

TITLE 1

OFFICE OF ADMINISTRATIVE LAW

CHAPTER 1

UNIFORM ADMINISTRATIVE PROCEDURE RULES

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.1997 d.158, effective March 10, 1997.
See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Uniform Administrative Procedure Rules, expires on March 10, 2002.

Chapter Historical Note

Chapter 1, Uniform Administrative Procedure Rules of Practice, was adopted as R.1980 d.275, effective July 1, 1980, repealing the administrative hearing rules of the Division of Administrative Procedure at N.J.A.C. 15:15-10. See: 11 N.J.R. 479(a), 12 N.J.R. 234(a), 12 N.J.R. 362(a). Chapter 1 was amended by R.1981 d.55, effective February 17, 1981. See: 13 N.J.R. 3(b), 13 N.J.R. 114(a); R.1981 d.116, effective May 7, 1981. See: 13 N.J.R. 2(a), 13 N.J.R. 254(b); R.1981 d.443, effective November 16, 1981. See: 13 N.J.R. 254(c), 13 N.J.R. 842(a); R.1982 d.87, effective April 5, 1982. See: 14 N.J.R. 2(a), 14 N.J.R. 335(a); R.1982 d.150, effective May 17, 1982. See: 14 N.J.R. 4(a), 14 N.J.R. 471(a); R.1982 d.295, effective September 7, 1982. See: 14 N.J.R. 606(b), 14 N.J.R. 975(b); R.1982 d.467, effective January 3, 1983. See: 14 N.J.R. 486(a), 15 N.J.R. 23(a); R.1983 d.268, effective July 5, 1983. See: 15 N.J.R. 582(a), 15 N.J.R. 1093(a); R.1983 d.515, effective November 21, 1983. See: 15 N.J.R. 1399(a), 15 N.J.R. 1939(a); R.1983 d.550, effective December 5, 1983. See: 15 N.J.R. 1400(b), 15 N.J.R. 2032(a); R.1984 d.368, effective September 4, 1984. See: 16 N.J.R. 1413(a), 16 N.J.R. 2354(a); R.1984 d.445, effective October 1, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2518(a); R.1984 d.476, effective October 15, 1984 (operative November 14, 1984). See: 16 N.J.R. 1408(a), 16 N.J.R. 2777(a); R.1984 d.490, effective November 5, 1984. See: 16 N.J.R. 2320(a), 16 N.J.R. 3004(a); R.1984 d.587, effective December 7, 1984. See: 16 N.J.R. 2710(a), 16 N.J.R. 3426(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules of Practice, was readopted as R.1985 d.292, effective May 15, 1985. See: 17 N.J.R. 2(a), 17 N.J.R. 1403(a). Chapter 1 was amended by R.1985 d.368, effective July 15, 1985. See: 17 N.J.R. 1008(a), 17 N.J.R. 1754(a); R.1985 d.508, effective October 7, 1985. See: 17 N.J.R. 1820(a), 17 N.J.R. 2457(b); R.1986 d.79, effective April 7, 1986. See: 18 N.J.R. 130(a), 18 N.J.R. 634(a); R.1986 d.340, effective August 18, 1986. See: 18 N.J.R. 2(a), 18 N.J.R. 1699(a); R.1986 d.468, effective December 1, 1986. See: 18 N.J.R. 1020(a), 18 N.J.R. 1865(a), 18 N.J.R. 2381(a).

Chapter 1, Uniform Administrative Procedure Rules of Practice, was repealed and a new Chapter 1, Uniform Administrative Procedure Rules, was adopted by R.1987 d.200, effective May 4, 1987 (operative July 1, 1987). See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1997 d.158, effective March 10, 1997. See: Source and Effective Date. See, also, section annotations.

Cross References

Apparel industry registration, confiscation of apparel and equipment, requests for formal hearings, see N.J.A.C. 12:210-1.9.

Motorized wheelchair dispute resolution, notification and scheduling of contested case hearings, see N.J.A.C. 13:45A-26E6.

Small, minority and female businesses, State contracts, contested case hearings as under this section, see N.J.A.C. 12A:10-2.2.

Law Review and Journal Commentaries

Administrative adjudications in New Jersey: Why not let the ALJ decide? Richard M. Hluchan, 180 N.J.Law. 28 (Mag.) (Oct./Nov. 1996).

