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October 22, 2020

Administration Commission
Room 1802, The Capitol
Tallahassee, Florida 32399-0001

Re: Application to Fill the Vacancy in the Office of Director
and Chief Judge, Division of Administrative Hearings

To the Governor and Cabinet,
Greetings:

I am an administrative law judge with the Division of Administrative Hearings, where I have served the people of Florida for more than 20 years. I am applying for the position of Director and Chief Judge of DOAH because the length and breadth of my experience as an ALJ cannot be found in another applicant; my educational and professional accomplishments are exemplary; and my expertise in the field of Florida administrative law is widely recognized. In addition, I am deeply invested in DOAH as an institution, having spent the better part of my career working hard to conduct the fair hearings, and make the consistently correct quasi-judicial decisions, that the persons whose substantial interests are being determined by agency action, and the agencies having jurisdiction over such persons, expect and deserve from DOAH's central panel of independent and impartial ALJs. Finally, the institutional knowledge I have gained over the past 20 years makes me uniquely situated to guide DOAH into the future.

To summarize my credentials, I graduated from Florida State University College of Law in 1988, ranked second in my class. During my first year as a lawyer, I held a judicial clerkship at the U.S. Eleventh Circuit Court of Appeals, being one of the first graduates of FSU's law school to clerk for a federal judge at the appellate level. In July 1989, after completion of the one-year judicial clerkship, I joined Steel Hector & Davis and became a commercial litigator. I was elected to the partnership of the firm in 1994.

My private practice as a litigator encompassed both commercial and administrative litigation, with special emphasis on insurance coverage disputes, commercial leases, business contracts, bid protests, administrative rule challenges, and licensure proceedings. As a litigator, I have tried cases in many forums, including the county and state circuit courts, federal districts courts, and DOAH. In addition, I occasionally handled appeals, presenting oral arguments in the state district courts and the U.S. Eleventh Circuit Court of Appeals.

In the summer of 2000, I was selected by then-director Sharyn Smith to fill one of six newly created ALJ positions, and I joined DOAH in October of that year. Since then, I have tried hundreds of section 120.57 hearings to conclusion. If Baker Act, code compliance, and claim bill hearings are included, I have conducted roughly 10,000 final evidentiary hearings. During my service as an ALJ, I have heard most every type of case that comes before DOAH, including numerous high-profile cases over the years, from the citrus canker litigation of 2001 to the medical marijuana licensure disputes of recent years.

In recognition of my expertise and reputation as an ALJ, I am regularly invited to lecture on administrative law issues at seminars, have guest-taught in law school and college classrooms, and have conducted workshops on trial skills at the National Advocacy Center in Columbia, SC.

My law review article on the deference doctrine, a subject I had addressed in lectures and orders for years, contributed to the discourse leading to the enactment of Amendment Six, which amended the Florida Constitution so as to abrogate the principle of deference to agencies as a rule of statutory interpretation in this state. *See John G. Van Laningham, When Courts Bow to Bureaucrats: How Florida's Deference Doctrine Lets Agencies Say What the Law Is*, 45 Fla. St. U. L. Rev. Online 1 (2018) (available at <http://www.fsulawreview.com/online/>).

I have been a member in good standing of the Florida Bar continuously since October 1988. I currently serve as an at-large representative in the Executive Council of the Florida Bar Government Lawyer Section. I am a Board-Certified Specialist in State and Federal Government and Administrative Practice (SFGAP), and I am currently a member of the SFGAP Certification Committee.

Enclosed herewith is my résumé, which contains some additional details regarding my professional background.

Because the Commission might be interested in my platform and policy goals for DOAH, I offer the following nonexclusive agenda.

1. Protecting Decisional Independence

These days, discussions about the desired qualifications for holding judicial office often begin with the topic of judicial philosophy, focusing on such questions as whether a candidate or nominee would apply the law as written, according to the plain meaning of the statutory text, and eschew legislating from the bench. These are, of course, important considerations, and for the record my commitment to textualism and respect for the separation of powers is not merely academic but is readily apparent in the hundreds of opinions I have written over the last two decades.

