

In the Matter of the Petition
of the United States Administrative
Law Judges Appointed Under 5 U.S.C.
sec. 3105 to Amend SCR 10.03(3)(a)

PETITION

TO: Chief Justice Shirley S. Abrahamson
Justice Jon P. Wilcox
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Louis B. Butler

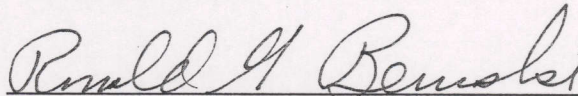
NOW COME the United States Administrative Law Judges
appointed under 5 U.S.C. sec. 3105 and hereby petition the
Wisconsin Supreme Court for an order amending SCR
10.03(3)(a) as follows:

(3) Classes of membership. (a) The members of
the state bar are divided into 4 classes: active
members, judicial members, inactive members and
emeritus members. The class of active members
includes all members of the state bar except the
judicial members and inactive members. The class
of inactive members includes those persons who
are eligible for active membership but are not
engaged in the practice of law in this state and
have filed with the secretary of the association
written notice requesting enrollment in the class
of inactive members. Judges of courts of record,
full-time family court commissioners, full-time
court commissioners, U.S. bankruptcy judges, U.S.
magistrate judges, U.S. administrative law judges
appointed under 5 U.S.C. sec. 3105 and retired
judges who are eligible for temporary judicial
assignment and are not engaged in the practice of
law are classed as judicial members, except that
any judicial member may elect to become an active

member with all rights of active membership except to hold office as an officer or governor or to practice law. The class of emeritus members includes those persons who are either active or inactive members in good standing but who are at least 70 years of age and have filed with the executive director of the association a written notice requesting enrollment in the class of emeritus members. An emeritus member has all the privileges of membership in the state bar and need not pay membership dues for the years following the year in which he or she attains the age of 70.

Attached is a memorandum in support of the petition.

Respectfully submitted this 8th day of December, 2006.



Ronald G. Bernoski
United States Administrative Law Judge
President, Association of
Administrative Law Judges

On behalf of himself and United States
Administrative Law Judges Stephen J.
Ahlgren, Ira S. Epstein, Gregory S.
Pokrass and Arthur J. Schneider

Social Security Administration
Office of Disability Adjudication &
Review
310 W. Wisconsin Ave., Suite 300W
Milwaukee, WI 53203
414-297-3141

Filed with; Clerk
Supreme Court of Wisconsin
110 East Main Street, Suite 215
Madison WI 53703

In the Matter of the Petition
of the United States Administrative
Law Judges Appointed Under 5 U.S.C.
sec. 3105 to Amend SCR 10.03(3)(a)

PETITION

To the court:

This memorandum is submitted in support of our petition for an amendment to SCR 10.03(3) which we are filing concurrently.

We are United States Administrative Law Judges assigned to the Social Security Administration Office of Disability Adjudication and Review in Milwaukee, Wisconsin. Although we currently hold judicial membership status in the State Bar of Wisconsin, and have been so designated for at least 25 years, we have recently been informed by Executive Director George C. Brown that our status will change to active, non-judicial membership as of July 1, 2007. A copy of Mr. Brown's letter is attached.

We consider Mr. Brown's characterization of our existing judicial membership status as an "incorrect election/allowance" to be an unacceptably dismissive rejection of a practice that has been in place for decades. His claim that SCR 10.03(3) does not apply to federal executive branch judges has no support in the language of the rule itself. We submit that we qualify as judges of

courts of record and that was the basis for placing us in the judicial membership status category in the first place. Regardless, in the interest of clarifying the rule as may be necessary, we ask the court to add our position to the list of those persons entitled to judicial status under SCR 10.03(3).

Our appointment is authorized by the United States Congress under 5 U.S.C. sec. 3105. We have tenure that is, in essence, lifetime and very similar to that provided federal judges appointed under the Constitution. S. Rep. No. 697, 95th Cong. 1st Sess. 2 (1978). With full seniority we receive a salary of \$152,000, equivalent to that for federal magistrate and bankruptcy judges, who are listed among the class of persons entitled to judicial status under SCR 10.03(3).

