

# **Code of Administrative Law Judge Ethics**

## **ETHICAL STANDARD 1**

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## **OVERVIEW**

The Ethical Standards and comments contained in this Code supplant Ethical Standards 1.0 – 3.0 (promulgated on June 3, 1996) and Ethical Standard 4.0 (promulgated December 8, 2004). They are rules of reason and are to be applied consistent with constitutional requirements, statutes, administrative rules and decisional law in the context of all relevant circumstances. The Code is to be construed so as to not impinge on the essential independence of administrative law judges employed by the Office of Administrative Hearings (OAH/Office) in making administrative judicial decisions.

This Code is not intended as an exhaustive guide for the conduct of OAH administrative law judges. They are also governed in their official judicial and personal conduct by Ethical Standards of general applicability to all state employees. The Code is intended, however, to state basic standards which govern the conduct of OAH administrative law judges and to provide guidance to assist such judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the NAALJ Model Code of Judicial Conduct for State Administrative Law Judges and Arizona Code of Judicial Conduct (1993; 2014).

While the Ethical Standards govern the conduct of OAH administrative law judges, every violation is not intended to result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, is to be determined through a reasonable and reasoned application of the text and depend on such factors as the seriousness of the violation, whether there is a pattern of improper conduct, and the effect of the improper conduct on others or on the administrative judicial system. The Comments, by explanation and example, provide guidance with respect to the purpose and meaning of the Ethical Standard. Comments are not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action taken pursuant to the State personnel system.

## **APPLICABILITY OF THE CODE**

An administrative law judge employed full-time, part-time, or on an as needed contractual basis, who is empowered to preside over statutory or regulatory fact-finding or administrative judicial hearings involving public agencies or those contracted to have administrative hearings held before OAH, is an administrative law judge for purposes of this Code.

## ETHICAL STANDARD 1

### **AN ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES**

A. An administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the Office of Administrative Hearings.

#### Comments:

Public confidence in OAH is eroded by improper conduct and conduct that creates the appearance of impropriety. An administrative law judge must expect to be the subject of constant public scrutiny. An administrative law judge must accept restrictions on the administrative law judge's conduct that might be viewed as burdensome by the ordinary citizen, and do so freely and willingly.

Although purely social contacts or other non-legal dialogues are not prohibited, care must be taken to protect the administrative law judge's reputation for fairness, impartiality, and independence.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of an administrative law judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, Arizona Administrative Code A.A.C. R2-19-101 *et. seq.*, or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the administrative law judge's ability to carry out administrative judicial responsibilities with integrity, impartiality and competence is impaired.

B. An administrative law judge shall not allow family, social, political or other relationships to influence administrative judicial conduct or judgment. An administrative law judge shall not lend the prestige of OAH to advance the private interests of the administrative law judge or others; nor shall the administrative law judge convey or permit others to convey the impression that they are in a special position to influence.

#### Comments:

Maintaining the prestige of OAH is essential to a system of government in which OAH functions independently. Respect for the Office facilitates the orderly conduct of legitimate administrative judicial functions. Administrative law judges shall distinguish between proper and improper use of the prestige of the Office in all of their activities. For example, it is improper for an administrative law judge to

allude to the position of the Office to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting the administrative law judge's personal business.

An administrative law judge must avoid lending the prestige of the Office for the advancement of the private interests of others. For example, an administrative law judge must not use the administrative law judge's position to gain advantage in a civil suit involving a member of the administrative law judge's family.

References or letters of recommendations are permitted if they are based on the administrative law judge's personal knowledge, although an administrative law judge is to be sensitive to possible abuse of the prestige of the Office.

An administrative law judge must not voluntarily testify as a character witness unless under subpoena.

C. An administrative law judge shall not hold membership in any organization that practices invidious discrimination.

Comments:

Membership of an administrative law judge in an organization that practices invidious discrimination gives rise to perceptions that the administrative law judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges are to be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on such bases as race, religion, sex, gender, ethnicity, or national origin persons who would otherwise be admitted to membership.