An ALJ's judicial philosophy is less important, however, than his or her independent mindedness. This is because, in contrast to the Article V judiciary, whose independence is assured by a muscular separation of powers doctrine, the decisional independence of ALJs lacks robust constitutional protection. While the Administrative Procedure Act clearly contemplates that ALJs will decide cases independently and impartially, it affords relatively minimal safeguards against encroachments on decisional independence. For ALJs, independence is a fragile thing, which should not be taken for granted; its existence depends in no small part upon the individual judge's strength of character, self-confidence, and personal integrity—and upon the director's use of his or her office to shield ALJs from any interference with their independence as decision-makers. DOAH is fortunate to have had long-serving directors such as Sharyn Smith and Bob Cohen who successfully insulated ALJs from such interference.

To preserve independence, the director must not treat ALJs as subordinates when they are acting in their quasi-judicial capacity. ALJs are *judges*, after all, which means that they must be personally and solely responsible for making every decision in the cases they hear. If an ALJ were to be given a directive or suggestion by the director to rule a particular way; or if the ALJ's orders were subject to review and approval by the chief judge as a prerequisite to issuance, then the ALJ would no longer be the completely independent and impartial judge to which litigants are entitled.

Therefore, the primary duty of DOAH's director should be, not to promote a judicial philosophy, but to foster a *culture of judicial independence*. This means that the director must constantly guard against infringements upon an ALJ's freedom to decide cases without fear or favor, pressure, or influence of any kind—including by the director him- or herself.

This is vitally important, in my judgment. As retired U.S. Magistrate Judge and former ALJ William C. Sherrill, Jr., astutely observed:

The accountability of the director [as a political appointee], of course, could be the Achilles heel for the independence of administrative law judges. Any structure that permits short-term political interference to affect the outcome of a single individual decision will erode public confidence and eventually fail to provide due process within the executive branch.

Sherill, "The Florida Division of Administrative Hearings," in *The Florida Bar Journal*, Vol. 75, No. 1, pg. 22, n.30 (Jan. 2001). In this regard, it must be kept in mind that, as an agency head, the director has the authority to materially alter an ALJ's working conditions, to the ALJ's detriment, in myriad ways short of invoking the formal disciplinary process. Moreover, under the current system, the director's power to impose discipline upon an ALJ, including termination of employment, while not unfettered, is still great. These powers give a director potential leverage over the decision-making process, which could be used to affect outcomes by a director inclined to impress his or her will on ALJs.

If selected, I will use all available means of assuring that no ALJ ever feels any pressure, or hears any suggestion, however subtle, from me or anyone else, to make a particular decision or change a proposed ruling. I will never ask a judge how he or she intends to rule in a pending case; direct that draft orders be reviewed by or for me before issuance; or make comments to an ALJ relative to the merits of a case under active consideration.

2. Reform of the Rules Regulating Quasi-Judicial Conduct

Florida's constitutional judges are required to comply with the Code of Judicial Conduct for the State of Florida. This Code is administered by an independent state agency, the Judicial Qualifications Commission, which investigates complaints of misconduct by judges. A judge whom the JQC

has found in violation of the Code is subject to discipline, including removal, by the Florida Supreme Court.

ALJs, in contrast, are governed (as attorneys) by the Rules Regulating the Florida Bar and (as state workers) by the standards of conduct applicable to all career service employees. There are no rules specifically designed to regulate the conduct of an ALJ while acting in any capacity, e.g., personal, quasi-judicial, or nonjudicial. An internal “ALJ Manual” directs ALJs to comply with the ABA Model Code of Judicial Conduct to the extent applicable, but there exists no JQC-like agency to investigate reports of ALJ misconduct, nor is there a body like the Judicial Ethics Advisory Committee in place to provide guidance to ALJs regarding the application of the ABA Model Code to specific instances of contemplated conduct.