After a selection and training process described as "rigorous," NLRB v. Permanent Label Corp., 657 F. 2d 512 (3d Cir. 1981), we assume a role and powers that the United States Supreme Court in Federal Maritime Commission v. South Carolina State Ports Authority, 535 U.S. 743 (2002) and Butz v. Economou, 438 U.S. 478 (1978) stated is "functionally similar" to that of federal district judges, the latter decision also noting that the similarities between federal administrative proceedings and civil

litigation are "overwhelming." The matters which we adjudicate have an average value of \$250,000. Our duties are established by 5 U.S.C. sec. 556: preside over the taking of evidence, administer oaths, issue subpoenas, rule on offers of proof, take depositions, regulate the full course of the proceeding, hold conferences for settlement or simplification of the issues, dispose of procedural requests and similar matters and, finally, make decisions that are based on the record, which includes the transcript of the testimony and all exhibits and documents filed in the case. This process is no different than that followed by any other federal or state court of record. As noted in Stieberger v. Heckler, 615 F. Supp. 1315 (S.D.N.Y. 1986), "the federal administrative law judge must decide cases just as any state or federal judge decides cases: based solely and wholly on the applicable legal rules and the facts as established by the record."

We are prohibited from practicing law by 5 U.S.C. sec. 3105 which states we may not perform duties inconsistent with our duties and responsibilities as judges. In turn, the ABA Model Code of Judicial Conduct, which designates us as judges for all purposes and prohibits us from practicing law, has been applied by us by the United States Merit

Systems Protection Board (MSPB). See In re Chocallo, 1 M.S.P.R. 612 (1978).

Discipline for judicial misconduct is also regulated ultimately by the MSPB and placing us under the jurisdiction of the Office of Lawyer Regulation would both interfere and be inconsistent with this federal structure. 5 U.S.C. sec. 7521 states that an action for removal and suspension of a United States Administrative Law Judge may occur for cause established and determined by the MSPB after a hearing. Federal agencies themselves may reprimand judges without seeking MSPB approval. See In re Perry, 39 M.S.P.R. 446 (1989). Numerous cases have demonstrated the efficiency and strength of this disciplinary structure. See, e.g., Social Security Administration v. Anyel, 58 M.S.P.R. 261 (1993) (judge suspended for failure to adequately protect the rights of unrepresented claimants); Social Security Administration v. Davis, 19 M.S.P.R. 279 (1984) (judge removed for lewd and lascivious conduct toward staff members); Chocallo, supra (judge removed for demonstrated bias and lack of judicial temperament).

New judges in our agency attend a one month training course and then a one week refresher course a year later. There are periodic educational requirements thereafter in subjects such as Social Security substantive and procedural

law, docket management, diversity and ethics. Our Association also conducts an annual conference that includes educational sessions. We will report this continuing judicial education as the court deems appropriate.

Finally, what we proposed is consistent with the practice in numerous other jurisdictions. Many apparently have no separate judicial status. But among those that do, some define judicial status in general terms that clearly would include us (e.g. Rhode Island: "full-time judges not engaged in the practice of law"). But more importantly, those that specifically address the status of United States Administrative Law Judges include them in the judicial membership category. See State Bar of California (Rule of Court 958 & Business Professions Code sec. 6070-Rule 6.1); District of Columbia Bar (Rule II, Sec. 4 & Bylaw Article III, sec. 1); Washington State Bar Association (Bylaw IIA3); South Carolina Bar (Bylaw Article I, sec. 1.1(c)); and State Bar of Mississippi (Mississippi Code 73-3-125). It is notable that this includes two jurisdictions, California and D.C., that are among those with the greatest number of United States Administrative Law Judges.

