Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Civil Remedies Division

Inspector General,
Social Security Administration,

v.

Bruce Patton,

Respondent.

Docket No. C-12-246

Date: August 13, 2013

Decision No. CR2890

DECISION DENYING RESPONDENT'S EQUAL ACCESS TO JUSTICE ACT AWARD APPLICATION

The application of Respondent, Bruce Patton, for attorney's fees and expenses pursuant to 5 U.S.C. § 504, the Equal Access to Justice Act (EAJA), is denied.

I. Procedural History

The Inspector General (I.G.) for the Social Security Administration (SSA), notified Respondent by letter dated November 28, 2011 (November 28, 2011 notice), that the I.G. was imposing against Respondent a civil money penalty (CMP) of $25,000 and an assessment in lieu of damages in the amount of $20,000, pursuant to section 1129 of the Social Security Act (Act) (42 U.S.C. § 1320a-8). SSA alleged in its notice that the CMP and assessment were imposed based on the SSA determination that Respondent had made or caused to be made false statements, misrepresentations, and/or omissions of material facts, and wrongfully converted his son's Child Insurance Benefits (CIB).

Respondent requested a hearing before an administrative law judge (ALJ) pursuant to 20 C.F.R. § 498.202, by an undated letter received at the Civil Remedies Division of the Departmental Appeals Board on January 4, 2012. The case was docketed and assigned to me for hearing and decision on January 6, 2012. On February 6, 2012, I convened a telephonic prehearing conference to discuss and establish the schedule to hearing. The substance of the prehearing conference is set forth in my Scheduling Order and Notice of Hearing dated February 6, 2012. An additional prehearing conference was convened by telephone on June 20, 2012, to discuss final procedural details and the issuance of subpoenas. Transcript (Tr.) 7. On June 27, 2012, a hearing was convened by video teleconference.

On November 30, 2012, I issued a decision in which I concluded that the SSA I.G. failed to establish that there is a basis for the imposition of a CMP or assessment against Respondent pursuant to section 1129(a)(1) of the Act. No appeal was filed with the Departmental Appeals Board (the Board), and my decision became final and binding on the parties 30 days after the decision was served. 20 C.F.R. § 498.220(d).

On December 31, 2012, Respondent filed an application for attorney fees, paralegal fees, and costs pursuant to the EAJA (R. App.), with Respondent's exhibits (R. Exs.) A, B, C, and D. On January 17, 2013, the I.G. filed its opposition to the Application (I.G. Opp.). On April 15, 2013, I ordered that Respondent file net worth exhibits pursuant to 45 C.F.R. § 13.11(a)[1] and to amend his application to comply with 45 C.F.R. pt. 13. On May 8, 2013, Respondent filed his amended application (Amended Application) with copies of R. Exs. A and B, new exhibits marked R. Exs. C and D, an affidavit of Respondent, and a seven page "Net Worth Statement." I treat R. Exs. A, B, C, and D, filed with the Amended Application, as being offered to substitute for R. Exs. A, B, C, and D offered with the initial application due to the similarity of the content. Respondent's affidavit and the net worth statement were not marked as exhibits and I mark them R. Ex. E and R. Ex. F, respectively. The I.G. filed its response to the amended application on June 10, 2013 (I.G. Response). Respondent filed a reply brief on June 24, 2013 (R. Reply).

The I.G. does not specifically object to my consideration of R. Exs. A, B, C, D, E, and F filed with the amended application and they are admitted as evidence for purposes of resolving the fee application. The I.G. does object that my April 15, 2013 Order permitted Respondent to "cure its fatally flawed initial application for EAJA fees." I.G.

---

[1] References are to the 2012 revision of the Code of Federal Regulations (C.F.R.) in effect at the time of the application, unless otherwise stated.