Although Ethical Standard 1C relates only to membership in organizations that invidiously discriminate on the above-mentioned bases, an administrative law judge's membership in an organization that engages in any discriminatory membership practices prohibited by law also violates Ethical Standard 1 and Ethical Standard 1A and gives the appearance of impropriety. In addition, it would be a violation of Ethical Standard 1 and Ethical Standard 1A for an administrative law judge to arrange a meeting at a club that the administrative law judge knows practices such invidious discrimination, or for the administrative law judge to regularly use such a club. Moreover, public manifestation by an

administrative law judge of knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Ethical Standard 1 and diminishes public confidence in the integrity and impartiality of OAH, in violation of Ethical Standard 1A.

## **ETHICAL STANDARD 2**

### **AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY**

A. Administrative judicial Duties in General. The administrative judicial duties of an administrative law judge take precedence over all the administrative law judge's other activities. Those duties include all the duties of OAH as prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) An administrative law judge shall hear and decide matters assigned to the administrative law judge except those in which disqualification is required.

(2) An administrative law judge shall be faithful to the law and maintain professional competence in it. An administrative law judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) An administrative law judge shall maintain order and decorum in proceedings before the judge.

(4) An administrative law judge shall be patient, dignified, tolerant, attentive and courteous to litigants, witnesses, lawyers and others with whom the administrative law judge deals in an official capacity, and shall require similar conduct of lawyers, hearing participants, and representatives. An administrative law judge shall be courteous and respectful to the Director of OAH, the Assistant Presiding Administrative Law Judge, other OAH administrative law judges, and staff of the OAH.

Comments:

The duty to hear all proceedings fairly, with courtesy and patience is consistent with the duty to dispose promptly of the business of the administrative law judge and is essential to fostering the appearance impartiality. Apologizing to the recipients of such improper conduct does not excuse the administrative law judge of such conduct or negate the negative impact of such conduct. Once the administrative law judge has acted improperly, the damage has already been done and cannot be undone. An administrative law judge shall be efficient and businesslike while being patient, objective, and deliberate.

The mission of the Office requires the utmost public and agency trust in the fairness and impartiality of administrative law judges. Even innocent expressions of pique can be misinterpreted as partiality or animus.

Collegiality, courtesy and respect are essential components of being a professional. Treating all employees of OAH in a respectful manner fosters a good working environment and professionalism.

(5) An administrative law judge shall perform judicial duties without bias or prejudice. An administrative law judge shall not, in the performance of administrative judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, political affiliation, or socioeconomic status, and shall not permit parties, representatives, attorneys, witnesses or members of the public subject to the administrative law judge's direction and control to do so. An administrative law judge shall not make comment regarding any agency or party in any context that would reflect on the administrative law judge's ability to be fair and impartial.

Comments:

An administrative law judge must perform administrative judicial duties impartially and fairly. To do so, an administrative law judge must be objective and open-minded. An administrative law judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the Office of Administrative Hearings into disrepute. Facial expression and body language, in addition to oral communication, can give to parties, lawyers or representatives in the proceeding, the media and others an appearance of bias. An administrative law judge must be alert to avoid behavior that can be perceived as prejudicial.

(6) An administrative law judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the administrative law judge outside the presence of all the parties concerning a pending or impending proceeding except:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters, issues on the merits are authorized; or expressly provided by law provided:

(i) the administrative law judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the administrative law judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) In the context of a default hearing, assuming the other party has been duly noticed.

It is permissible for an administrative law judge to initiate or consider any ex parte communications when expressly authorized by law to do so.

Comments:

To the extent reasonably possible, all parties, their representatives or lawyers shall be included in communications with a judge.

(7) An administrative law judge shall not broach settlement in any manner that can be reasonably interpreted as signaling a prejudgment of the relative merits of a case. No judge shall actively participate in a settlement negotiation.

