Federal administrative law judges have been members of the American Bar Association, Judicial Division, National Conference of the Administrative Law Judiciary, since 1971; this resolution renews and extends existing American Bar Association policy.¹

The American Bar Association has previously endorsed enhancements of compensation for federal administrative law judges, by supporting establishment of a pay schedule for administrative law judges separate from other career civil servants.²

Retirement benefits are a substantial part of the compensation benefits that are made available to federal administrative law judges but present retirement systems are not adequate or consistent with the recruitment needs or status of administrative law judges.

Federal administrative law judges are appointed under 5 U.S.C. § 3105.³ Their powers emanate from the Administrative Procedure Act.⁴ Extensive prior legal experience is necessary for the position because it provides maturity, a reliable record, experience with problems likely to be encountered as an administrative law judge, and first-hand knowledge of rules of the operation of the courts.⁵

¹The American Bar Association has adopted policy supporting the independence and integrity of the administrative judiciary in 1983, 1989, 1998, 2000 and 2001. Indeed, the Association’s commitment to the independence of the administrative judiciary is reflected in the jurisdictional authority of the Standing Committee on Judicial Independence, which is authorized to promote this value.
²Policy to this effect was adopted 20 years ago, in 1983.
³See also, 5 U.S.C. sec. 5372 (a) (“For the purposes of this section, the term ‘administrative law judge’ means an administrative law judge appointed under section 3105.”)
⁴See, A Guide to Federal Agency Adjudication, Michael Asimow, ed., 164 (American Bar Association Administrative Law Section 2003). For example, subject to published rules of the agency, administrative law judges are empowered to administer oaths, issue subpoenas, receive relevant evidence, take depositions, and regulate the course of the hearing. These fundamental powers arise from the Administrative Procedures Act “without the necessity of express agency delegation” and “an agency is without the power to withhold such powers” from its administrative law judges. Id. The Administrative Procedures Act seeks to affirm and protect the role of the administrative law judge, whose “impartiality,” in the words of the Supreme Court in Marshall v. Jerrico, 446 U.S. 238, 250 (1980), “serves as the ultimate guarantee of fair and meaningful proceedings in our constitutional regime.” In order to accomplish this goal, Congress requires Office of Personnel Management to maintain a register of qualified applicants, and to test and evaluate prospective applicants. Office of Personnel Management has been recognized for doing an excellent job. In fact, in 1992, the principal investigator for the Administrative Conference of the United States (ACUS) wrote:
Administrative Law Judges as a group are among the most diversely talented, well-trained, and deeply entrenched adjudicators in our system, even when they are compared with the federal district and state judiciary. Paul Verkuil, “Reflections upon the Federal Administrative Judiciary,” 39 UCLA L. Rev. 1341 (1992).
The Supreme Court has declared that federal administrative law judges are functionally just like other federal trial judges. Although federal administrative law judges are judicial officers, they do not have a judicial retirement system.

It is important to ensure that the federal government can attract highly qualified candidates for the administrative law judge position. Maintaining appropriate pay and pension reform will assure that the American people have highly qualified administrative law judges to adjudicate their administrative claims.

It is important that the demographic pool of administrative law judges does not become stagnant. Recent studies show that, as a body, administrative law judges retire on the average of eight to ten years later than the average federal civilian employee. Regenerating the pool will also enable greater diversity in the corps of judges.

Administrative law judges are the oldest discernable group of federal employees. As a result, more administrative law judges die on the job proportionally than in any other civilian federal occupation.

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6 See Butz v. Economou, 438 U.S. 478 (1978); Federal Maritime Com’n v. South Carolina State Ports Authority, 535 U.S. 743 (2002); see also, Rhode Island Dept. of Environmental Management v. United States, 304 F.3d 31 (1st Cir. 2002) (finding that Department of Labor administrative law judges are functionally equivalent to Federal District Judges).

7 Four groups of Article I federal judicial officers have enhanced pensions: (1) U.S. Bankruptcy Judges, (2) U.S. Magistrate Judges, (3) U.S. Court of Federal Claims Judges, and (4) U.S. Court of Appeals for the Armed Forces Judges. Members of Congress, Congressional staffers, and many federal law enforcement employees also have the same enhanced pensions that may be appropriate for administrative law judges, but they do not also have separate pension plans such as those in force for the Article I federal judicial officers. The American Bar Association adopted policy in favor of enhanced state Administrative Law Judge compensation and retirement in 1998.


9 See Office of Personnel Management, Cognos PowerPlay Web Explorer, http://www.fedscope.opm.gov/index.htm, Table 10, The Fact Book, Office of Personnel Management, Federal Civilian Workforce Statistics, http://www.opm.gov/feddata/01factbk.pdf (2001 Edition) and data compiled by Association of Administrative Law Judges. Administrative law judges are currently part of the Civil Service Retirement System (CSRS) and the Federal Employee Retirement System (FERS). Under the CSRS, at age fifty-five, after thirty (30) years of participation, retirees can receive fifty-three per cent (53%) of their highest three years of government earnings. The most a federal retiree may earn in this plan is eighty per cent (80%) of the highest three years of earnings. This can be achieved with forty-one years and ten months’ service. This is a traditional defined benefit plan, but it only applies to ALJs whose federal service began before 1984, when the retirement plan was changed to FERS. Under FERS, participants receive one per cent (1%) for each year of service at retirement. Enrollees also contribute to Social Security and may participate in the Thrift Savings Plan. Up to five per cent (5%) of Thrift Savings contribution is matched under this plan. There is a ceiling on contributions, however, so that administrative law judges may not contribute as much proportionally as the general federal workforce population.

See Office of Personnel Management Retirement Information, http://www.opm.gov/retire/html/faqs/faq11.html and Association of Administrative Law Judges’ Retirement Committee Report, supra (2001, revised 2003). Association of Administrative Law Judges’ Retirement Committee Report, supra (2001, revised 2003). Under the existing CSRS and FERS retirement system for federal employees, an adequate pension can be earned only after a full and long career in government service of about thirty (30) years. Id. The lack of an adequate pension is causing a large and increasing number of administrative law judges to work into old age to achieve a federal pension based on the
Most (ALJs) are appointed later in life than other federal employees and therefore must work until age 75, 80 or older in order to attain a decent pension under the current federal program based on 30 years of service that was designed for career employees entering federal service in their 20’s or 30’s with a reasonable expectation of retiring at age 55-65. As a result, more ALJs die in office, proportionally, than any other federal civilian occupation.

Given the current retirement structure, there is little incentive for administrative law judges to retire. The Congressional Budget Office has reviewed the administrative law judge retirement dilemma and has determined that using proposed H.R.2316, “The Administrative Law Judges Retirement Act of 2003,” pension reform can be accomplished at a very low cost.\(^\text{11}\)

Under these circumstances, the American Bar Association should recommend that federal administrative law judges should be provided retirement plans appropriate to their status.

Respectfully submitted,

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