

CHAPTER 7A, SUBCHAPTER XII, ARTICLE 60

OFFICE OF ADMINISTRATIVE HEARINGS

OAH Revised 03/10/2009.]

**§ 7A-750. Creation; status; purpose.**

There is created an Office of Administrative Hearings. The Office of Administrative Hearings is an independent, quasi-judicial agency under Article III, Sec. 11 of the Constitution and, in accordance with Article IV, Sec. 3 of the Constitution, has such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which it is created. The Office of Administrative Hearings is established ensure that administrative decisions are made in a fair and impartial manner to protect the due process rights of citizens who challenge administrative action and to provide a source of independent administrative law judges to conduct administrative hearings in contested cases in accordance with Chapter 150B of the General Statutes and thereby prevent the commingling of legislative, executive, and judicial functions in the administrative process. It shall also maintain dockets and records of contested cases and shall codify and publish all administrative rules.

**§ 7A-751 Agency head; powers and duties; salaries of Chief Administrative Law Judge and other administrative law judges**

(a) The head of the Office of Administrative Hearings is the Chief Administrative Law Judge, who shall serve as Director of the Office. The Chief Administrative Law Judge has the powers and duties conferred on that position by this Chapter and the Constitution and laws of this State and may adopt rules to implement the conferred powers and duties.

The salary of the Chief Administrative Law Judge shall be the same as that fixed from time to time for district court judges. The salary of a Senior Administrative Law Judge shall be ninety-five percent (95%) of the salary of the Chief Administrative Law Judge.

In lieu of merit and other increment raises, the Chief Administrative Law Judge and any Senior Administrative Law Judge shall receive longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act.

(b) The salary of other administrative law judges shall be ninety percent (90%) of the salary of the Chief Administrative Law Judge.

In lieu of merit and other increment raises, an administrative law judge shall receive longevity pay on the same basis as is provided to employees who are subject to the State Personnel Act.

**§ 7A-752. Chief Administrative Law Judge appointments; vacancy.**

The Chief Administrative Law Judge of the Office of Administrative Hearings shall be appointed by the Chief Justice for a term of office of four years. The first Chief Administrative Law Judge shall be appointed as soon as practicable for a term to begin on the day of his appointment and to end on June 30, 1989. Successors to the first Chief Administrative Law Judge shall be appointed for a term to begin on July 1 of the year the preceding term ends and to end on June 30 four years later. A Chief Administrative Law Judge may continue to serve beyond his term until his successor is duly appointed and sworn, but any holdover shall not affect the expiration date of the succeeding term.

The Chief Administrative Law Judge shall designate one administrative law judge as senior administrative law judge. The senior administrative law judge may perform the duties of Chief Administrative Law Judge if the Chief Administrative Law Judge is absent or unable to serve temporarily for any reason.

**§ 7A-753. Additional Administrative Law Judges; appointment; specialization.**

The Chief Administrative Law Judge shall appoint additional administrative law judges to serve in the Office of Administrative Hearings in such numbers as the General Assembly provides. No person shall be appointed or designated an administrative law judge except as provided in this Article.

The Chief Administrative Law Judge may designate certain administrative law judges as having the experience and expertise to preside at specific types of contested cases and assign only these designated administrative law judges to preside at those cases.

**§ 7A-754 Qualifications; standards of conduct; removal.**

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.

**§ 7A-755. Expenses reimbursed.**

The Chief Administrative Law Judge of the Office of Administrative Hearings and all administrative law judges shall be reimbursed for travel and subsistence expenses at the rates allowed to State officers and employees by G.S. 138-6(a).

**§ 7A-756. Power to administer oaths and issue subpoenas.**

The chief administrative law judge and all administrative law judges in the Office of Administrative Hearings may, in connection with any pending or potential contested case under Chapter 150B:

- (1) Administer oaths and affirmations;
- (2) Sign and issue subpoenas in the name of the Office of Administrative Hearings requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence; and
- (3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this Article.

**§ 7A-757. Temporary administrative law judges; appointments; powers and standards; fees.**

When regularly appointed administrative law judges are unavailable, the Chief Administrative Law Judge of the Office of Administrative Hearings may contract with qualified individuals to serve as administrative law judges for specific assignments. A temporary administrative law judge shall have the same powers and adhere to the same standards as a regular administrative law judge in the conduct of a hearing. A temporary administrative law judge shall not be considered a State employee by virtue of this assignment, and shall be remunerated for his service at a rate not to exceed three hundred dollars (\$300.00) per day and shall be reimbursed for travel and subsistence expenses at the rate allowed to State officers and employees by G.S. 138-6(a). The Chief

Administrative Law Judge may also designate a full-time State employee to serve as a temporary administrative law judge with the consent of the employee and his supervisor; however, the employee is not entitled to any additional pay for this service.

