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*Final, But Often Fallible: Recognizing Problems with ALJ Finality*

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Abstract by Melissa Sutton

The author argues that administrative law judge (ALJ) finality is a questionable, yet generally unacknowledged development in state administrative procedure, one that should be approached with great caution by states considering APA reforms and by the recently initiated process to revisit the Model State Administrative Procedure Act. The article begins with a look at the trend toward increased ALJ finality and three conceptual models of ALJ adjudication. The article explores the sacrifice of accountability for independence and proposes that accountability of ALJ's can be enhanced with standards of review.

Under several state administrative procedure acts (APAs), final decisions for purposes of judicial review are made not by agencies charged with implementing regulatory programs, but by ALJs or hearing officers housed within a central panel. In the 1990s, the trend towards ALJ finality grew, garnering support in several states. ALJ finality, however, introduces a new kind of fallibility into administrative decisions and, as some have suggested, raises problems under state constitutions. The article concludes that, although there are some benefits to ALJ finality, it nevertheless risks thwarting accountability.

Part of the article describes how many states have increasingly given ALJ finality by taking away an agency's opportunity to review ALJ decisions or requiring agencies to accept ALJ findings, unless the agency overcomes a fairly rigorous evidentiary or reasoning burden. Part II argues that while it is difficult to generalize across the states, the trend towards finality risks undermining a legislature's intended delegation of policymaking authority to an agency as well as core executive branch functions, and thus runs counter to separation of powers and accountability norms. Finally, Part III concludes that, to the extent ALJ finality is a permanent feature of state administrative law, the best way to correct the accountability deficiency with ALJ finality is for courts to apply different judicial standards of review to ALJ final orders than agency final orders.