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Evaluation: Where Are We? Where Are We Going?

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EVALUATION:[1]

WHERE ARE WE? WHERE ARE WE GOING?

by Ronnie A. Yoder

Federal ALJs have enjoyed nearly 50 years of evaluation-free performance under the APA. Freedom from evaluation by the ALJs' employing agency has always been seen as inherent in the APA structure, which contemplates ALJ hearing officers serving within the individual agencies free from the supervision of enforcement and investigatory officers and free from evaluations. The APA provides that an ALJ may not be "responsible to or subject to the supervision or direction of an employee or agent engaged in the purpose of investigating or prosecuting function of an agency." 5 U.S.C. § 554d)(2).

The APA also establishes an elaborate structure for performance appraisals for federal employees (5 U.S.C. § 4302)[2] and specifically excludes federal administrative law judges from those procedures. (5 U.S.C. § 4301 (2) (D). Congress specifically intended to ensure that ALJs were not subject to performance appraisals by the agencies where they work. S Rep. No. 752, 79th Cong., 1st Sess 29 (1945) reprinted in Administrative Procedure Act Legislative History, 1944-46 S. Doc. No. 248, 79th Cong., 233 (1946). In 1978 the Civil Service Reform Act again reaffirmed the APA's prohibition against performance appraisals of ALJs. Pub. L. No. 95-454, 92 Stat. 1111 (1978). See L. Hope O'Keefe, Note *Administrative Law Judges, Performance Evaluation and Production Standards: Judicial Independence Versus Employee Accountability*, 54 Geo. Wash. L. Rev. 591 (1986). ALJ pay has historically been prescribed by [OPM]

1 This article was originally presented by Administrative Law Judge Ronnie A. Yoder, now Chair of the ABA's National Conference of Administrative Law Judges, at its 19th Annual Symposium, April 8, 1994, in Washington, D.C., on "Discipline and Complaint Procedures for Federal and State Administrative Law Judges—Past, Present, and Future." The views expressed are those of the author and not those of any agency or organization. The article has been updated to reflect subsequent developments.

2 5 U.S.C. § 4313 state that SES performance appraisals are to be "based on both individual agency head performance taking into account such factors as—(1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork; (2) cost efficiency; (3) timeliness of performance; (4) other indications of the effectiveness, productivity, and performance quality of the employees from whom the senior executive is responsible; and (5) meeting affirmative action goals and achievement of [EEO] requirements."

independently of agency recommendations or ratings.[3] Step increases have been given without the certification required for other employees that their work is of an acceptable level of competence.[4] Under the new ALJ pay system, pay for ALJs (other than some Chiefs or Associate Chiefs in AL-1 and 2) is tied to a specific schedule of pay levels within AL-3 based solely upon years of service.[5]

What then has happened that we should concern ourselves with the question of evaluating ALJs:

1. pressure generally for evaluation of government employees and judges in particular;
2. the move to central panels at the State level where evaluations of ALJs for pay and retention is practiced;
3. the move to ALJ Corps at the federal level where evaluations might be permitted;
4. regulatory reform and ABA support for evaluation outside the employing agency;
5. the GAO Report questioning discrimination by SSA ALJs;[6]
6. the Ninth Circuit Gender Bias Task Force Preliminary Report (Decision Draft) (July 1992) pp. 93-103 (gender bias issues related to disability benefits determinations);
7. the ACUS Report; and
8. the proposals of the ABA Administrative Law Section.

Let's look at a few of those developments.

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3 5 U.S.C. § 5372, *repealed by* Pub. L. by Pub. L, No. 101-590, Title I, § 104(a)(1), No. 5, 1990, 104 Stat. 1445.

4 5 U.S.C. § 5335 (1988), prior to amendment by Pub. L. No. 101-590.

5 5. U.S.C. § 553; 5 C.F.R. Parts 591 and 930.

6 *Social Security: Racial Difference in Disability Decision Warrants Further Investigation*, GAO/HRD-92-56 (April 1992).

A. ABA POSITION

In 1979 the ABA adopted a position endorsing periodic performance evaluations by someone outside the employing agency.

