



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 6 2006

DEPUTY ADMINISTRATOR

MEMORANDUM

SUBJECT: EPA Attorneys' Certification of Active Bar Membership

FROM: Marcus C. Peacock *MP*
Deputy Administrator

Ann R. Klee *ARK*
General Counsel

TO: Assistant Administrators
Deputy Assistant Administrators
Inspector General
Chief Financial Officer
Associate Administrators
Chief of Staff
Staff Office Directors
Regional Administrators
Deputy Regional Administrators
Regional Counsels
Deputy Regional Counsels

EPA requires that all Agency attorneys in the GS-905 (general attorney) and GS-1222 (patent attorney) occupational series (hereinafter "attorney" or "attorneys"), as defined by the U.S. Office of Personnel Management, must maintain active membership in the bar of at least one State, the District of Columbia, U.S. territory, or the Commonwealth of Puerto Rico. This requirement applies regardless of the grade, title, or level of the attorney's position, or the nature of the legal work of the position. All references to "active" bar membership in this memorandum refer to the conditions of the applicable jurisdiction necessary for an attorney to be licensed and authorized to practice as an attorney under the laws of that jurisdiction.

In order for EPA to monitor compliance with the active bar membership requirement, the Agency is requiring that all Agency attorneys self-certify, annually and in writing, that they are active members of a bar of at least one of the jurisdictions described above. A form for that purpose is attached (Attachment 1). If your office employs GS-905 or GS-1222 attorneys, you are responsible for designating an official within your organization who will be responsible for receiving and retaining the self-certification forms.

Listed below are the procedures the Agency has established regarding this self-certification process for those attorneys who are not represented by a union. The Agency has discussed this process with the appropriate union officials, and has negotiated agreements that implement this process.¹

Under the procedures described below and the agreements with the unions, attorneys are required to file their initial self-certification form within the time frames specified therein. This initial self-certification form will fulfill the filing requirement for 2006. Self-certification forms for subsequent years must be filed by July 31 of each year. **Accordingly, please ensure that every attorney in your organization who is a member of a bargaining unit represented by either AFGE or NTEU receives a copy of the applicable union agreement attached to this memorandum as soon as possible. For those attorneys in your organization who are not represented by a union, please ensure that they receive a copy of this memorandum with the attached self-certification form as soon as possible.**

Your office is also responsible for reminding your attorneys each year, at least ten (10) work days prior to the July 31 deadline, of the requirement to file the self-certification forms by that deadline.

Further, to the extent it does not conflict with an attorney's assignments or the needs of his/her office, attorneys may be granted a reasonable amount of administrative leave to complete annual requirements to maintain active bar membership in one of the jurisdictions listed above. Such requirements may include continuing legal education (CLE) or ethics courses, seminars, training, or conferences. Administrative leave may be granted for this purpose only to the extent that the subject matter covered in such courses, seminars, training, or conferences relates to the Agency's mission or helps develop or improve the attorney's professional skills.

Finally, nothing in this memorandum or the union agreements is intended to waive the rights of the Agency or a union, including EPA's right to take appropriate action regarding attorneys who have not maintained active membership in a bar, or in situations where attorneys have been disbarred, suspended, or subjected to other forms of disciplinary or corrective action by a jurisdiction listed above. The Agency will carry out such actions consistent with all applicable laws, regulations, and bargaining agreements. EPA management officials may also consider detailing or reassigning an attorney who has not maintained active membership in a bar to another position for which the attorney qualifies. Agency management officials will provide due consideration to attorneys under their supervision with documented special health or medical concerns that may delay their reinstatement to active status.

¹Attachments 2 and 3 to this memorandum are the negotiated agreements with the American Federation of Government Employees (AFGE) and the National Treasury Employees Union (NTEU), respectively, containing the self-certification procedures applicable to those Agency attorneys who are members of a bargaining unit represented by either AFGE or NTEU.

