiating the case may not supervise the administrative law judge's proceedings, which shall comply with uniform procedures established by the chief administrative law judge in a public rulemaking.

(b) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested matter except by proper evidence and legal argument.

(c) Every decision of an administrative law judge shall contain findings of fact, conclusions of law, and a disposition of the case.

(d) Every decision of an administrative law judge shall be a final decision of the executive branch or executive agency that initiated the proceeding as set forth in section [XX]. Section [XX] shall govern judicial review of every final decision of an administrative law judge, except that any aggrieved party, including the agency, may seek judicial review.

Section 5. Selection of Administrative Law Judge

- a) Prior the start of the proceedings involving an Administrative Law Judge, a list of potential Administrative Law Judges shall be given to all parties for selection.
- b) Each Administrative Law Judge shall be given a ranking by all parties and Administrative Law Judge with the highest ranking shall be selected to oversee the proceedings.
- c) If all parties agree to an Administrative Law Judge from the onset of the proceedings, there shall be no need for a list of potential Administrative Law Judges to be given.

Section 6. Rules of Civil Procedure

- a) The Rules of Civil Procedure for (insert State) shall be in effect for all proceedings involving an Administrative Law Judge