

February 2019

The Need for a Central Panel Approach to Administrative Adjudication: Pros, Cons, and Selected Practices

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Executive Summary
A Report from the Chicago Appleseed Fund for Justice
in collaboration with the Chicago Council of Lawyers

Preface

In the 1970s, states began to experiment with what was called the central panel system of administrative adjudication – an approach first utilized in California in 1945. In this new model, administrative law judges (ALJs) would not be employed by the agencies whose cases they hear, but by a distinct central panel agency created solely to manage them.

The central panel system is a framework to increase the judicialization of the state administrative process by seeking to keep ALJs separate from the agencies they serve, and to thereby ensure fair, high-caliber decision-making within an environment that promotes cost efficiencies.

Much of the discussion historically has been about the problems each central panel agency had faced in being created, and the even bigger challenges in getting the funding necessary for the present and for the expansion that each wanted. Every central panel is different, shaped either by the legislative battles that led to its creation, or the debates that led to the Executive Order creating the central panel. These differences involve how these central panels operated, including the kinds of cases they heard, how the agency was funded, how decision-making independence was insured, and whether there are cost efficiencies.

Legislative battles to create the central panel agencies often led to selected agencies being exempted in order to avoid a potentially deadly political battle. Sometimes agencies provided the opposition; sometimes unions provided the opposition; sometimes differing viewpoints between the executive and legislative branches led to a particular compromise. But a consistent tension was always whether an ALJ should be a specialist or a generalist. And always lurking in the background was the question of whether an ALJ should have final decision-making authority.

In 1981, there were seven central panel agencies. On May 8, 1981, a workshop was held in Chicago to provide a forum for exchange of information about state and federal ALJs and researchers doing work in the administrative law area. The event was co-sponsored by the American Judicature Society and the Administrative Conference of the U.S. - and became a forum for the candid discussion of similarities and differences between the state

and federal adjudicative system and a consideration of the strengths and weaknesses of central panel systems.

The November 1981 issue of *Judicature* was devoted to the administrative law process. The articles, written by both researchers and practitioners, provided an overview of the central panel approach and how they operated. In 1983, a monograph was produced utilizing new research and the outcomes from the 1981 workshop (*The Central Panel System for Administrative Law Judges: A Survey of Seven States*, by Malcolm C. Rich and Wayne E. Brucar).

Over the next thirty years, there was substantial growth in the central panel approach with more than thirty state and municipalities adopting the central panel system. In September 2014, I was contacted by Judge Larry Craddock who asked me to assist in doing a new research study of the central panel system with an emphasis on what had changed to lead to the movement's growth, how central panels were currently operating, and what were the pros and cons of the approach thirty years after the initial study. Judge Craddock, who recently passed away, was a tireless advocate who promoted social justice generally, and the quality and independence of administrative adjudication, in particular. He had come to believe that the central panel approach was a key to reaching these goals and wanted to promote research around the central panel efforts. I agreed to lead the research effort.

The purpose of this report is to provide a picture of the current state of the central panel system, now that the panels have had decades to operate. This picture includes the structure of the panels and the pros and cons of central panels. It includes insights into the central panel approach, including fairness and due process, efficiency, cost reduction, hiring, training, and supervision. We also focus on one of the most controversial of the issues surrounding central panels – the independence of ALJs, including final decision-making authority. We present our survey results which provide a description of the central panel phenomenon, and conclude with suggested best practices.

The authors, in doing this study, have met many persons who have dedicated their professional lives to leading and studying government systems that promise fair,

efficient, and high-quality adjudication. In addition to the Judge Craddock, we wish to thank Judge Julian Mann, Judge Robert Cohen, and Judge Lorraine Lee for their guidance. We thank Roger Lewis, Emily Gilman, and Kristen Jones for their research and guidance. We also thank Lakeisha Andress and Vinita Singh for their research assistance.

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The Structure of Central Panels

At the outset, the scope of central panel operations was dictated by the state legislatures through the state administrative procedure acts. In general, a jurisdiction can be considered as mandatory (agencies listed in the state APA must use central panel ALJs) or voluntary (agencies may use the central panel services).¹ Central panels using a hybrid jurisdiction provide that the agencies can either use their own hearing officers or those in the centralized panel.

Today, it is common for state legislation to delineate which agencies do not have to utilize central panel ALJs. Proponents of the mandatory system claim that ALJs will be independent of agency influence only if agencies must utilize central panel ALJs for all of their adjudications. An agency that can use its own hearing officers will be free to consciously divide its hearing load between the two types of ALJs. This, say the proponents of mandatory jurisdiction, will destroy the appearance of justice that the central panel program seeks. But advocates of voluntary jurisdiction argue that because agency officials will feel less threatened by a voluntary use of central panel ALJs, there would be fewer problems in implementing the central panel.²

The Role of the Administrative Law Judge within the Central Panel

Related to the notion of ALJ independence is the amount of expertise that an ALJ should bring to the hearing process. This was the debate throughout the 1970s as the early central panels were being created. Those who see little need for expertise believe that ALJs have the ability to learn more than one area of the law and can serve as generalists — administrative judges who are capable of hearing a variety of types of cases. Critics subscribe to the view that administrative judges are present and useful only because of their specialized expertise in one area and, therefore, should only hear one type of case.

Yet if the system assigns ALJs exclusively to one agency because of the need for specialized expertise, will there be a risk of bias among its ALJs that the central panel was devised to eliminate? Others argue that the lack of specialized ALJ expertise leads to inefficiency. These opponents also argue that ALJs without specific knowledge will have to be educated by the parties and will consequently be subject to manipulation.³ But acquiring information from the parties has always been part of judging.

Today, the generalist-versus-specialist debate is resolved on a state-by-state, panel-by-panel basis. Judges sometimes hear only one type of case while others are assigned a variety of cases. In surveys conducted in the 1980s and interviews conducted since 2016, the results are similar. That is, central panels have developed hybrid systems through which some ALJs maintain specialized expertise in a very limited number of cases while other ALJs within the central panel are more generalist in nature. What seems to be consistent among ALJs we have surveyed and interviewed is that they tend to be satisfied with their jobs in no small part because of the opportunity to judge different areas of the law.

Pros and Cons of a Central Panel System

Since 2016, we have surveyed and interviewed central panel directors and ALJs across the country. We have also interviewed practitioners and agency personnel nationwide. In reporting the results of these surveys and interviews, we seek to compare our current results with those data collected in 1981 and 1982. The following are the comparative results. In a subsequent section, we report the results of an electronic survey completed by twenty-three central panel directors.

As we have discussed, debate over the pros and cons of a central panel system began in California in 1945 and intensified during the 1970s and 1980s when there was substantial growth in the number of central panels. The following pros and cons related to central panels were part of the research we conducted both in the 1980s and during the current effort.

- Proponents say that independent funding of central panels promotes ALJ independence.
- Proponents of central panels claim that the central panel's more-efficient allocation of ALJs reduces costs. Larger agencies will not have to keep all the ALJs they need to handle peak periods; smaller agencies will always have ALJs available to them.

- Implementing a central panel transfers some degree of financial control from the agency to the panel. No longer do the agencies have exclusive administrative and financial control of the hearing process and, as a result, the system is a potential source of conflict. These concerns become evident during the changeover as well as during the preceding legislative debates.
- Existing operations are funded in one of two ways. One approach is known as general funding. The state legislature appropriates a set amount of money which it transfers to the central panel agency to use as an operating budget. The other approach is the revolving fund, in which the central panel bills agencies for the use of its hearing services on an hourly basis. Under revolving funding, the agencies are appropriated funds by the state legislature. Central panels utilize both methods of funding, but their leaders are consistent in their conclusion that general funding is the best way to ensure the independence of central panel ALJ decision-making.
- Proponents say the central panel will allow cost cutting through administrative efficiencies and encourage administrative cost-cutting innovations. By using the adjudication services of the central panel, administrative agencies with a small number of ALJs will be able to eliminate administrative overhead costs by transferring their hearing function to the central panel.

In cases where ALJs issue final rather than recommended decisions, cost savings will accrue from agency staff and litigants not having to conduct and participate in a second-stage adjudication proceeding.

- Proponents say central panel ALJs can hear a variety of cases so that they will always be approaching a problem from a fresh perspective.

- Proponents say the central panel will encourage uniform policies and procedures and will allow for more efficient collection and analysis of hearing data.
- Proponents see the judicialization of ALJs to be a good thing, but opponents of the central panel approach see it as a step toward reducing the power of agencies, making the system unnecessarily inefficient.
- Opponents say that placing all decisions relating to ALJ employment in the hands of agencies risks creating the appearance of bias. They point to the sometimes-political appointment of central panel directors as a source of political intervention into the administrative adjudication process.

The directors of central panels are often appointed through the state political structure. Once appointed, directors are given administrative control over the operations. To ensure independence, however, the term of office is often not in direct overlap with the term of the then-governor, and we heard no instance where governors have sought to influence the decision-making of the central panels.

ALJs are most often protected by the civil service system, while their director can be removed at will by the executive. This has raised the issue of whether central panel directors who are selected by elected officials may appear susceptible to influence from the official who nominated them.

Some central panel directors see their role as a buffer between state government and the decision-making independence of ALJs.

Directors always downplay this possibility and note that they consider their positions to be apolitical.

Some note that their position has a benefit in terms of their ability to work with members of the legislature to bring about a more efficient and just policy for the central panel. A director familiar with and accepted by the political system, they say, can better resist attempts by a

governor, for example, to interfere with the administrative process. These directors see their role as a buffer between state government and the decision-making independence of ALJs.⁴

- Proponents of central panel systems note that central panels have low filing fees and, in many cases, no filing fees at all.
- Proponents of central panel systems note the new types of cases now being heard in some central panels that formerly were in the province of the state court judiciary, including corrections and child support. In general, these proponents note the accountability of central panel ALJs. State court judges are evaluated rarely — often just as part of a re-election bid, and then only for educating voters on a YES or NO basis. Central panel directors report that their ALJs are evaluated annually with a focus on how to improve judicial performance.
- Proponents also note that while the administrative process has important implications for the business community, it has an increasingly important role in matters involving the welfare safety net: cases involving food stamp eligibility determinations, Medicaid eligibility, eligibility for state-funded home health services, matters involving long-term care facilities certification, child support matters, hearings involving child and family state services, etc.

Some legal aid lawyers have expressed the hope that independent, well-trained ALJs will provide more objective, higher-quality adjudication to their low-income clients. Equally as important, some lawyers have expressed their view that highly trained, independent ALJs will be of benefit to pro se litigants by providing a less adversarial, more efficient system of adjudication designed to make proceedings more fair, effective, and efficient for those without legal representation.

Insights into the Central Panel Approach

Fairness and Due Process

Proponents of central panel systems contend that separating the adjudication process from the agencies that have an interest in the outcome of a case enhances fairness and minimizes the appearance of impropriety and bias. Directors we interviewed often commented that the central panel system enhances public confidence in the system because ALJs are independent of the agencies.⁵

In interviews we conducted with legal aid lawyers whose clients appear before the “safety net” agencies, we have heard that they and their clients are often subject to a system that is “stacked against them.” Some see an independent ALJ as the safety valve for fairness.⁶

Illinois Administrative Law Judge Edward Schoenbaum, a leader of the central panel movement, stated, “many people believe that [ALJs] who are not in a central hearing agency are biased in their adjudicative responsibilities ... [because the] ALJs are hired, promoted, supervised, and paid by the very agency for whom [they] are [reviewing]... [t]he public thinks this is unfair.”⁷

Central panels allow litigants challenging an agency decision to appear before a judge who is not also their adversary.