Procedures

1. Attorneys will have thirty (30) calendar days from the date of this memorandum to complete and file their initial certification form with an official designated by each attorney's office. However, attorneys on extended leave or otherwise absent from work due to extraordinary circumstances will be allowed a reasonable amount of time beyond thirty (30) calendar days to complete and file the certification form.
2. Attorneys must submit subsequent certification forms to the official designated by each attorney's office by July 31 of each year. The forms will be retained for as long as the attorney is employed in a GS-905 or GS-1222 occupational series in that office. In the event the attorney is reassigned to another EPA office, the forms will be transferred to the gaining office.
3. Attorneys on extended leave at the time their office issues the reminder of the filing deadline described above, or at the time of the due date for filing the forms, will be granted a reasonable extension of time to file the forms.
4. Attorneys will be granted up to one (1) hour of duty time on an annual basis to complete and submit the certification form.
5. Attorneys filing their initial certification form and who are presently working toward active status will be granted up to eight (8) hours of administrative leave to complete and file any documents required by their bar for requesting reinstatement to active status.
6. Attorneys filing their initial certification form and who are presently working toward active status may, consistent with the requirements of the applicable jurisdiction, have up to three (3) months from the date of this memorandum to complete the active membership reinstatement process in that jurisdiction. EPA management officials may consider a reasonable extension of this time period for attorneys under their supervision, on a case-by-case basis.
7. In addition to submitting their initial certification form, attorneys who are currently not active members of a bar must inform their management officials, in writing, of the reasons why they are not currently active members of a bar, the requirements needed for reinstatement to active status (e.g., CLE or ethics courses), and any delays in reinstatement by the expected date noted in the form.

Should you have any questions regarding this memorandum, please contact David P. Guerrero of the Office of General Counsel at (202) 564-5458.

Attachments (3)

ATTORNEY CERTIFICATION

I, _____, understand that, while employed at EPA as
(Name)

a GS-905 general attorney or GS-1222 patent attorney, I must maintain active membership in the bar of at least one State, the District of Columbia, U.S. territory, or the Commonwealth of Puerto Rico.

Choose one of the following, as applicable:

1. I hereby certify that I am an active member of the bar of _____. My
(Jurisdiction)
bar or license number is _____.

2. I am currently not an active member of the bar of a State, the District of Columbia, U.S. territory, or the Commonwealth of Puerto Rico. However, on _____, I applied for
(Date)
reinstatement to active bar membership in _____. I expect to be
(Jurisdiction)
reinstated to active bar membership by _____. My bar or license number is
(Date)
_____.

(Signature)

(Date)

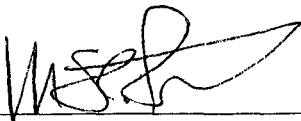
**AGREEMENT ON ATTORNEY ACTIVE BAR MEMBERSHIP CERTIFICATION
BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, COUNCIL
238 (AFGE)**

The U.S. Environmental Protection Agency (EPA or Agency) and the American Federation of Government Employees (AFGE) agree to the following:

1. All bargaining unit attorneys in a GS-905 or GS-1222 occupational series (hereafter “attorney” or “attorneys”), as defined by OPM, must maintain active membership in the bar of at least one State, the District of Columbia, U.S. territory, or the Commonwealth of Puerto Rico. This requirement applies regardless of the grade, title, or level of the attorney’s position, or the nature of the legal work of the position.
2. All references to “active” bar membership in this Agreement refer to the conditions of the applicable jurisdiction necessary for an attorney to be licensed and authorized to practice as an attorney under the laws of that jurisdiction.
3. All attorneys must self-certify, annually and in writing, using the form attached to this Agreement (Attachment 1), that they are active members of a bar of at least one of the jurisdictions listed in paragraph 1, above.
4. Attorneys must submit certification forms to an official designated by each attorney’s office by July 31 of each year. The forms will be retained for as long as the attorney is employed in a GS-905 or GS-1222 occupational series in that office. In the event the attorney is reassigned to another EPA office, the forms will be transferred to the gaining office.
5. Attorneys will have thirty (30) calendar days from the date this Agreement is signed by the parties to complete and file their initial certification form. However, attorneys on extended leave or otherwise absent from work due to extraordinary circumstances will be allowed a reasonable amount of time beyond thirty (30) calendar days to complete and file the certification form. The Agency will inform all attorneys of this requirement a reasonable period of time prior to the due date.
6. Attorneys must file certifications forms for subsequent years by the deadline established in paragraph 4, above. Each year, at least ten (10) work days prior to this deadline, the Agency will remind all attorneys of the requirement to file the forms. Attorneys on extended leave at the time of the reminder, or at the time of the due date for filing the forms, will be granted a reasonable extension of time to file the forms.
7. Attorneys will be granted up to one (1) hour of duty time on an annual basis to complete and submit the certification form.
8. Attorneys filing their initial certification form and who are presently working toward active status will be granted up to eight (8) hours of administrative leave to complete and file any documents required by their bar for requesting reinstatement to active status.

