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## Federal Administrative Law Judge Examination (Revisited)

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## FEDERAL ADMINISTRATIVE LAW JUDGE EXAMINATION (REVISITED)

For many years prior to 1980, the United States Office of Personnel Management adhered to a policy which did not favor the appointment of State ALJs to the position of Federal Administrative Law Judge. In particular, Unemployment, Workers Compensation, and other state benefit judges were tacitly excluded from the hiring process. In October, 1981, Marvin H. Morse, then Director of OPM's Office of Administrative Law Judges, addressed this Association's annual meeting, and invited briefs addressed to the qualification of State ALJs for the Federal judgeships. (See 1 J. NAALJ, Vol. 2, p. 5.) This Association responded with forceful arguments demonstrating that experienced state ALJs were as qualified or more qualified than other candidates whose non-judicial work had been given excessive weight by OPM. The Association challenged OPM to demonstrate that its selection process was, as the agency claimed, principled, competitive, and open to all qualified candidates.

In response to these arguments, OPM announced a change in policy. New York State Unemployment Insurance ALJs were declared qualified for federal appointment as were, on a case-by-case basis, the judges of other agencies and states. As a result, a number of the state members of NAALJ were placed on the register as eligible for federal appointments. Unfortunately (and, we think, erroneously) most state ALJs who were ruled qualified for appointment were assigned the lowest possible passing score in the category of "experience".

The final grade in the Federal ALJ examination is determined by combining the candidate's score in four separate areas. Experience is heavily weighted. In addition, however, the candidate is required to complete a written demonstration, consisting of drafting an opinion in a hypothetical case. The candidate must also submit to an oral examination conducted by a panel of interviewers, at which his (or her) oral responses were graded. Finally, the candidate must consent to a canvass of persons having knowledge of the candidate's actual work performance.

Handicapped by a low score for experience, a State ALJ must demonstrate superiority in some or all of the other categories in order to attain a final score equal to that of other candidates. This, we submit, is unfair. Experience is a statement of the candidate's history. His or her score

on written and oral examinations is an indication of his present ability to function as an ALJ. Moreover, to the extent that experience is relevant, we believe that service as a State ALJ is the best possible training for the position of Federal ALJ.

Despite their artificially imposed handicap, a number of State ALJs scored reasonably well on the Federal examination conducted in 1984, under OPM's new Assistant Director for Administrative Law Judges, Craig B. Pettibone. While precise figures have not been made available by OPM, it appears that, approximately 300 persons, State ALJs and others, passed the examination by achieving a score of 70 or more. Of these, a few State Administrative Law Judges achieved a score between 90-85; a few more were graded between 85-80.

In the winter of 1986, responding to the impatience expressed by a few representatives of NAALJ, OPM unofficially announced that it expected to reach those candidates with scores of 90-85 during the second half of 1987. So far as we know, this did not take place. On the contrary, the Journal received an announcement (*infra*, p. 83) that the Administrative Law Judge examination had been reopened for more applicants. The Journal was, accordingly, concerned that State ALJs, although nominally qualified to serve, would never be appointed to a Federal judgeship, because of their artificially low scores for experience.

Printed below are excerpts from letters exchanged by OPM and the NAALJ Journal concerning this matter:

[Office of Personnel Management]

June 23, 1987

Dear Judge Agatstein:

The Office of Administrative Law Judges at the U.S. Office of Personnel Management is planning on accepting new applications in August and September from applicants who are interested in examination of their qualifications for Administrative Law Judge (ALJ) positions.

I would appreciate your help in informing interested applicants who may meet our qualification requirements as they are explained on the enclosed information sheet. . . .

Thank you for your cooperation.

Sincerely,

Craig B. Pettibone  
Assistant Director for  
Administrative Law Judges  
Career Entry Group

[Journal of the National Association of  
Administrative Law Judges]

July 3, 1987

Dear Mr. Pettibone:

[After summarizing the history and arguments recited above (pp. 83 to 84) Judge Agatstein continued:].

. . . You should be aware that the federal job is not substantially more desirable than many comparable state positions, including my own. In terms of judicial procedure, and judicial independence, many state judgeships, including New York Unemployment Insurance ALJ, are distinctly superior to some federal items, particularly at the GS-15 level. Moreover, the salary gap has narrowed appreciably in recent years, particularly when state-financed benefits and pensions are taken into account.

Accordingly, to the extent that your recent letter may be taken as a signal that state ALJs, and UI ALJs in particular, are to remain permanently unreachable, at the bottom of the list, it will not be well received by the members of my association. Moreover, the state faction of the ABA's National Conference of Administrative Law Judges, . . . may be expected to share my impatience with the prospects afforded state ALJs for federal judgeships. While I have not polled my state colleagues on the issue, I suspect that many would agree with my view that the time for affirmative action on behalf of Administrative Law Judges is now. . . .

Yours truly,

David J. Agatstein,  
Administrative Law Judge

[Office of Personnel Management]

July 10, 1987

Dear Judge Agatstein:

This is in reply to your July 3, 1987, letter concerning the reopening of the Administrative Law Judge (ALJ) examination. . . .

The June 15 letter to you and other current applicants sought to allay applicant concerns, such as you raise about their status in the examination vis-a-vis new applicants filing this August and September. Reopening will

give current applicants an opportunity to claim additional credit for further achievements accomplished since they last applied and, hopefully, increase their examination scores and rating. This is particularly true of the Supplemental Qualifications State (SQS) part of the examination. Persons reapplying need only complete this part of the examination. At the same time, current applicants need not concern themselves with competition from new applications received in August and September until some time next year. It will take us some months to review the new applications and conduct necessary written demonstrations, panel interviews and personal reference inquiries. In the meantime, only currently eligible applicants at their current scores will be certified to agencies for consideration for filling vacant ALJ positions. We expect that during the next several months we will be certifying applicants with scores reaching down into the 90-85 range as we advised all applicants last year. These applicants can expect opportunities to become an ALJ to hear cases arising under the Immigration, Labor Medicare and Social Security laws.