Further, Ann Wise, former Director of the Louisiana Division of Administrative Law, holds fairness as one of the greatest justifications for implementing a central panel system, stating, “it is not fair to combine into one person or political entity all of these powers: to investigate (like police), to decide whether to bring charges (like grand juries), to prosecute (like district attorneys), and to decide guilt or innocence (like judges or juries).”⁸

Central panels allow litigants challenging an agency decision to appear before

a judge who is not also their adversary. Instead, such persons have the opportunity to appear before an ALJ that is independent from the agency at the heart of the dispute and receive an arguably unbiased review and decision.⁹ Many central panel directors have remarked based on their anecdotal experience that central panels produce more fair outcomes.¹⁰ But commentators report that some ALJs on central panels have expressed the view that they sometimes feel at least some continued pressure to rule in favor of agencies, particularly in systems where the panel is funded by the agencies.¹¹ But such blatant interference appears uncommon.¹²

However, some central panel systems are funded by charging the agencies for their costs and services at a billable rate.¹³ Some central panel systems, like Wisconsin and Michigan, seek to build safeguards into this process through a “Memorandum of Understanding” (“MOU”), which governs the relationship and funding arrangement between the central panel and each agency.¹⁴ Operating under such a MOU, however, requires significant administrative effort on an annual basis in order to negotiate the MOU with each agency and attempt to forecast the cost per case for that upcoming year.¹⁵ It is also reported to be difficult to resolve billing disputes that may arise with the agencies during the year.¹⁶

Many central panel directors have remarked that funding plays an essential role in ensuring fairness. The vast majority believe that the best method of funding is an allocation from the state’s general assembly.¹⁷ This approach provides a source of funding independent of the agencies served by the central panel and allows for more independent operations by the central panel agency.

Creating an advisory council to give direction, policy counsel, and advice on the adoption of rules established by the central panel may be another way to increase fairness. For example, Maryland created the State Advisory Council on Administrative Hearings, which advises the chief administrative law judge.¹⁸ The Council also identifies issues that the administrative law judges should address and reviews matters relating to administrative hearings, the administrative process, and policies and regulations proposed by the chief

ALJ.¹⁹

In addition, at the advice of its State Advisory Council for Administrative Hearings, the North Dakota Office of Administrative Hearings (“OAH”) decided early on not to aggressively seek to include agencies within its jurisdiction, but rather to encourage agencies to voluntarily use OAH.²⁰ It should be noted, however, that other central panel systems found it advantageous to work diligently to include as many case types and agencies as possible from the panel’s inception.²¹

An issue that straddles the notions of fairness, independence, and accountability is evaluation of ALJ performance. Opponents of any type of evaluation of ALJs look to general jurisdiction judges as examples. According to this view, other judges are not evaluated formally on a regular basis because they must enjoy absolute independence if the judicial system is to remain impartial. But general jurisdiction judges in many states are subject to retention election through which voters must vote affirmatively to allow these individuals to maintain their judicial seats. Proponents of evaluation claim that the public is owed a system that is transparent and accountable — one that includes a system that identifies areas of weakness for each administrative law judge and makes recommendations for improvements.

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Efficiency

Central panels are credited with fostering better allocation of state agency resources and producing greater efficiency in administrative adjudication.²² They are also credited with producing more systematic and uniform agency decision-making.²³ Central panel directors commented that increased efficiency is "one of the most underrated benefits of the system."²⁴

The Maryland Office of Administrative Hearings, for example, prides itself on issuing a decision on every hearing in ninety days or less.²⁵ Michigan eliminated thousands of administrative rules to create a uniform set of rules governing all administrative cases.²⁶ One goal of this effort was to make the process more clear and predictable to the parties.²⁷ New York City similarly recommended that its central panel create its own standard rules and procedures, rather than adopting the multiple sets of rules and procedures utilized by each of the different agencies.²⁸ Centralizing the process by placing ALJs and associated staff under one umbrella also reduces the overall costs associated with hearing cases and, generally, more cases can be heard by fewer ALJs.²⁹ Several directors also credit the central panel system with clearing case backlogs, since the central panel has more flexibility to add ALJs in certain subject areas when those areas experience a higher volume of cases.³⁰

There is some concern, however, that too much focus on efficiency may create

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problems — specifically in regard to the imposition of quotas. A study of the Virginia Social Security ALJs found that:

“...the requirement to schedule 40 cases per month, on average, is not reasonably attainable, nor is it reasonable to expect ALJs to achieve 500–700 case dispositions annually while also complying with SSA directives on legally sufficient decisions. Obviously, opinions could vary about how challenging “reasonably attainable” goals should be, and some might prefer more or less stringent challenges.”³¹

The Chief ALJ of the Florida Division of Administrative Hearings commented that while the Florida legislature has statutory mandates for certain cases to be resolved in a certain timeframe, he also has a collaborative relationship with the legislature allowing him to offer input on the feasibility of such standards.³² In addition, these timeframes have been amended and revised

over time to fit the current realities of the panel.³³

Such flexibility and open communication between the panel and the legislature has ensured that the panel hears cases efficiently and in a timely manner while also ensuring that ALJs allocate the appropriate time to each case — allowing extensions in the interest of due process where necessary.³⁴ Thus, consultation of ALJs before setting quotas and the willingness to be flexible in adjusting such standards appears to go a long way to prevent the aforementioned issues.³⁵

Cost Reduction

Proponents of a centralized administrative system argue it results in reduced costs due to economies of scale and flexibility. The benefits of economies of scale are most apparent for agencies that have high-volume hearing needs, such as a thousand or more annual referrals.³⁶

A hearing officer issuing 1,000 orders a month can do so more efficiently than one issuing 100, for example, because of shared resources such as case management systems, operational staff, vehicles, office space, etc.³⁷ In addition, a larger hearing office has the capacity to absorb a greater amount of additional work than a smaller office.³⁸

The benefits of flexibility in case assignment are most visible for agencies with low-volume hearing needs (a few hundred referrals a year).³⁹ A centralized system allows a chief ALJ to assign ALJs a variety of cases with different subject matters depending on the ALJ's expertise.⁴⁰ "The resulting flexibility in case assignments bore fruit in reductions of redundant staff, monetary cost savings, or both in Colorado, New Jersey, Texas, and Minnesota."⁴¹

An indication of the savings that may be anticipated by the institution of a central hearing panel is supplied by Oregon's experience, which first showed a fiscal impact in FY 2000–01. There were cost reductions in hours per case

referral (down 17 percent), cost per referral (down 11 percent), cost of Department of Transportation referrals (down six percent, saving \$37 million) and cost of Department of Human Services referrals (down 23 percent).⁴²

Hiring, Training, and Supervision

Central panel directors appear to place an emphasis on hiring and the need to select highly qualified applicants to fill ALJ positions. This includes applicants who have practiced law for a number of years and have prior experience handling cases before an administrative court or other trial experience.⁴³ The basic idea is that hiring highly qualified lawyers as ALJs will enhance fairness, efficiency, and the overall quality of administrative hearings for all parties involved.

Many proponents of central panels suggest that newly hired ALJs should receive further training by virtue of the work they perform under the central panel system. For example, the former Chief ALJ of the Pennsylvania Liquor Control Board argued that the central panel structure “will place the management and training of all ALJs in the hands of experienced officials whose understanding and appreciation of the duties and responsibilities of the office come from their actual performance of such duties and responsibilities.”⁴⁴ Many central panel directors reported sending new hires to the 4-hour National Judicial College training in Reno, complying with the required CLE training requirements for all lawyers, as well as conducting an annual training in addition to informal on-the-job training.⁴⁵

In California, new ALJs complete a year-long probation and mentoring program, which includes conducting mock hearings and issuing practice decisions under the observation and review of an ALJ mentor. Before issuing their first decisions, new ALJs’ opinions are reviewed by both their mentor and a more senior ALJ.⁴⁶

Many states provide only limited ALJ supervision after the initial training period, if any. For example, ALJs often issue their own decisions without any kind of

evaluation prior to issuance.⁴⁷ In other states, the director observes hearings conducted by new ALJs and then provides feedback on the hearing and written decision.⁴⁸

Generalist v. Specialist ALJs

An important consideration for states implementing a central panel system is whether the panel will consist of specialist ALJs, who hear certain case topics exclusively or almost exclusively, or generalist ALJs, who hear a variety of cases.

The generalist system can combat ALJ insularity and complacency as well as the appearance of ALJ bias in favor of the agency, since ALJs work on a variety of cases originating from different agencies.⁴⁹ Further, a generalist system allows central panel directors more flexibility to assign ALJs to different case types depending on caseloads, thereby reducing costs and increasing the speed with which cases are heard.⁵⁰

Directors commented that ALJs prefer the generalist system with a more diversified caseload over hearing the same type of case over and over;⁵¹ however, some cases require highly technical expertise, which can be difficult for ALJs to acquire across several different areas of law.⁵² One director described the question of whether to make ALJs generalist or specialists as a “constant tension.”⁵³ Interviews and surveys with ALJs indicate a strong relationship between hearing more than one type of case and job satisfaction.

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In order to capture the benefits from both the specialist and generalist system, some states opt for a hybrid system where specialized ALJs hear more complicated or technical cases and other ALJs hear a variety of different cases.⁵⁴

States can consider placing ALJs in tiers based on their experience to most effectively capture the benefits of both the generalist and specialist systems.

Based on our interviews, such a promotional system would likely incentivize ALJs to work hard and increase their knowledge base in order to earn the promotion to a higher tier.⁵⁵ Additionally, this system would afford central panel directors the ability to maintain staffing flexibility by assigning higher-tiered ALJs to adjudicate cases along with lower-tiered ALJs during periods of increased caseloads.⁵⁶ The hybrid system could also combat ALJ complacency and the appearance of ALJ bias in favor of an agency, since higher-tiered ALJs can be assigned to lower-tiered cases in addition to adjudicating a variety of specialized cases.

Independence of Administrative Law Judges

Administrative law judge independence has always been at the heart of arguments by proponents of the central panel. Final decision-making authority, as opposed to recommendations subject to agency review, is one means through which ALJ independence can be effectuated. Many central panel directors have commented that while administrative law judges' opinions are often recommended decisions subject to agency review, the ALJs are empowered with the ability to create the record and make findings of fact, which is not subject to review or disturbed on review.⁵⁷ Others noted that most recommendations become final. States adopting a central panel system must make this choice, and there is much division on which alternative produces the fairest outcome.⁵⁸

Before central panels, administrative adjudication was clearly the province of the agency. The contested case took place at the agency, and fact-finding done by the ALJ was just a preliminary step to the agencies rendering the final decision. ALJs were considered to be employees of the agency, there only to provide aid via a fact-finding function to facilitate agency decision-making.

But the creation of the central panels transferred the focus of adjudication

Proponents of final decision authority view judicial review as a source of accountability within the system.

from the final agency decision to the decision-making by the ALJ. Legislatures that have provided for this change have been persuaded to do so in light of the hiring process, nonpartisan supervision, training, and overall independence of the central panel ALJ.

In addition, giving final decision authority to central panel ALJs has a financial edge. ALJ finality allows a step in the process — agency review — to be skipped, thereby providing for cost savings. Proponents of final decision authority view judicial review as a source of accountability within the system.

To proponents, giving ALJs final decision authority combines the recognition that central panel ALJs are highly trained, well-supervised administrative jurists with the benefits of cost savings provided by eliminating a major step in the process.

But opponents look to the role of the administrative agency as the reason to oppose central panel ALJ final decision authority. In their view, agencies need that final power in order to maintain policy consistency. In contrast, proponents state that agencies can set forth their policy positions through rulemaking and that lawyers for the agency during administrative hearings are free to argue their claims based on policy set forth by the administrative agency.

Proponents of central panel ALJ final decision authority also point to the potential abuse of power that could occur should agencies seek to overturn every central panel ALJ decision adverse to the agency. This would allow agencies to not only second-guess ALJ decisions applying policy to facts but to second-guess the fact-finding of the ALJ as well.

This protection from agency abuse is particularly pronounced in the increasing number of administrative law cases involving pro se litigants. These individuals, lacking legal representation, need the protection of an independent administrative process perhaps even more than cases in which parties are represented by legal counsel. This is one of the reasons why some legal aid lawyers to whom we spoke see the central panel as a protector of individual rights.

Central panels have proven themselves to be laboratories of new ideas to provide administrative adjudication that is fair, efficient, and independent.