Comments:

*Sua sponte* invitations to discuss settlement can be viewed by parties as a reflection of the administrative law judge's view of the merits of the case. Therefore, broaching the issue of whether parties have discussed settlement, or might wish to do so, is to only occur before the taking of evidence, and only with a disclaimer that parties are not required to participate in settlement negotiations and that the administrative law judge's inquiry regarding settlement does not reflect any prejudgment by the administrative law judge of the merits of the case. Any actions by the administrative law judge that could be interpreted as force, threats or promises to induce a settlement are per se impermissible.

Although active participation in settlement negotiations is strictly prohibited if a settlement agreement is reached, it is not improper for the administrative law judge to confirm on the record that the agreement is genuine, that the terms are fair and reasonable under all of the circumstances, and that the parties' entry into the settlement is knowledgeable and voluntary.

(8) An administrative law judge shall dispose of all administrative judicial matters promptly, efficiently and fairly.

Comments:

In disposing of matters promptly, efficiently and fairly, an administrative law judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

Prompt disposition requires an administrative law judge to devote adequate time to administrative judicial duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that litigants and their representatives cooperate with the administrative law judge to that end.

(9) An administrative law judge shall not, while a proceeding is pending or impending in any court or tribunal, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. This Ethical Standard does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the hearing procedures. This Ethical Standard does not apply to proceedings in which the administrative law judge is a litigant in a personal capacity.

Comments:

The restrictions on judicial speech in Ethical Standard 2B(9) are essential to the maintenance of the integrity, impartiality, and independence of the Office of Administrative Hearings. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that an administrative law judge abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. Ethical Standard 2B(9) does not prohibit an administrative law judge from commenting on proceedings in which the administrative law judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the administrative law judge is a litigant in an official capacity, the administrative law judge must not comment publicly.

(10) An administrative law judge shall not disclose or use, for any purpose unrelated to administrative judicial duties, nonpublic information acquired in an administrative judicial capacity.

C. Administrative Responsibilities.

(1) An administrative law judge shall diligently discharge the Office's administrative judicial responsibilities without bias or prejudice and maintain professional competence in administrative judicial administration.

(2) An administrative law judge shall observe the standards of fidelity and diligence that apply to the administrative law judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) An administrative law judge who has knowledge or who receives reliable information that another administrative law judge has committed a violation of this Code or who receives reliable information that raises a substantial question as to the administrative law judge's honesty, trustworthiness, or fitness as an administrative law judge in other respects shall inform the Director of OAH of such conduct.

D. Disqualification.

(1) An administrative law judge shall disqualify himself or herself in a proceeding in which the administrative law judge's impartiality might reasonably be questioned, including but not limited to instances where:

Comments:

By decisional law, the rule of necessity may override the rule of disqualification. For example, an administrative law judge might be the only judge available in a matter requiring immediate action. In such case, the administrative law judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the administrative law judge has a personal bias or prejudice concerning a party or a party's lawyer or representative, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the administrative law judge has served as a lawyer or representative in the matter in controversy; or practiced law with a lawyer who is or who has served as a lawyer or representative in the matter in controversy; or who has been a material witness concerning the matter;

(c) the administrative law judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) An administrative law judge who was previously an administrative law judge, hearing officer, or lawyer for an agency for which a hearing is conducted.

Comments:

A lawyer in a governmental agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Ethical Standard 2D(1). However, the administrative law judge shall disqualify himself or herself in a proceeding if the administrative law judge's impartiality might be reasonably questioned because of such association.

(e) the administrative law judge knows that he or she, individually or as a fiduciary, or the administrative law judge's spouse, parent or child wherever residing, or any other member of the administrative law judge's family residing in the administrative law judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the proceeding;

(f) the administrative law judge or the administrative law judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the administrative law judge to have an interest that could be substantially affected by the proceeding;

(iv) is to the administrative law judge's knowledge likely to be a material witness in the proceeding.