"The Association supports legislative action which would, with respect to the appointment and tenure of administrative law judges (ALJs):

> *"(A)Create a system of periodic performance evaluations by an Administrator outside the employing agency, under standards of performance to be promulgated by the Administrator with the approval of a review board composed of a majority of ALJs (excluding chief ALJs) and others, but no individuals from the agency that employs the ALJ under review or who regularly litigate before that agency. Such evaluations may lead to the filing of a complaint by the Administrator before the Merit Systems Protection Board (MSPB) seeking removal or other sanction of ALJs whose performance is found unacceptable by MSPB after a hearing on the record; provided that before any such complaint is filed (1) the accused judge is given written notice of the basis of the complaint and an opportunity to appear before the review board and (2) a majority of the review board has voted to file such complaint."*

That position grew out of the pressure arising from regulatory reform, where we successfully resisted legislation for terms of years and evaluation of ALJs for performance and retention. Regulatory Reform proposals provided for a fixed term of office and performance evaluation of ALJs by ACUS or OPM. D.262, 96th Cong., 1st Sess., § 209(b)(1)(1980) (ACUS panels of ALJs from agencies other than the ALJ under review); H.R. 6768, 96th Cong., 2d Sess. (1980) (presidentially appointed Performance Review Board). Subsequent to the initial ABA position various states adopted central panels of ALJs where terms of years and evaluations are in place.

B. CENTRAL PANEL DEVELOPMENTS

The ACUS Report on "the Federal Administrative Judiciary (August 1992)" (p. 161) referred extensively to evaluation for federal and state judges and state central panel ALJs:

> *"Whether or not they follow the ABA Guidelines, judicial evaluation programs are increasingly being used at the state level. According to the latest survey of state activity, 'six states and the courts of the Navajo Nation operate judicial evaluation programs, and eight states are actively developing a program or are close to implementing one.'* [7(n.1267)] *Among the stated purposes of some of these programs is to generate information to be used in judicial retention elections or in reappointment decisions.*
>
> *"The federal judiciary has also shown interest in judicial evaluation. Under the auspices of a Judicial Conference Subcommittee on Judicial Evaluation, the U.S. District for the Central District of Illinois recently completed a pilot evaluation project involving the voluntary participation of judges and attorneys. The report on this pilot project states that 'the response of participants was overwhelmingly positive.' In addition, the Seventh, Eighth and Ninth Circuit Courts of Appeals have used performance evaluation in making retention decisions for bankruptcy judges and magistrates. Finally, it is also worth noting that Congress has expressed its concerns about current arrangements relating to discipline and removal of federal judges by creating the blue-ribbon National Commission on Judicial Discipline and Removal, scheduled to complete its work in 1993.*
>
> *"Within the state administrative judiciary, there is considerable use of performance evaluation. All but 4 of the 18 states (plus New York City) that have adopted the 'central panel' model of agency adjudication (whereby some or all state ALJs are located in a central organization to be assigned to agency cases on an as-needed basis)*[8(n.1272)] *use at least the normal type of civil service evaluation. Eight states (plus New York City)*

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7 (n.1267) Keilitz and McBride, *Judicial Performance Evaluation Comes of Age*, State Court J., Winter 1992, 4-5. The six states with established programs are AK, CO, CT, IL, NJ and UT. The eight states developing such programs are AZ, DE, HA, MD, MN, NM, ND and WA. See also, Feigenbaum, *"Statewide Judicial Performance Evaluations: How New Jersey Judges the Judges,"* Innovations (National Center for the Courts), 1984.

8 (n.1272) The 18 states are CA, CO, FL, HA, IA, MD, MA, MN, MO, NJ, NC, ND, PA, TN, TX, WA, WI and WY. Information supplied by Tracey Brown, Editor, *The Central Panel,* Lutherville, MD (401) 321-3993. (Editor's Note: South Carolina and South Dakota began operating in 1994.)

submitted to the Conference specially-tailored performance appraisal forms for their judges and one state (Maryland) submitted its proposed plan.[9(n.1273)]

"Perhaps the most sophisticated program is New Jersey's. The New Jersey Office of Administrative Law has developed an evaluation system designed to reflect performance of ALJs, to indicate the need for improvement, and also to assist in the Governor's reappointment decisions.