Central panels have proven themselves to be laboratories of new ideas to provide administrative adjudication that is fair, efficient, and independent. As final decision authority for ALJs is debated on an ongoing basis, we have seen a hybrid approach being employed among existing central panels.

There is a growing trend of legislatures providing for final decision authority to central panel ALJs in at least some matters. Georgia is the latest state legislature to do so. Agency personnel to whom we spoke were much less opposed to final decision authority in cases where the adjudication has to do primarily with fact-finding and applying statutory law and conditions to the established set of facts. In more controversial, more complex cases involving legal representation for both parties, agencies are much less likely to want to give up control over review of the central panel ALJ decision-making.

What has occurred in a variety of states and municipalities is that as central panels become more accepted into the framework of administrative adjudication as independent, high-quality, well-trained adjudicators, opposition to final authority subsides. In fact, this process of acceptance has led to a phenomenal growth in the number of central panels as well as the jurisdictions covered by each.

In general, there appears to be a spectrum of ALJ decision-making authority and processes. For some central panel systems, decision-making authority is

determined by the agency. In Wisconsin, the agency identifies whether they

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want a final or proposed decision at the time they provide the hearing order to the panel.⁵⁹ In other states, like Maryland and North Dakota, the state legislature plays a role in determining whether ALJ

decisions are final or recommendations.⁶⁰ In New York City, ALJs only render recommendations; none of their decisions are final.⁶¹ Colorado ALJs have no other final decision-making authority beyond Secretary of State election disputes.⁶² In contrast, in North Carolina, South Carolina, and Louisiana, the vast majority of decisions rendered by the ALJs are final.⁶³ Florida ALJs have final decision-making authority over most cases in their jurisdiction, excluding professional licensure cases and school board cases.⁶⁴

The ALJs for the Cook County Parking Ticket Hearing Officer System only issue final decisions.⁶⁵ This specific central panel system was built on this concept from its inception, based on a perspective that permitting an agency director to overturn a judge's decision diminishes the value of the judge and the purpose of the process to create efficiency, fairness, and cost savings.⁶⁶

In Tennessee, most agencies request that the ALJs render "initial orders" subject to review by the agency director. If the initial order is not appealed within fifteen days, it becomes a final order.⁶⁷ Approximately 80–90% of the initial orders in Tennessee eventually become final orders.⁶⁸ In Iowa, ALJs generally issue recommendations, at which time the parties always have a right of appeal directly to the agency, thereby permitting the agency to modify or overturn the ALJ's decision.⁶⁹

Opponents of ALJ finality argue that agencies have greater knowledge and more expertise in the subject matters before the ALJs, and as such are the more-appropriate final decision makers.⁷⁰ The general concern is the

inconsistencies that may arise from ALJ finality if the agencies and ALJs are using different policy approaches.⁷¹

Former Illinois Supreme Court Justice and law professor Frank Sullivan Jr., remarked:

We have seen already that removing policy considerations from administrative adjudications strips those decisions of the separation of powers justification for deference: they are no longer the decisions of the entity under the Constitution with primacy for executing policy on that subject. Indeed, does the exhaustion doctrine — that a party must exhaust administrative remedies before seeking judicial review — have the same vitality under central panels if there is a non-deferential standard of review? Without a deferential standard of review, I think the very legitimacy conferred on administrative law judge decisions by virtue of those judges being accountable within the executive branch is arguably removed.⁷²

Further, there are some cases where even proponents of finality in ALJ decision-making agree that the agency should have final decision-making authority. For example, where the agency at issue is an elected board or commission, allowing the ALJ final decision-making authority would usurp the authority of officials chosen by the electorate specifically to make such decisions.⁷³

Central panel directors have differing opinions on this topic. Some agree that agencies have greater expertise and therefore should have final decision authority.⁷⁴ In response, proponents of finality in ALJ decisions argue that these decisions are still appealable and reviewable by a court. In addition, agencies or legislatures could consider reserving recommended decisions to only those specialized areas where level of ALJ expertise is a particular concern. Other proponents have argued that vesting final decision-making authority in the ALJ results in cost savings and greater efficiency and fairness for litigants, as it eliminates a step in the process — allowing litigants to go

from an administrative trial directly to the appeal, thereby streamlining and simplifying the process.⁷⁵

Permitting ALJ finality and removing agency review also minimizes the perception of impropriety by not permitting an agency to appeal or overturn an unfavorable decision. Indeed, in North Dakota, from time to time where the ALJ's decision is not final, agencies ask the ALJ to make final decisions in difficult or controversial cases in order to avoid the appearance of impropriety. One chief ALJ commented that a drawback of giving ALJs such authority could be heightened scrutiny of the panel by the agency when the ALJ renders unfavorable decisions.⁷⁶ While a consensus has not been issued on the question of ALJ finality, opponents and proponents seem to agree that agency policy should always be the cornerstone of decision-making.

Finally, there may be cost savings that accrue to final decision-making authority. In cases where ALJs have such authority, agencies and litigants do not have to expend time and money on a second-stage adjudication.

A Legislative Case Study in Imposing Final Decision-making Authority: Georgia

On May 8, 2018, the governor of the state of Georgia signed House Bill 790 ("H.B. 790") into law. The purpose of H.B. 790 was to implement various legal and systemic changes recommended by the state's Court Reform Council to streamline the state administrative hearing process and increase the public's perception of fairness in the judicial system. H.B. 790 has altered the landscape of administrative law within the state of Georgia, with a focus on the newly enhanced power of ALJs to issue final decisions in "contested cases."

H.B. 790 has greatly impacted the landscape of the administrative hearing process in the state of Georgia. The bill was a response to the Court Reform Council's Final Report — an effort to implement the recommendations therein, themselves a product of learned observation as well as collaboration and negotiation of key stakeholders within the state.

The recently enacted legislation's introduction of default ALJ final decision-making, time constraints on agency referral of hearing requests, and augmented ALJ enforcement authority is predicted by proponents to positively impact the state's administrative hearing process in two main ways. First, the administrative hearing process is likely to become much more efficient as the former two-tier contested case review process has largely been disposed of, and ALJs no longer need to rely on superior courts to issue civil penalties for non-cooperation by persons in anticipation of and during hearings. Second, according to proponents, these changes are likely to contribute to the perception that ALJs and the larger OSAH hearing process are just and impartial, as the decisions of ALJs are, generally, no longer subject to agency review, and ALJs are now empowered to issue civil penalties. This perception is an indication that ALJs in Georgia are now viewed more like judges than as administrative agency employees.

Addressing Agency Concerns with the Central Panel System

The vast majority of central panel systems have had to address agency concerns relating to the creation or expansion of a central panel system. The primary agency concerns were (a) loss of control of the process and (b) loss of subject matter expertise.⁷⁷ The Michigan Administrative Hearing System (MAHS) overcame the agency concern of loss of control through the creation of an MOU setting forth the responsibilities of the referring agency and the central panel, including how a hearing request would be processed, approximately how long the process would take, etc.⁷⁸ Other central panel systems highlighted for the agencies the benefits of:

- (a) case backlog removal;
- (b) increased efficiency in process and quicker adjudication of cases;
and
- (c) cost savings due to no longer needing a hearing support staff, which was persuasive.⁷⁹ Many central panel systems also agreed to hire agency ALJs.⁸⁰

MAHS addressed the agencies and special interest groups' concerns of lack of

expertise in technical, complex, or specialized subject matters through further utilizing the MOU approach. More specifically, pursuant to the MOU, MAHS and the agency agreed that they would jointly agree on the ALJs assigned to those specialized cases.⁸¹ Other central panel systems stressed to the agencies the caliber of highly qualified individuals hired for the ALJ position.⁸² Some agencies ultimately opted to exempt from the central panel system a certain

No state that has adopted a central panel has returned to its original practice.

subset of their hearings on highly technical or specialized matters.⁸³ Other agencies requested only proposed decisions for those specialized cases, thereby retaining final decision-making authority.⁸⁴

However, with time, the agencies become comfortable with the compromises and utilization of the central panels.⁸⁵ No state that has adopted a central panel has returned to its previous practice.

Growth in the Central Panel Movement

Since 1983, the central panel movement has grown from seven state central panels to more than 30 state and municipal panels. Some are exceptionally large, while some remain small. But the trend leans toward expansion in terms of the number of central panels, their jurisdiction, and final decision authority being granted to central panel ALJs. This growth can be attributed to a variety of reasons, but the most commonly cited include the recognition that central panels are free to hire experienced lawyers, provide them with substantial initial and ongoing training, and provide impartial and constructive evaluation of judicial performance as well as the perception that the central panel can provide independent decision-making at lower cost.

Our interviews with central panel directors, ALJs, and administrative agency representatives lead to the following conclusions:

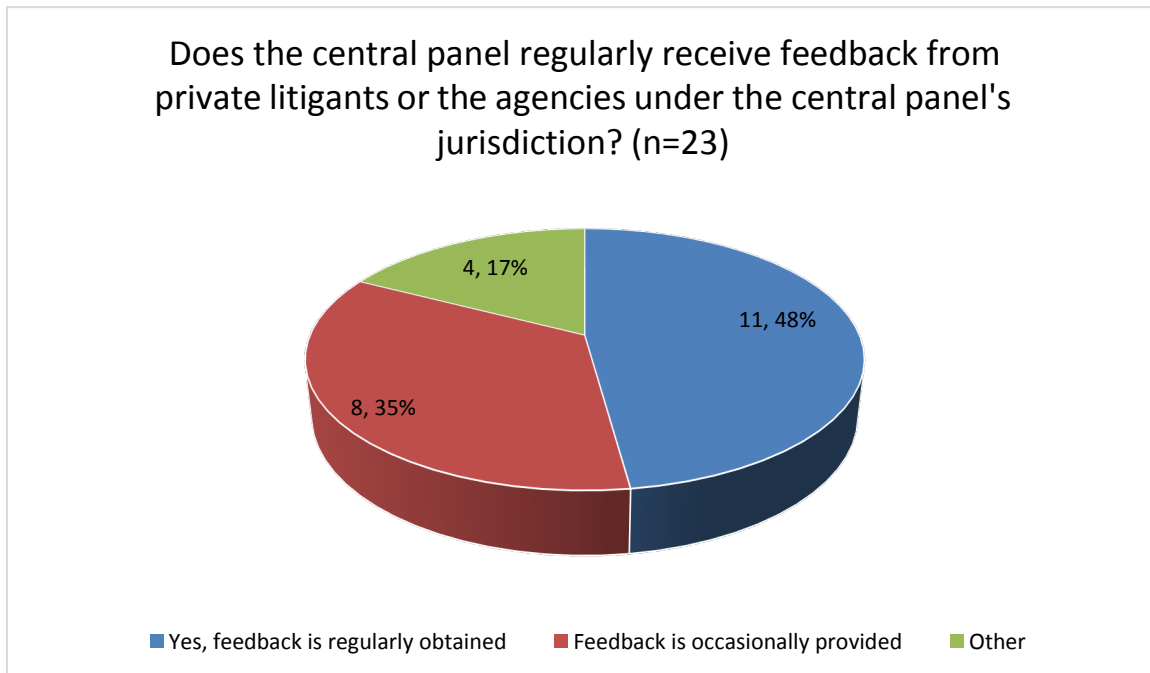
Proponents of the central panel approach argue that the consumers of administrative adjudication appear to have accepted central panel ALJs as impartial arbiters. The independence of the central panels has led to improvements in the quality of hearings and decisions as well as the consistency and uniformity of the proceedings. The management and training of ALJs are perceived to be in the hands of experienced officials. While the increase in the number of new central panels has slowed since 2000, central panel directors noted in our interviews that the number of agencies using the services of the central panel has increased.

Central panel directors also note that since 2000, they have seen within their central panel agencies the streamlining and improved effectiveness of data management and technology. This includes electronic submission, case management, videoconferencing to conduct and record hearings, establishing and maintaining a database of hearing decisions, and maintaining transparency through up-to-date websites. Central panels have been responsible for producing codes of ethics for ALJs, uniform rules of procedure, and the enhanced use of alternative dispute resolution procedures.

