

**MARYLAND OFFICE OF ADMINISTRATIVE HEARINGS
CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES**

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PREFACE

By statutory mandate, the Office of Administrative Hearings (“OAH”) is required to develop a code of ethics for administrative laws judges (“ALJs”) appointed to serve in the agency. Based on extensive review and research by its Ethics and Professionalism Committee, OAH has adopted this Code of Judicial Conduct (“Code”) for ALJs at the OAH. Sources include the Model Code for federal Administrative Law Judges, the Maryland Code of Judicial Conduct, the Maryland Code of Conduct for Judicial Appointees (2010), the Maryland Public Ethics Law, Title 5, General Provisions Article, Annotated Code of Maryland,¹ the Maryland Administrative Procedure Act, State Government Article, sections 10-201 through 10-226, State Personnel and Pensions Article section 2-304, governing political activity of State employees, and the Model American Bar Association (“ABA”) Code of Judicial Conduct.

The Model Code for federal ALJs provides an excellent guide on ethical conduct for ALJs. However, modifications were required to ensure conformity with Maryland State Law and OAH policy. Other revisions were made to provide more detailed guidance on the applicability of specific rules and to further facilitate use of the Code for ALJs at OAH. The format has been revised, using the Maryland Code of Judicial Conduct as a guide, to improve ease of use.

¹ All statutory references are to the Annotated Code of Maryland.

DEFINITIONS

“De minimis” denotes an insignificant interest that could not raise reasonable question as to an ALJ’s impartiality.

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party.

“Fiduciary” includes such relationships as personal representative, trustee, and guardian.

“Member of the ALJ’s family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the ALJ maintains a close familial relationship.

“Member of the ALJ’s family residing in the ALJ’s household” denotes any relative of an ALJ by blood or marriage, or a person treated by an ALJ as a member of the ALJ’s family, who resides in the ALJ’s household.

“Non-public information” denotes information that, by law, is not available to the public. Non-public information may include, but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in dependency cases or psychiatric reports.

“Third degree of relationship” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. Md. Rule 16-813(B-112).

RULES

SECTION 1. RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

Rule 1.1 Upholding the Integrity and Independence of the Administrative Judiciary

An Administrative Law Judge shall uphold the integrity and independence of the administrative judiciary. An independent and honorable administrative judiciary is indispensable to justice in our society. An ALJ shall 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 agencies depends upon public confidence in the integrity and independence of ALJs. Public confidence is maintained by the adherence of each ALJ to this principle. Conversely, violation of this principle diminishes public confidence in the administrative law process and thereby does injury to the system of government under law.

As State employees in the executive branch of government with quasi-judicial authority, ALJs are also subject to the Maryland Public Ethics Law, Title 15, State Government Article. This law was enacted to guard against any improper influence or the appearance of improper influence on State and public officials in the performance of their official duties by requiring disclosure of their financial affairs and by setting minimum standards for the conduct of their State and local business.

In carrying out their official duties, ALJs must adhere to this Code, the Maryland Public Ethics Law, and all other related laws and regulations.

Rule 1.2 Avoiding Impropriety and the Appearance of Impropriety in All Activities

An Administrative Law Judge shall avoid impropriety and the appearance of impropriety in all activities. An ALJ 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 administrative judiciary.

COMMENTARY

Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by ALJs. An ALJ must avoid all impropriety and appearance of impropriety. An ALJ must expect to be the subject of public scrutiny. An ALJ must therefore accept restrictions on his or her 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 an ALJ. Because it is not practical to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by ALJs that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, administrative 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 ALJ's ability to carry out adjudicatory responsibilities with integrity, impartiality and competence is impaired. To ensure impartiality and fairness to all parties, an ALJ must be objective and open-minded. It is not a violation of this Rule for an ALJ to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

Rule 1.3 Outside Relationships

An ALJ shall not allow family, social, economic, political, or other relationships to influence judicial conduct or judgment.

Rule 1.4 Private Interests

An ALJ shall not lend the prestige of the office to advance private interests, nor convey or permit others to convey the impression that they are in a special position of influence.

