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BALANCING ADMINISTRATIVE LAW IN NORTH CAROLINA: A COLLECTION

FOREWORD

The following Article Collection describes and analyzes recent modifications to administrative law in North Carolina from the perspectives of three authors who have helped shape administrative law in the state. Authors in this Collection include Professor Charles E. Daye, Henry Brandis Professor of Law at the University of North Carolina School of Law, who has conducted administrative process and advocacy seminars focusing on state administrative adjudication and has analyzed and observed administrative law in North Carolina for over a quarter-century; Judge Julian Mann, Director of the Office of Administrative Hearings and Chief Administrative Law Judge in the State of North Carolina; and Senator Brad Miller, a Member of the North Carolina General Assembly, who played a key role in shaping recent amendments the General Assembly enacted to address problems with the North Carolina Administrative Procedure Act's allocation of decision-making power among agencies, administrative law judges, and courts.¹

In the first Article, *Powers of Administrative Law Judges, Agencies, and Courts: An Analytical and Empirical Assessment*, Professor Daye analyzes the recent legislative modifications to the North Carolina Administrative Procedure Act. He identifies the problems that were so frequently and persistently brought to the attention of the legislature that legislators were compelled to act. The Article explores the most recent legislation that intended to address a perceived imbalance in administrative power among agencies, administrative law judges, and courts. Professor Daye argues that in enacting the recent amendments, the legislature attempted to alter the perception that the “deck might be stacked” unfairly in favor of agencies and against citizens. Finally, Professor Daye's Article reports the results of his empirical study of the outcomes of administrative adjudication and judicial review—confirming what many expected—it is extremely difficult for citizens to successfully challenge agency decisions.

1. Professor Daye expresses appreciation to Senator Miller and Judge Mann for accepting his entreaty to develop the Articles contained in this Collection.

In the second Article, *Administrative Justice: No Longer Just a Recommendation*, Judge Mann presents an administrative law judge's perspective on the new legislation itself and its expected impact. Judge Mann first identifies the fundamental purposes of administrative adjudication; he then describes the procedural protections that have been developed to assure fundamental fairness to citizens, including the use of a central panel of administrative law judges to implement these protections. Furthermore, Judge Mann specifically discusses the reasons why administrative law judges must maintain an appropriate role in the system of administrative adjudication and how the legislature designed recent amendments to address problems of power relationships in administrative law.

In the final Article, *What Were We Thinking?: Legislative Intent and the 2000 Amendments to the North Carolina APA*, Senator Brad Miller addresses the legislative purposes of the amendments and, in a remarkably candid discussion, provides insight into the legislative process that produced the amendments—his version of the Act's legislative history illuminates the meaning of the statutory language. Senator Miller's Article identifies key personalities and interests, both among members of the General Assembly and interested parties outside the legislature, that supported and opposed particular provisions. Senator Miller demonstrates how these forces were instrumental in shaping the contours of the provisions ultimately enacted.

This Collection offers a comprehensive description and analysis of the continued evolution of administrative adjudication in North Carolina. It is instructive not only to North Carolina's own experience in administrative law, but to the critical issues all states face in attempting to achieve a workable and balanced system of administrative adjudication.