

Proposed Amendment to Administrative Judges Recommendation from Government Member Robert Girouard

Recommendation 5 (lines 88-91) currently reads as follows:

To the extent feasible, agencies should consider assigning all adjudicative functions to employees who serve exclusively as administrative judges, rather than to administrative judges who also have significant non-adjudicative duties. Occasional cross-over of duties may be appropriate to meet agency objectives, including professional development.

I recommend amending the first sentence, so that the recommendation reads as follows:

To the extent feasible, agencies should consider assigning all adjudicative functions to administrative judges who exclusively perform adjudicative duties and directly-related duties (such as hearing office management), rather than to administrative judges who also have significant unrelated duties. Occasional cross-over of duties may be appropriate to meet agency objectives, including professional development.

Reason for amendment:

The Attorney General has opined that administrative and management duties related to maintaining, supervising, and financing an agency's hearing program are not inconsistent with the duties and responsibilities of an administrative law judge (ALJ), at least where those duties require an experienced ALJ, and where the ALJ continues to adjudicate cases to the extent his or her duties permit. 42 Op. A.G. 289, 294, 298-99 (1963). This is a sensible rule and there is no reason to have a different, more restrictive rule for the functions of administrative judges (AJs). My proposed amendment recognizes that adjudicative functions may be assigned to AJs who have hearing office management responsibilities, consistent with the Attorney General's opinion and with the long-standing practices of agencies that employ chief administrative judges in their regional offices.

Sincerely,

Robert J. Girouard
Government Member