

James F. Flanagan

*Redefining the Role of the State Administrative Law Judge: Central Panels and Their Impact on State ALJ Authority and Standards of Agency Review*

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Abstract by Heather Sidwell

Two separate and interrelated trends are emerging in state administrative procedure: (1) the creation of central panels of state administrative law judges who are administratively independent of the agencies whose cases they hear, and thus, removed from agency influence, and (2) the authorization of ALJs to issue final decisions in contested cases by restricting or eliminating agency review of state administrative law judges' (ALJ) decisions. As states create more central panels, there is increasingly more interest in according state ALJs the power to issue de facto, if not de jure, final orders.

This article explores the emergence of ALJ finality in states that have created central panels, the rationale and consequences for administrative law. In particular, four states (Louisiana, South Carolina, North Carolina and Oregon) that have adopted ALJ finality are considered. This article then considers the relationship between central panels and ALJ finality and proposes reasons for the recent trend. The author contends that a separate hearing before a central panel ALJ enhances the importance and status of the ALJ, the facts found by the ALJ, and the ALJ's recommended decision-making.

Further, the article considers the consequences of ALJ finality and addresses the concern about loss of decisional consistency. The author concludes that ALJ finality will significantly alter state contested case adjudication by creating inconsistencies between the agencies' articulated policies and the results achieved through contested case litigation. Furthermore, it will adversely affect the agency's enforcement of its statutory mandate. The author fears the generalized concerns for fairness conceal the real issue in ALJ finality - the justification for transferring final authority over policy issues in contested cases from the agency to each central panel ALJ. As a result, ALJ finality must be justified on its own merits. Ultimately, the author argues, central panel ALJs should not be given across-the-board authority to enter final orders without agency review, though ALJ finality may be adopted on a program-by-program approach when it can be shown that one hearing would be advantageous and agency review of limited value. Agencies, too, are urged to adjust to the new era of administrative adjudication before central panels, to recognize the importance of the hearing, to not use agency review powers as a substitute for effective presentation of evidence and policy before the ALJ.