"The system focuses on three areas of judicial performance: competence, conduct, and productivity, and uses a combination of evaluation techniques for assessing an ALJ's performance.

"The evaluation of an ALJ's competence in New Jersey is measured primarily on the judge's written decisions which are reviewed by the Director. Decisions reflective of the judge's major subject matter are randomly selected and are reviewed for factors such as structure, and substance, including: clarity, proper differentiation of significant and insignificant fact, proper consideration of statutory, regulatory, and constitutional principles.

"The conduct of an ALJ is assessed primarily through the use of case-specific questionnaires to counsel and parties on a random basis. There are separate questionnaires for attorneys, pro se litigants, other litigants, and state agencies. The attorney questionnaires are quite technical and relate to substantive legal issues as well as settlement skills. The party questionnaires are less technical and relate more to the judge's conduct of the hearing and ability to explain the process to the litigant. The agency's questionnaire is mainly concerned with the judge's written decision but also includes topics such as the judge's compliance with timeframes.

"The third area of evaluation is concerned with how the ALJ handles his or her caseload. Computers are used to generate reports which present average time per case, average time from the judge's receipt of the file to the issuance of a decision, and other administrative timing matters. After all of the above data is gathered, each judge is afforded an opportunity to review the information collected. The Office formerly used four performance levels (marginal, acceptable, commendable and distinguished), but eliminated these ratings when it stopped

9 (n.1273) The eight states submitting appraisal forms were CO, FL, MN, NJ, ND, TN, WA and WI.

using evaluations for salary review. Now the ALJ is simply provided with the summary results of the evaluation.

"In general the evaluation criteria in the state central panels concentrate on three main areas: (1) the ability to preside over hearings both in terms of conducting orderly, speedy hearings and in terms applying principles of law and appropriate procedures (2) adequacy of decision making[10] and (3) interpersonal relations with staff and caseload management. In most states, the chief ALJ or panel director does the evaluating (although Idaho, Oregon and Washington have a unique arrangement of evaluating each other's ALJs). In some states, the purpose of the evaluation (beyond meeting usual civil service requirements) is not explained, although several states explicitly use such evaluations for counseling, training, reassignment, advancement, and even salary adjustments." (Some footnotes omitted.)

C. ACUS REPORT

The ACUS Report recommended that each agency appoint a Chief ALJ who would:

"a. Develop case processing guidelines with the participation of ALJs, agency officials, and advisory groups, and subject to the oversight and approval of OPM.

"b. Collect and maintain data on individual ALJ performance based upon those guidelines and on adherence to agency rules and substantive policies.

"c. Conduct performance appraisals on ALJs based on those case processing guidelines and adherence to agency rules and substantive policies, at appropriate intervals.

"d. Recommend commendations and awards for superior performance.

"e. Undertake counseling, training or other ameliorative activities with respect to an ALJs performance.

"f. Receive complaints from ALJs about undue agency pressure or infringement on decisional independence, determine such complaints

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10 *Cf. SSA v. Anyel*, MSPB Docket No. CB752191010009T1, Opinion and Order dated June 25, 1993 (discipline action against federal ALJ can be based on adjudicatory error).

are meritorious and take appropriate steps to resolve meritorious complaints and

"g. Issue reprimands, or recommend that the agency bring formal charges for good cause, against individual ALJs before the MSPB. In agencies with numerous ALJs, the Chief ALJ may wish to establish peer review groups to provide advice on whether to bring such charges."

D. ADMINISTRATIVE LAW SECTION

No action has been taken on the ACUS Report and none is expected at present. However, in response to that Report, the Administrative Law Section of the ABA initiated a study of various recommendations in the Report, including the section on performance evaluations. The February 1993 FALJ newsletter reported the Ad Law Section deliberations and included a copy of my memorandum pointing out that evaluations for the ALJs are neither warranted nor appropriate.

