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Ms. Kay Coles James
Director and the President's Pay Agent
U.S. Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

Dear Director James:

On behalf of the American Bar Association and its more than 405,000 members, I write to thank you for your past efforts to improve the compensation of administrative law judges (ALJs) and to urge you to continue to address salary equity issues affecting the administrative judiciary in the course of setting federal pay levels for FY 2004.

The ABA has long advocated that the compensation of ALJs needs to be appropriate to their judicial status and functions. We are farther from achieving this goal today than we were in 1991, when Congress enacted a separate pay scale for ALJs in the expectation of improving their pay. Unfortunately, the new pay system has failed: in the intervening years, entry-level ALJ salaries have declined significantly in relative value, and increasing numbers of experienced ALJs have been prevented from collecting cost-of-living adjustments due to pay compression. Immediate steps need to be taken to prevent further pay erosion and long-term solutions need to be pursued.

For FY 2004, we urge the President to exercise his full authority granted under Public Law No. 106-97 to authorize the same cost-of-living adjustment for ALJs that will be authorized for the General Schedule, as well as to authorize a supplemental adjustment by raising the percentage of EL-IV pay to which each level of ALJ pay is linked,

While we feel confident that ALJs will receive a cost-of-living adjustment, we hope you will use the influence of your office to recommend a supplemental adjustment to help recoup wages lost over the last decade. We appreciated your championing a supplemental adjustment in 2002, but, as you know, it was not sufficient to fully restore ALJ pay to a rate comparable

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to where it was in 1991, *vis-a-vis* the General Schedule.

We are sensitive to the fact that one of the central issues being examined by your office and by Congress in the course of evaluating ways to improve public service is the adequacy of compensation for all levels of the federal workforce. Therefore, we want to emphasize that authorizing a supplemental adjustment for ALJs this year would not bestow favorable treatment on them but would rather help restore compensation levels to comparable 1991 rates and provide a more equitable starting point for future discussions of salary reform within the administrative judiciary.

We would like to take this opportunity to provide some comments regarding principles that we believe should guide future efforts to reform ALJ pay mechanisms.

Foremost, ALJ salary reform proposals should respect and strengthen the unique function of the administrative judiciary within the Executive Branch and should have as their objective the elimination of pay compression and restoration of pay parity.

The current inadequacy of ALJ pay and the severity of the problem of pay compression should not be measured by the number of ALJs who are resigning. That form of analysis would be short-sighted and side-steps the fact that it is inequitable to deny more than two-thirds of the administrative judiciary cost-of-living adjustments simply because they have reached the statutory cap. Inadequate or stagnant salaries steadily undermine morale, diminish the importance of retaining experienced jurists, and reduce the value we, as a society, place on the work performed by the administrative judiciary. We should address this problem now, not after we do lose experienced and able ALJs.

The adjudicative function performed by ALJs and the delicately balanced relationship that ALJs must maintain with their employing agencies distinguish ALJs from the rest of an agency's workforce. The Administrative Procedure Act established the adjudicative independence of the administrative judiciary to enable ALJs to make fair, impartial decisions without fear of undue agency pressure or agency reprisal. To preserve ALJ independence, federal regulations explicitly prohibit an agency from rating the performance of an administrative law judge or granting a monetary or honorary award for superior adjudicative performance. 5 C.F.R. Secs. 930.211 and 930.215(b).

Even though this Administration is desirous of making pay-for-performance the centerpiece of workforce reform initiatives any proposal to improve ALJ pay that directly or indirectly links pay to performance clearly would violate existing statutes and regulations and jeopardize the decisional independence of ALJs and the integrity of the administrative hearing process. Accordingly, attempts to find a surrogate mechanism for awarding merit increases to individual ALJs based on some measure of performance are equally suspect. This does not mean that there are no checks on ALJ performance. The manner in which an ALJ carries out his or her duties

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may be evaluated through a system of peer review if the purpose is to measure and improve performance. Further, ALJs who fail to carry out the duties assigned to them are subject to remedial action by their chief judge and, in serious cases, disciplinary action before the Merit System Protection Board. We hope that you will share these observations with any staff that may be wrestling with these issues.

We join many other national organizations in sincerely thanking you for your interest in the concerns of the ALJ community. We would like to continue our collaborative efforts to strengthen the federal administrative judiciary and would welcome the opportunity to talk with you about any of these concerns.

If you would like to discuss these matters in greater detail, please feel free to contact Denise Cardman, ABA Senior Legislative Counsel, at 202/662-1761.

Thank you for your consideration of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert D. Evans