Response at 1. The I.G. requests that I reconsider my April 15, 2013 Order and deny and dismiss Respondent's EAJA application. I.G. Response at 2. I have reviewed my April 15, 2013 Order in light of the entire record and the I.G.'s objections. The errors in the original fee application identified in my Order of April 15 were: incorrect citation to EAJA as codified at 28 U.S.C. § 2412 rather than as codified at 5 U.S.C. § 504; failure to file detailed net worth exhibits, although it was asserted in the application and counsel's affidavit that Respondent's net worth did not exceed $2 million; omission of the declaration required by 45 C.F.R. § 13.20(a)(7); and omission of the verification required by 45 C.F.R. § 13.10(b). I find no prejudice to the I.G. due to Respondent's incorrect citation to 28 U.S.C. § 2412. Respondent's application for EAJA fees was titled "Plaintiff's Motion for Attorney's Fees Under the Equal Access to Justice Act and for Entry of Final Judgment Order." R. App. at 1. Thus, it was clear that Respondent was requesting attorney fees and costs pursuant to EAJA and the I.G. was adequately noticed that Respondent's filing was an EAJA application. The fact that the I.G. had to conduct research to distinguish between an EAJA application filed pursuant to 28 U.S.C. § 2412 and 5 U.S.C. § 504 (I.G. Response at 1, n.1), is insignificant prejudice, if it is prejudicial at all. Although the I.G. is correct that I could have rationalized denying the fee application based on the technical errors in the application, I determined in the interest of justice and fairness to ensure that the application was fully developed and presented for my consideration consistent with authority granted by 45 C.F.R. §§ 13.11(a) and 13.25. The SSA I.G. acted in this case pursuant to section 1129 of the Act and 20 C.F.R. pt. 498, which also establishes the procedures for adjudication. This SSA case was heard by an ALJ of the Department of Health and Human Services (HHS) pursuant to an inter-agency agreement and delegated authority applying 20 C.F.R. pt. 498 to the merits. SSA has not promulgated regulations implementing EAJA and it is necessary to apply the regulations of the Secretary at 45 C.F.R. pt. 13, rather than regulations issued by the Commissioner. Thus, it is understandable and excusable in this instance that Respondent did not recognize the application of and comply with the regulations of the Secretary at 45 C.F.R. pt. 13, until such time as Respondent was advised that those regulations applied to his EAJA fee application. The I.G.'s objection is overruled and the request that I vacate my April 15, 2013 Order and deny the application for noncompliance with 45 C.F.R. pt. 13 is denied.

II. Discussion

My conclusions of law, including the findings and conclusions required by 45 C.F.R. § 13.26, are set forth in bold followed by the pertinent facts and analysis.

A. Respondent was the prevailing party.

B. The proceeding was an adversary adjudication.

The provisions of EAJA applicable to proceedings pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 500-596, are set forth at 5 U.S.C. § 504. Section 504(a)(1) provides:

> An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

The statute is clear that fees and other expenses incurred by a party will be paid unless it is determined that the position of the agency was substantially justified or special circumstances would make an award unjust. Pursuant to 5 U.S.C. § 504(a)(2), a party that seeks an award of attorney fees and costs will submit to the agency an application within 30 days of final adjudication, which: (1) shows that the party is a prevailing party; (2) that the party is eligible to receive an EAJA award; (3) states the amount sought supported by an itemized statement of the actual time expended and the rate at which fees and expenses were calculated; and (4) which alleges that the position of the agency was not substantially justified. An individual party is eligible to receive attorney fees and costs under 5 U.S.C. § 504, only if his or her net worth at the time the adversary adjudication was initiated did not exceed $2,000,000. 5 U.S.C. § 504(b)(1)(B). An "adversary adjudication" is an adjudication pursuant to 5 U.S.C. § 554 in which the United States was represented by counsel. 5 U.S.C. § 504(b)(1)(C). "Position of the agency" includes the position taken by the agency in the adversary adjudication and the agency's action or failure to act upon the basis for the adversary adjudication. 5 U.S.C. § 504(b)(1)(E).

The Secretary implemented EAJA by regulations promulgated at 45 C.F.R. pt. 13. As already mentioned, the parties have not objected to the application of those regulations in this case, and I apply them in the absence of similar regulations promulgated by the Commissioner of SSA. The regulations provide that they apply to an adversary adjudication, which is one in which the agency is represented by an attorney or other representative. 45 C.F.R. § 13.3.

There is no dispute that the case on the merits was an adversary adjudication within the meaning of 5 U.S.C. § 504(b)(1)(C) and 45 C.F.R. § 13.3(a). There is no dispute that Respondent was the prevailing party within the meaning of 5 U.S.C. § 504(a)(1) and 45 C.F.R. §§ 13.1, 13.22(c). There is no dispute that the application was timely filed. 45 C.F.R. § 13.22(a).