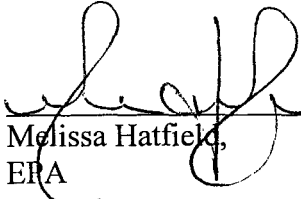
EPA Attorney Certification Procedures – AFGE Final

9. Attorneys filing their initial certification form and who are presently working toward active status may, consistent with the requirements of the applicable jurisdiction, have up to three (3) months from the date this Agreement is signed by the parties to complete the active membership reinstatement process in that jurisdiction. EPA management officials may consider a reasonable extension of this time period for attorneys under their supervision, on a case-by-case basis.
10. In addition to submitting their initial certification form, attorneys who are currently not active members of a bar must inform their management officials, in writing, of the reasons why they are not currently active members of a bar, the requirements needed for reinstatement to active status (e.g., continuing legal education (CLE) or ethics courses), and any delays in reinstatement by the expected date noted in the form.
11. EPA management officials will provide due consideration to attorneys under their supervision with documented special health or medical concerns that may delay their reinstatement to active status.
12. To the extent it does not conflict with an attorney's assignments or the needs of his/her office, attorneys may be granted a reasonable amount of administrative leave to complete annual requirements to maintain active bar membership in one of the jurisdictions listed in paragraph 1, above. Such requirements may include CLE or ethics courses, seminars, training, or conferences. Administrative leave may be granted for this purpose only to the extent that the subject matter covered in such courses, seminars, training, or conferences relates to the Agency's mission or helps develop or improve the attorney's professional skills.
13. Nothing in this Agreement is intended to waive the rights of the Agency or the Union, including EPA's right to take appropriate action regarding attorneys who have not maintained active membership in a bar, or in situations where attorneys have been disbarred, suspended, or subjected to other forms of disciplinary or corrective action by a jurisdiction listed in paragraph 1, above. EPA will carry out such actions consistent with all applicable laws, regulations, and bargaining agreements. EPA management officials may also consider detailing or reassigning an attorney who has not maintained active membership in a bar to another position for which the attorney qualifies.
14. Within 120 days from the date this Agreement is signed by the parties, the Union may submit proposals regarding an impact caused by the procedures covered in the Agreement that was unforeseen at the time the Agreement was signed.
15. This Agreement becomes effective on the date signed by the parties.



Mary St-Peter
AFGE Council 238

6/19/06
Date



Melissa Hatfield,
EPA

6-14-06
Date

Attachment 1

ATTORNEY CERTIFICATION

I, _____, understand that, while employed at EPA as
(Name)

a GS-905 general attorney or GS-1222 patent attorney, I must maintain active membership in the Bar of at least one State, the District of Columbia, U.S. territory, or the Commonwealth of Puerto Rico.

Choose one of the following, as applicable:

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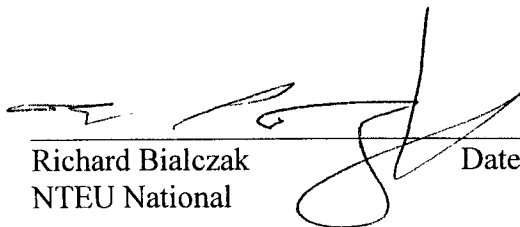
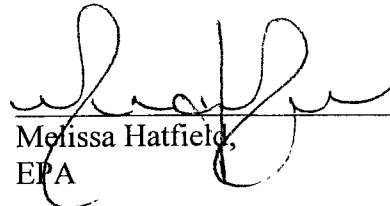
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BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE NATIONAL TREASURY EMPLOYEE'S UNION (NTEU)**

The U.S. Environmental Protection Agency (EPA or Agency) and the National Treasury Employee's Union (NTEU) agree to the following:

1. All bargaining unit attorneys in a GS-905 or GS-1222 occupational series (hereafter "attorney" or "attorneys"), as defined by OPM, must maintain active membership in the bar of at least one State, the District of Columbia, U.S. territory, or the Commonwealth of Puerto Rico. This requirement applies regardless of the grade, title, or level of the attorney's position, or the nature of the legal work of the position.
2. All references to "active" bar membership in this Agreement refer to the conditions of the applicable jurisdiction necessary for an attorney to be licensed and authorized to practice as an attorney under the laws of that jurisdiction.
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	6/2/06		6-14-06
Richard Bialczak NTEU National	Date	Melissa Hatfield, EPA	Date

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_____.

(Signature)

(Date)