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Model Act Creating A State Central Hearing Agency

House of Delegates of the American Bar Association

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**MODEL ACT CREATING A
STATE CENTRAL HEARING AGENCY
(OFFICE OF ADMINISTRATIVE HEARINGS)
AN ACT concerning**

Office of Administrative Hearings

FOR the purpose of establishing an Office of Administrative Hearings as an independent agency in the Executive Branch in order to provide a source of independent administrative law judges to preside in contested cases; providing for the appointment of a chief administrative law judge; establishing the chief administrative law judge's qualifications, compensation, powers, and duties . . . [other purposes]

Section 1. BE IT ENACTED BY THE [NAME OF LEGISLATIVE BODY], That the Laws of [STATE] read as follows:

Article - State Government

Subtitle [] . Office of Administrative Hearings

Part I. Office of Administrative Hearings

Section 1-1 Scope of Subtitle.

(a) Exceptions - - This subtitle does not apply to:

- (1) an agency of the Legislative Branch of the State government;**
- (2) an agency of the Judicial Branch of the State government; or**
- (3) the following agencies of the Executive Branch of the State government:**

- (i) the Governor;
- (ii) [exception]; and
- (iii) [exception]

(b) except as provided in paragraphs (1), (2), and (3) of subsection (a) of this section, this subtitle shall apply to each agency that employs or engages one or more hearing officers or administrative law judges, either full or part-time, to adjudicate contested cases unless the agency has been exempted by the Governor under subsection (c) of this section.

(c) until one year from the effective date of this statute the Governor temporarily may exempt an agency from this subtitle.

Section 1-2 Establishment and Appointment of Administrative Law Judges.

(a) The Office of Administrative Hearings is created as an independent agency in the Executive Branch of State Government for the purpose of separating the adjudicatory function from the investigatory, prosecutory and policy-making functions of agencies in the Executive Branch. Administrative law judges shall be selected and appointed [by the Governor upon screening and recommendation of a judicial nominating commission] [through competitive examination in the classified service of state employment] [by the chief administrative law judge].

(b) The hearing officers and administrative law judges of the agencies to which this subtitle applies shall become employees of the Office of Administrative Hearings. [The grandfathered hearing officers and administrative law judges are exempt from the qualifications contained in Section 1-6(a)(2).]

Section 1-3 Responsibility.

(a) Except as provided herein, the Office shall administer the resolution of all contested cases [unless the agency head or

governing body of any agency hears the case without delegation or assignment to a hearing officer or administrative law judge].

(b) Upon referral by an agency, one or more administrative law judges shall administer the resolution of the matters referred.

Section 1-4 Chief Administrative Law Judge - In general.

(a) The Office is headed by a chief administrative law judge [appointed by the Governor with advice and consent of the Senate for a term of () years], [through competitive examination in the classified service of state employment] who may be removed only for good cause following notice, and an opportunity for an adjudicative hearing and shall continue in office until a successor is appointed.

(b) The chief administrative law judge shall:

- (1) take an oath of office as required by law prior to the commencement of duties;
- (2) devote full time to the duties of the Office and shall not engage in the practice of law;
- (3) be eligible for reappointment;
- (4) receive the salary provided in the state budget [receive a salary in the same amount as that provided by law for a { } court judge];
- (5) be licensed to practice law in the State and admitted to practice for a minimum of five years;
- (6) have the powers and duties specified in this subtitle; and
- (7) be subject to the code of conduct for administrative law judges.

(c) The chief administrative law judge may employ a staff in accordance with the State budget.

Section 1-5 Chief Administrative Law Judge - Powers and Duties.

- (a) The chief administrative law judge shall:
- (1) supervise the Office of Administrative Hearings;
 - (2) [appoint and remove administrative law judges in accordance with this subtitle (the other option is for the Governor to appoint through a judicial nominating commission as provided by Section 1-2)];
 - (3) assign administrative law judges in any case referred to the Office;
 - (4) protect and ensure the decisional independence of each administrative law judge;
 - (5) establish and implement standards and specialized training programs and provide materials for administrative law judges;
 - (6) provide and coordinate continuing education programs and services for administrative law judges, including research, technical assistance, technical and professional publications, compile and disseminate information, and advise of changes in the law relative to their duties; and
 - (7) adopt rules to implement this subtitle through rulemaking proceedings in accordance with the Administrative Procedure Act or other law.
 - (8) adopt a code of conduct for administrative law judges;
 - (9) monitor the quality of state administrative hearings through the provision of training, observation, feedback and, when necessary, discipline of A.L.J.s who do not meet appropriate standards of conduct and competence, subject to the provisions of Section 1-6(a)(4) below;

- (10) submit an annual report on the activities of the Office to the Governor and to the [Legislature] and;
 - (11) [cooperate and assist the State Advisory Council in the discharge of its duties pursuant to Sections 1-12 through 1-14 of this Act.]
- (b) The chief administrative law judge may:
- (1) serve as an administrative law judge in a contested case;
 - (2) [establish qualifications for the selection of administrative law judges];
 - (3) furnish administrative law judges on a contractual basis to governmental entities other than those required to use their services;
 - (4) accept and expend funds, grants, bequests and services, which are related to the purpose of the Office, from any public or private source;
 - (5) enter into agreements and contracts with any public or private agencies or educational institutions; and
 - (6) [create specialized subject matter divisions within the Office.]

Section 1-6 Administrative Law Judges.