Key Findings of Our Electronic Survey of Central Panel Directors (CPDs)

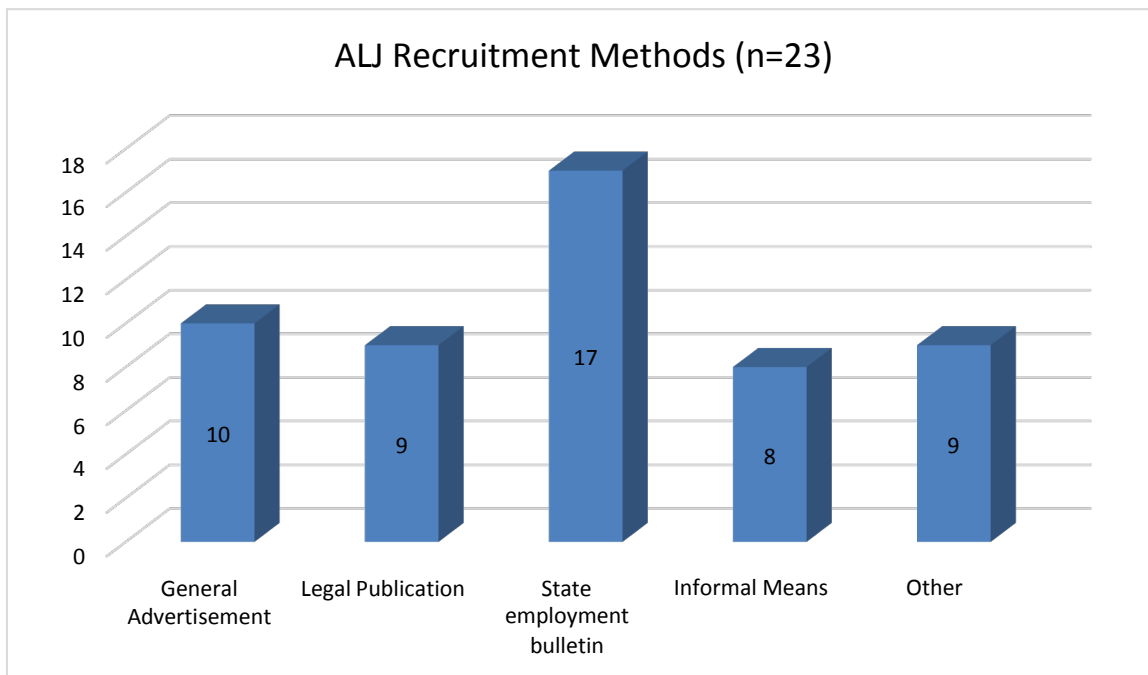
We conducted a survey of central panel directors (CPDs) nationwide and received responses from twenty-five states. The majority of the questions were answered by twenty-three central panel directors. The data reported below summarize the survey results.

Fairness and Due Process

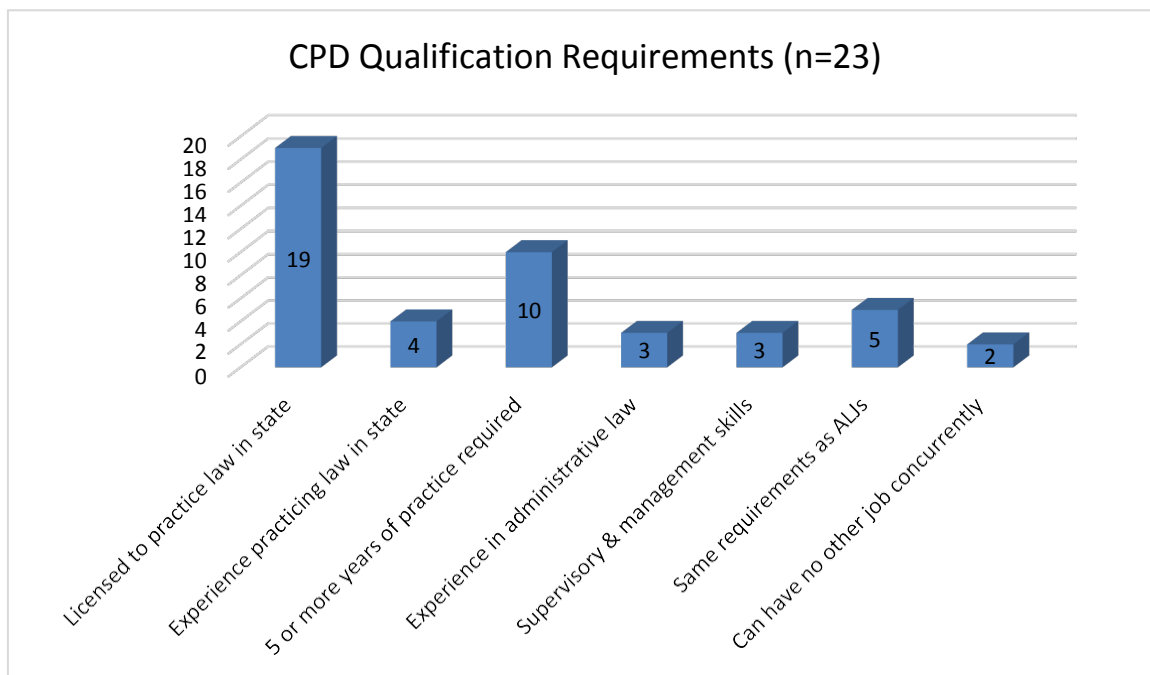


Nearly half (11/23) of the CPDs surveyed said they regularly obtain feedback, but 52% (12/23) said feedback is only provided occasionally or not at all. Directors in several states that do request feedback noted that response rates are low. In North Carolina the CPD has specifically charged the Deputy Director with improving the return rate.

Hiring, Training, and Supervision

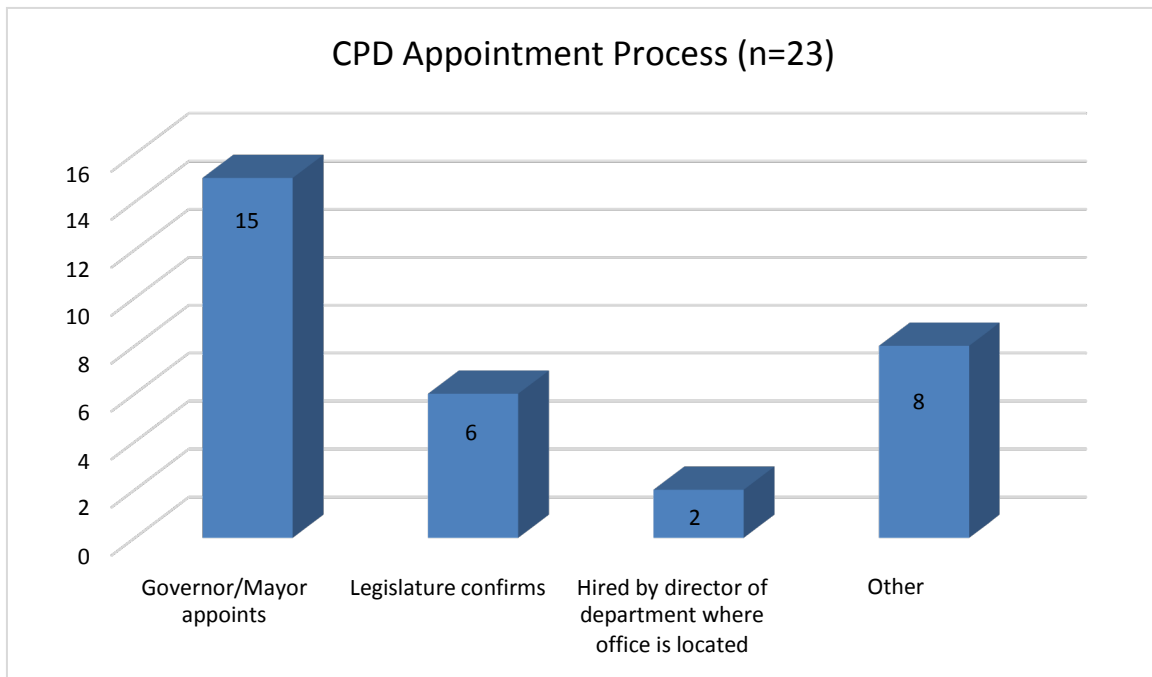


Other recruitment sources cited included the state bar association website and agency or state employment websites.

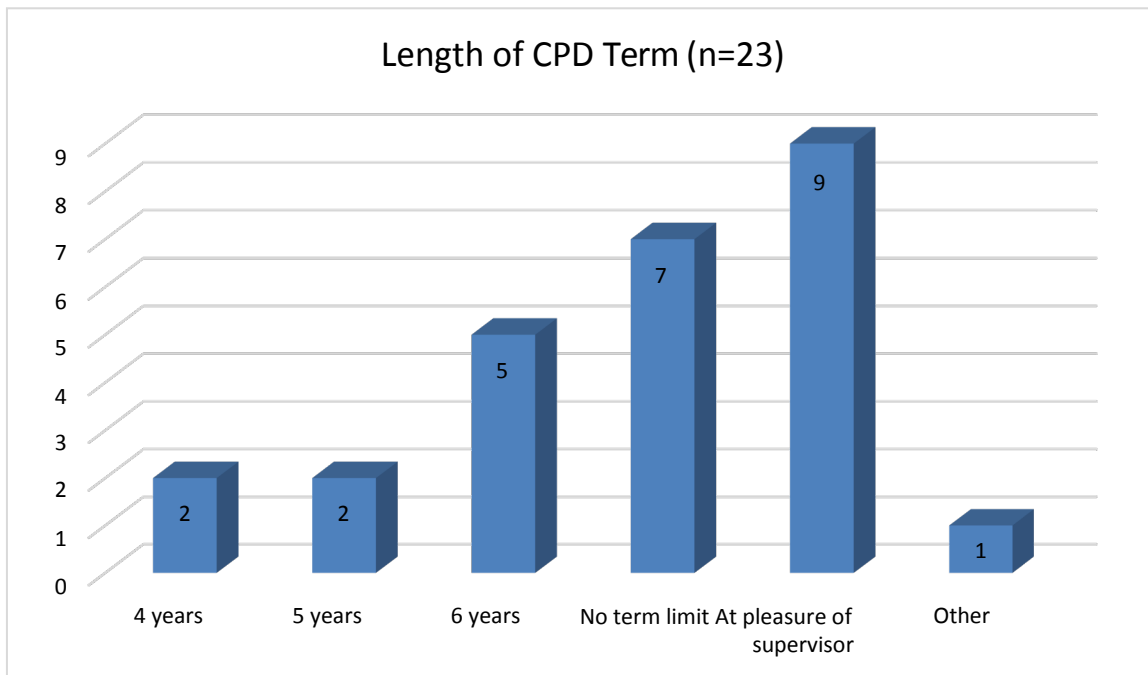


Many states have few specific requirements beyond a license to practice law, though