As director, I will work to reform this inadequate system by advocating for: (1) the adoption of a code of quasi-judicial conduct similar to the Code of Judicial Conduct for judges, which would be tailored to the specific needs of an independent administrative judiciary; (2) the creation of an independent authority having jurisdiction to investigate reports of ALJ misconduct and to enforce compliance with the newly adopted code; and (3) the extension of existing judicial immunity to protect ALJs against disciplinary action based upon an ALJ’s purely judicial acts.

3. Reform of the Process for Selecting ALJs

Recent years have witnessed attempts in the legislature to establish a more rigorous procedure for the selection of ALJs. I am in favor of such reform.

Currently, the duty of hiring ALJs belongs to the director, who may seek input from others as he or she chooses. I have personally participated in the hiring of many ALJs and have firsthand knowledge of the process. Although the current system works, as evidenced by the many outstanding ALJs who serve and have served at DOAH, it lacks the dignity of the judicial selection process and attenuates accountability for the selections. Further, hiring ALJs as regular state workers denies them the imprimatur of a commission.

ALJs make important and consequential decisions of statewide interest. Accordingly, they should be appointed by an elected official or officials having direct accountability to the people for the appointments.

Preferably, candidates for ALJ positions would also be vetted by a merit selection panel like the judicial nominating commissions. I would support the legislature's putting the power to appoint ALJs in the Governor's hands, or, alternatively, empowering the Administration Commission to make the appointments. Either option would be preferable to the status quo, in my opinion, and would enhance the stature of the office of ALJ, the legitimacy of our decisions, and public confidence in the quality of the central panel.

The more difficult issue concerns the matter of tenure in office. I am wary of proposals that would create terms for ALJs of, say, four years with the prospect of reappointment, because without strict safeguards such schemes might tend to infringe upon decisional independence. Assuming appropriate safeguards were enacted as part of the package, however, which I believe is possible, I would be supportive of terms of office, as well.

4. Selecting a Deputy

DOAH has been without a deputy director for approximately one and one-half years. The task of selecting the next deputy will fall to the new director. The past four deputy directors have been chosen from the ranks of the ALJs. There is nothing wrong with this, and, if the Commission chooses a director from outside DOAH, it would probably make sense for the new director to consider choosing a deputy who has experience in the agency and firsthand knowledge of what ALJs do. Having plenty of both, my perspective is different, however, and I would likely seek a deputy from outside DOAH, whose skill set would complement mine, preferably someone with extensive management experience in a law firm environment.

5. Reevaluating the Internal Organization of ALJs

Currently, DOAH's ALJs are internally organized into three geographic districts representing the northern, middle, and southern parts of the state. This organization reflects the fact that, historically, ALJs traveled extensively to conduct in-person hearings. There are efficiencies to be had in sending the same personnel to the same parts of the state on a regular basis.

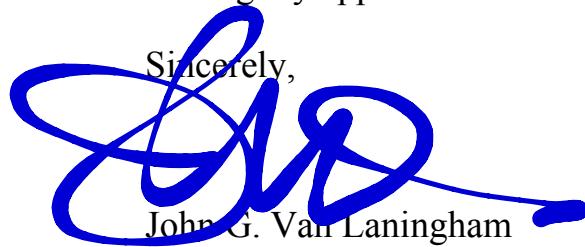
The use of video-teleconference facilities, which has increased markedly since I came to DOAH, has greatly reduced the need for ALJ travel. In 2020, secondary to the COVID-19 pandemic, ALJs have practically ceased traveling altogether. Like many others, we have migrated

to Zoom, which is now being used in conjunction with our regular video-teleconference facilities for the conduct of hearings.

We anticipate that travel will resume sometime in 2021. The successful integration of Zoom into our hearing practice, however, suggests to me that this platform will remain in use even after the pandemic has subsided. Assuming that Zoom is here to stay, it is reasonably foreseeable that ALJs will travel less in the future than before COVID-19. If so, an opportunity will arise to reevaluate the utility of organizing ALJs by geographic district. As travel considerations (and geographic boundaries) become less important, new efficiencies might be achieved by, for example, organizing ALJs around subject matter specialization, perhaps by creating “divisions” handling particular types of cases.