C. Respondent has failed to adequately show that his net worth did not exceed $2 million at the time the adversary proceeding was initiated.

Pursuant to 45 C.F.R. § 13.4(a) Respondent must show as an applicant for an EAJA award that he meets all conditions of eligibility for an award. Respondent is required to show that his net worth did not exceed $2 million when the adversary adjudication was initiated in order to be eligible. 45 C.F.R. § 13.4(b)(3). An applicant for EAJA fees must submit with his or her application a "detailed exhibit showing net worth . . . when the proceeding was initiated." 45 C.F.R. §§ 13.4(b)(3), 13.11(a). The regulation provides that the net worth exhibit may be in any form convenient for the Respondent, but the evidence must provide full disclosure of assets and liabilities to permit me to determine whether or not Respondent qualifies for an award. 45 C.F.R. § 13.11(a).

Respondent had two opportunities to provide sufficient net worth evidence but he failed in both instances to provide the detailed evidence necessary for a full disclosure so that I could find his net worth was less than $2 million. I conclude that Respondent has made an insufficient showing that his net worth did not exceed $2 million when the adversary proceeding was initiated. Accordingly, I conclude that Respondent has not established he is eligible for an award.

Respondent asserted in the application filed December 31, 2012 and his amended application filed May 8, 2013, that his net worth did not exceed $2 million. R. App. at 1; Amended Application at 1. Respondent's attorney attested to personal knowledge that Respondent's net worth has never exceeded $2 million. R. Ex. A, ¶ 2. Respondent was advised by my April 15, 2013 Order that the assertions in the application were insufficient to meet his burden to show that he is eligible for an award and that he had to file the net worth exhibits as required by 45 C.F.R. § 13.11(a). In his two page affidavit, Respondent asserts that his net worth did not exceed $2 million when the adversary adjudication was initiated; he identified his residence as being on a 6.9 acre plot at 4329 East 2175th Road in Sheridan, Illinois; he estimated the value of his residence as being below $200,000 with an outstanding mortgage of approximately $160,000; he estimated the value of his Ford pick-up and furniture as approximately $750; and he stated that his retirement fund amounted to $1,200. R. Ex. E. Respondent also filed a form titled "Net Worth Statement" that I have marked R. Ex. F. Respondent lists checking and savings accounts; a Ford pickup; real estate with a mortgage of $170,000 and an estimated "fair market value" of $40,000; and an outstanding bank loan. Respondent does not disclose any other potentially valuable personal property such as motorcycles, guns, boats,

recreational vehicles, collectables, and similar items, but simply lists "None" on the form. R. Ex. F at 3. Respondent did not provide any bank statements; loan or mortgage papers; real estate tax records showing the assessed value of his residence; realtor estimates of the possible sale price for his real estate; state or federal tax returns; or publications such as the Kelley Blue Book or National Automobile Dealers' Association Guide as evidence of the value of his vehicle. It is not possible to make a determination as to Respondent's net worth without adequate documentation to support the assertions of Respondent in his affidavit and the form he completed. Accordingly, I conclude that Respondent has not met his burden to establish his net worth at the time the adversary proceeding was initiated.

Even if I determined that Respondent successfully showed that he met the eligibility requirements of EAJA, I conclude that the I.G. met its burden to show that its position was substantially justified.

D. The agency position was substantially justified.

According to the EAJA statute the "position of the agency" refers not only to the "position taken by the agency in the adversary adjudication," but to "the action or failure to act by the agency upon which the adversary adjudication is based." 5 U.S.C. § 504(b)(1)(E). Similarly, the Secretary's regulations provide that the agency's position "includes, in addition to the position taken by the agency in the proceeding, the agency action or failure to act that was the basis for the proceeding." 45 C.F.R. § 13.5(b)(1). EAJA does not define the term "substantially justified." However, the regulations provide that an agency's position is substantially justified if it "was reasonable in law and fact." 45 C.F.R. § 13.5(b)(1). The regulations specify that the fact a party prevailed in a proceeding does not trigger a presumption that the agency position was not substantially justified. But the agency bears the burden of proof to show that its position was "reasonable in law and fact." 45 C.F.R. § 13.5(b). The Departmental Appeals Board (Board) extensively considered an EAJA application in *Park Manor Nursing Home*, DAB No. 2005 (2005) and provided further guidance on evaluation of whether the agency position was substantially justified.