Appeals and enforcement of agency decisions: Confessions of a general counsel. Robert E. Anderson, 180 N.J.Law. 25 (Mag.) (Oct./Nov. 1996).

Approaching hearsay at administrative hearings: Hearsay evidence and the Residuum Rule. Joseph R. Morano, 180 N.J.Law. 22 (Mag.) (Oct./Nov. 1996).

Introduction to administrative law, or what is this thing called administrative law? Barbara A. Harned, 180 N.J.Law. 9 (Mag.) (Oct./Nov. 1996).

Right to a hearing: Statutory rights, constitutional rights and "fundamental fairness". Robert H. Stoloff, 180 N.J.Law. 14 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION; COMPUTATION OF TIME

1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail. Procedur-

al rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:1-11.1(c) (Subpoena forms);
2. N.J.A.C. 1:1-12.6 (Emergency relief);
3. N.J.A.C. 1:1-14.10 (Interlocutory review);
4. N.J.A.C. 1:1-16.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:1-21 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

Cross References

Women-owned and minority-owned businesses, false information supplied, contested case hearing as under this subchapter, see N.J.A.C. 12A:11-1.9.

Case Notes

Disciplinary hearings by the Board are authorized by the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., and are governed by the New Jersey Uniform Administrative Rules. *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F.Supp. 633 (D.N.J.1982).

Administrative agency cannot expand reach of statute. *Rutgers University Legislative Affairs Council, Inc. v. Thompson*, 12 N.J.Tax 642 (1992).

An administrative law judge is not automatically bound by an agency party's argument. This would frustrate the legislative intent of N.J.S.A. 52:14F-1 et seq. which tasked the OAL with providing due process hearings independently and impartially. *Div. of Motor Vehicles v. Canova*, 1 N.J.A.R. 7 (1980).

1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

Amended by R.1992 d.213, effective May 18, 1992.

See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Revised (a).

Case Notes

Conduct of contested case hearing under former rulemaking regulations. *Bally Manufacturing Corp. v. New Jersey Casino Control Commission*, 85 N.J. 325, 426 A.2d 1000 (1981) appeal dismissed 102 S.Ct. 77, 454 U.S. 804, 70 L.Ed.2d 74.

Definitions of adjudication and contested case under former rulemaking regulation; conduct of hearings. In re *Matter of Public Hearings*, 142 N.J.Super. 136, 361 A.2d 30 (App.Div.1976), certification denied 72 N.J. 457, 371 A.2d 62 (1976).

Administrative law judge was without jurisdiction to compel joinder of third party in school district's placement dispute with parents. *B.R. v. Woodbridge Board*, 95 N.J.A.R.2d (EDS) 159.

Requests for adjournment granted as petitioner had retained counsel and needed time to conduct discovery and prepare appropriately for trial. Request was granted in order to secure a just determination and to avoid unfairness to the pro se complainant. *White v. Public Service*, 8 N.J.A.R. 335 (1984), approved Docket No. A-1496-84 (App.Div. 1986).

Standard for reopening case has not been set forth by statute or rule. In the absence of standards, N.J.A.C. 1:1-1.3(a) states judge may proceed in any manner compatible with the purposes of administrative adjudication. In Re: *White Bus Co.*, 6 N.J.A.R. 535 (1983).

Section incorporates generally into the uniform administrative rules only those portions of the court rules which govern the conduct of lawyers, judges, and agency personnel (cited former rule, N.J.A.C. 1:1-3.8). *Div. of Motor Vehicles v. Festa*, 6 N.J.A.R. 173 (1982).

1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

1:1-1.5 Conduct of Administrative Law Judges

The Code of Judicial Conduct for Administrative Law Judges, as incorporated herein by reference as Appendix A, shall govern the conduct of administrative law judges.

APPENDIX A

**CODE OF JUDICIAL CONDUCT
FOR ADMINISTRATIVE
LAW JUDGES**

PREAMBLE

The Code of Judicial Conduct for Administrative Law Judges is intended to establish basic ethical conduct standards for administrative law judges. The Code is intended to govern the conduct of these administrative law judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the Model Code of Judicial Conduct as adopted by the ABA on August 7, 1990 and the New Jersey Code of Judicial Conduct.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is 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. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to administrative law judges and to provide a structure for regulating conduct.