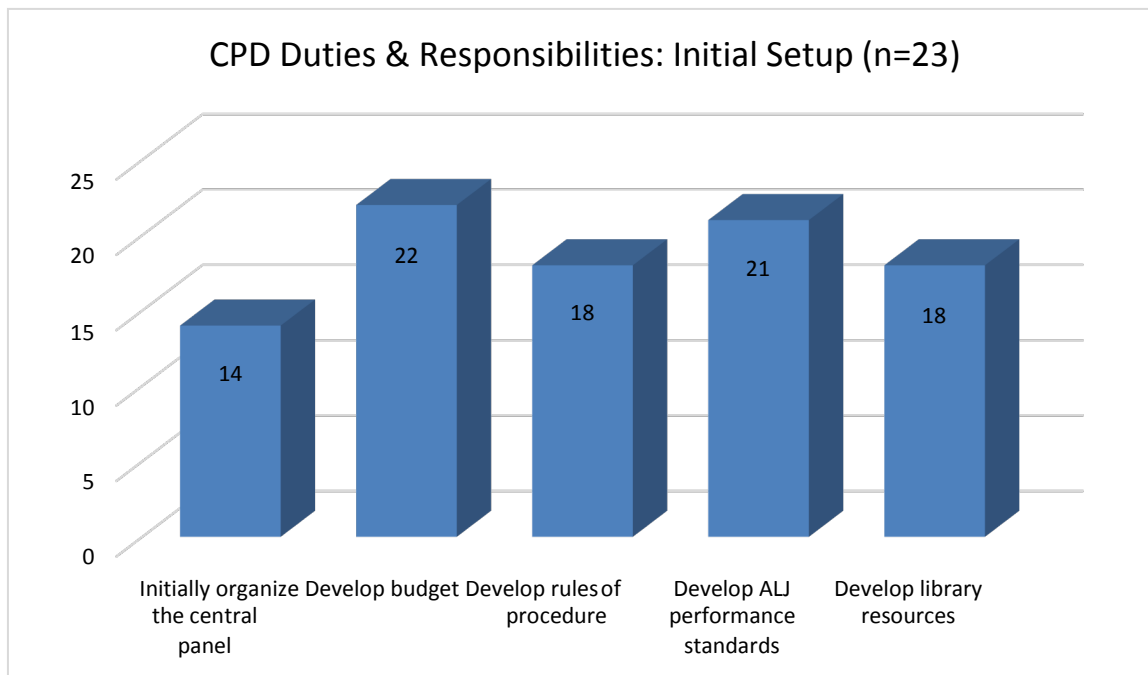
nearly half (10/23) specified that CPDs are required to have substantial or extensive experience. Most (8/10) of the states with experience requirements demand five or more years of practice. A few states define specific areas of required experience including administrative law and representing clients in both administrative and judicial proceedings. Other requirements worth noting include vetting by the governor’s office and an absence of financial conflicts of interest.

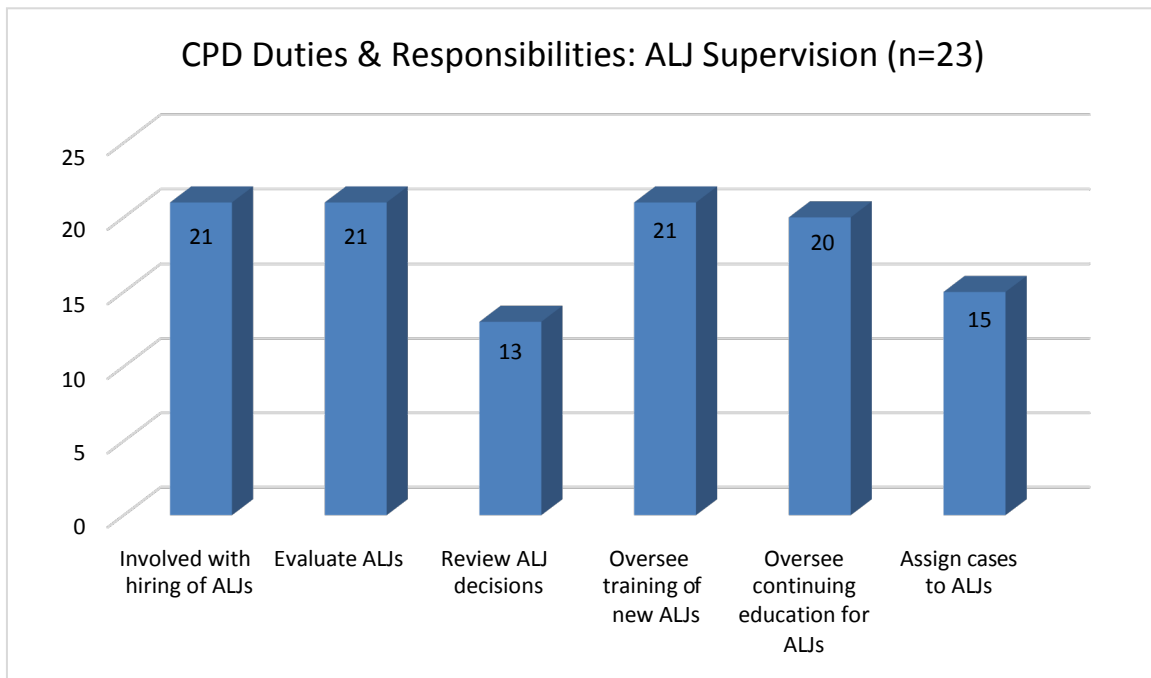


In nearly 2/3 (65%) of states, CPDs are appointed by the governor (or mayor, in municipalities). Several states (6/23) involve cabinet members in the selection and/or appointment process. In one state, a judicial selection panel makes a recommendation to the governor, while in another a vote is taken by the administrative law judges (ALJs).

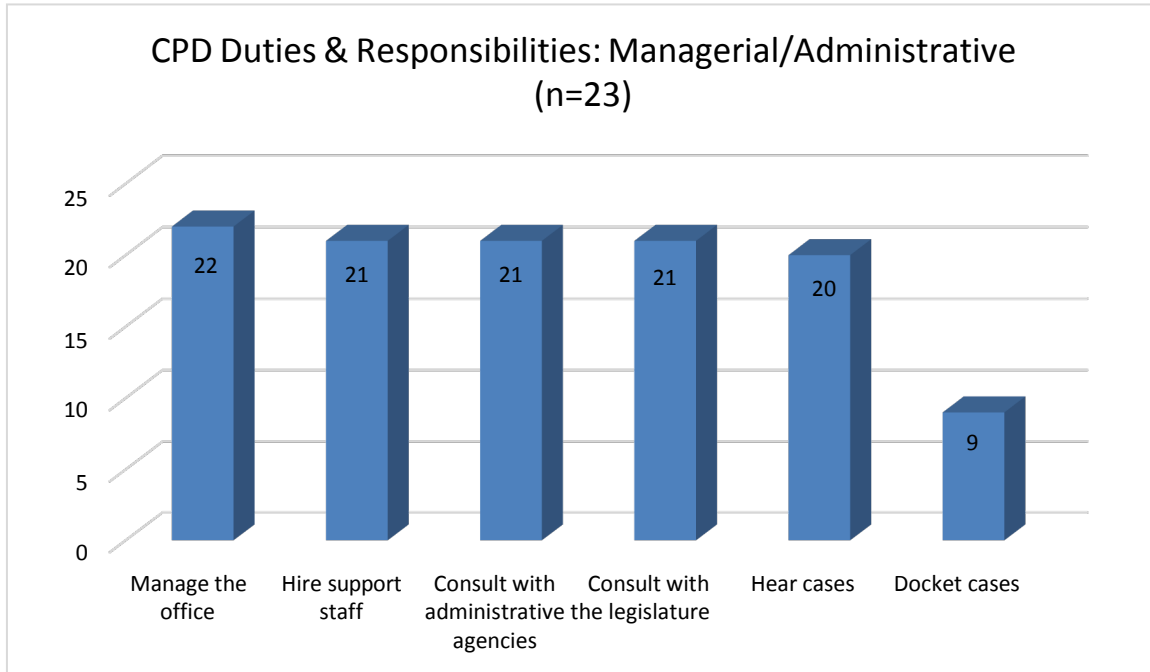


CPDs in 61% (14/23) of states have no term limits and/or serve at the pleasure of their superior, while 39% (9/23) of states specify term limits with lengths of four to six years.



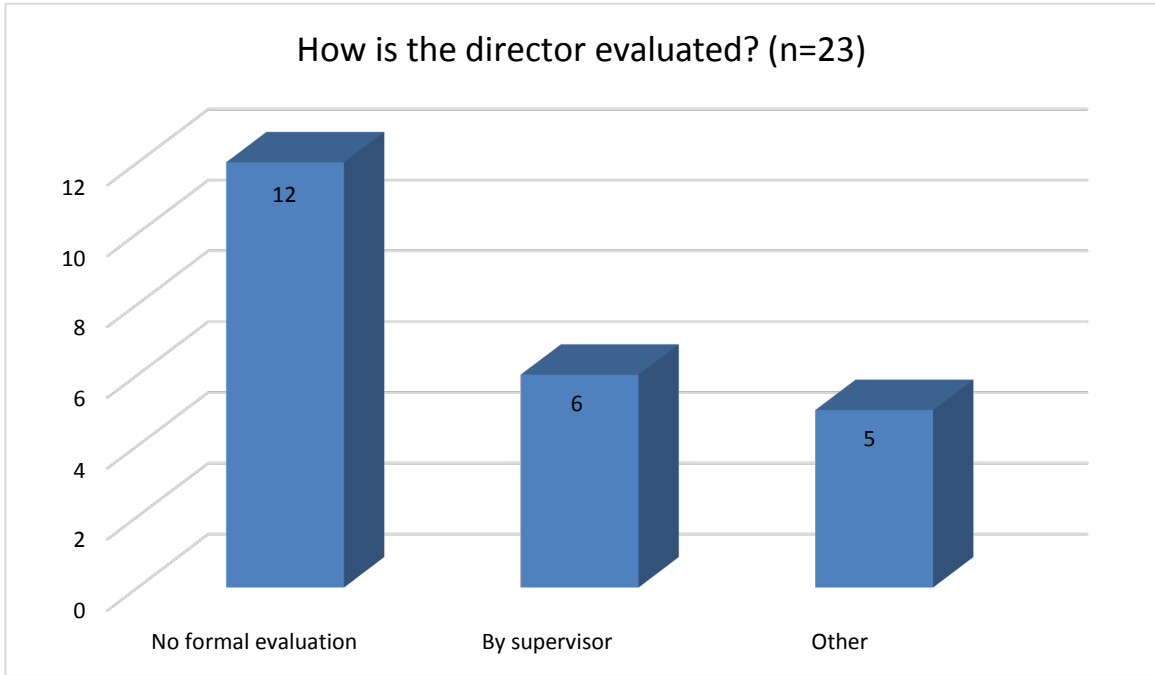


A unique approach to CPD review of ALJ decisions is conducted in Alaska, where the CPD (Chief ALJ) and all the more senior ALJs participate in a peer review process; however, there is no top-down control of decisions and no right of appeal to the Chief ALJ.



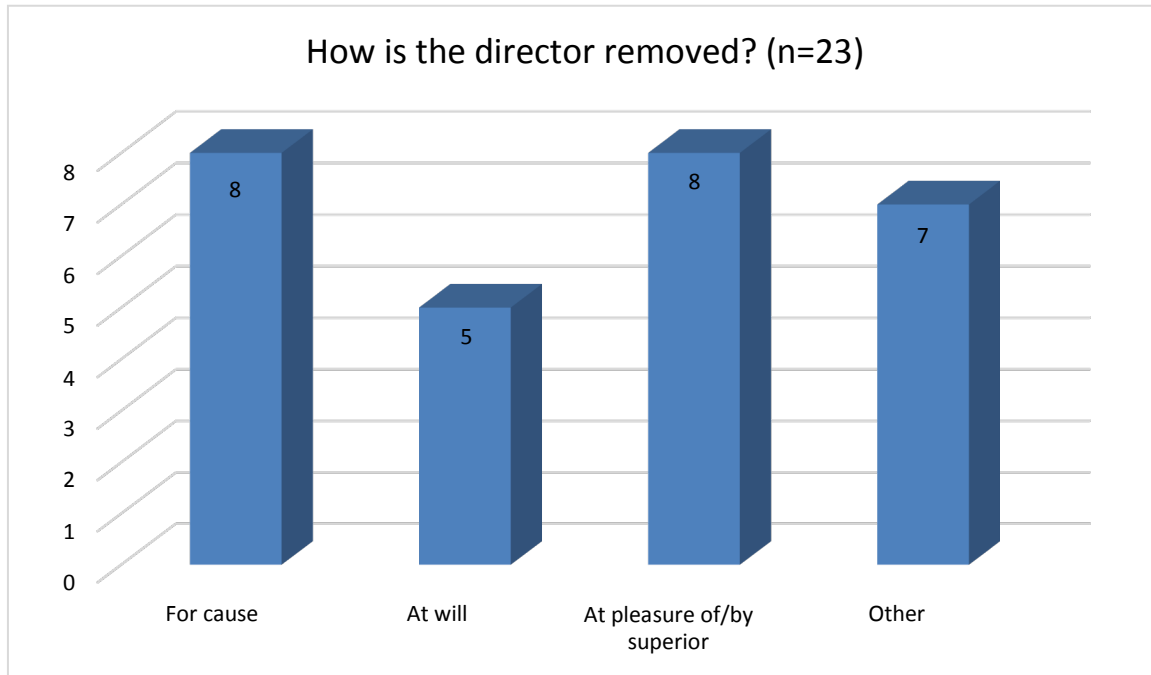
Other managerial/administrative duties include:

- hiring judges,
- general administration of the court operations,
- investigating allegations of misconduct and ethics of ALJs and hearing officers,
- overseeing management of the Rules Division or appointing the Codifier of Rules for the State,
- overseeing management of the Civil Rights Division, which is charged with investigation of claims of discrimination by state employees,
- serving as a member of the Governor's Cabinet, and
- presiding over a limited docket of cases.



