



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

MEMORANDUM

TO: Chief Judge Donald R. van der Vaart

FROM: Judge Linda F. Nelson

SUBJECT: Code of Ethics for ALJs

DATE: May 22, 2023

ISSUE

Is it necessary to update the Code of Ethics which governs Administrative Law Judges?

GOVERNING STATUTE

N.C. Gen. Stat. § 7A-754 provides as follows:

Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126-13 shall control as to political activity in lieu of Canon 5. Failure to comply with the applicable provisions of the Model Code may constitute just cause for disciplinary action under Chapter 126 of the General Statutes and grounds for removal from office. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall constitute just cause for disciplinary action under Chapter 126 of the General Statutes and shall be grounds for removal from office. Each administrative law judge shall take the oaths required by

Chapter 11 of the General Statutes. An administrative law judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35 and this section.

DISCUSSION

Since 2001, North Carolina ALJs have been governed by the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association (revised August 1998) (the "Model Code"), as modified N.C. Gen. Stat. § 7A-754. The two statutory modifications to the Model Code are as follows:

1. ALJs may not engage in the private practice of law; and
2. ALJs' political activities are governed by Chapter 126 of the NCGS applicable to all State employees.

The Office of Administrative Hearings is unaware of any complaints regarding the current code of conduct governing ALJs.

Since the Model Code was last revised in 1998, a model code of the same name was adopted by the entire American Bar Association. Unlike the Model Code, which was adopted only by the National Conference of Administrative Law Judges (the "Conference"), a conference of the Judicial Division of the ABA, the new model code was adopted by the entire ABA. It is referred herein as the "ABA Model Code." The Conference developed and submitted the new code for approval by the ABA, stating that Conference had developed two prior model codes for ALJs, but the submission, which was to become the ABA Model Code, was a new code. One of these prior model codes was the Model Code.¹

There are no major differences between the Model Code and the ABA Model Code.

CONCLUSION

The Model Code, as modified by N.C. Gen. Stat. § 7A-754, has governed ALJ conduct since 2001. contains all provisions advisable for addressing the conduct of ALJs on and off the bench. The ABA Model Code (2018) does not materially differ from the Model Code. I see no reason to seek modification of N.C. Gen. Stat. § 7A-754.

¹ Former Chief Administrative Law Judge Julian Mann, who was involved in the drafting of the ABA Model Code, stated that North Carolina ALJs continued to be governed by the Model Code rather than the ABA Model Code. *The Adoption of a Model Code of Conduct for State Administrative Law Judges*: Resolution 113, 41 Campbell L. Rev. 339, 346 (2019).