> [The Secretary's] regulatory criteria reflect court decisions on the EAJA. The Supreme Court has said that the government's position "can be justified even though it is not correct, and . . . it can be substantially (i.e., for the most part) justified if a reasonable person could think it correct, that is, if it has a reasonable basis in law and fact." *Pierce v. Underwood*, 487 U.S. 552, 566, n.2 (1988). The courts emphasize that, in performing a substantial justification analysis, a tribunal applies a different standard than the standard used to adjudicate the prevailing party's rights in the underlying

> merits proceeding. *United States v. Hallmark Const. Co.*, 200 F.3d 1076, 1080 (7th Cir. 2000). Consequently, the findings or conclusions that support the decision on the prevailing party's merits, claim, and other circumstances relevant to that decision (such as the stage of the proceeding when it was made), are rarely conclusive factors in a substantial justification analysis. *Id*. at 1079-80; *F.J. Vollmer Co. v. Magaw*, 102 F.2d 591, 595-96 (D.C. Cir. 1996). According to one court, a proper substantial justification analysis focuses on "'the actual merits of the Government's litigating position"' and is global or comprehensive in scope, examining "not simply whether the government was substantially justified at the beginning or end of the proceedings, but whether the government was substantially justified in continuing to push forward at each stage." *Hallmark*, 200 F.3d at 1080 (quoting *Pierce*, 487 U.S. at 569).

Park Manor Nursing Home, DAB No. 2005, at 14 (footnote omitted).

I conclude that SSA's position had a reasonable basis in law and fact and SSA met its burden to show it was substantially justified at every stage of the adversary adjudication. SSA did not prevail on the merits, but no presumption that the SSA position was not substantially justified is triggered by that fact. 45 C.F.R. § 13.5(b). The pertinent facts presented by SSA are set forth in the decision on the merits and are set forth here only for the convenience of the reader. References to the transcript are to the transcript of the hearing in the case on the merits and no hearing was held on the EAJA application.

The Counsel to the SSA I.G., B. Chad Bungard, notified Respondent by letter dated November 28, 2011, that the I.G. proposed to impose a CMP of $45,000 against Respondent. The I.G. cited as the bases for the CMP that:

> (1) On about March 11, 2005, Respondent falsely claimed in the application for CIB for his son Mark, that Mark lived with him, but, Mark had not lived with him since October 2004;
>
> (2) Respondent failed, on an unspecified date, to notify SSA that Respondent's son, Mark, was not in Respondent's custody for the period November 2005 through February 2008;
>
> (3) Respondent received his son's CIB during the period November 2005 through February 2008, and wrongfully converted those funds to his own use;

> (4) On about April 16, 2007, Respondent completed a Representative Payee Report in which he falsely stated that his son, Mark, lived with him from May 1, 2006 through April 30, 2007.
>
> (5) On about April 16, 2007, Respondent falsely stated that $9,022 was spent for the care and support of his son, Mark; and,
>
> (6) Respondent's false statements, misrepresentations, and omissions of material facts to SSA related to Mark resulted in Respondent receiving $10,977 in CIB to which Respondent was not entitled.

SSA Ex. 13 at 1.

Mr. Bungard testified that he made the determination to impose the CMP in this case. Mr. Bungard testified that Respondent was notified by the SSA I.G. brief filed on June 11, 2012,[2] that the bases for the CMP were changed or modified to allege that Respondent withheld material information from SSA regarding Mark's living arrangements from December 2006 through March 2008, and made a false statement regarding Mark's living arrangement in the representative payee report in April 2007. Tr. 278-82. Mr. Bungard testified that the SSA brief filed June 11, 2012, reflected his decision that Respondent only improperly received $6,493 of CIB during the period December 2006 through March 2008. Mr. Bungard's testimony and the SSA brief filed on June 11, 2012, reflect Mr. Bungard's revised determination to impose a CMP of $2,000 for each of 16 months from December 2006 through March 2008 when Respondent allegedly failed to disclose Mark's "true living arrangements," and $2,000 for the false statement on the representative payee form dated April 16, 2007, for a total CMP of $34,000 plus an assessment in lieu of damages of $6,493. Tr. 281-83; SSA Br. at 1-2.