No formal evaluation process for CPDs exists in more than half (12/23) of the states, but evaluation procedures that are in practice include:

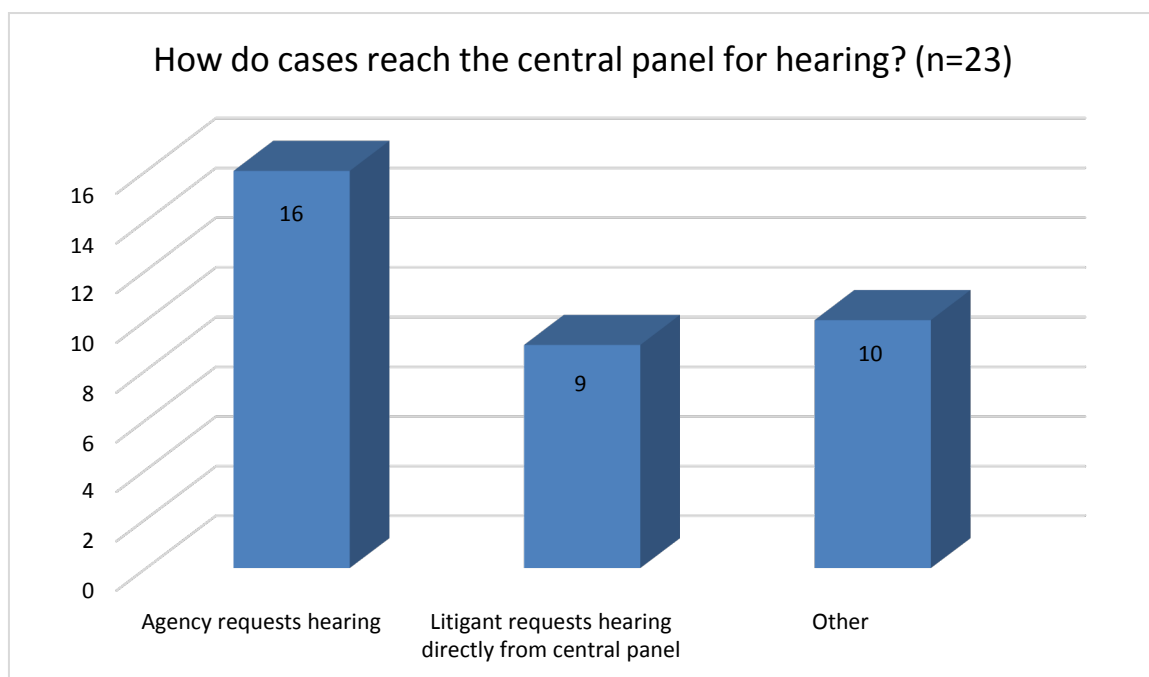
- yearly performance plan;
- quarterly performance measures and annual detailed review by the governor's office;
- number of cases heard, appeal rate of decisions, and customer satisfaction rating;
- constant evaluation by employees and agencies in their feedback to the governor and umbrella organization's director;
- oversight committee with four members of the legislature, representative from governor's office, and three attorneys; and
- legislators review, question, and modify the central panel's budget and compel supporting data.



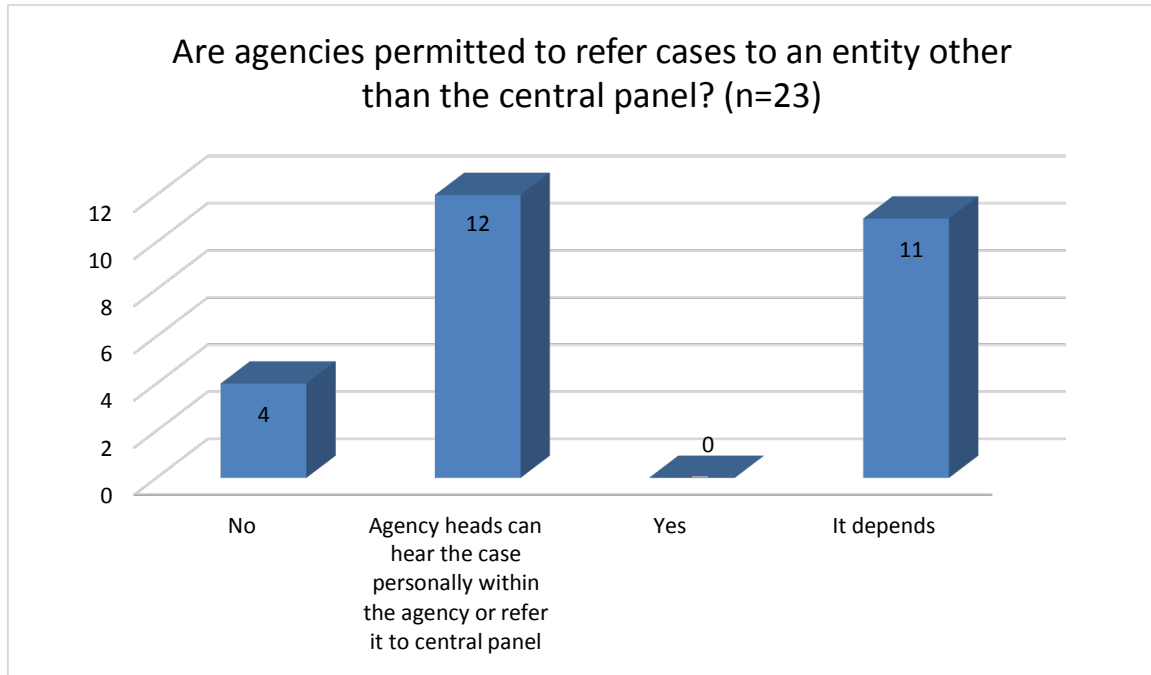
Procedures for removing directors vary, but 8/23 states remove directors for cause, 8/23 states remove directors at the pleasure of their superior, and in 5/23 states CPDs are employed at will. Other removal processes include:

- by at least a 3-1 vote of the cabinet; the governor must be on the side voting to remove;
- when term ends. Term is not concurrent with governor's term and not at will;
- upon appointment of a new director;
- with public employee protections, removal would be for cause (performance), promotion, or transfer with no loss of pay or classification; and
- there is no direct authority for the removal of the director.

Mandatory v. voluntary use of ALJs



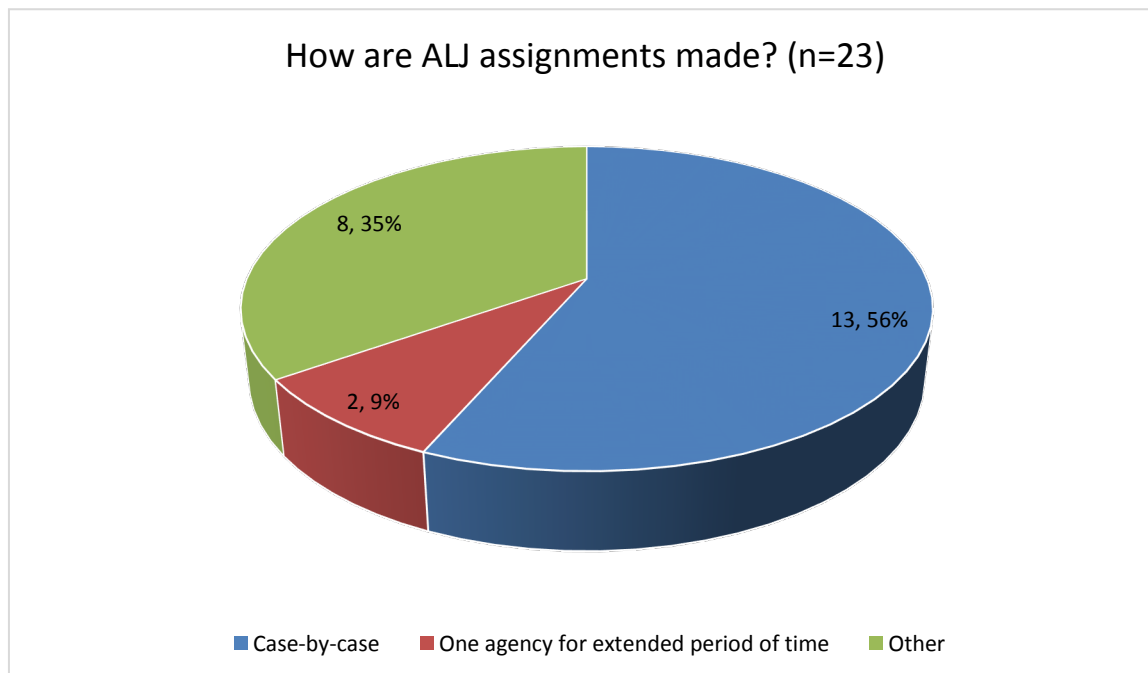
Cases reach the central panel for hearing through agency requests in nearly 70% (16/23) of states and through litigant requests in nearly 40% (9/23) of states. Close to one third (7/23) of states use both methods. In several states CPDs noted that the method depends upon the type of case and/or agency involved.



Central panel use is always mandatory in only four (17%) states. Agency heads have the choice to hear cases within the agency or refer it to the central panel in slightly more than half (12/23) of the states. There are no states in which agency heads are allowed to refer cases outside of the agency to entities outside of the central panel. CPDs in nearly half (11/23) of the states say it depends, but most of them (9/23) say that central panel use is mandatory in most cases with only specific exceptions or exemptions.

ALJs – Generalist v. Specialist?