Comments:

The fact that a lawyer in a proceeding is affiliated with a law firm in which a relative of the administrative law judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, that fact that the administrative law judge's impartiality might reasonably be questioned under Ethical Standard 2D(1), or that the relative is known by the administrative law judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Ethical Standard 2D(1) shall under certain circumstances require the administrative law judge's disqualification.

An administrative law judge is disqualified whenever the administrative law judge's impartiality is reasonably questioned, regardless of whether any provisions in Ethical Standard 2D(1) apply. For example, if an administrative law judge were in the process of negotiating for employment with a law firm, the administrative law judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge. In addition, disqualification would be required if the proceeding involves an issue or subject on which the administrative law judge previously has announced his or her view.

An administrative law judge shall disclose on the record information that the administrative law judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the administrative law judge believes there is no real basis for disqualification.

An administrative law judge who receives a complaint from a litigant appearing before the administrative law judge is not automatically disqualified from hearing the case.

(2) An administrative law judge shall keep informed about the administrative law judge's personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the administrative law judge's spouse and minor children residing in the administrative law judge's household.

(3) For the purposes of this section of the Code, the following words or phrases shall have the meaning indicated:

a. the degree of relationship is calculated according to the civil law system;

E. Remittal of Disqualification. An administrative law judge is disqualified by the terms of Ethical Standard 2D unless there is disclosure on the record that the basis of the disqualification is for other than for personal bias or prejudice concerning a party and

the parties and lawyers or representatives, independent of the administrative law judge's participation, all agree that the administrative law judge not be disqualified the administrative law judge is permitted to participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Comments:

This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement.

Public comments about an administrative law judge's interpretation of statute or probable course of action given certain facts can unintentionally foster the image of prejudging cases which is contrary to the mission of OAH. Moreover, contrary or inconsistent statements by various OAH administrative law judges can create confusion and undercut the credibility of the Office.

Public comment or speculation regarding undecided OAH policy is prohibited since these may have procedural or substantive effects on particular cases. This standard does not include statements of established principles of law, recitation of statutory provisions, administrative rules or regulations, or of established policy of the Office. However, care must be taken to avoid even innocent misstatement of these in order to avoid undercutting the credibility of the Office.

Parties are entitled to rely upon the stated substance and rationale of written decisions and further public comments expanding upon such decisions is inappropriate. Administrative law judges shall refer those inquiring about decisions to the public record of the hearing and the written decision. Responding to inquires in any other manner invites questions about hypothetical facts that may not have been known to the administrative law judge and which, if commented on, could undermine the integrity of the hearing process. Likewise, it invites inquiries about the opinion of the administrative law judge in regard to the final agency action, a situation clearly adverse to the requirement that administrative law judges remain impartial. Great care is to be taken to avoid such situations.

### **ETHICAL STANDARD 3**

**AN ADMINISTRATIVE LAW JUDGE SHALL REGULATE THE ADMINISTRATIVE LAW JUDGE'S EXTRA-JUDICIAL ACTIVITIES SO AS TO MINIMIZE THE RISK OF CONFLICT WITH THE ADMINISTRATIVE LAW JUDGE'S DUTIES**

A. Extra-judicial Activities in General. An administrative law judge shall conduct all of the administrative law judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the administrative law judge's capacity to act impartially as a judge;
- (2) demean the Office; or
- (3) interfere with the proper performance of administrative judicial duties.

Comments:

Expressions of bias or prejudice by a judge, even outside the administrative law judge's judicial activities, can cast reasonable doubt on the administrative law judge's capacity to act impartially as a judge. Expressions which are to be avoided include jokes or other remarks demeaning individuals. See Ethical Standard 2B(5) and accompanying Comments.

B. Avocational Activities.

An administrative law judge is permitted to speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

Comments:

An administrative law judge is in a unique position to contribute to the improvement of the law, the legal system, and the administrative process. To the extent that time permits, an administrative law judge is encouraged to do so, either independently or through a bar or administrative judicial association, or other organization dedicated to the improvement of the law. It is permissible for judges to participate in efforts to promote the fair administration of justice, the independence of the Office of Administrative Hearings, and the integrity of the legal profession.