> *"ALJ evaluation by the agency is prohibited by the APA and appropriately so. Such evaluations, particularly when tied to "compliance with agency policy" and separated from "good cause" discipline before an impartial adjudicator is an invitation to agency coercion—subtle or not-so-subtle—of ALJ independence. Lack of evaluation for ALJs was not a legislative oversight but a specific recognition by the Congress of the pernicious potential of such evaluations as long as ALJs remain agency employees charged with protecting the public from the enforcement and regulatory modes of the agency itself and ensuring fair adjudicatory proceedings.*
>
> *"Judicial evaluation has been the subject of extensive study—both within and outside of the ABA. The JAD Committee on the Evaluation of Judicial Performance has considered the nature and efficacy of judicial evaluation and has never suggested that the statutory mandate against agency evaluation of ALJs should be reversed. The ACUS draft report reflected little awareness of the extensive literature or legislative history on this subject. Its conclusion supporting agency evaluation of ALJs was reached without substantial study or consideration and without any mandate from the OPM contract. Indeed the references to evaluation of state and federal judges and to state*

ALJs were included in the final report (pp. 161-63) as an afterthought following criticism of the lack of any substance to the report's recommendations in this regard.

"While the final report now notes correctly that many of the states have evaluations of their general-jurisdiction and administrative law judges, the evaluations of the general-jurisdiction judges are commonly in connection with retention elections—a system which the ABA has long denounced as improper for judicial selection. (The ABA has also specifically rejected proposals for term appointments for ALJs. See ABA Report of Board of Governors (1979).) The evaluation of state 'administrative law judges' must be considered on a case-by-case basis, because many of these 'judges' do not have protected decisional independence and are not truly judges; on the other hand, many of these judges are in central panels separate from the agencies whose cases they hear. None of these systems present an analog to the federal system where the ALJs work in the agencies whose cases they hear and hence must be protected from evaluation, coercion, reward and punishment by those agencies.

"Finally, the JAD Committee on Judicial Evaluation has previously recognized that the most appropriate modality for judicial evaluation is development evaluation rather than the judgmental evaluation mode suggested by the ACUS report. Developmental evaluation permits confidential feedback to the judge from participants in the judge's proceedings in order to permit the judge to self-improve without threat to judicial independence. Similarly, the ABA Guidelines for the Evaluation of Judicial Performance (1985), p. iii, recognize that 'the single key goal of judicial performance evaluations [is] judicial self-improvement'—not discipline. 'These are Guidelines for an evaluation process, not principles to be invoked to discipline a particular judge.' (Emphasis in original.) The use of such guidelines for self improvement by individual judges is also endorsed by OPM in the Administrative Law Judge Program Handbook (May 1989), p. 18."

The ACUS report appeared to be unaware of most of this information, perhaps because its efforts were not focused on the subject of judicial evaluation, but on the subject of judicial selection and rationalizing ALJ use by the agencies. As I noted in my memorandum:

"3. The primary reason asserted for the need for evaluations is to provide a basis for agency discipline against

judges. No basis for the need for discipline beyond that presently available under the APA is demonstrated in the report. The APA permits discipline upon a showing of 'good cause.' What alternate standard does the report assume or propose—'no cause' or 'spurious cause'? The ALJ's work is public and widely known. It is reviewable and reversible by the agency or on judicial review. The judge is subject to peer counseling and pressure from fellow judges and from the chief judge. Judges are formally or informally subject to the Code of Judicial Conduct and to discipline for 'good cause' shown before the Merit System Protection Board. There is no dearth of such cases; there have been 22 such cases in the last ten years (nearly all involving SSA)—compared with eight cases in the previous 35 years. The burden of demonstrating the need for more is appropriately on the proponent—which should be required to document a need and the efficacy of a proposed solution. The ACUS report does neither."

Nevertheless, the Ad Law Section Adjudication Committee approved a proposal which provided that:

"1. Some form of periodic review of the performance of administrative law judges (ALJs) employed by Federal agencies should be conducted on a regular basis.

"2. Chief administrative law judges employed by Federal agencies should be given the authority and resources to develop and oversee a training and counseling program, designed to enhance professional capabilities and to improve individual performance.

"3. Chief ALJs employed by Federal agencies should be given the authority and resources to coordinate the development of case processing guidelines, with the participation of other agency ALJs."

