



NOSSCR Recommendations to ACUS: Selection of Administrative Law Judges

Members of the National Organization of Social Security Claimants' Representatives (NOSSCR) primarily interact with Social Security Administration (SSA) Administrative Law Judges (ALJs) and our recommendations come from that perspective. However, some members practice before other agencies, such as ALJs at the Departmental Appeals Board of HHS, which hears certain Civil Monetary Penalty and other cases under a Memorandum of Understanding with SSA.

Recruitment

- ALJ positions should all be posted on USAjobs.gov.
 - Agencies should have the option to advertise open ALJ positions by other means, such as on their own websites, on listservs used by practitioners in the field, at conferences, etc., but such advertising should direct applicants to USAjobs to apply.
- Postings should remain open for a reasonable period of time so that applicants can learn about and complete the application process.
 - One week should generally be considered the minimum allowable time for a posting to accept applications. The amount of time an application is open should be related to the amount of time it takes to complete the application: requirements for submission of supporting documentation, writing samples, or extensive responses to questions or KSAs should lead to a longer amount of time to apply.
- Agencies should consider whether to post openings at specific hearing offices or to post a general recruitment and then determine where ALJs will be placed. A challenge with the previous OPM system was that applicants frequently indicated a willingness to serve at any of SSA's more than 160 hearing offices and National Hearing Centers; this led to situations where the certificate provided by OPM did not provide enough discrete candidates for harder-to-staff offices and did not allow applicants to express their true preferences. Allowing applicants to indicate their preferences for a work location, and possibly hiring separately for different locations, could reduce the incidence of ALJs quickly requesting transfers to different hearing offices.
 - Hiring separately for specific offices would also allow agencies to recruit people with area-specific knowledge; for SSA ALJs this could include knowledge about the health care services available in the area served by a given hearing office.
- Postings for ALJ positions at SSA hearing offices should be open to the public, not restricted to federal employees, armed forces, or any subset of these categories.
 - Postings or other hiring for ALJ positions at SSA National Hearing Centers should only be open to ALJs who have performed in-person Social Security hearings for at least six months.

Examination

- Applicants should be assessed on the basis of program-specific knowledge (for SSA, this would include knowledge of the Social Security programs, especially the agency's disability programs) and general knowledge of administrative law and the administrative adjudication process.
- Knowledge should be demonstrated through submission of writing samples, performance on an examination developed by the agency or its contractor, and participation in an interview.

- *Writing samples:* Applicants should be asked to submit (appropriately redacted) samples of their written work. This should include work produced as a licensed attorney preparing for and directly participating in formal hearings or trials involving litigation and/or administrative law at the Federal, State or local level. If an applicant wishes to submit relevant legal publications, writing presented as a provider of Continuing Legal Education, or other samples, these could be accepted as well but should not replace written work directly related to hearings or trials.
- *Examination:* Applicants should be required to pass an examination, developed and administered by an agency or its contractor, to evaluate whether the applicant can demonstrate the required knowledge, skills, and abilities (KSAs) essential to performing the work of an Administrative Law Judge.
- *Interview:* ALJs are held to a high standard of conduct to maintain the integrity and independence of the administrative judiciary. Therefore, applicants shall participate in an interview to demonstrate judicial temperament. Agencies should consider whether ALJs will be overseeing adversarial or non-adversarial hearings and whether parties ever represent themselves in hearings and assess ALJ candidates for their ability to act appropriately in the types of hearings they will conduct. For example, applicants for SSA ALJ positions should undergo assessment of their ability to adjudicate claims in a non-adversarial manner for people, both represented and unrepresented, with a variety of disabling impairments.

Evaluation

- At some point during the application process, applicants who are still being considered for employment should be required to provide proof (a diploma or transcript) that they received a juris doctor (JD) degree from an accredited law school.
- At some point during the application process, applicants who are still being considered for employment should be required to provide proof that they remained licensed and authorized to practice law under the laws of a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution throughout the selection process.
 - Alternately, applicants could be required to provide proof they are in "good standing" in lieu of "active" status in States where the licensing authority considers "good standing" as having a current license to practice law.
 - Applicants should also be required to supply notice of any informal admonitions, periods of suspension, or other disciplinary actions ever taken against them by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the United States Constitution.
 - In States that prohibit sitting judges from maintaining "active" status to practice law, sitting judges applying for ALJ positions should be allowed to submit proof of judicial status.
- Applicants should be required to provide appropriately redacted documentation (court dockets, published court decisions, SSA Appointed Representative Services status reports) or to attest to their qualifying experience with litigation and administrative law.
- Agencies should consider whether recommendations would be useful for evaluating candidates. However, agencies should allow for a range of recommenders that enables the widest possible group of qualified candidates to apply for ALJ positions. For example, requiring recommendations from supervisors may discourage candidates who already work at the agency and do not want word to get out that they are applying for a different position, as well as self-employed applicants who do not have supervisors. Similarly, requiring references from opposing counsel may discourage those who represent claimants in non-adversarial cases from applying, and may also be impossible for those who currently work as judges.