Should you pursue state and federal opportunities to become an adjudicator of administrative cases? The best way I know to address the theme of career paths in administrative law is to share some of my own experiences. I am currently an administrative judge with the U.S. Nuclear Regulatory Commission, after having served as a state administrative law judge and previously as an assistant general counsel in a state administrative agency.

My professional life in administrative law started from the “outside looking in,” and I have gained successively broader “inside” perspectives as my career has progressed. The more I have seen and done, the more interesting administrative law has become, and the more I have learned about how government works in action—how policy is made, laws are passed, rules are adopted, disputes are resolved. I’ve seen how our government is an ever-developing thing, sometimes seeming like the baby presented to Solomon, fought over until only the threat
of pulling it apart altogether can ultimately hold it together—sometimes less obviously fraught with conflict, but still always packed with tensions of various kinds. And sometimes, working inside government can be a setting in which one can serve the public in meaningful and rewarding ways.

I have had the good fortune to have worked in various contexts and roles in government, so that I have observed the [nonpartisan] “elephant” from quite a number of perspectives. I have found it to be a very fascinating animal. Perhaps my experiences can give some insights into what role might fit your personality and working style, and how you might find your place in the world of government and administrative law.

My first practical experience in administrative law came during my first job after being a law clerk, working as a legal aid lawyer. I represented clients, trying to make government work for them. Later, working with a nonprofit advocacy group concerned with juvenile law, I approached government from a broader perspective, advocating for change that could help the many systematically, rather than just one client at a time. When the grant money for that job ran out, I became an assistant general counsel for a state agency responsible for health and environment regulation and enforcement. In that role, I assisted non-attorney managers in writing rules, provided legal advice to various agency managers and professional licensing boards, and represented the agency in prosecutions of health professionals accused of regulatory violations, as well as in some benefits cases. Inside the state government I interacted with policy makers, as well as with those employees commonly referred to as bureaucrats. I learned that most state employees were sincere in wanting to serve the public. Of course, to some it was just a job, and some had become “burned out” over time. As in any large organization, each of these descriptions could be used in varying proportions at different times for just about every state employee.

My legal aid and state attorney jobs allowed me to develop my litigation skills, and provided me with the satisfaction that I could actually do this work, which had seemed just a bit scary at the beginning. Having these experiences gave me a perspective on how disputes get resolved in an adjudication context, on a very nuts-and-bolts level that has been valuable to me. I believe such litigation experience is very valuable for any young lawyer starting out, whether you end up with a career representing clients in various capacities, doing appellate work,
being in politics or otherwise in policy making, teaching law, writing about law, or being a judge and resolving disputes. I ultimately became a state administrative law judge (ALJ) and later a federal administrative judge. Without my prior litigation experience I would probably have been less likely to become a judge, and I know I would have been a less effective judge.

I got my job with the state agency after being told about the job opening by another potential employer who did not have an opening at the time. I could also have gone to the state personnel department and asked how to find job openings in my field(s) of interest. I expect that these jobs are generally listed online now. You also may find out about jobs that may not yet be listed, through friends and colleagues. But once you learn what is out there, you must follow up yourself and find your place through your own merits.

I became a state administrative law judge in Tennessee after friends and colleagues told me that the state office of ALJs, which heard cases for most of the state agencies, had a backlog of cases and was seeking some new judges. I had mentioned that, while I liked the “thrills” that came with the interactional back and forth of litigation, I had come to dislike the ups and downs as well as the “hired gun” aspects of being a litigator. My friends told me they thought my personality would fit the role of the neutral ALJ, who seeks to reach the result the law requires rather than necessarily just the result a client wanted. So, ultimately, I went through the application process and was selected as a state ALJ. I have been an adjudicator for the last 25 years, including a move to the federal government when I was appointed to be an administrative judge.

Why did I move to the federal government? I was ready for a move, and learned of an opening at the Nuclear Regulatory Commission from an ABA colleague. I had some limited background in science, and I believe this, along with my long experience as a state ALJ, helped me to win my current position.

Should you aspire to be a judge? Some judges I know of (at much higher levels than I) have left the bench because it lacked the more interactive pace of litigation and did not fit their personalities, or because it did not pay enough to support their families or lifestyles. But I have always found the job of being a judge to be interesting and engaging— hearing and learning the facts of cases, working to ascertain how the law applies to the facts to lead to a proper result, and managing cases
so that disputes can be most efficiently and meaningfully presented and resolved. And so I have stayed in this role, and hopefully improved my skills over the years, both in traditional and various less formal types of adjudication and, in some cases, serving as a settlement judge, after taking a course in mediation.