- (a) An administrative law judge shall:
- (1) take an oath of office as required by law prior to the commencement of duties;
 - (2) be admitted to practice law [in the State] [for a minimum of five years];
 - (3) be subject to the requirements and protections of [e.g., classified service of State employment and the State ethics code];

- (4) be removed, suspended, demoted, or subject to disciplinary or adverse actions including any action that might later influence a reduction in force, only for good cause, after notice and an opportunity to be heard in an Administrative Procedure Act or other statutory-type hearing and a finding of good cause by an impartial hearing officer;
- (5) be subject to a reduction in force only in accordance with established, objective civil service or merit system procedures;
- (6) receive compensation provided in the State budget [receive a salary in the same amount as that provided by law for a () court judge];
- (7) not perform duties inconsistent with the duties and responsibilities of an administrative law judge;
- (8) devote full time to the duties of the position and [shall not engage in the practice of law unless serving as a part-time administrative law judge];
- (9) be subject to administrative supervision by the chief administrative law judge; and
- (10) be subject to the code of conduct for administrative law judges.

(b) An administrative law judge shall not be responsible to or subject to the supervision, direction or direct or indirect influence of an officer, employee, or agent engaged in the performance of investigatory, prosecutory, or advisory functions for an agency.

Section 1-7 Cooperation of State Government Agencies; Audits; Selection of Judges.

(a) All agencies of State government shall cooperate with the chief administrative law judge in the discharge of the duties of the Office.

(b) The Office shall be subject to audit by [the legislative audit office under the same rules and rotation by which other State agencies are audited].

(c) Except in arbitration or similar proceedings as provided by law or in this subtitle or in regulations adopted under this subtitle, an agency may not select or reject a particular administrative law judge for a particular proceeding.

Section 1-8 Designation of Administrative Law Judges.

If the Office is unable to assign an administrative law judge in response to an agency referral, the chief administrative law judge shall designate in writing an individual to serve as an administrative law judge in a particular proceeding before the agency [if the individual meets the qualifications for an administrative law judge established by the Office and is subject to the Code of Judicial Conduct].

Section 1-9 Powers of Administrative Law Judges.

An administrative law judge shall have the power to: (1) issue subpoenas; (2) administer oaths; (3) control the course of the proceedings; (4) engage in or encourage the use of alternative dispute resolution methodologies as appropriate; (5) order a party, a party's attorney, or other authorized representative, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay; and (6) perform other necessary and appropriate acts in the performance of duties.

Section 1-10 Decision-making Authority.

(a) The assigned administrative law judge shall render the final decision of the agency not subject to agency review, in all hearings for the following agencies:

- (1) [Name of Agency];
- (2) [Name of Agency]; and
- (3) [Name of Agency].

(b) Except as provided by law, the administrative law judge shall issue a proposed [initial, recommended] decision unless the agency authorizes the issuance of a final decision, as provided in the Administrative Procedure Act.

(c) Where a matter is referred to the Office by an agency, the referring agency shall take no further adjudicatory action with respect to the proceeding, except as a party litigant, as long as the Office has jurisdiction over the proceeding. [Nothing in this subsection shall be construed to prevent an appropriate interlocutory review by the agency nor an appropriate termination or modification of the proceeding by the agency.]

Section 1-11 Proposed Decisions and Orders.

In reviewing a proposed (initial, recommended) decision or order received from the administrative law judge, the agency head or governing body of the agency shall not modify, reverse or remand the proposed decision of the administrative law judge except for specified reasons in accordance with law. Judicial review of agency decisions shall occur in accordance with the Administrative Procedure Act [or other specific statutory provision].

OPTIONAL

Section 1-12 State Advisory Council on Administrative Hearings - Establishment; Composition; Appointment.

(a) There is a State advisory council on administrative hearings.

(b) The council consists of nine members.

(c) Of the nine council members:

- (1) One shall be a member of the Senate of [];
- (2) One shall be a member of the House of [];
- (3) One shall be the Attorney General or the Attorney General's designee;
- (4) Two shall be directors, secretaries, chief executives, or their designees from agencies involved in the adjudication of contested cases before the Office;
- (5) Two shall be from the general public; and
- (6) Two shall represent the state bar association.

(d) The Governor shall appoint the members specified in subsection (c)(4) through (6) of this section.

Section 1-13 Terms; Compensation; Chair.

- (a)
- (1) The term of a member of the council is four years.
 - (2) The terms of the members are staggered as required by the terms provided for members of the council on [DATE].
 - (3) A member is eligible to serve more than one term.
 - (4) A member shall not be disqualified by virtue of being engaged in the practice of law or appearing regularly as an attorney before the Office.

(b) A member of the council may not receive compensation, but is entitled to reimbursement for expenses under the standard state travel regulations.

(c) The council shall designate a chair from among its members.

Section 1-14 Powers and Duties; Meetings.

- (a) The council shall:
 - (1) advise the chief administrative law judge in carrying out the duties of the Office;
 - (2) identify issues of importance to administrative law judges that should be addressed by the chief administrative law judge;
 - (3) review issues and procedures relating to administrative hearings and the administrative process;
 - (4) review and comment upon rules of procedure and other regulations and policies proposed by the chief administrative law judge;
 - (5) review and comment on the annual report submitted by the chief administrative law judge; and
 - (6) conduct a study of agencies which employ hearing officers to adjudicate contested case hearings which have been exempted by the Governor pursuant to Section 1-1(3) and recommend to the Governor those agencies for which such exemption should be continued by [DATE].

- (b) The council shall meet at a regular time and place to be determined by the council.

Section 1-15 Effective Date.

That Sections 1-1 through 1-14 shall take effect on [DATE].