---

[2] In the decision on the merits, I noted that the notice requirements of 20 C.F.R. § 498.109 are very specific and do not appear to be fully satisfied by the SSA I.G. Brief dated June 11, 2012. However, Respondent made no specific objection and I found no prejudice as Respondent exercised his right to request a hearing, he was advised of the revised bases prior to hearing, and the he had an opportunity to challenge the revised bases in the case on the merits.

The SSA I.G.'s evidence shows that on February 11, 2005, Respondent was notified by SSA that he was found to be disabled as of October 29, 2004, and entitled to benefits under Title II of the Act. SSA Ex. 1. On about March 11, 2005, Respondent applied for CIB for his children, David W. Patton and Mark J. Patton. SSA Ex. 2. On April 2, 2005, SSA notified Respondent that Mark was entitled to CIB beginning in April 2005, and that Respondent was chosen to be Mark's representative payee. SSA Ex. 3. The SSA I.G. introduced as evidence a Representative Payee Report, which Respondent does not dispute he signed and dated on April 16, 2007. Respondent also does not dispute that he completed the form to show that Mark lived with him from May 1, 2006 through April 30, 2007. Respondent also completed the form to indicate that he used $9,022 of benefits received by him during the period May 1, 2006 to April 30, 2007 on Mark's behalf for the care and support of Mark. SSA Ex. 4.

The SSA I.G.'s evidence shows that Mark's mother, Jeri Patton (DeGroot at the time of hearing), reported to SSA on March 6, 2008, that Mark never lived with Respondent during the period April 2005 through March 2008, and that Mark lived with her during that period. She reported that she never received benefits for Mark until March 2008. SSA Ex. 5. SSA notified Respondent by letter dated March 17, 2008, that Mark's CIB would be sent to a different representative payee and that Respondent should refund to SSA any benefits he retained from payments he received on behalf of Mark. SSA Ex. 6. The I.G. presented two reports of investigation that concluded that Respondent received benefits from April 2005 to September 2008, apparently Mark's CIB, that he was not entitled to receive. SSA Exs. 7 and 8. The I.G. submitted the report of Mary Ann Forness, a Title II Claims Representative (Tr. 216) that reflects her conclusion that Respondent received CIB from Mark during the period November 2005 through February 2008, and that he appropriated $10,977 to his own use. SSA Ex. 9. SSA notified Respondent by letter dated May 4, 2011, that he had to return $10,977 that he received on behalf of Mark. SSA Ex. 10. SSA also offered as evidence a "Joint Parenting Agreement" executed on February 7, 2006, which provides that the Respondent and his wife, Jerri Patton, were to have joint legal and physical custody of Mark, that Mark was to reside with her on a daily basis, and that Respondent was to have reasonable and liberal visitation as Respondent and Jeri Patton agreed. SSA Ex. 20 at 1, 5; R. Ex. 8 at 7. A marital settlement agreement also dated February 7, 2006, provided that Respondent was to pay Jerri Patton $365 per month, and stated that was the entire amount of Social Security benefits Respondent received on behalf of Mark. SSA Ex. 20 at 12; R. Ex. 8 at 7. Respondent and Jeri R. Patton were divorced on February 7, 2006. R. Ex. 8 at 1-3.

SSA presented evidence that Respondent was repaying the alleged $10,977 overpayment of Mark's CIB. R. Ex. 2; Tr. 135-36, 233.

Special Agent Rodney Haymon testified that he understood based upon his interview with Jeri DeGroot that she received $365 of child support from Respondent each month and that Mark stayed with Respondent on weekends, but he did not recall discussing with

her where Mark stayed during vacation, school holidays or when he was sick and stayed out of school. Tr. 129-31. Agent Haymon testified that he did not investigate the amount of money that Respondent spent on Mark and he did not investigate the number of days that Mark lived with Respondent. Agent Haymon testified that Respondent told him that Mark had a room in Respondent's house and that Mark told him that he kept clothes at Respondent's house. Tr. 166-67.