CANON 1

**AN ADMINISTRATIVE LAW JUDGE SHALL UPHOLD
THE INTEGRITY AND INDEPENDENCE OF THE AD-
MINISTRATIVE JUDICIARY**

An independent and honorable administrative judiciary is indispensable to justice in our society. An administrative law judge should participate in establishing, maintaining, and enforcing, high standards of conduct, and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary: Deference to the judgments and rulings of administrative proceedings depends upon public confidence in the integrity and independence of administrative law judges. The integrity and independence of administrative law judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each administrative law judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the administrative judiciary and thereby does injury to the system of government under law.

CANON 2

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 at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

Commentary: Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by judges. An administrative law judge must avoid all impropriety and appearance of impropriety. An administrative law judge must expect to be the subject of constant public scrutiny. An administrative law judge must therefore expect, and accept restrictions on the administrative law judge's conduct that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by administrative law judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, 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 judicial responsibilities with integrity, impartiality, and competence is impaired.

See also Commentary under Canon 2C.

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

Commentary: Maintaining the prestige of the administrative judiciary is essential to a system of government in which the administrative judiciary must to the maximum extent possible, function independently of the executive and legislative branches. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. Administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for an administrative law judge to allude to his or her judgeship 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 an 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, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.

Although an administrative law judge should be sensitive to possible abuse of the prestige of the office, an administrative law judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

An administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the office in support of the party for whom the administrative law judge testifies. Moreover, when an administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. An administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, an administrative law judge should discourage a party from requiring the judge to testify as a character witness.

C. An administrative law judge shall not hold membership in any organization that practices invidious discrimination as defined by Federal law and the New Jersey Law Against Discrimination.

Commentary: It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination. Membership of an administrative law judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should 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, that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that 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 the basis of categories prohibited by Federal law or the New Jersey Law

Against Discrimination persons who would otherwise be admitted to membership. See New York State Club Ass'n Inc. v. City of New York, 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

Although Canon 2C relates only to membership in organizations that invidiously discriminate, in addition, it would be a violation of Canon 2 and Canon 2A for an administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination, or for the judge to regularly use such a club. Moreover, public manifestation by an administrative law judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Canon 2A.



When a person who is an administrative law judge at the time this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2 and Canon 2A, the administrative law judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but the judge is required to suspend participation in any activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible, the administrative law judge is required to resign immediately from the organization.

CANON 3

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

The judicial duties of an administrative law judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities:

(1) An administrative law judge shall hear and decide matters assigned to the 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. A judge shall be unswayed 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, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the judge deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members, and others subject to the judge's direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the judge. Judges can be efficient and businesslike while being patient and deliberate.

(5) An administrative law judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff and others subject to the judge's direction and control to do so.

Commentary: A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, the media, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudice.

(6) An administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representative, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications as to substantive matters concerning a pending or impending proceeding. On notice, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, by amicus curiae or as otherwise authorized by law, if the judge affords the parties reasonable opportunity to respond. A judge may with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding except as authorized by law, but does not preclude a judge from consulting with other judges or subordinate personnel whose function is to aid the judges in carrying out adjudicative responsibilities. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

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

Commentary: In disposing of matters promptly, efficiently, and fairly, a 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 of the judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants, and their representatives cooperate with the judge to that end.

(8) An administrative law judge shall abstain from public comment about a pending or impending proceeding in any court or tribunal and shall require similar abstention on the part of personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the hearing procedures of agencies.

Commentary: "Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of

lawyers is governed by rules of professional conduct. This subsection is not intended to preclude participation in an association of judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge.

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

B. Administrative responsibilities:

(1) An administrative law judge shall diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative law judges.

(2) An administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) An administrative law judge shall initiate appropriate disciplinary measures against a judge or a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body. Internal agency procedure which routes the complaint should be utilized; however, the judge remains responsible for initiation of the action.

C. Disqualification:

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

Commentary: By decisional law, the rule of necessity may supersede the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial action. The 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 judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) in private practice the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the 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) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or child residing in the judge's household, or any other member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household, has a more than de minimis financial interest in the subject matter in controversy or is a party to the proceeding, or any other more than de minimis interest that could be substantially affected by the outcome of the proceeding; generally, receiving service from a particular public utility is a de minimis interest;

(e) the judge or the 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, or is in the employ of or associated in the practice of law with, a lawyer or other representative in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.