I hope that any applicant who may be disappointed in this examination rating will consider reapplying by completing and submitting a new SQS, along with a supporting case listing. In completing the SQS, it is important to prepare a well-written, one to two page response highlighting the scope, complexity and impact of an applicant's major achievements or accomplishments, including not only those in administrative law and/or trial work, but also those in other work, volunteer service, educational endeavors, etc. Such achievements or accomplishments should be selected to demonstrate that the applicant possess the knowledge, skills and abilities which are essential for successful performance of ALJ duties, including knowledge of rules of evidence and trial procedure, analytical ability, decision-making ability, oral communications ability and judicial temperament, and writing ability.

Anyone wishing to reapply need only refer to their prior application materials if they still have them. The materials have not been changed. However, if anyone needs a new set of application materials, they may obtain them by calling my office at 202-632-5677 or writing us at 1900 E Street, N.W., Washington, D.C. 20415.

Thank you for your continued interest in the ALJ examination. I hope that you will share this information about the examination reopening with other members of the

National Association of Administrative Law Judges. Please contact me again if you have any further questions.

Sincerely,

Craig Pettibone  
Assistant Director for  
Administrative Law Judge  
Career Entry Group

United States Office of Personnel Management	Office of Administra- tive Law Judges	Amendment to Announce- ment No. 318 and Notice of Open Competition Administrative Law Judge Effective June 15, 1987
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INFORMATION FOR APPLICANTS FOR EXAMINATION OF  
QUALIFICATIONS TO BECOME AN ADMINISTRATIVE LAW JUDGE

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1. Competition Notice

The Office of Administrative Law Judges, Career Entry Group, U.S. Office of Personnel Management, will accept new applications for examination of qualifications to become an Administrative Law Judge (ALJ) during August and September 1987. This will be the first time the examination has been open to receipt of new applications since the summer of 1984. The office has on hand a very adequate supply of several hundred qualified applicants to consider for the 25-50 ALJ positions which become available annually. However, the majority of applicants on hand have already been examined and the time is appropriate to accept new applications. Reopening will give new applicants--who have been precluded from applying--an opportunity to apply, and will give current eligible applicants an opportunity to claim additional credit for further achievements accomplished since they last applied. Current qualified applicants remain eligible for further consideration without reapplying, though, and should consider reapplying only if they have achieved additional accomplishments which are of a

higher order of scope, complexity and impact than those accomplishments described in their prior application.

## 2. Qualification Requirements

Applicants must be attorneys and have a minimum of 7 years administrative law and/or trial experience involving formal administrative hearing proceedings before local, State or Federal administrative agencies, courts, or other administrative bodies. In addition, applicants must have had either 1 year of such experience characteristic of the grade level next below that of the position applied for, or 2 years of such experience characteristic of the grade level two grades below that of the position applied for.

## 3. Duties and Responsibilities

ALJs prepare for and preside at formal hearings which Federal agencies are required by statute to hold under or in substantial accord with the provisions of the Administrative Procedure Act, Sections 556-557 of Title 5, United States Code. ALJs function as independent, impartial triers of fact in formal hearings in a manner similar to that of a trial judge conducting civil trials without a jury.

## 4. Rating Criteria and Procedures

Applicants who are found to meet minimum qualification requirements will be rated on the quality of their experience in such areas as knowledge of rules of evidence and trial procedure, analytical ability, decision-making ability, oral communication and judicial temperament, and writing ability. Those who receive a satisfactory minimum score for the quality of their experience will be eligible to participate in subsequent stages of the examination--a written demonstration, a panel interview, and a personal reference inquiry. Applicants will be invited to participate in these latter stages of the examination and given final ratings only as vacancies are expected to occur in various geographic areas for which applicants have indicated they are available.

## 5. Opportunities for Employment

There are only 1,000 ALJ positions in 31 Federal Government agencies at various locations across the continental United States, Hawaii, and Puerto Rico. Competition for the relatively few positions which become vacant from year to year is keen. Only very highly qualified applicants



whose qualifications substantially exceed the minimum examination requirements should include such a position in their career plans. In the coming year, new ALJs are likely to be needed to hear cases arising under the Immigration, Labor, Medicare and Social Security Laws.

#### 6. Pay

ALJ positions are currently at grades GS-15 and GS-16. GS-15 pays from \$53,830 to \$69,576. GS-16 pays from \$63,135 to \$72,500. Some GS-14 positions, which pay from \$45,763 to \$59,488, may be filled by applicants on the GS-15 register who are willing to accept appointment at the GS-14 grade level.

#### 7. Equal Employment Opportunity

Applicants for ALJ positions will be considered without regard to race, religion, age, color, national origin, sex, handicap, political affiliations, or any other non-merit factor.

#### 8. How to Apply

Applications for examination of individual qualifications for Administrative Law Judge positions may be obtained by writing the Office of Administrative Law Judges, Career Entry Group, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 2433, Washington, D.C. 20415, or by calling (202) 632-5677. Application materials will be available from July through September. Complete applications must be received or postmarked by September 30, 1987.

#### 9. Future Reopenings

Notices of future reopenings as agency hiring needs warrant will be posted in Office of Personnel Management Regional and Area Offices and circulated to interested agencies and bar associations.