



Why States Need Independent Administrative Law Judges

THE PROBLEM: WHEN CITIZENS CHALLENGE AN AGENCY'S WRONGDOING, THE JUDGE WORKS FOR THAT AGENCY

Imagine how unfair our court system would be if judges were employed by the prosecutors. Would it make you feel any better, upon being convicted, to find out that there was an internal "firewall" supposedly separating the prosecutor and judge? Of course not. That's because when you're accused of doing something wrong, or when you're challenging someone else's wrongdoing, you expect to have, at the very least, an opportunity to explain your side of the story to a neutral decision maker. And it goes without saying that judges who have their paychecks signed by one of the parties in a case before them cannot be neutral.

Unfortunately, when it comes to challenging an agency's adverse decision affecting rights, duties, or privileges, or defending against an agency's prosecution of an enforcement action, this is the reality for people living in states without a central panel of independent administrative law judges (ALJs). Rather than being heard by a neutral decision maker, a person will instead plead their case to an ALJ or hearing officer who quite literally works for the opposing party (i.e., the agency). Unsurprisingly, these in-house judges often report feeling pressured to resolve cases in their employer's favor. This undermines the fundamental principles of due process to which all persons are entitled.

Even in most states that have established a central panel, decisions made by independent ALJs can generally be amended or outright reversed by the agency involved in the case, thus subverting the twin aims of impartiality and fundamental fairness.

THE SOLUTION: CREATE A CENTRAL PANEL OF INDEPENDENT ADMINISTRATIVE LAW JUDGES

Due process of law, which is fundamental to ordered liberty, requires fair, unbiased, and independent decision makers. This requirement is especially important in administrative proceedings because of the absence of procedural safeguards normally available in judicial proceedings.

To promote due process, states should require administrative adjudications to be heard and decided by independent ALJs employed by a central panel, subject only to judicial review. By removing ALJs from the employ of the agencies that appear before them in contested cases, states will free ALJs from actual and perceived bias and undue influence, and ensure people have a fair shot when challenging an agency.

Importantly, creating a central panel does not expand bureaucracy. Rather, it consolidates multiple existing in-house agency hearing units into a single department. Also, while of secondary importance relative to the due process benefits, it should be noted that states that have implemented central panels have reported significant cost savings, reduced regulatory clutter, and increased efficiency in adjudicating cases.

Additionally, it is imperative that ALJs are equipped with the ability to render final decisions, not proposed decisions that can be overturned by agencies. The due process and cost-saving benefits associated with central panels are undermined when one of the parties in the case (i.e., agencies), rather than ALJs, can render final decisions.