(iii) is known by the judge to have a more than de minimis interest that could be affected by the outcome of the proceeding;

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

(2) A judge shall inform himself or herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

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

(a) The degree of relationship is calculated according to the common law;

Commentary: According to the common law, the third degree of relationship test would, for example, disqualify the judge if the judge's or his or her spouse's parent, grandparent, uncle or aunt, brother or sister, cousin, niece or her husband, or nephew or his wife were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) ownership of one share of stock is more than a de minimis interest.

(d) "proceeding" includes prehearing or other stages of litigation.

CANON 4

AN ADMINISTRATIVE LAW JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

A. Extra-judicial activities in general:

An administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Avocational activities:

An administrative law judge may 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.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including the revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

C. Governmental, civic, and 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 judge or the judge's interest.

Commentary: The judge has a professional 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. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

Commentary: Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the judge from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative judiciary.

(3) An administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may 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) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court or tribunal.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to reexamine regularly the activities of each organization with which he or she is affiliated to determine if it is proper to continue his or her relationship with that organization.

(b) An administrative law judge as an officer, director, trustee or non-legal advisor, or as a member, or otherwise:

(i) may assist such an organization in planning fund-raising, but shall not personally participate in the solicitation of funds or other fund-raising activities; however, this shall not prohibit de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary: An administrative law judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may conduct de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated, (2) a judge may solicit other judges for membership in the organizations described above and other persons if neither those persons nor persons with whom they are affiliated are likely ever to appear before the Office of Administrative Law, and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for membership solicitation does not violate Canon 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial activities:

(1) An administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in transactions or continuing business relationships with lawyers or other persons likely to come before the Office of Administrative Law.

Commentary: A judge may avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges in the Office of Administrative Law. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or involve those family members in frequent transactions or continuing business relationships with persons likely to come before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

(2) An administrative law judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate.

(3) An administrative law judge shall not serve as an officer, director, manager, advisor, or employee of any business entity.

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

(5) Neither an administrative law judge, nor a member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except for:

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

(a) a gift incident to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

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

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification;

(f) 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;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria to other applicants; or

(h) any other gift, bequest, favor, or loan only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Commentary: Canon 4D(5)(h) 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.

(6) An administrative law judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and Canon 3. The Director of the Office of Administrative Law is required to disclose such information pursuant to the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12.

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 judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) An administrative law judge shall not serve as a fiduciary if it is likely that the 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 of Administrative Law.

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

Commentary: The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Canon 4D(4).

F. Practice of law:

A full-time administrative law judge shall not practice law, with or without compensation.

Commentary: This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may 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, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

This provision will not be interpreted to prohibit a judge from giving legal advice to and assisting in the drafting or reviewing of documents for a member of the judge's family, so long as the judge receives no compensation. A member of the judge's family denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

G. Compensation and reimbursement:

An administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code to the extent permitted by law.

CANON 5**AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY****A. An administrative law judge shall not:**

- (1) act as a leader or hold an office in a political organization;
- (2) publicly endorse or publicly oppose any candidate for public office;
- (3) make speeches on behalf of a political organization;
- (4) attend political functions or functions that are likely to be considered as being political in nature;
- (5) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or
- (6) otherwise engage in any political activity except as authorized under this Code.

Commentary: An administrative law judge retains the right to participate in the political process as a voter. Canon 5A(2) does not prohibit an administrative law judge from privately expressing his or her views on candidates for public office.

B. A candidate for reappointment to an administrative law judge position or an administrative law judge seeking another governmental office shall not engage in any political activity to secure the appointment except that such persons may:

- (1) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;
- (2) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Canon 5B(1); and
- (3) provide to those specified in this Canon information as to his or her qualifications for the office.

C. An administrative law judge shall resign from office when the judge becomes a candidate either in a party primary or in a general election for an elective public office.

SUBCHAPTER 2. DEFINITIONS**1:1-2.1 Definitions**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

“Adjournment” means postponement of the hearing until another time.

“Administrative law judge” means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

“Administrative rule” means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

“Affidavit” means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

“Agency” includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

“Agency head” means the person or body authorized by law to render final decisions in contested cases, except that in the Department of Education, the State Board of Education is the head of an agency but the Commissioner of Education is authorized by statute to render final decisions.

“Appellant” means the party who is requesting a reversal or modification of a prior result.

“Burden of producing evidence” means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or peremptory finding on a material issue of fact.

“Burden of proof” means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence.