RESOLVED, That the American Bar Association adopts the *American Bar Association Model Code of Judicial Conduct for State Administrative Law Judges* dated August 2018, as applied to members of the administrative judiciary. For purposes of this resolution, the administrative judiciary includes all individuals whose exclusive role in the administrative process is to preside and make decisions in judicial or quasi-judicial capacity in evidentiary proceedings, but does not include agency heads, members of agency appellate boards, or other officials who perform the adjudicative functions of an agency head; and

FURTHER RESOLVED, That the American Bar Association urges state, local, and territorial governments to enact and adopt ethical principles applicable to the administrative judiciary, as defined herein, in accordance with the *Model Code*.
AMERICAN BAR ASSOCIATION

A MODEL CODE OF JUDICIAL CONDUCT
FOR STATE ADMINISTRATIVE LAW JUDGES

(August 2018)

Most of the text herein is based on the 2007 American Bar Association Model Code of Judicial Conduct which was approved by the House of Delegates of the American Bar Association and represents the policy of the American Bar Association. Please bear in mind that modifications to address the functions of administrative law judges have not been approved by the House and, thus, are not yet the policy of the American Bar Association.

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PREFACE

In 1989, following 12 years of effort, the Conference endorsed a Model Code for Federal Administrative Law Judges which was published by the ABA and has been circulated. Because of the widely differing systems of administrative adjudications at the state level, it was recognized that a separate Model Code for State Administrative Law Judges should be developed. The 1995 Model Code of Judicial Conduct for State Administrative Law Judges reflected the culmination of the efforts of the National Conference of the Administrative Law Judiciary (NCALJ), State Practices Committee (attached) chaired by Judge Edwin L. Felter, Jr., then Chief Administrative Law Judge of the Central Panel of the State of Colorado, and the NCALJ Committee on Ethics and Responsibility, chaired by Judge Ronnie Yoder (Federal), Judge Felter, Vice-Chair (State).

The 1995 Model Code was endorsed by the Executive Committee of the National Conference of Administrative Law Judges at the 1995 annual meeting in Chicago, Illinois. The conference approved the distribution of the code to state administrative law judges as a reference for them in considering their own conduct and for others in considering the Code of Judicial Conduct appropriately applicable to state administrative law judges. The Code was based upon the 1990 Model Code of Judicial Conduct of the American Bar Association (ABA) and the 1989 Model Code for Federal Administrative Law Judges, with modifications considered appropriate in adapting the Code for state administrative law judges. The 1995 Code assumed decisional independence by the covered administrative law judges and served as an aspirational code for hearing officers who are not guaranteed such decisional independence.

The first ABA Code was adopted in 1972 and amended in 1982 and 1984. Neither the model ABA code nor the Model Code for State Administrative Law Judges would apply to any judge unless adopted by the responsible adjudicatory agency. The 1990 ABA Code for the judicial branch was adapted and adopted by 47 states and the District of Columbia. Adoption and endorsement of the 1995 Model Code for State Administrative Law Judges by NCALJ did not make that Code applicable to any administrative law judge but was intended to reflect the considered judgment of the Conference on appropriate provisions in adapting the ABA Code for state administrative law judges.

As noted in the Preface of the Model Code for federal administrative law judges:

"The Code has not been adapted to apply to state administrative law judges and hearing officers, because of the wide variations in the nature of those positions. See ABA Informal Opinion 86-1522 dated December 24, 1986, holding that, if the applicability of the ABA Model Code to federal administrative law judges is assumed, then they are 'judges' within the meaning of the Code and that applicability of the Code to state administrative law judges 'depends upon the facts of the particular case.'"

Most states have adopted some version of the State Model Administrative Procedure Act, but administrative adjudications are conducted within agencies by a wide variety of
hearing officers, including attorneys and non-attorneys, with a variety of titles and various degrees of decisional independence. In addition, twenty-five states, three cities and one county\(^1\) have central panel systems where ALJs in central panels hold hearings for a variety of agencies.

In 2007, the ABA, after years of efforts, adopted a new Model Code of Judicial Conduct, which represented a significant change from the 1990 Code. The most important paradigm shift in the 2007 Code was that the Canons enunciated general principles, and each Canon is broken down into enforceable rules. The ABA House of Delegates resoundingly approved the 2007 Code, which has now been adopted (almost “lock, stock and barrel”) by more than a majority of states. The Application Section of the 2007 Model Code [I (A)] states that the code applies to all full-time judges. Section I (B) of the Application Section defines “judge” as including “member(s) of the administrative law judiciary.” Thirty-Three states have approved a revised Judicial Code for the judicial branch, based on the 2007 ABA Model Code and forty-seven states have initiated or completed review of their judicial codes in light of the 2007 ABA Model Code (Appendix A).

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AD HOC COMMITTEE TO REVISE AND UPDATE 1995 MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES


The Ad Hoc Committee consists of:

Lorraine Lee, Chief Administrative Law Judge, Washington State Office of Administrative Hearings (Member, NCALJ Executive Committee);

John Allen, former Chief Administrative Law Judge, Cook County, Illinois (Member, NCALJ Executive Committee);

Edwin L. Felter, Jr., Senior Administrative Law Judge, Colorado Office of Administrative Courts;

Julian Mann III, Chief Administrative Law Judge, North Carolina / Chair of NCALJ (2015/2016), Ex-Officio;

Amanda Banninga, Staff Director, NCALJ.

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\(^1\)New York City; Washington, D.C.; Chicago; and, Cook County, Illinois
Rule 2.3: Bias, Prejudice and Harassment

(B) An ALJ shall not, in the performance of official duties, by words or conduct manifest bias or prejudice, or engage in harassment based upon race, sex, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit support staff, or others subject to the ALJ’s direction and control to do so.

Rule 2.13: Administrative Appointments

[Reserved]

Rule 2.143: Disability and Impairment

An ALJ having a reasonable belief that the performance of a lawyer or another ALJ is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Rule 2.154: Responding to Judicial and Lawyer Misconduct

Rule 2.165: Cooperation with Disciplinary Authorities

Rule 3.6: Affiliation with Discriminatory Organizations

(A) An ALJ shall not hold membership in any organization that practices discrimination on the basis of race, sex, gender identity, religion, national origin, ethnicity, or sexual orientation.

Rule 3.15: Reporting Requirements

[Reserved]
Rule 4.2: Political and Campaign Activities of ALJs in Public Elections

[Reserved]

Rule 4.32: Candidates for Appointive ALJ Positions

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Rule 4.4: Campaign Committees

[Reserved]

Rule 4.53: Activities of ALJs Who Become Candidates for Nonjudicial Office

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