In this and other sections of Ethical Standard 3, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Ethical Standard of the Code does not relieve an administrative law judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

- (1) An administrative law judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the administrative law judge or the administrative law judge's interests.

Comments:

See Ethical Standard 1B regarding the obligation to avoid improper influence.

(2) An administrative law judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. It is permissible for an administrative law judge to represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Comments:

Ethical Standard 3C(2) prohibits an administrative law judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Ethical Standard 3C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on administrative judicial resources and extra-judicial matters that are or likely to be controversial. Administrative law judges shall not accept governmental appointments that are likely to interfere with the effectiveness and independence of the Office of Administrative Hearings.

Ethical Standard 3C(2) does not govern an administrative law judge's service in a non-governmental position. See Ethical Standard 3C(3) permitting service by an administrative law judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Ethical Standard 3C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Ethical Standard 3C(3).

(3) It is permissible for an administrative law judge to serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. An administrative law judge is permitted to assist such an organization in raising funds and to participate in their management and investment, but shall not personally participate in public fund-raising activities except that an administrative law judge can be an announced speaker at a fund-raising event benefiting indigent representation or public institutions of legal education. An administrative law judge can make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

(4) It is permissible for an administrative law judge to participate in civic and charitable activities that do not reflect adversely upon the administrative law judge's impartiality or interfere with the performance of the administrative law judge's administrative judicial duties. An administrative law judge can serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not

conducted for the economic or political advantage of its members, subject to the following limitations:

(a) An administrative law judge shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the administrative law judge or will be regularly engaged in adversary proceedings in any agency, board or commission that falls under OAH's jurisdiction.

(b) An administrative law judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use but it is permissible for the administrative law judge to be listed as an officer, director, or trustee of such an organization, so long as the listing is not used for fund-raising purposes. Except as permitted by Ethical Standard 3C(3) above, An administrative law judge shall not be a speaker or the guest of honor at an organization's fund-raising events, but it is permissible for an administrative law judge to attend such events.

(c) An administrative law judge shall not give investment advice to such an organization, but it is permissible for An administrative law judge to serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Comments:

The changing nature of some civic and charitable organizations and of their relationship to the law makes it necessary for an administrative law judge to regularly to reexamine the activities of each organization with which the administrative law judge is affiliated to determine if it is proper to continue his or her relationship with it. For example, in many jurisdictions, charitable hospitals are in administrative proceedings now more frequently than in the past. Similarly, the boards of some organizations now make policy decisions that may have political significance or imply commitment to causes for any agency, board or commission that may come before OAH for adjudication.

#### D. Financial Activities.

1. An administrative law judge shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the administrative law judge's official position or involve the administrative law judge in frequent transactions with lawyers or persons likely to come before the agency in which the administrative law judge serves.

2. Subject to the requirements of Ethical Standard 3D(1), it is permissible for an administrative law judge to hold and manage personal investments, including real estate, and engage in other remunerative activity.

3. An administrative law judge shall manage the administrative law judge's investments and other financial interests to minimize the number of cases in which the administrative law judge is disqualified. As soon as judges can do so without serious financial detriment, judges shall divest themselves of investments and other financial interests that might require frequent disqualification.

4. Neither an administrative law judge nor a member of the family residing in the administrative law judge's household are to accept a gift, bequest, favor or loan from anyone except as follows:

a. Acceptance of a gift is permissible if it incident to a public testimonial to the administrative law judge, books supplied by publishers on a complimentary basis for official use, or an invitation to the administrative law judge and the administrative law judge's spouse to attend a function or activity devoted to the improvement of the law, the legal system or the administration of justice.

b. Ordinary social hospitality in the form of a gift, bequest, favor or loan from a relative or close personal friend; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges; or a scholarship or fellowship awarded on the same terms applied to other applicants is permitted to be accepted by the administrative law judge or a member of the family residing in the administrative law judge's household.

c. It is permissible for an administrative law judge or a member of the family residing in the administrative law judge's household to accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, or the gift is otherwise consistent with relevant agency rules and is reported to the extent required by such rules and other applicable laws.

