

Dkt. 672 at 27. But “retained” in Section 515(b), like “appointed” in Section 515(a), is not a past-tense verb. It is part of a participial phrase modifying “attorney.” And while it is a *past* participle, “[p]ast participles . . . are routinely used as adjectives to describe the present state of a thing.” *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 84 (2017); *see also id.* (“the term ‘past participle’ is a ‘misnomer, since’ it ‘can occur in what is technically a present tense.’”) (quoting P. Peters, *The Cambridge Guide to English Usage* 409 (2004) (ellipsis omitted)). In fact, the main verbs throughout Section 515 are in the present tense: the specially appointed attorney “may . . . conduct” legal proceedings, and the attorney “shall be commissioned” with a title and “shall take the oath.” And those present-tense actions should occur together with the appointment, since it makes little sense to “appoint” a special attorney who has no commission or title, who has not taken the oath of office, and who has no power to act.<sup>3</sup>

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<sup>3</sup> Section 17 of the DOJ Act likewise described the act of retention using present-tense verbs, referring to every attorney “who *shall be* specially retained.” DOJ Act, § 17, 16 Stat. 164-65. That phrase became “who *is* specially retained” in the 1875 Revised Statutes, 1875 Act, § 366, 1 Rev. Stat. 61 (emphasis added), but without any intent to change the meaning, *see* Act of June 27, 1866, 14 Stat. 74 (explaining that the Revised Statutes focused on altering style not substance). Congress then simplified “[e]very attorney or counselor who is specially retained” to “[e]very attorney specially retained,” Pub. L. No. 80-773, 62 Stat. 895, explaining that change as designed to “omit[] surplus language” solely for