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Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
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September 25, 2008

The Honorable Howard Weizmann
Deputy Director and the President's Pay Agent
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, D.C. 20415

Re: 2009 Basic Pay and Locality Adjustments for Administrative Law Judges

Dear Director Weizmann:

On behalf of the American Bar Association (ABA) and its over 405,000 members throughout the country, I commend you on your interest in addressing the salary equity issues of the federal administrative judiciary. This is a subject of great concern to the American Bar Association.

The ABA has long advocated that the compensation of the administrative judiciary be appropriate to its judicial status and functions. Unfortunately, over the last decade and a half, entry level administrative law judge (ALJ) salaries have not kept pace with salaries for the most senior government attorneys under the General Schedule, for senior attorneys in the SES, or for experienced attorneys in the private sector. This situation is making it increasingly difficult to attract and retain the best talent to the administrative judiciary.

ALJ compensation is determined according to a separate pay scale that is linked to the Executive Schedule. Enacted by Congress in 1990 to improve the ALJ pay system, it instead has failed to maintain the parity that previously existed with the compensation levels of other senior executive personnel. ALJ basic pay has deteriorated in comparison with the General Schedule due to ALJ's not receiving pay increases (cost-of-living adjustments) similar to those granted under the General Schedule. In 1991, ALJ entry level basic pay was comparable to the pay at GS-15, Steps 5 and 6; by 2001, basic pay slipped to a rate comparable to the pay at GS-14, Steps 7 and 8.

In 1999, Congress enacted ABA-supported legislation (P.L. No. 106-97) to permit the President annually to authorize the same national pay raise for ALJs that is authorized for the General Schedule. The legislation also modified the ALJ basic pay structure by eliminating the specific percentage links of Executive Level (EL) IV applicable to AL-3A through AL-3F and AL-2 basic pay and authorizing the President to adjust ALJ basic pay subject to a minimum of 65% of EL IV and a maximum of 100% of EL IV.

In 2002, the President exercised this authority by granting ALJs a 5.4 percent basic pay increase for ALJs at levels 2 and 3. This included the same national pay raise authorized for the General Schedule and a supplemental adjustment within the EL-IV cap. The President's Pay Agent also extended locality adjustments to ALJs in the years 2002 through 2008. However, ALJ pay remains disproportionately compressed and relatively deficient compared to other professional pay. Accordingly, the American Bar Association urges the Office of Personnel Management and the President to exercise the authority granted to them to make these basic pay adjustments, in addition to granting ALJs the same national pay raise that is expected to be authorized for the General Schedule for Fiscal Year 2009.

Thank you for your consideration of this letter. If you would like to discuss the ABA's views on this issue in greater detail, please feel free to contact me at (202) 662-1765 or Lillian Gaskin, Senior Legislative Counsel, at (202) 662-1768.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman
Director