The Adjudication Committee report stated that:

"Case processing guidelines can be useful tools in reviewing ALJ performance. This recommendation urges a peer approach in developing such guidelines, tailored to the agency's caseload. Chief ALJs should be authorized to coordinate this effort in each agency with the participation of the other ALJs in the agency."

All the ALJs on the Adjudication Committee (and one of the other members), totaling a majority of the participating committee members, filed a strong dissent to that recommendation:

> *"The Administrative Procedure Act was carefully crafted to assure that administrative law judges are truly neutral hearing officers who have decisional independence. If ALJs become subject to performance reviews conducted by agency supervisors, their requisite decisional independence and neutrality would be eroded and compromised.*
>
> *"The 'case processing guidelines,' contemplated by the recommendation, have not been shown to be necessary or practicable. Statutory provisions and agency rules of practice already exist to require 'speedy' hearings and expedited case dispositions where appropriate and needed. The development of these additional case processing guidelines is unwarranted and could lead to numerical quotas stressing quantity over quality in case management and decision writing."*

Nevertheless, the Ad Law Section adopted those proposals essentially as stated by the Adjudication Committee. In adopting that recommendation, the Ad Law Section noted:

> *"In 1979 the ABA supported legislation which would 'create a system of periodic performance evaluations [of ALJs] by an Administrator outside the employing agency, under standards of performance to be promulgated by the Administrator with the approval of a review board composed of a majority of ALJs and others, but no individuals from the agency that employs the ALJ under review or who regularly litigate before that agency.*
>
> *"Recommendation 92-7 of the Administrative Conference of the United States, 1 CFR § 305.92-7 (1993), also proposes legislation to create a system of performance review for ALJs employed by Federal agencies, but proposes that Chief ALJs in each agency be given the authority to undertake the reviews (and to develop training programs and use peer review to provide guidance to individual judges and develop case-processing guidelines).*
>
> *"This recommendation reiterates the basic principle embodied in the ABA's 1979 recommendation—that some form of periodic review of ALJ performance be instituted. Although nearly all other Federal executive branch employees are covered*

by the civil service performance appraisal system (and members of the Senior Executive Service are now covered by a special tailored system of 'recertification,' which took effect in 1992), ALJs are exempted from the system [U.S.C. § 4301(2)(D). Agencies may seek removal or discipline of ALJs, 'for good cause,' but only by initiating a formal proceeding at the Merit Systems Protection Board, and the Board has applied standards that have limited the contexts in which such actions may successfully be taken against an ALJ. For example, while misconduct cases have been successfully brought before the Board, agency actions premised on low productivity have not been successful.

"This recommendation does not specify what procedure should be used for conducting the evaluations except to provide that they be conducted on a regular basis. The recommendation does, however, recognize the importance of agency Chief ALJs in undertaking the developmental responsibilities that relate to performance evaluations such as training and counseling. Indeed, as the ABA has already recognized in its guidelines for evaluation of judicial performance:

" 'Self-improvement should be the primary use of judicial performance evaluation.' (Guideline I.I, ABA Guidelines for the Evaluation of Judicial Performance, August 1985.) In addition, however, it is also appropriate that evaluations be available for management purposes."

In my article in the *NCALJ Administrative Judiciary News & Journal* (Winter 1994) I noted that:

"The case processing and evaluation proposals of the ABA Ad Law Section are especially troubling . . . , since they do not seem to appreciate the rationale of the APA in prohibiting evaluations by an agency or agency employees as a necessary ingredient of decisional independence."

Following objection by NCALJ and the Judicial Administration Division, the Ad Law Section withdrew the proposal from consideration by the ABA House of Delegates at that time. Subsequent negotiations led the Ad Law Section to drop the provision concerning case processing guidelines, but they retained the restatement of the ABA position supporting evaluations and references in the accompanying report to the GAO Study and the Gender Bias Task Force Report:

> *"It is important to the legitimacy of any system of adjudication that both the reality and appearance of any bias, prejudice, or misconduct by adjudicators be avoided. Allegations of bias or other misconduct on the part of a federal administrative law judge are rare and infrequent, but they do occur. See e.g., U.S. Government Accounting Office, Social Security: Racial Differences in Disability Decisions Warrants Further Investigation, GAO/HRD-92-56 (April 1992): Ninth Circuit Gender Bias Task Force Preliminary Report (Discussion Draft) (July 1992 at 93-103 (discussing gender bias issues relating to disability benefits determinations)."*