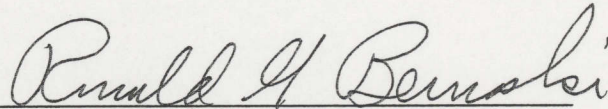
In conclusion, we ask this court to approve this rule change to maintain consistency with past practice; to

properly recognize our federal judicial position, duties and disciplinary obligations; and to keep Wisconsin in line with the practice in other jurisdictions.

Thank you for your consideration.

Respectfully submitted this 8th day of December,

2006.



Ronald G. Bernoski
United States Administrative Law Judge

President, Association of
Administrative Law Judges

On behalf of himself and United States
Administrative Law Judges Stephen J.
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414-297-3141

November 9, 2006

Hon. Gregory S. Pokrass
N16W26512 Golf View Ln # G
Pewaukee, WI 53072-6635

Dear Judge Pokrass,

A review of our records indicates that since 1981 you have elected the State Bar membership category of judicial when completing your annual State Bar membership dues and Supreme Court assessments statement. While this was a correct election on your part while a Wisconsin Supreme Court Commissioner, this has been an incorrect election since becoming an administrative law judge in 2005. Therefore, this was an incorrect election on your part and an incorrect allowance of that election on our part that will need to be corrected beginning this membership year.

This election has had several results. While the Supreme Court requires all attorneys actively practicing law in Wisconsin for more than three years after law school and all Supreme Court justices to pay full dues and assessments, judges who elect non-voting judicial status are required to pay only half dues and assessments and not pay the assessment for legal services to the poor. This election also has an impact on continuing education reporting requirements.

The State Bar of Wisconsin maintains the membership records for all attorneys admitted to practice by the Wisconsin Supreme Court. We work closely with the other administrative offices of the Court, including the Office of Lawyer Regulation, the Board of Bar Examiners, the Office of Judicial Education, and the Judicial Conference, to keep these records current and accurate.

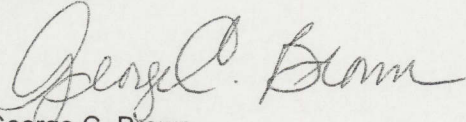
The judicial membership category only applies to judges of the judicial branch of government. A judge is subject to judicial education reporting requirements and must file a report with the Office of Judicial Education just as an attorney is subject to continuing legal education reporting requirements and must file a report with the Board of Bar Examiners. As an administrative law judge, you provide service to the executive branch of government and therefore are not subject to judicial education reporting requirements. A review of your paper records by the Board of Bar Examiners, which administers the continuing legal education reporting requirements, as well as a review by the Office of Judicial Education, indicates that you have not filed CLE reporting forms since electing the judicial membership category. This will need to be corrected as soon as possible. Discussions with John Kosobucki, Director of the Board of Bar Examiners indicate that he has agreed to waive the requirements for previous reporting cycles and begin the filing with the current CLE reporting period. Because you were admitted in an odd numbered year, you'll need to file your report by December 31, 2007. If you choose the exemption from attendance option, please complete the form and submit it to the Board of Bar Examiners by the reporting deadline.

If you feel the exemption is not applicable for your situation, please complete the form supplying the necessary credit information. The reporting form will be sent to you by the Board in the fall of 2007.

The State Bar has waived the additional fees between the amount you paid as a judicial member and the active fee. You will be billed at the full active rate beginning with the next fiscal year.

If you have any questions about your membership status or fee, please contact State Bar Membership Manager Julie Chrisler at 608/250-6125. For questions regarding filing CLE Form 1 with the Board of Bar Examiners, please contact Director John Kosobucki at 608/266-9760. In addition, you are welcome to contact me at 608/250-6101.

Sincerely,



George C. Brown
Executive Director

cc: Chief Justice Shirley Abrahamson
State Bar President Steve Levine
State Bar President-elect Tom Basting
State Bar Past President Michael Guerin
BBE Director John Kosobucki
WSAA Past President William Gansner
WSAA President Jacquelynn Rothstein
SSA Chief Judge Robert Bartelt
Julie Chrisler

Handwritten notes:
608-250-6101
608-266-9760
608-250-6125