COMMENTARY

An ALJ shall not use the influence of the office to advance his or her own personal interests or the private interests of others. For instance, it would be improper for the ALJ to use his or her position to gain a personal advantage, such as preferential treatment by a police officer when stopped for a traffic offense.

Rule 1.5 Acting as a Character Witness

An ALJ should not testify voluntarily as a character witness. The testimony of an ALJ as a character witness injects the prestige of the ALJ's office into the proceeding in which the ALJ testifies and may be misunderstood to be an official testimonial. This Rule, however, does not afford the ALJ a privilege against testifying in response to an official summons.

Rule 1.6 Letters of Reference

Although an ALJ shall be sensitive to potential abuse of office, an ALJ may, in certain circumstances, based on the ALJ's personal knowledge, serve as a reference or provide a letter of recommendation.

COMMENTARY

ALJ's may not provide references to individuals who are subject to the authority of an agency served by OAH. For example, it would not be appropriate for the ALJ to provide a reference for a day care provider seeking certification to provide services from the Maryland State Department of Education, even though the ALJ may have personal knowledge on which to base the reference. On the other hand, references would be permitted for former employees, such as law clerks, seeking employment. An ALJ may provide a reference or recommendation for an individual based upon the ALJ's personal knowledge. The ALJ may use OAH letterhead if the ALJ indicates that the reference is not personal and if there is no likelihood that the use of the letterhead would reasonably be

perceived as an attempt to exert pressure by reason of the ALJ's position.

Rule 1.7 Attorneys Practicing Before the OAH

An ALJ shall not indicate, by public words or actions, favor or disfavor toward attorneys who are likely to appear before the OAH.

COMMENTARY

From time to time, ALJ's may be asked to refer or to make a comment on attorneys who practice before the OAH. Although ALJs are not prohibited from making attorney referrals to family members or close personal friends, the ALJ should be sensitive to the appearance of impropriety when doing so.

Rule 1.8 Memberships in Organizations

An ALJ shall not hold membership in any organization that practices discrimination on the basis of race, gender, religion, national origin, physical or mental disability, age, sexual orientation, or socioeconomic status.

COMMENTARY

Membership of an ALJ in an organization that practices invidious discrimination gives rise to perceptions that the ALJ's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which ALJs should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on the history of the organization's selection of membership and other relevant factors. Ultimately, each ALJ must determine according to the ALJ's own conscience whether an organization of which the ALJ is a member practices invidious discrimination.

SECTION 2. RULES GOVERNING THE PERFORMANCE OF DUTIES

Rule 2.1 Performing the Duties of the Office Impartially and Diligently

An Administrative Law Judge shall perform the duties of the Office impartially and diligently. The judicial duties of an ALJ shall 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.

Rule 2.2 Adjudicative Responsibilities

(2.2.1) Adherence to the Law - An ALJ shall be faithful to the law and maintain professional competence in it.

(2.2.2) Order and Decorum - An ALJ shall require order and decorum in proceedings. An ALJ shall be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the ALJ deals in an official capacity, and the ALJ shall require similar conduct of lawyers, staff members, and others subject to the ALJ's direction or 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 ALJ. ALJs can be efficient and businesslike while being patient and deliberate.

(2.2.3) Impartiality and Lack of Bias - An ALJ shall not be swayed by partisan interests, public clamor, or fear of criticism. An ALJ 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, gender, religion, national origin, physical or mental disability, age, sexual orientation, or socioeconomic status, and shall not permit staff members, lawyers and others subject to the ALJ's direction to do so.

COMMENTARY

An ALJ must perform judicial duties impartially and fairly. An ALJ who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the administrative law court into disrepute. 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 judicial bias. An ALJ must be alert to avoid behavior that may be perceived as prejudicial.

An ALJ 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 ALJ's direction or control.

(2.2.4) Bias and Prejudice by Parties or Lawyers - An ALJ shall require parties and lawyers in proceedings before the ALJ to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, physical or mental disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This section does not preclude legitimate advocacy by counsel when race, gender, religion, national origin, physical or mental disability, age, sexual orientation, or socioeconomic status are issues in the proceeding. An ALJ shall require parties and lawyers in proceedings before the ALJ subject to his or her direction or control to refrain from offensive or disruptive conduct.

