

# THE FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE

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April 22, 2010

Honorable Shaun Donovan, Secretary  
U.S. Department of Housing and Urban Development  
451 7<sup>th</sup> Street, S.W.  
Washington, DC 20410

Dear Secretary Donovan:

I am sending this letter to you in my capacity as President of the Federal Administrative Law Judge Conference. The Federal Administrative Law Judges Conference is a voluntary professional association composed of Administrative Law Judges appointed under 5 U.S.C. § 3105 to hear and decide administrative law cases according to the Administrative Procedure Act. The membership of our organization includes judges from most of the over 30 agencies that employ Administrative Law Judges. Our organization was formed over 60 years ago to preserve the integrity of the administrative adjudication process prescribed by the Administrative Procedure Act; to represent the concerns of judges in matters affecting judicial independence and compensation; to improve the federal administrative judicial process; and to present educational programs to enhance the judicial skills of Administrative Law Judges.

I am writing because of allegations that raise serious questions about the ability of the Administrative Law Judges at the Department of Housing and Urban Development to maintain and exercise their decisional independence under the Administrative Procedure Act. Four years ago, the Department of Housing and Urban Development moved its Office of Administrative Law Judges into the newly created Office of Hearings and Appeals. Subsequently, all four Administrative Law Judges left your agency in the span of little over one year, leaving the Department with no Administrative Law Judges for a period of eight months. We understand that all of those judges left—to retire or go to other agencies—specifically because of their concern that the Director of the Office of Hearings and Appeals was making significant encroachments on their judicial independence. Those four former judges are available to discuss their experiences with you or your designee at an appropriate time.

In September of 2008, your agency hired two new Administrative Law Judges, both of whom advise that they were unaware of the Office of Hearings and Appeals' current management practices. Subsequently, one of those judges felt compelled to file a complaint in Federal District Court, alleging, among other things, that the agency violated the Administrative Procedure Act by improperly interfering with the judicial independence of the Administrative Law Judges. A

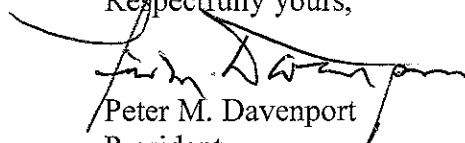
copy of the complaint was served on your General Counsel. The Department of Justice has sought an extension of time and has not yet responded to the complaint. The complaint names Office of Hearings and Appeals Director David Anderson as a defendant, but we understand that he continues to serve in his position, and we are not aware that your agency has conducted any inquiry into his actions.

I am forwarding a copy of the complaint for you to examine. We ask that you look at the allegations contained in pages 11-18 which relate to specific violations of the Administrative Procedures Act. Any of those allegations, if true, raise serious concerns that Administrative Law Judges can exercise judicial independence at your agency. The specifics include allegations that—contrary to law—the Director selected which judge to assign to a case based upon political considerations or upon the Director's assessment of the judge's "sophistication." It is also alleged that the Director interfered in cases assigned to judges by directing that notices be issued on their docket, and in one case by corresponding with a respondent about her case, without knowledge of the judge, or notice to agency counsel. It is further alleged that the Director countermanded directions of the judges concerning issuance of docket numbers for pending cases; and countermanded directions of the judges limiting communication about pending cases with non-parties. Additionally, it is alleged that the Director wrongfully used his control over the travel budget in an attempt to control the scheduling and length of hearings.

Although I understand the demands upon your time, I ask that you either to look into this matter personally—rather than relying upon your senior staff—or obtain an independent and unbiased review of the Office of Hearing and Appeals practices from an outside source. The independence and impartiality of Administrative Law Judges, as required by the Administrative Procedure Act, is vitally important to the Department of Housing and Urban Development's image and credibility in the eyes of the public. Your Department's commitment to due process and transparency in the enforcement of fair housing laws and in the maintenance of statutory and regulatory standards for the numerous programs it administers must be subject to the independent scrutiny of Administrative Law Judges conducting public hearings to decide the appropriateness of proposed sanctions and penalties, and to review those sanctions already imposed by program offices and boards prior to a hearing. To achieve this goal, the adjudicative process must be transparent and free of improper managerial interference or political influence.

Should you find any truth in any of the designated portions of the complaint, I urge you to act quickly to resolve this matter, rather than await the delay and damage of a protracted court proceeding. The Federal Administrative Law Judges Conference stands ready to provide whatever assistance you feel might be appropriate and we are confident that you share our concern that Administrative Law Judges at your agency be able to operate in an atmosphere free from political or other interference.

Respectfully yours,



Peter M. Davenport  
President

Attachment: Complaint, 1:10-cv-00185, February 2, 2010

Copies:       John Berry, Director, OPM  
              Addy R. Schmitt, Esquire (w/o attachment)  
              Francis A. Vasquez, Jr., Esquire (w/o attachment)