In reference to that Ad Law proposal, I submitted a memo to JAD stating:

> *"2. The provisions concerning evaluations in the proposal contain nothing beyond currently stated ABA policy; and nothing in the report warrants a reiteration of that ABA position. Citation to the GAO study and the Gender Bias Task Force preliminary report is particularly troubling, since nothing in them supports what they are habitually cited for, and they provide no basis for an alleged need for evaluation."*

At the February midyear meeting NCALJ voted not to acquiesce in the Ad Law proposal. During its Spring meeting at Amelia Island in May, 1994 the Ad Law Section modified its proposal to provide:

> *"1. Reviews of the performance of administrative law judges should be conducted outside the employing agency on the basis of peer review.*
>
> *2. The chief administrative law judge of each employing agency should be given the authority and resources to develop and oversee programs, designed to enhance professional capabilities and to improve performance of administrative law judges in that agency."*

Paragraph I reflected a step back from the current ABA policy calling for "periodic" review and a step forward calling for "peer review," but it raised the specter of a further ABA pronouncement calling for an amendment of the APA to require evaluations of the ALJs. Paragraph 2 raised concern among some judges as providing a basis for the Chief Judge to participate in "improving performance" of ALJs and thereby inferentially measuring that performance. In late July the Ad Law Section agreed to

remove paragraphs 1 and 2 from its proposal before the ABA House of Delegates in an effort to avoid a floor fight over the other provisions of its resolution. The Ad Law Section also deleted the objectionable references to the GAO Report and the Gender Bias Report. This matter is still alive, and if you are concerned about it contact me (401 Seventh Street SW, Suite 5100, Washington, DC 20590, Phone: 202/366-2137, Fax: 202/366-7536).

E. ALJ CORPS

The pending ALJ Corps Bill, "The Reorganization of the Federal Administrative Judiciary," appears to retain the current provisions exempting ALJs from performance appraisals under Title 5. See Sec. 7(a) (5) which appears to continue the current reference to 4301(2)(D). On the other hand, that bill provides that the Council of the Corps "shall adopt and issue rules of judicial conduct for administrative law judges," which

> *"shall be enforced by the Council and shall include standards governing—*
>
> *"(1) judicial conduct and extra-judicial activities to avoid actual, or the appearance of, improprieties or conflicts or interest;*
>
> *"(2) the performance of judicial duties impartially and diligently;*
>
> *"(3) avoidance of bias or prejudice with respect to all parties; and*
>
> *"(4) efficiency and management of cases so as to reduce dilatory practices and unnecessary costs." S. 486, § 599e(b) (emphasis added).*

In explaining these provisions, their sponsor Senator Cohen stated that

> *"My amendment would strengthen the provisions governing the removal and discipline of ALJ's and establish a fair and open process for taking disciplinary actions against ALJ's. My amendment requires that the Council of the ALJ Corps must adopt and issue rules of judicial conduct for administrative law judges. This code of conduct will include standards which govern the judicial conduct and extrajudicial activities of ALJs and should be designed to avoid actual, or the appearance of, improprieties or conflicts of interest, as well as bias or prejudice with respect to all parties, and to ensure the impartial and diligent performance of judicial duties and the efficient management of cases. The Council will be responsible for enforcing the code of conduct.*

* * *

Finally, the bill also provides for appropriate and fair discipline, and in some instances, removal of ALJ's; for enhanced training of ALJ's; and for greater accountability of ALJ's to their supervisors." Congressional Record, S16564, 516565 (November 19, 1993).

These provisions may provide a basis for evaluations by the Chief Judge of the Division within the Corps. In any event the adoption of a ALJ Corps bill would vitiate many of the arguments traditionally used in resisting performance evaluations for ALJs. And the presence of State Central Panels as a template for the Corps Bill may provide further impetus toward evaluation of federal ALJs.