5. For purposes of this section "member of the family residing in the household" means any relative of the administrative law judge by blood or marriage, or a person treated by An administrative law judge as a member of the family, who resides in the household.

6. An administrative law judge is not required by this Code to disclose income, debts or investments, except as provided by law.

7. Information acquired by administrative law judges in their administrative judicial capacity shall not be used or disclosed by the administrative law judge in financial dealings or for any other purpose not related to judicial duties.

#### Comments:

The Time for Compliance provision of this Code postpones the time for compliance with certain provisions of this section in some cases. When an administrative law judge acquires in administrative judicial capacity information, such as material contained in filings with the Office, that is not yet generally known, the administrative law judge must not use the information for private gain.

An administrative law judge must avoid financial and business dealings that involve the administrative law judge in frequent transactions or continuing business relationships with persons likely to come either before the administrative law judge personally or before other administrative law judges. In addition, An administrative law judge shall discourage members of the administrative law judge's family from engaging in dealings that would reasonably appear to exploit the administrative law judge's administrative judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

Participation by an administrative law judge in financial and business dealings is subject to the general prohibitions in Ethical Standard 3A against activities that tend to reflect adversely on impartiality, demean the administrative judicial office, or interfere with the proper performance of administrative judicial duties. Such participation is also subject to the general prohibition in Ethical Standard 1 against activities involving impropriety or the appearance of impropriety and the prohibition in Ethical Standard 1B against the misuse of the prestige of the administrative judicial office. In addition, An administrative law judge must maintain high standards of conduct in all of the administrative law judge's activities, as set forth in Ethical Standard 1.

Although participation by an administrative law judge in a closely-held family business might otherwise be permitted by Ethical Standard 3D(3), An administrative law judge is prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the administrative law judge or the Office or the participation requires significant time away from administrative judicial duties. Similarly, an administrative law judge must avoid participating in a closely-held family business if the administrative law judge's participation would involve misuse of the prestige of the Office or misuse of the Office's facilities or staff.

Because a gift, bequest, favor or loan to a member of the administrative law judge's family residing in the administrative law judge's household might be viewed as intended to influence the judge, an administrative law judge must inform those family members of the relevant ethical constraints upon the administrative law judge in this regard and discourage those family members from violating them. An administrative law judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the administrative law judge's household.

It is permissible for an administrative law judge to accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code.

A gift to a judge, or to a member of the administrative law judge's family living in the administrative law judge's household, that is excessive in value raises questions about the administrative law judge's impartiality and the integrity of the administrative judicial office and might require disqualification of the administrative law judge where disqualification would not otherwise be required.

Ethical Standard 3D(4) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

(1) An administrative law judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the administrative law judge's family and then only if such service will not interfere with the proper performance of administrative judicial duties.

(2) An administrative law judge shall not serve as a fiduciary if it is likely that the administrative law judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the Office.

(3) The same restrictions on financial activities that apply to an administrative law judge personally also apply to the administrative law judge while acting in a fiduciary capacity.

Comments:

Other restrictions imposed by this Code may conflict with an administrative law judge's fiduciary obligation; in such circumstances, the administrative law judge shall resign as fiduciary. For example, an administrative law judge is deemed to have an interest in shares of stock held by a trust if the amount of stock is more than *de minimis*.

F. Service as Arbitrator or Mediator. An administrative law judge can act as an arbitrator or mediator if such activity does not affect the independent professional judgment of the administrative law judge or the conduct of his or her official duties. An administrative law judge shall not be an arbitrator or mediator over a matter in which the administrative law judge may later preside.