**§ 7A-758. Availability of administrative law judge to exempt agencies.**

The Chief Administrative Law Judge of the Office of Administrative Hearings may, upon request of the head of the agency, provide an administrative law judge to preside at hearings of public bodies not otherwise authorized or required by statute to utilize an administrative law judge from the Office of Administrative Hearings including, but not limited to, State agencies exempt from the provisions of Chapter 150B, municipal corporations or other subdivisions of the State, and agencies of such subdivisions.

**§ 7A-759. Role as deferral agency.**

(a) The Office of Administrative Hearings is designated to serve as the State's deferral agency for cases deferred by the Equal Employment Opportunity Commission to the Office of Administrative Hearings as provided in Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. for charges filed by State or local government employees covered under Chapter 126 of the General Statutes and shall have all of the powers and authority necessary to function as a deferral agency.

(b) The Chief Administrative Law Judge is authorized and directed to contract with the Equal Employment Opportunity Commission for the Office of Administrative Hearings to serve as a deferral agency and to establish and maintain a Civil Rights Division in the Office of Administrative Hearings to carry out the functions of a deferral agency.

(b1) As provided in the contract between the Office of Administrative Hearings and the Equal Employment Opportunity Commission, a deferred charge for purposes of 42 U.S.C. § 2000e-5(c) or (d) is a charge that is filed by a State or local government employee covered under Chapter 126 of the General Statutes and alleges an unlawful employment practice prohibited under that Chapter or any other State law. A deferred charge may be filed with either agency.

The date a deferred charge is filed with either agency is considered to be a commencement of proceedings under State law for purposes of 42 U.S.C. § 2000e-5(c) or (d). The filing of a deferred charge automatically tolls the time limit under G.S. 126-7.2, 126-35, 126-38, and 150B-23(f) and any other State law that sets a time limit for filing a contested case under Article 3 of Chapter 150B of the General Statutes alleging an unlawful employment practice. These time limits are tolled until the completion of the investigation and of any informal

methods of resolution pursued pursuant to subsection (d) of this section.

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(c) In investigating charges an employee of the Civil Rights Division of the Office of Administrative Hearings specifically designated by an order of the Chief Administrative Law Judge filed in the pending case may administer oaths and affirmations.

(c1) In investigating charges, an employee of the Civil Rights Division shall have access at reasonable times to State premises, records, and documents relevant to the charge and shall have the right to examine, photograph, and copy evidence. Any challenge to the Civil Rights Division to investigate the deferred charge shall not constitute grounds for denial or refusal to produce or allow access to the investigative evidence.

(d) Any charge not resolved by informal methods of conference, conciliation or persuasion may be heard as a contested case as provided in Article 3 of Chapter 150B of the General Statutes.

(e) Notwithstanding G.S. 150B-34 and G.S. 150B-36, an order entered by an administrative law judge after a contested case hearing on the merits of a deferred charge is a final agency decision and is binding on the parties. The administrative law judge may order whatever remedial action is appropriate to give full relief consistent with the requirements of federal statutes or regulations or State statutes or rules.

(f) In addition to the authority vested in G.S. 7A-756 and G.S. 150B-33, an administrative law judge may monitor compliance with any negotiated settlement, conciliation agreement or order entered in a deferred case.

(g) The standards of confidentiality established by federal statute or regulation for discrimination charges shall apply to deferred cases investigated or heard by the Office of Administrative Hearings.

(h) Nothing in this section shall be construed as limiting the authority or right of any federal agency to act under any federal statute or regulation.

(i) This section shall be broadly construed to further the general purposes stated in this section and the specific purposes of the particular provisions involved.

**§ 7A-760. Number and status of employees; staff assignments; role of State Personnel Commission.**

(a) The number of administrative law judges and employees of the Office of Administrative Hearings shall be established by the General Assembly. The Chief Administrative Law Judge is exempt from provisions of the State Personnel Act as provided by G.S. 126-5(c1)(26). All other employees of the Office of Administrative Hearings are subject to the State Personnel Act.

(b) The Chief Administrative Law Judge shall designate, from among the employees of the Office of