(2.2.5) Right to Full and Prompt Hearing - An ALJ shall accord to every person who has a legal interest in a proceeding, and that person's lawyer or representative, the full right to be heard according to law.

COMMENTARY

In disposing of matters promptly, efficiently and fairly, an ALJ must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary costs or delay. Containing costs while preserving fundamental rights of parties also protects the interest of witnesses and the general public. An ALJ shall monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. An ALJ shall encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the ALJ.

Prompt disposition of cases requires an ALJ to devote adequate time to judicial business, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other officials, litigants and their lawyers cooperate with the ALJ to that end.

(2.2.6) Ex Parte Communications - An ALJ shall not initiate, permit, or consider ex parte communications. The ALJ must make reasonable efforts, including the provision of appropriate supervision, to ensure that this section is not violated through law clerks or other staff members. An ALJ shall not consider ex parte communications 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 or issues on their merits are authorized, provided:

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

(ii) where appropriate, the ALJ makes provision to notify all other parties of the substance of the *ex parte* communication, and allows an opportunity to respond.

(b) The ALJ may consult with ALJs or OAH staff members whose function is to aid the ALJ in carrying out the ALJ's adjudicative responsibilities.

(c) The ALJ may initiate or consider any *ex parte* communication when expressly authorized by law to do so.

COMMENTARY

Maryland's Administrative Procedure Act makes it clear that an ALJ may not engage in substantive *ex parte* communications. Maryland Administrative Procedure Act, State Government Article, section 10-219. If an *ex parte* communication does occur, the Act mandates certain steps that must be taken regarding disclosure and rebuttal of the communication. *Ex parte* communications should be scrupulously avoided; if such communication does occur, the "curative" provisions should be strictly followed.

There may be occasions when an *ex parte* communication is required in an emergency or unusual situation. These limited *ex parte* communications are permissible, so long as appropriate curative measures are undertaken. The manner of curative measures employed should be commensurate with the gravity of the communication. If the communication is trivial, involving purely non-substantial issues such as a minor scheduling matter, and no party is prejudiced thereby, a notation to the file may be sufficient.

The ALJ must not independently investigate facts in a case and must consider only the facts presented in the official record of the case.

(2.2.7) Public Comments - An ALJ shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness, or make any non-public comment that might subsequently interfere with a fair hearing. The ALJ shall

require similar abstention on the part of staff members subject to the ALJ's direction. This section does not prohibit ALJs from making public statements in the course of their official duties or from explaining to members of the public the hearing procedures of the agency. This section does not apply to proceedings in which the ALJ is a litigant in a personal capacity.

COMMENTARY

This section is not intended to preclude participation in an association of ALJs merely because such an association makes public comments about pending or impending proceedings before OAH.

(2.2.8) Media Coverage of Hearings - The ALJ shall permit broadcasting, televising, recording or photographing in hearing rooms and areas immediately adjacent thereto, consistent with the parties' right to a fair hearing.

(2.2.9) Use of Non-Public Information - An ALJ shall not disclose or use for any purpose unrelated to adjudicatory duties, non-public information acquired in a judicial capacity. The ALJ shall observe the requirements of the Maryland Public Information Act, General Provisions Article, sections 4-101 through 4-601, which prohibits the release of certain public records.

COMMENTARY

Under the Maryland Public Ethics Law, section 5-507, an official or employee may not use for his or her own economic benefit or that of another party, confidential information not available to the public which was acquired in the performance of official duties.

Rule 2.3 Administrative Responsibilities

(2.3.1) General - An ALJ shall diligently discharge assigned administrative OAH responsibilities, without bias or prejudice, shall maintain

professional competence in OAH judicial administration, and shall cooperate with other ALJs and staff in the administration of agency business.

(2.3.2) Supervision - An ALJ shall require staff and other persons subject to the ALJ's direction to observe the standards of fidelity and diligence that apply to the ALJ, and further, to carry out their official duties, without bias or prejudice.

Rule 2.4 Disciplinary Responsibilities

(2.4.1) Actions of Other ALJs - An ALJ who receives information indicating a substantial likelihood that another ALJ has committed a violation of this Code shall take appropriate action. An ALJ having knowledge that another ALJ has committed a violation of this Code that raises a substantial question as to the other ALJ's fitness for office shall inform the appropriate authority.

(2.4.2) Actions of Lawyers and Agency Representatives

(a) An ALJ who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action. An ALJ having knowledge that a lawyer has committed a violation of the Maryland Lawyers' Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in any other respect shall inform the appropriate authority.

COMMENTARY

The obligation to report attorney professional misconduct to Bar Counsel remains the responsibility of each member of the bar, pursuant to Rule 8.3 of the Maryland Lawyers' Rules of Professional Conduct. Conduct contemplated by Rule 8.3 includes that which raises a substantive question of an attorney's honesty, trustworthiness or fitness as a lawyer. Although it is strongly recommended that an ALJ include management ALJs in the decision-making process regarding the need to report attorney professional misconduct, the ultimate decision to make such a report to Bar Counsel lies with the individual ALJ.

(b) An ALJ having a reasonable belief that the performance of a lawyer or an agency representative is impaired by drugs or alcohol or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or employee assistance program. Depending upon the gravity of the conduct that has come to the ALJ's attention, however, the ALJ may be required to take other action, such as reporting the impaired lawyer or representative to the appropriate authority, agency, or body.

(2.4.3) Privileged Actions - Acts of an ALJ in the discharge of disciplinary responsibilities, required or permitted by this section, are part of an ALJ's judicial duties and are privileged.

Rule 2.5 Disqualification

(2.5.1) General - An ALJ shall disqualify himself or herself in a proceeding in which the ALJ's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the ALJ has a personal bias or prejudice concerning the proceeding, or a party or a party's lawyer to the proceeding;

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

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

COMMENTARY

A lawyer in a government agency does not necessarily have an association with other lawyers employed by the agency within the meaning of the subsection. An ALJ formerly employed by a government agency, however, shall disqualify himself or herself in a proceeding if the ALJ's impartiality might reasonably be questioned because of such association.

(d) the ALJ knows that he or she, individually or as a fiduciary, or his or her spouse, parent, child, or other member of the ALJ's family, has an economic interest in the subject matter in controversy or is a party to the proceeding, or has any other interest of more than a de minimis nature that could be substantially affected by the proceeding;

(e) the ALJ knows that he or she, individually, or his or her spouse, or a person within the third degree of relationship (see Definitions Section) to either or 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 ALJ to have more than a de minimis interest that could be substantially affected by the outcome of the proceeding; or

(iv) is to the ALJ's knowledge likely to be a material witness 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 ALJ is affiliated does not of itself disqualify the ALJ. Under appropriate circumstances, the fact that "the ALJ's impartiality might reasonably be questioned" under Rule 2.5.1, or that the lawyer-relative is known by the ALJ to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Rule 2.5.1(d) & (e), may require the ALJ's disqualification.

(2.5.2) Keeping Informed - An ALJ shall keep informed about his or her personal and economic interests, and make a reasonable effort to keep informed about the personal and economic interests of his or her spouse and minor children residing in the ALJ's household.

Rule 2.6 Remittal of Disqualification

An ALJ disqualified by the terms of this section may disclose on the record the basis of the disqualification. If, following disclosure, there exists any basis for disqualification other than personal bias or prejudice concerning the parties and lawyers, the parties and lawyers, without the ALJ's participation, all agree that the ALJ should not be disqualified and the ALJ is then willing to participate, the ALJ shall participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

COMMENTARY

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the ALJ, an ALJ must not solicit, seek or hear comments on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in the rule. A party must act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, an ALJ may wish to have all parties and their lawyers sign the remittal agreement.

Maryland Public Ethics Law

Although the remittal procedure is designed to permit a case to move forward with the consent of the parties, the ALJ nonetheless may be required to disqualify himself or herself under circumstances where the ALJ's involvement is prohibited under the Maryland Public Ethics Act. For instance, if the ALJ is in the

process of negotiating employment with a firm representing a party appearing before the ALJ, disqualification would be required and could not be waived by the parties.

SECTION 3. RULES GOVERNING EXTRA-JUDICIAL ACTIVITY TO MINIMIZE RISK OF CONFLICT WITH JUDICIAL DUTIES

Rule 3.1 Extra-Judicial Activities in General

An ALJ shall conduct all extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the ALJ's capacity to act impartially as an ALJ;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Rule 3.2 Avocational Activities

An ALJ may write, lecture, teach, speak and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, and engage in the arts, sports, and other recreational and social activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

COMMENTARY

Complete separation of an ALJ from extra-judicial activities is neither possible nor wise. An ALJ should not become isolated from the society in which he or she lives. As a judicial officer and person specially learned in the law, an ALJ is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, an ALJ is encouraged to do so, either independently or through a bar association, judicial

conference or other organization dedicated to the improvement of the law. The ALJ should avoid contact with any organization or participation in any activity in which he or she may be asked to provide views on issues which may be litigated before the ALJ.

Rule 3.3 Governmental, Civic and Charitable Activities

(3.3.1) Legal Organizations and Agencies - An ALJ may 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 ALJ may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fundraising activities. An ALJ may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

(3.3.2) Appointments - An ALJ shall not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters which may come before the ALJ.

COMMENTARY

Valuable services have been rendered in the past to the states and the nation by ALJs appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments must be assessed, however, in light of the demands on judicial resources created by today's crowded dockets and the need to protect ALJs from involvement in extra-judicial matters that may prove to be controversial. ALJs shall not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the administrative judiciary. The Code was modified to permit ALJs to accept appointments to appropriate organizations which do not appear before the agency they serve.

(3.3.3) Civic and Charitable Activities - An ALJ may participate in civic and charitable activities that do not reflect adversely upon or interfere with his or her impartiality in the performance of judicial duties. An ALJ may serve as

an officer, director, 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 ALJ shall not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the ALJ or will be regularly engaged in adversarial proceedings before OAH.

COMMENTARY

The changing nature of some organizations and of their relationship to the law makes it necessary for an ALJ to re-examine 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 ALJ shall not use or permit the use of the prestige of the ALJ's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal, or civic organization, but the ALJ may be listed as an officer, director, or trustee of such an organization. The ALJ shall not be a speaker or the guest of honor at an organization's fundraising events.

COMMENTARY

This subsection is not intended to discourage participation in the identified organizations or preclude the use of an ALJ's name on stationary or other material used to solicit contributions, provided the ALJ's name and office are in no way selectively emphasized. The language of the Model ABA Code was modified to permit ALJs to solicit funds for charitable and other named organizations if they do not use the prestige of office in doing so.

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

Rule 3.4 Financial Activities

An ALJ shall not engage in financial and business dealings that:

- (a) may reasonably be perceived to exploit the ALJ's judicial position, or
- (b) involve the ALJ in transactions or continuing business relationships with those lawyers or other persons likely to come before the OAH.

Rule 3.5 Fiduciary Activities

(3.5.1) General - An ALJ may, subject to the requirements of this Code, hold and manage investments of the ALJ and members of the ALJ's family, including real estate, and engage in other remunerative activity, unless prohibited under this Code or the Maryland Public Ethics Law.

(3.5.2) Effect on Cases - An ALJ shall manage the ALJ's investments and other financial interests to minimize the number of cases in which the ALJ is disqualified. As soon as the ALJ can do so without serious financial detriment, the ALJ shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(3.5.3) Fiduciary Role - An ALJ may serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, but only if such service will not interfere with the proper performance of judicial duties.

An ALJ shall not serve as a fiduciary if it is likely that the ALJ as a fiduciary will be engaged in proceedings that would ordinarily come before the ALJ, or if the estate, trust, or ward becomes involved in adversarial proceedings before OAH.

While acting as a fiduciary, an ALJ is subject to the same restrictions on financial activities that apply to the ALJ in his or her personal capacity.