Comments:

Ethical Standard 3F does not prohibit an administrative law judge from participating in arbitration performed as part of the administrative law judge's responsibilities as a member of the State Bar of Arizona.

G. Practice of Law. It is permissible for an administrative law judge to practice law if such activity would neither affect the independent professional judgment of the administrative law judge nor the conduct of the administrative law judge's official duties. An attorney who is an administrative law judge shall not accept the representation of a client who is a litigant before the Office or if there is a likelihood that such person will appear before the judge. An administrative law judge shall not practice law before the Office.

Comments:

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. It is permissible for an administrative law judge to act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, An administrative law judge must not abuse the prestige of office

to advance the interests of the administrative law judge or the administrative law judge's family. See Ethical Standard 1(B).

The Code allows an administrative law judge to give legal advice to and draft legal documents for members of the administrative law judge's family, so long as the administrative law judge receives no compensation. An administrative law judge must not, however, act as an advocate or negotiator for a member of the administrative law judge's family in a legal matter.

Judges who are actively practicing law at the time of their hiring with the Office are encouraged to become familiar with ethical considerations immediately affecting the transition from lawyer to an administrative law judge.

#### **ETHICAL STANDARD 4**

##### **AN ADMINISTRATIVE LAW JUDGE OR SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY**

###### **A. Political Conduct in General**

(1) An administrative law judge shall not:

(a) act as a leader or hold any office in a political organization or party, the principal purpose of which is to further election or appointment of candidates for political office;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or be compelled to pay an assessment to a political organization or candidate, or purchase tickets for political dinners or other similar functions if it constitutes a public endorsement of a candidate or cause otherwise prohibited by these Ethical Standard.

(d) engage in any other partisan political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Comments:

An administrative law judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, an administrative law judge or another judicial candidate having knowledge of the facts is not prohibited by Ethical Standard 4A(1) from making the facts public.

Ethical Standard 4A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Ethical Standard 4A(1)(b) does not prohibit an administrative law judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

Ethical Standard 4A(1)(c) sets a limit on the combined total contributions to political parties and candidates. The \$250.00 limit was adopted by the Arizona Supreme Court in 1985. State law on campaign contributions is found in A.R.S. § 16-905.

An administrative law judge is entitled to entertain his or her personal views on political questions. The administrative law judge is not required to surrender his or her rights or opinions as a citizen, but avoid political activity which can give rise to a suspicion of political bias or impropriety. The term political activity is not to be construed so narrowly as to prevent private comment.

Nothing in this Ethical Standard prohibits an administrative law judge from speaking to a political organization.

(2) An administrative law judge or a non-judge who is a candidate for judicial office can speak to political gatherings on his or her own behalf.

(3) It is permissible for an administrative law judge purchase tickets for political dinners or other similar functions but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by this Ethical Standard.

(4) An administrative law judge shall resign from the Office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the administrative law judge can continue to hold an administrative law judge position while being a candidate for election to or serving as a delegate in a state constitutional convention if the administrative law judge is otherwise permitted by law to do so.

## **ETHICAL STANDARD 5**

### **AN ADMINISTRATIVE LAW JUDGE SHALL LIMIT COMPENSATION RECEIVED FOR QUASI-JUDICIAL AND EXTRA-JUDICIAL ACTIVITIES**

It is permissible for an administrative law judge to receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the administrative law judge in the administrative law judge's official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

#### **A. COMPENSATION.**

Compensation cannot exceed a reasonable amount nor can it exceed what a person who is not an administrative law judge would receive for the same activity.

**B. EXPENSE REIMBURSEMENT.**

Expense reimbursement is be limited to the actual cost of travel, food and lodging reasonably incurred by the administrative law judge and where appropriate to the occasion, by the administrative law judge's spouse or guest. Any payment in excess of such an amount is compensation.

**ETHICAL STANDARD 6**

**COMPLIANCE**

A. Time for Compliance. A person to whom this Code becomes applicable shall arrange his or her affairs as soon as reasonably possible to comply with it.