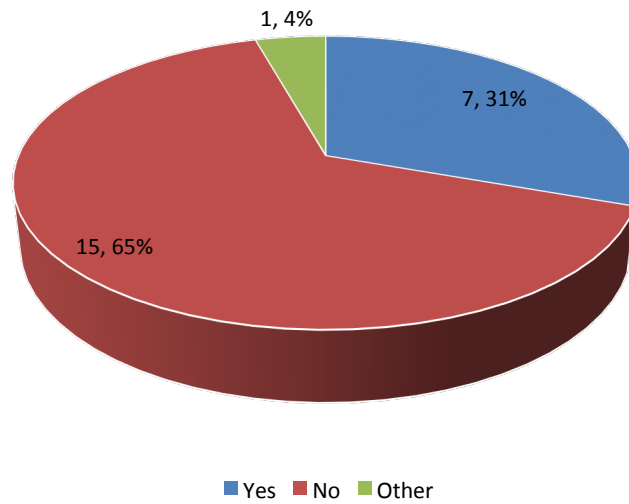
CPD Perspective



More than half (13/23) of states assign ALJs on a case-by-case basis. Only two states (9%) assign ALJs to one agency for an extended period of time. One third of states use different methods to assign ALJs, including:

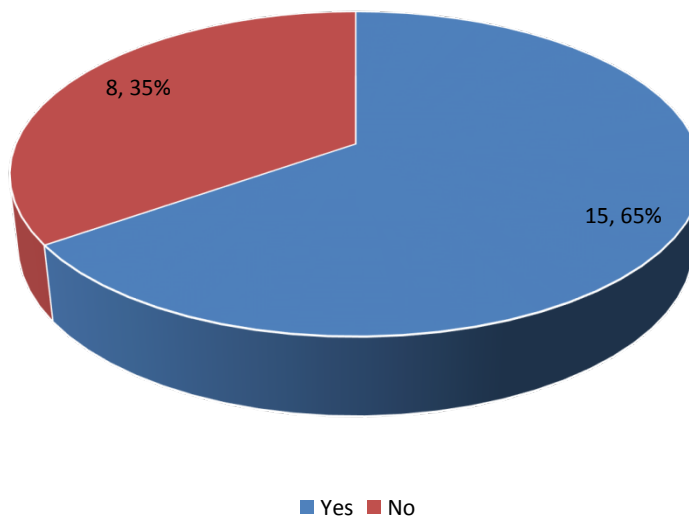
- geographically for general jurisdiction ALJs and case-by-case for specialized matters;
- based on a circuit system;
- assignments made monthly for case dockets;
- ALJs are moved between eight main areas when caseloads fluctuate;
- some are by batch, others case by case;
- most cases are set on pre-calendared dates to which an ALJ is already assigned;
- some are case-by-case; most develop an expertise (e.g., Medicaid cases and workers compensation cases) that keep them in a unit; and
- case-by-case on dockets.

Is the central panel divided into sub-units based on ALJ specialization in technical areas? (n=23)



Nearly 2/3 (65%) of states do not divide central panels into sub-units based on ALJ specialization in technical areas, while 30% (7/23) of states do. One state divides some of the central panel ALJs into sub-units while others are general jurisdiction.

Are ALJ assignments made with expertise in mind? (n=23)



ALJ assignments are made with expertise in mind in nearly 2/3 (65%) of states while the other third of states do not assign ALJs according to their expertise.

We also conducted a limited survey of central panel directors (nine CPDs from nine different states/municipalities). Again, while these data certainly are not conclusive — due to the very small sample size — we believe they suggest potential trends and areas for further research to determine best practices and lessons learned from central panels nationwide. Summaries of the key findings are below.

Initial concerns regarding the adoption of a central panel

By far, the most significant concerns regarding the adoption of a central panel revolved around the agencies’ perceived loss of control. Additionally, CPDs expressed concerns about agencies’ willingness to accept recommended decisions that challenged the agencies’ initial determinations. Another CPD mentioned concerns regarding sustainability.

Concerns remaining after initial adoption of central panel

The CPDs who were surveyed on this issue agreed that in the long run, the initial concerns regarding the adoption of a central panel were abated. One CPD commented that “the rate of acceptance of recommended decisions by agency directors, even those that have gone counter to the initial agency determination, is substantial. In those cases where the recommended decision goes contrary to the initial agency, the rate of acceptance of the recommended decision is about 90%.”

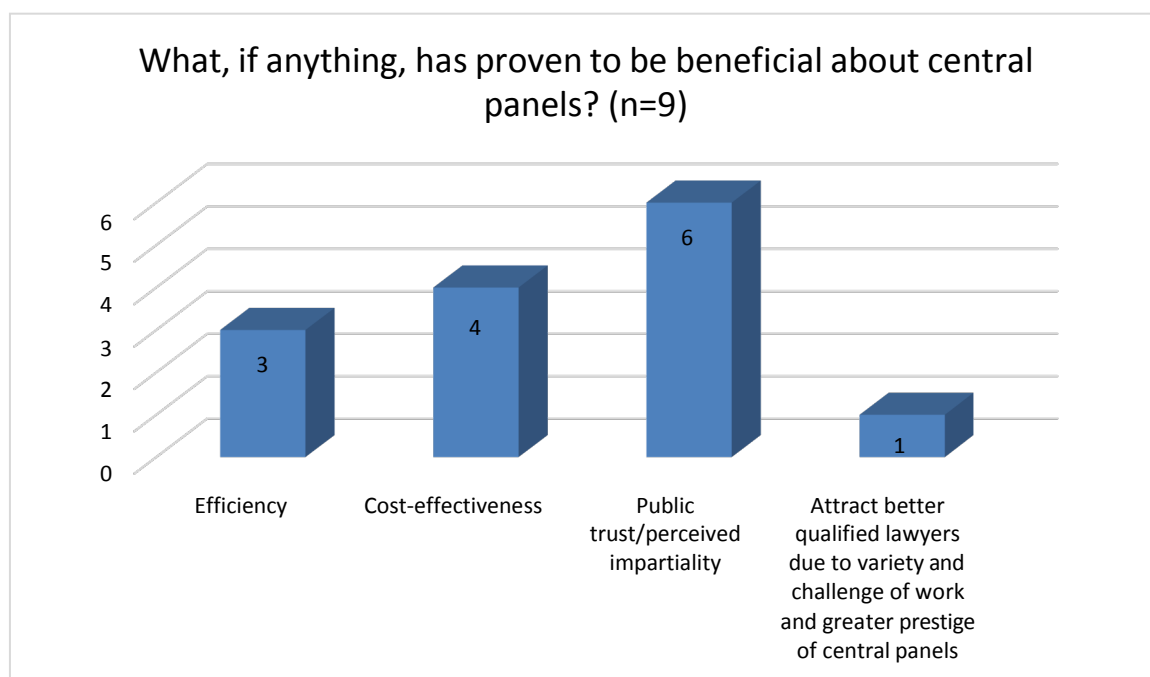
Another CPD commented that “the challenge was political, not logistical or managerial. Once the political question of prior agency autonomy was resolved by legislative mandate, there was little challenge in the execution of that mandate.”

A CPD also noted that “some agencies may not have the win percentage the agency would like, but the process is well respected.” While “the agencies did lose some control, the benefits of having an independent judge far outweigh any issues with control.” Another CPD noted that while one agency briefly switched back to having its own hearing officers after an attempt at independent ALJs it did return back to the independent ALJ system.

Challenges with expansion of central panels

The main challenges noted by CPDs with the expansion of central panels have revolved around resources and unpredictable swings in workload. One CPD explained that, “since its creation, numerous new jurisdictions have been added without new resources.” Other CPDs expressed concern about “the agency's growth over time, taking in new subject areas and handling areas that are constantly evolving and fluctuating” or highly technical matters occasionally being difficult when the judge assigned had a limited background in that area. Another CPD noted that “the only current problem comes during sunset periods when we have to remind legislators of the reasoning behind the implementation of a central panel.”

Benefits of central panels



The central panel directors we surveyed on this question cited multiple benefits of central panels, but the most common (6/9) was improvements in public trust or perceived impartiality of the administrative courts. This improvement was illustrated in a comment from one CPD:

“Of paramount importance is the trust that has built up with the public that citizens will receive a fair and impartial hearing forum. There is no doubt that

those persons who participate in administrative litigation through our central panel feel that regardless of the outcome, they have been given a fair hearing by an agency that is independent. This is reflected in our annually accumulated post hearing surveys. Without exception, over the last 20 years the number of participants rating the process as good to excellent have exceeded 90%.”

CPDs’ desired modifications of the central panel model in their state

Multiple CPDs commented that they would incorporate more state agencies into the central panel model if they could. One CPD noted expanding the number of local jurisdictions for which they handle administrative hearings would be desirable. Another CPD commented that perceived fairness could be improved if they had enough judges so a party could exclude a judge by right. This respondent also explained that having more full time ALJs would help with managing workload, building camaraderie, and providing for backup.

Would CPDs revert to the administrative law model that existed prior to the central panel model if they could?

100% of reporting CPDs answered No, they would not (9/9).

New types of cases that have come under the jurisdiction of the central panel since its inception

Many CPDs we surveyed noted that the central panels have been expanding consistently. One explained, “the history in our state is one of aggregation. The Central Panel started out as a natural resource hearing panel in 1985 and has never lost a jurisdiction. Today, it hears all manner of cases.”

The most common new types of cases absorbed by central panels include workers compensation, tax issues, special education, teacher dismissal and other employee disciplinary and appeals processes, public benefits (including SNAP eligibility, Medicaid eligibility, TANF), medical malpractice, child/adult abuse or neglect, Title IX, environmental cases, and child support. Following trends in legislation nationwide, a frequently noted new area of jurisdiction was marijuana regulation, licensing, and enforcement.

Suggested Practices of Central Panels and Central Panel ALJs

Based on our current research, the following are some practices to be considered:

- Create an advisory council to give direction, policy counsel, and advice on the adoption of rules established by the central panel. Such a reform council could include a review of current practices and procedures within both the judicial court system and the administrative hearing system, with a constructive exchange of ideas and proposals;
- Create reasonable completion deadlines for ALJ decisions that are both timely and fair, and seek input from ALJs;
- Implement high application and selection standards for ALJs;
- Standardize all rules and procedures utilized by the central panel system from the beginning, rather than adopting existing fractured rules and procedures from the agencies;
- Assign ALJs hired from agencies to caseloads outside their former agency in order to minimize any appearance of bias or impropriety;
- Implement a hybrid system of generalist and specialist ALJs;
- Direct funding allocation from the legislature;
- Utilize technology, including implementing electronic data collection systems to track cases and electronic filing systems as well as permitting parties to access forms online;
- Implement a complaint process for lawyers and pro se litigants to voice concerns. Implement consumer satisfaction surveys for lawyers and litigants. Survey agency officials for their satisfaction with the central panel and for their recommendations;

- Require implicit bias training for central panel ALJs;
- Provide training for central panel ALJs that focuses on approaches to handling the hearing room when one or more of the parties is unrepresented by legal counsel;
- Focus on increasing diversity among central panel ALJs;
- Continue research on pros and cons of ALJ decision finality;
- Maintain flexibility in the management of central panels to handle fluctuating caseloads; and
- Further investigate the benefits of state-specific practices including:
 - To promote safety and visibility, the North Carolina central panel conducts a majority of its hearings in courthouses located throughout the state.
 - In Georgia, state legislation has given its central panel ALJs the ability to issue fines to litigants and lawyers for disobeying subpoenas, not following court orders, and other misconduct.
 - Newly hired central panel ALJs in North Carolina are assigned a mentor by the central panel, and those ALJs receive intensive training at the National Judicial College in Reno, Nevada.
- Issue an annual report analyzing factors including:
 1. Changes in jurisdiction and documentation of the cost impact of these changes,
 2. Expertise and experience levels of current and newly hired ALJs and staff,
 3. Case processing time,
 4. Case-flow management data, and
 5. Cost efficiency data.

Conclusion

The central panel concept represents a major change in the way administrative adjudication is done. Administrative hearing officers are hearing cases that are equally important to those being heard in most courtrooms in the state courts. But we have not paid enough attention to administrative justice, including the decision-making independence of these administrative hearing officers — the hidden judiciary.

The benefits of the central panel approach include:

- Increased efficiency,
- Cost effectiveness,
- Enhanced public trust and perceived impartiality among lawyers and the broader community,
- An opportunity to bring more transparency to our justice system as well as to attract higher-quality lawyers who want to become ALJs.

These benefits are weighed against the commonly expressed administrative agency concern that the central panel approach leads to a loss of agency control and a loss of policy expertise at the adjudicative level.

Despite these concerns, while the pace of creation of new central panels has slowed in recent years, the jurisdictions of the existing central panels have increased. The typical growth pattern of central panels is to see an increasing number of agencies having their cases heard by central panel ALJs.

The focus on the central panel system has historically been on whether the central panel brings cost efficiency and whether it brings an enhanced perception of impartiality. But it also has provided a laboratory to test new approaches to adjudication. Central panel directors report an increasing number of new types of cases being brought into their operation, including

issues that have historically been handled in other types of tribunals such as the state courts of general jurisdiction. These issues include child support, corrections, medical leave disputes, and conflicts related to Article IX policies.

Moreover, as central panels become more trusted by the executive and legislative branches of state government for their ability to provide high-quality and independent adjudication, they become the “go to” tribunal for administrative adjudication, mediation, and rulemaking expertise.