COMMENTARY

An ALJ's obligation under this Rule and the ALJ's obligation as a fiduciary may come into conflict. For example, an ALJ shall resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the ALJ in violation of Rule 3.5. The specific prohibitions contained in the ABA Code against an ALJ's service as executor, administrator, trustee, guardian or other fiduciary were deleted, because the general prohibitions in Rule 3.5 render such provisions somewhat superfluous, and because generic prohibition of service in such fiduciary capacities was regarded as unnecessary and undesirable.

Rule 3.6 Gifts

(3.6.1) General - An ALJ shall not solicit any gifts. An ALJ shall not accept, and shall urge members of the ALJ's family residing in the ALJ's household not to accept, a gift, bequest, favor, or loan from anyone, except in accordance with provisions of this Code and the Maryland Public Ethics Law.

COMMENTARY

An ALJ may 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 or gift is otherwise in compliance with other provisions of this Code and the Maryland Public Ethics Law. ALJs are prohibited from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the OAH; also gifts, favors, bequests, or loans from clients of lawyers or their firms are prohibited when the clients' interests have come or are likely to come before the OAH.

Maryland Public Ethics Law provides that no official or employee may knowingly accept any gift, directly or indirectly, from any person whom the official or employee knows or has reason to know:

- (1) does or seeks to do any business of any kind, regardless of amount, with the official's or employee's governmental unit;
- (2) engages in an activity that is regulated or controlled by the official's or employee's governmental unit;

- (3) has a financial interest that may be affected substantially and materially, in a manner distinguishable from the public generally, by the performance or nonperformance of the official's or employee's official duties; or
- (4) is a regulated lobbyist with respect to matters within the jurisdiction of the official or employee.

Md. Code Ann., Gen. Provisions § 5-505(b).

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

A gift to an ALJ or to a member of the ALJ's family living in the ALJ's household that is excessive in value raises questions about the ALJ's impartiality and the integrity of the judicial office and may require disqualification of the ALJ. Judges should review the entire text of State Government Article section 15-505 and use it to guide their actions regarding gifts.

Rule 3.7 Arbitration

An ALJ may act as an arbitrator or mediator.

Rule 3.8 Practice of Law

An ALJ shall not practice law before any tribunal, court, or administrative agency. An ALJ shall evaluate other law practice subject to the factors in Rule 3.9.²

² Besides the restrictions of the Code, the private practice of law may also be subject to OAH Management rules.

Rule 3.9 Compensation and Reimbursement (Non-OAH Activities)

An ALJ may receive compensation or reimbursement of expenses for non-OAH activities if the source of such payments does not give the appearance of influencing the ALJ's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount or exceed what a person who is not an ALJ would receive for the same activity.

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

Section 4. RULES GOVERNING POLITICAL ACTIVITY

Rule 4.1 Refraining From Political Activity Inappropriate to the Judicial Office

An Administrative Law Judge shall refrain from political activity inappropriate to the judicial office.

COMMENTARY

Specific prohibitions in the ABA Code were omitted which were considered to be inappropriately and unnecessarily more restrictive than Maryland Law applicable to ALJs, as State employees. State Personnel and Pensions Article section 2-304 governs the political activities of State employees. Under this law, State employees retain the right to participate in politics or political

campaigns and have all rights of citizenship under the constitution with certain exceptions. State employees may not engage in political activity while on the job, advocate the overthrow of government, or be obligated to contribute or render political service.

NOTE: The State Ethics Commission issued Opinion No. 85-13 in which it determined, inter alia, that service of a Public Service Commission Hearing Examiner on the Baltimore County Council, was prohibited by the inconsistent employment provisions of Article 40A, section 3-103(a)(ii) (now section 5-502 of the General Provisions Article) of the State Ethics Law.

Section 5. COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

Anyone who is appointed to serve as an ALJ is subject to this Code.

Violations may lead to the filing of disciplinary action against the ALJ. A person to whom this Code becomes applicable should arrange his or her affairs, to comply with it as soon as reasonably possible.

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