Mary Ann Forness, a Title II Claims Representative, with the Elgin, Illinois Social Security Field Office was called as a witness by the SSA I.G. Tr. 215. She testified that she reviewed Respondent's Title II claims record. Tr. 217. She testified that Respondent was removed as the representative payee and Jeri DeGroot was designated the representative payee in March 2008, based on Ms. DeGroot's claim that she was the custodial parent of Mark. She testified that there was nothing in the file that showed that Ms. DeGroot's claim was investigated at the time. Tr. 220-22. Ms. Forness testified that she made the determination that Respondent misused $10,977 of CIB he received for Mark, which Ms. Forness testified was the amount of CIB received by Respondent in excess of the $365 per month he sent to Ms. DeGroot. Tr. 227-28. Ms. Forness testified that her determination that Respondent misused funds was based upon her interview of Respondent and his statements that Respondent spent the money on taking Mark to dinner and for activities. She admitted that spending the money on dinner and activities, including hunting, is not misuse of the funds so long as Mark's basic needs were being met. She testified that she did not recall specifically asking Respondent how many days each year Mark lived with Respondent. Ms. Forness did not recall asking Respondent if Mark had a room in Respondent's house. Ms. Forness did not determine how much of the CIB that Respondent received as Mark's representative payee were spent for Mark's benefit. Tr. 230-32, 270. Ms. Forness agreed that there was never an issue regarding Mark's eligibility and that the only issue was a question of who was the correct representative payee for Mark. Tr. 236. She also agreed that where the child lives has no impact on the child's eligibility for CIB, but may impact the determination of the appropriate representative payee. Tr. 238-39. Ms. Forness testified that a natural child is deemed dependent upon the natural parent and no determination of actual dependence is required. Tr. 242. She testified that the determination of which parent would be the preferred representative payee could turn on the issue of whether the child lived over half the time with one parent. She agreed that the determination of who should be representative payee has no impact on the child's entitlement to benefits. Tr. 244-45. On cross-examination Ms. Forness testified that she never located a form completed by Respondent requesting to be representative payee. Tr. 252.

There was never a dispute in the adversary adjudication that Mark Patton was entitled to CIB; that Respondent received Mark's CIB during the pertinent period; and that Respondent only paid a portion of the benefits to Mark's mother. SSA determined to impose a CMP and assessment against Respondent based on: the allegations of Mark's mother, Jeri DeGroot; the joint parenting agreement and the marital settlement agreement

between Mark's mother and Respondent; and the investigations of Ms. Forness and Agent Haymon. The evidence the I.G. collected provided a reasonable basis in law and fact for Mr. Bungard to: (1) conclude that Respondent improperly received $6,493 of CIB during the period December 2006 through March 2008; and (2) impose a CMP of $2,000 for each of 16 months from December 2006 through March 2008 when Respondent allegedly failed to disclose Mark's "true living arrangements," and $2,000 for the false statement on the representative payee form dated April 16, 2007, for a total CMP of $34,000 plus an assessment in lieu of damages of $6,493. Tr. 281-83. Respondent prevailed in this case by successfully rebutting the I.G.'s prima facie showing with the testimony of Respondent, Mark Patton, and Jeri DeGroot, not because the I.G.'s prima facie case was not supported in law and fact.

III. Conclusion

For the foregoing reason, Respondent's application for an EAJA award is denied.

The parties are advised as required by 45 C.F.R. § 13.27, that the appellate authority for this decision is the Departmental Appeals Board (the Board) (20 C.F.R. § 498.220(c)); either party may seek review within 30 days of the date of this decision by filing and serving exceptions; and not more than 30 days after receipt of such exceptions, the opposing party may file it own exceptions to this decision. The Board procedures for filing the request for review are available at:

www.hhs.gov/dab/divisions/appellate/guidelines/ssa.html.

All submissions to the Board must be made by mail to:

Department of Health and Human Services
Departmental Appeals Board, MS 6127
Appellate Division
330 Independence Ave., S.W.
Cohen Building, Room G-644
Washington, D.C. 20201.

_____/s/_____
Keith W. Sickendick
Administrative Law Judge