Being in the administrative judiciary is not all a bed of roses, of course. If you seek ego gratification, you won’t necessarily get it here, apart from the self-satisfaction of having done your job well. The administrative law judiciary endures the recurring theme of being (ever so subtly) looked upon as not quite a “real” judge. The facts are that ALJs serve essentially the same function as trial-level judges, although the specific procedures we use will vary from office to office and agency to agency. However, not being located within the judicial branch of government leads to various types and levels of confusion, with some ramifications.

As a member of the administrative law judiciary (whether you are called an administrative law judge, an administrative judge, a hearing officer, or some other title), you adjudicate disputes related to, for example, the proposed grant, denial, or renewal of licenses and benefits; alleged regulatory violations; and so on, in any of a wide array of substantive areas of regulation. In this role you become acutely aware of due process issues, to an extent that few can appreciate in any other role. It is your responsibility to see that proceedings before you are fair to all parties, when some participants may come in expecting just the opposite. It is satisfying when parties are pleasantly surprised at receiving a fair hearing, conducted by a judge who is interested and who has taken the time to learn something about their case and the law relating to it. But it can be frustrating when the perceptions of others seem to be based on an entirely different model of responsibility than that which you see for yourself. For example, is the ALJ a quasi-judge whose primary allegiance is to the agency, or does the ALJ have the same ethical duties of independence, neutrality, and fairness that are required of any judge?

Concerns have arisen around such questions, including about inappropriate attempts to influence members of the administrative judiciary. Some judges have job security that protects their ability to do their job effectively and independently, without fear or favor, but others are essentially at-will employees. There are a variety of situations and office structures for adjudicators. At the state level (but not exclusively
so), there have sometimes been perceptions that it is appropriate for some agency managers to direct judges in, for example, applying agency policy “correctly,” even when the actual law may be to the contrary. Although this may not reflect any evil intention, it is not an easy situation. The judge’s integrity and skill at addressing such challenges intelligently and effectively may become critical factors in performing the job well, in a manner worthy of respect.

In all of these respects—the good, the bad, and the ugly—a member of the administrative judiciary has a unique perspective on how government works. In Tennessee, I heard cases in a state central panel of administrative law judges, adjudicating for a large number of agencies. I saw through the disputes that came before me many of the realities of how government operates, more or less from the inside. My involvement with the ABA led me to join with others to bring about improvements in government. The interaction of these activities and efforts led to fresh insights about, for example, why the founders of our country fought and worked so hard to create a government based on principles not only of liberty, independence, and equality but also of limited power. They realized that power does corrupt, and thus it is important to have limits on power, checks and balances, separation of powers and functions, and much more that flow from these principles. An adjudicator sees these issues from a unique perspective.

If any of this sounds interesting to you, you just might like serving in some role in the administrative law side of government. You won’t make as much money as you would in a large law firm doing corporate law, for example. You will no doubt experience some level of frustration and stress. But if you look around, you may be able to find your own niche, from which you can have a good view of how things really work inside government, and maybe even the chance to have a meaningful impact.

My advice for how to move toward an ALJ position is get some experience in litigation, in order to get an understanding of how it works, on the ground from a practical perspective. Don’t necessarily be averse to starting out in a lower-level position than you might ultimately want, because the experience gained in such jobs can provide perspectives you may not gain anywhere else. Rather than just casually networking at meetings, become involved in activities in which you have a real interest, where you can demonstrate some of your skills and abilities. Of course, stay alert to what is available. Be flexible, and try
out some different roles until you find one that fits you, and in which
you think you can serve.

Somewhere along the way, I learned that government is not so
much a matter of what is the best (utopian visions can lead to bad out-
comes), but of what is the least bad, and that what is the government
is an ever-evolving thing. Changes come and go in cycles, so there can
be stresses, depending on which way things are moving at any given
time and how such changes may fit with your individual approach and
viewpoints. But that is how it works, and you just keep at it, doing your
job, and working with others to improve the system more broadly. And
from time to time you experience the satisfaction of feeling you have
really served the public and contributed to the greater good in some
way, significant or small, recognized or not. And that can be an exciting
thing.

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16 years as an administrative law judge for Tennessee’s Administrative Procedures
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