The central panel has also brought new approaches to adjudication involving large percentages of unrepresented persons — an issue that our state court systems struggle with on an ongoing basis.

The central panel movement represents state- and municipality- based laboratories developing new approaches to resolving disputes. As a research

The central panel movement has become such an important part of our justice system that it deserves the ongoing attention of social justice advocates. and advocacy organization focused on identifying and stopping injustice in the court system, Chicago Appleseed believes that the central panel movement has become such an important part of our justice system that it deserves the ongoing attention of social justice advocates.

We must ensure that the administrative adjudication portion of our justice system is accountable and transparent — and the central panel movement is an important part of this goal. We must make a review of this system a part of our watchdog/reform efforts — the lives of hundreds of thousands of persons and businesses are at stake.

Endnotes

- ¹ Interviews with central panel directors
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- ³ Interviews with central panel directors
- ⁴ Interviews with central panel directors
- ⁵ Based on interviews with Chris Seppanen (Michigan Administrative Hearing System, Executive Director), Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance), Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge), Cynthia Eyre (Louisiana Division of Administrative LALJ, former General Counsel). However, most conclusions about the fairness of central panel systems are derived from anecdotal, interview-based evidence, and the results of litigant surveys conducted by many central panels.
- ⁶ Interviews with individual legal aid lawyers
- ⁷ Interview with Judge Edward Schoenbaum
- ⁸ Wise, Louisiana's Division of Administrative LALJ: An Independent Administrative Hearings Tribunal, 30 J. National Association of Administrative law Judges 95, 96 (2010).
- ⁹ Interviews with central panel directors
- ¹⁰ Based on interviews with Judge Larry Craddock (Texas State Office of Administrative Hearings), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge).
- ¹¹ Hon. W. Michael Gillette, ALJ Central Panels: How is it Going Out There?, The Judicial Edge (2015).
- ¹² Interviews with central panel directors
- ¹³ Interviews with central panel directors
- ¹⁴ Based on interviews with Brian Hayes (Wisconsin Division of Hearings and Appeals, Division Administrator) and Chris Seppanen (Michigan Administrative Hearing System, Executive Director).

15 *Id.*

16 *Id.*

17 Based on interviews with Judge Larry Craddock (Texas State Office of Administrative Hearings), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge), Brian Hayes (Wisconsin Division of Hearings and Appeals, Division Administrator), Chris Seppanen (Michigan Administrative Hearing System, Executive Director), John Allen (Cook County Department of Administrative Hearings, Former Director).

18 Maryland Office of Administrative Hearings Origins & Functions, Maryland.gov, <http://msa.maryland.gov/msa/mdmanual/25ind/html/01adminf.html>.

19 *Id.*

20 Allen C. Hoberg, Ten Years Later: The Progress of State Central Panels, *Journal of the National Association of Administrative law Judiciary* (2001), 239.

21 Based on interviews with Tammy L. Pust (Minnesota Office of Administrative Hearings, Chief Judge); Brian Hayes (Wisconsin Division of Hearings and Appeals, Division Administrator); Chris Seppanen (Michigan Administrative Hearing System, Executive Director).

22 Thomas E. Ewing, Oregon's Hearing Officer Panel, 23 *J. NAT'L ASS'N. ADMIN. L. JUDGES* 57 (2003) (detailing the increased efficiency effectuated by adopting a central panel in Oregon); Flanagan, *supra* note 1, at 1383 (noting that central panels often render better decisions than those adjudicators employed by a single agency); Christopher B. McNeil, Similarities and Differences Between Judges in the Judicial Branch and the Executive Branch: The Further Evolution of Executive Adjudication Under the Administrative Central Panel, 18 *J. NAT'L ASS'N. ADMIN.L.JUDGES* 1 (1998) (advocating for the adoption of central panel systems for administrative adjudication); Karen Y. Kauper, Note, Protecting the Independence of Administrative law Judges: A Model Administrative law Judges Corps Statute, 18 *U. MICH. J.L. REFORM* 537, 543 (1985) (applauding the benefits of the central panel paradigm).

23 Interviews with central panel directors

24 *Id.*

25 The Office of Administrative Hearings, Maryland.gov, <http://www.oah.state.md.us/>.

26 Based on interview with Chris Seppanen (Michigan Administrative Hearing System, Executive Director).

- 27 *Id.*
- 28 Based on interview with Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge)
- 29 Based on interviews with Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge) and Chris Seppanen (Michigan Administrative Hearing System, Executive Director).
- 30 Based on interviews with Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge), Samuel P. Langholz (former Chief Administrative Law Judge and Administrator, Iowa Administrative Hearings Division), Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director).
- 31 Administrative law Judge Work Analysis Study, Human Resources Research Organization (2015), vi,
<https://drive.google.com/a/jd16.IALJ.harvard.edu/file/d/0B2kAAfgH45CIZjRGejdwSkwyNXc/viiew?p li=l>.
- 32 Based on interview with Robert Cohen (Florida State Office of Administrative Hearings, Chief Administrative law Judge).
- 33 *Id.*
- 34 *Id.*
- 35 Based on interviews with Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge), Samuel P. Langholz (former Chief Administrative Law Judge and Administrator, Iowa Administrative Hearings Division), Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director).
- 36 John Hardwicke and Thomas E. Ewing, "The Central Panel: A Response to Critics," 24 *Jour. of the National Association of Administrative law Judiciary* 231 (2004), 233.
- 37 *Id.* at 234.
- 38 *Id.*
- 39 *Id.* at 233.
- 40 *Id.* at 233-34.
- 41 *Id.* at 236-37.
- 42 *Id.* at 234.

- ⁴³ Based on interviews with Judge Larry Craddock (Texas State Office of Administrative Hearings), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge); Tammy L. Pust (Minnesota Office of Administrative Hearings, Chief Judge)
- ⁴⁴ Gerald E. Ruth, Unification of the Administrative Adjudicatory Process: An Emerging Framework to Increase "Judicialization" in Pennsylvania, *Journal of the National Association of Administrative law Judiciary* (1996), 245.
- ⁴⁵ Based on interviews with Judge Larry Craddock (Texas State Office of Administrative Hearings), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge); Brian Hayes (Wisconsin Division of Hearings and Appeals, Division Administrator); Cynthia Eyre (Louisiana Division of Administrative LALJ, former General Counsel).
- ⁴⁶ Based on interview with Alicia Boomer (California Office of Administrative Hearings, Senior Counsel).
- ⁴⁷ Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance); Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge); Samuel P. Langholz (former Chief Administrative Law Judge and Administrator, Iowa Administrative Hearings Division).
- ⁴⁸ Based on interview with Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director).
- ⁴⁹ Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance) and J. Richard Collier (Office of Tennessee Secretary of State, Chief Administrative Judge, Administrative Procedures Division).
- ⁵⁰ Based on interview with Brian Hayes (Wisconsin Division of Hearings and Appeals, Division Administrator).
- ⁵¹ Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance) and J. Richard Collier (Office of Tennessee Secretary of State, Chief Administrative Judge, Administrative Procedures Division).
- ⁵² Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings,

Administrative law Judge, Deputy Director, Quality Assurance).

⁵³ Based on interview with Samuel P. Langholz (former Chief Administrative Law Judge and Administrator, Iowa Administrative Hearings Division).

⁵⁴ Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance), Judge Larry Craddock (Texas State Office of Administrative Hearings, Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge).

⁵⁵ It is important for such a hybrid system to have the flexibility to absorb ALJs into higher tiers when they meet certain benchmarks for advancement, rather than when there is an opening at the higher tier. One central panel director commented that morale problems are created when ALJs work to gain the knowledge and experience to advance to a higher tier but have to wait for a vacancy.

⁵⁶ Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance) and Chris Seppanen (Michigan Administrative Hearing System, Executive Director).

⁵⁷ Based on interviews with Judge Larry Craddock (Texas State Office of Administrative Hearings, Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge); Brian Hayes (Wisconsin Division of Hearings and Appeals, Division Administrator), Tammy L. Pust (Minnesota Office of Administrative Hearings, Chief Judge).

⁵⁸ 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, 54 ADMIN. L. REV. 1355 (2002); James F. Flanagan, An Update on Developments in Central Panels and ALJ Final Order Authority, 38 IND. L. REV. 401 (2005); Final, But Often Fallible: Recognizing Problems with ALJ Finality, 56 ADMIN.L.REV. 53, 57 n.6 (2004).

⁵⁹ *Id.*

⁶⁰ Based on interviews with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance); Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director).

⁶¹ Based on interview with Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge).

⁶² Based on interviews with Julian Mann (North Carolina Office of Administrative Hearings,

Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge).

⁶³ Based on interviews with Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative Law Judge); Cynthia Eyre (Louisiana Division of Administrative LALJ, former General Counsel).

⁶⁴ Based on interview with Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative Law Judge).

⁶⁵ Based on interview with John Allen (Cook County Department of Administrative Hearings, Former Director).

⁶⁶ *Id.*

⁶⁷ Based on interview with J. Richard Collier (Office of Tennessee Secretary of State, Chief Administrative Judge, Administrative Procedures Division).

⁶⁸ *Id.*

⁶⁹ Based on interview with Samuel P. Langholz (former Chief Administrative Law Judge and Administrator, Iowa Administrative Hearings Division).

⁷⁰ James F. Flanagan, An Update on Developments in Central Panels and ALJ Final Order Authority, 38 IND. L. REV. 419 (2005).

⁷¹ *Id.*

⁷² Frank Sullivan, Jr., Some Questions to Consider Before Indiana Creates a Centralized Office of Administrative Hearings, Indiana law Review (2005), 397.

⁷³ Based on interviews with Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director) and Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge).

⁷⁴ Based on interviews with Judge Larry Craddock (Texas State Office of Administrative Hearings), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Robert Cohen (Florida Division of Administrative Hearings, Chief Administrative law Judge).

⁷⁵ Based on interview with Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge).

- ⁷⁶ Based on interview with Ed Felter (Colorado Administrative Hearings Office, Senior ALJ).
- ⁷⁷ Based on interviews with Chris Seppanen (Michigan Administrative Hearing System, Executive Director), John Allen (Cook County Department of Administrative Hearings, Former Director), Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance), Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge), J. Richard Collier (Office of Tennessee Secretary of State, Chief Administrative Judge, Administrative Procedures Division), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director) and Cynthia Eyre (Louisiana Division of Administrative LALJ, former General Counsel).
- ⁷⁸ Based on interview with Chris Seppanen (Michigan Administrative Hearing System, Executive Director)
- ⁷⁹ Based on interviews with John Allen (Cook County Department of Administrative Hearings, Former Director), Cynthia Eyre (Louisiana Division of Administrative LALJ, former General Counsel)
- ⁸⁰ Based on interviews with John Allen (Cook County Department of Administrative Hearings, Former Director), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative Law Judge).
- ⁸¹ Based on interview with Chris Seppanen (Michigan Administrative Hearing System, Executive Director).
- ⁸² Based on interview with John Allen (Cook County Department of Administrative Hearings, Former Director).
- ⁸³ Based on interview with Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance).
- ⁸⁴ *Id.*
- ⁸⁵ Based on interviews with Chris Seppanen (Michigan Administrative Hearing System, Executive Director), John Allen (Cook County Department of Administrative Hearings, Former Director), Georgia S. Brady (Maryland Office of Administrative Hearings, Administrative law Judge, Deputy Director, Quality Assurance), Fidel F. Del Valle (New York City Office of Administrative Trials and Hearings, Chief Administrative law Judge), J. Richard Collier (Office of Tennessee Secretary of State, Chief Administrative Judge, Administrative Procedures Division), Julian Mann (North Carolina Office of Administrative Hearings, Chief Administrative

law Judge), Ed Felter (Colorado Administrative Hearings Office, Senior ALJ), Allen C. Hoberg (North Dakota Office of Administrative Hearings, Former Director) and Cynthia Eyre (Louisiana Division of Administrative LALJ, former General Counsel).