F. WHERE ARE WE GOING?

The pressure toward public complaint procedures and evaluation of all government employees is strong, and it would be imprudent for ALJs to fail to consider developing their own proposals concerning complaints and evaluations. One such proposal for complaints is contained in the ALJ Corps bill, which would create a peer review Board to determine whether complaints merit further action. But that bill has not passed despite a decade of trying—and we have recently seen indications that the Clinton Administration, like those before it, will not support the bill. The ABA JAD Committee on Judicial Evaluation endorses evaluation for self-improvement (i.e., developmental, not judgmental, evaluation), and that approach has been adopted in the Illinois state courts and the federal court system.

As I noted in the NCALJ Administrative Judiciary News and Journal:

"The message is clear: Like the Code of Conduct 10 years ago: If we don't do it ourselves, someone is apt to do it for us (to us) in a way we will doubtless like less. The time for us to address these questions—at least within our own groups—is now."

G. JUDICIAL EVALUATION COMMITTEE

Consequently, I have appointed a new committee of NCALJ on Judicial Evaluation to study the current situation among state ALJs and central panels, as well

as the state and federal judiciary. The Committee will be chaired by one of our most respected scholar lawyers, Terry Miller; with Melanie Vaughn as vice-chair; and two of our non-NCALJ ALJs have agreed to assist: Jerry Nelson who teaches professional responsibility at the American University Law School and Jim Timony, who recently completed an article entitled "Performance Evaluation For Federal Administrative Law Judges" for the *American University Administrative Law Journal.* 7 A.U. Ad L.J. 629 (Fall/Winter 1993-94).

The ALJ community continues to watch the fallout from the ACUS study of the federal administrative judiciary and the recommendations of the Administrative Law Section for the selection and evaluation of ALJs. One of the apparent lessons of that experience is that all federal administrative law judges must seek to be as active as possible in the ABA and the Ad Law Section—several of the critical votes within the Ad Law Adjudication Committee were won or lost on the strength of a single vote. Every judge should join and participate in the Ad Law Section as well as NCALJ.

We are still being outgunned on many fronts. If all administrative law judges in NAALJ, FALJC and the SSA ALJ Association were active members of the ABA and the Administrative Law Section as well as NCALJ, it would dramatically change the chemistry of those organizations. Active participation in all of those organizations is costly in many ways—time, money, and frustration—but that job is important and necessary; and I still believe that our job is the best there is. Moreover, with the recent pay increases it is increasingly difficult to plead poverty, and increasingly necessary to see the expense of active involvement as a necessary investment in our business—providing fair and impartial judging to the agency and the public alike.

National Association of
Administrative Law Judges

c/o National Center for the State Courts
300 Newport Avenue, Williamsburg, VA 23187-8798

Membership Application and Questionnaire

Please answer questions in full. Type or print.

1) Name: _____
(last) (first) (m.i.)

2) Home address _____
(street) (apt.)

3) Home phone _____ Work Phone: _____

4) Title (ALJ, Hearing Officer, etc.) _____

5) Name of agency (in full): _____

6) Business address: _____
(street)

_____
(city) (state) (zip)

7) Please send my mail to: Home _____ Work _____

8) Date of birth: _____

9) Are you an attorney at law? Yes _____ No _____

10) My present position is: Elected _____ Appointed for fixed term_____ Appointed for in definite term_____
Competitive Civil Service _____ Other (explain _____
_____

11) My position is: Full-time _____ Part-time _____ Per Diem _____

12) Year service began _____

13) Brief Description of job duties. _____

_____

_____

_____

14) Academic degrees with year awarded _____

_____

_____

15) Awards, honors, etc.; Other affiliations (optional) _____

_____

_____

_____

16) Optional and confidential: for use by The Committee on Compensation Of Administration Law Judges and Hearing Officers.

Salary (or salary range) for your present position:

$ _____ per _____

Salary fixed by: Statute ____ Civil Service Board ____ Appointeing Authority ____

Collective Bargaining ____ Other (explain _____ _____

17) _____ I am now a memer of this association. (I previously joined NAALJ or its predecessor, NAAHO).

18) _____ I am a new member.

19) Signature _____

Date: _____

Please photocopy, fill out and mail with your check for $35.00