The foregoing agenda is not meant to be exhaustive, and, of course, any new director’s current plans will likely be reshaped in response to circumstances, including the resistance to change inherent in any organization. The one item that would not change, however, under any circumstances, is my unwavering commitment to decisional independence, which is DOAH’s *raison d'être*.

Thank you for considering my application.

Sincerely,

John G. Van Laningham
Board Certified Specialist

JOHN G. VAN LANINGHAM

BOARD CERTIFIED SPECIALIST • STATE AND FEDERAL GOVERNMENT & ADMINISTRATIVE PRACTICE

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EXPERIENCE

ADMINISTRATIVE LAW JUDGE

*State of Florida
Division of Administrative Hearings*

YEARS EMPLOYED: 2000 - PRESENT

*1230 Apalachee Parkway
Tallahassee, Florida 32399*

Preside in nonjury trials and resolve disputes between state agencies and persons whose substantial interests are determined by agency action, rendering orders containing detailed findings of fact and conclusions of law. Subject matter jurisdiction includes regulatory enforcement and discipline, rulemaking, procurement, education, health care facilities and financing, and civil rights. In addition, I have served as a Special Master for the Florida Senate for claim bills, conducting hearings and making recommendations regarding private relief legislation. I am, as well, the Special Magistrate for Code Compliance in Monroe County, Florida. As Southern District Senior Judge from 2010-2014, I supervised nine other judges and support staff, balancing caseloads, overseeing workflow, monitoring case management, and evaluating performance.

PARTNER

Steel Hector & Davis LLP

YEARS EMPLOYED: 1989 - 2000

*1900 Phillips Point West
777 S. Flagler Drive
West Palm Beach, Florida 33401*

My practice with this Miami-based, international law firm encompassed both commercial and administrative litigation, including appeals, with special emphasis on insurance recovery, contractual disputes, shopping center leases, public procurement (bid protests), administrative rule challenges, regulatory compliance, and substantial interest proceedings.

JUDICIAL CLERK

*Hon. Albert J. Henderson
U.S. 11th Cir. Ct. App.*

YEARS EMPLOYED: 1988 - 89

Atlanta, Georgia

Researched and drafted legal memoranda and proposed opinions for a United States Circuit Judge.

RESEARCH ASSISTANT

*Talbot (Sandy) D'Alemberte
Dean and Professor
FSU College of Law*

YEARS EMPLOYED: 1986 - 88

Tallahassee, Florida

Researched, drafted, and edited speeches, op-ed pieces and law review articles for the law school dean.

EDUCATION

JURIS DOCTOR (SUMMA CUM LAUDE), APRIL 1988 YEARS ATTENDED: 1985 - 88
Florida State University *Tallahassee, Florida*

Honors: Graduated second in class; Order of the Coif; *Law Review*, Associate Editor, Summer through Fall 1986, then Managing Editor, Spring 1987 through Fall 1988; Blank-Miller Scholarship, Fall 1986, Fall 1987; Comment, *The Making of the 1986 Florida Safety Belt Law: Issues and Insight*, 14 Fla. St. U.L. Rev. 685 (1986), selected by faculty as Best Legislative Article, November 1986; numerous “book awards” including Contracts, Legal Writing, Civil Procedure, Sales, Secured Transactions, Professional Responsibility, and Remedies.

BACHELOR OF ARTS, ENGLISH, MAY 1985 **YEARS ATTENDED: 1981 - 85**
University of Florida *Gainesville, Florida*

Honors: Paper, *A Quantitative, Comparative Analysis of Mr. Reagan's Style in Discourse as a Possible Indicator of Effects Attributable to Aging*, selected for presentation, Undergraduate Honors Conference, DePauw University, Greencastle, IN, February 1985.