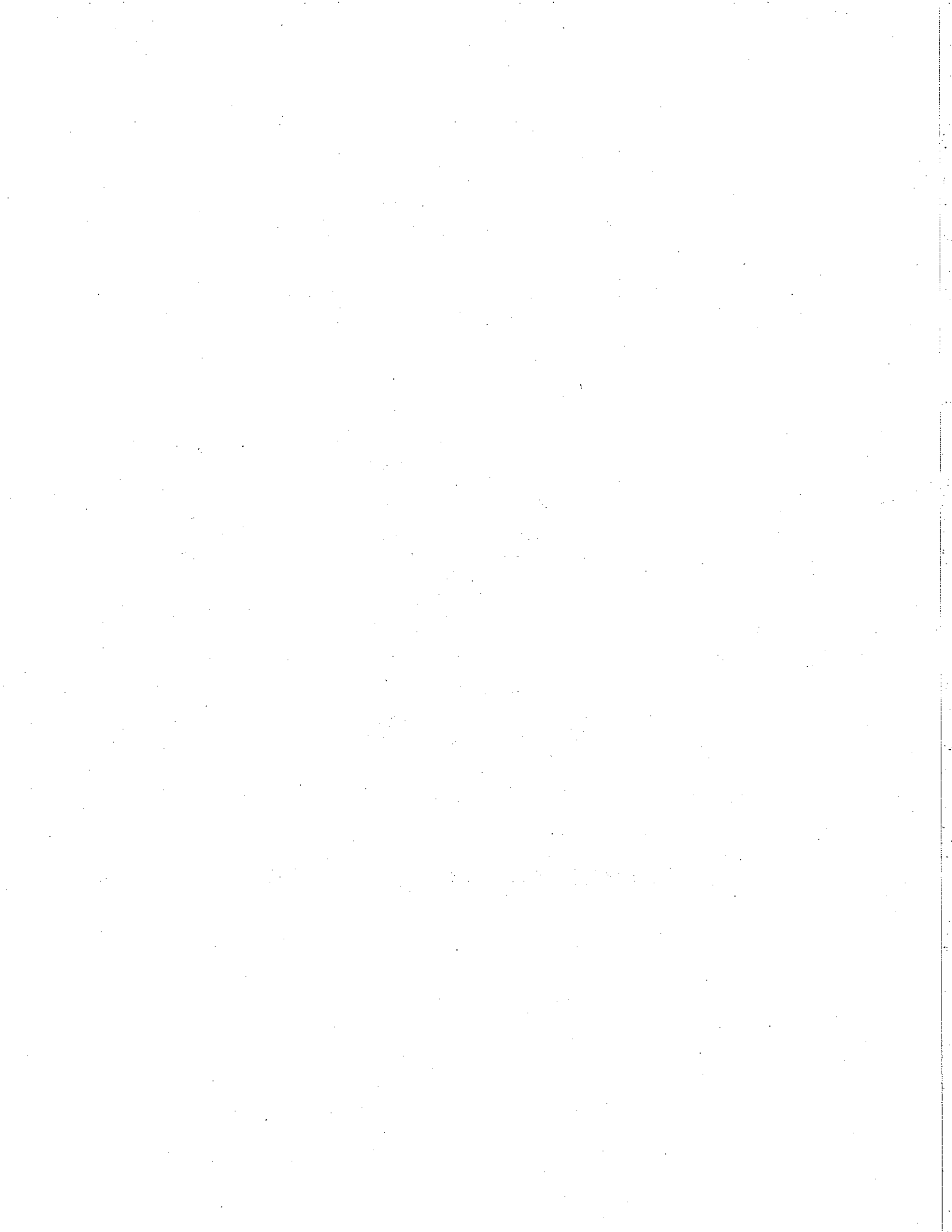


*Washington State*  
**Office of Administrative Hearings**



**Code of Ethics**  
**for**  
**Administrative Law Judges**



Adopted by Lorraine Lee, Chief Administrative Law Judge

November 1, 2010

### PREAMBLE

The Code of Ethics for Administrative Law Judges (Code) establishes standards for the ethical conduct of ALJs. It is intended to provide guidance and assist ALJs in maintaining the highest standards of professional and personal conduct, and to provide a basis for regulation of their conduct under Washington Administrative Code (WAC) 10-16-010.

### TERMINOLOGY

**“Direction and Control”** refers to the parties, witnesses, court reporters, interpreters and members of the public who are present at the administrative proceedings (e.g., hearing, pre-hearing and status conferences). For supervisory ALJs, this also refers to employees under their supervisory authority.

**“Economic interest”** means ownership of more than a *de minimis* legal or equitable interest. Except for situations in which the ALJ participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before an ALJ, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the ALJ or the ALJ’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the ALJ may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the ALJ.

**“Fiduciary”** includes relationships such as executor, administrator, trustee, or guardian.

**“Impartial,” “impartiality,”** and **“impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before an ALJ.

**“Impending matter”** is a matter that is imminent or expected to occur in the near future.

**“Impropriety”** includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines an ALJ’s independence, integrity, or impartiality.

**“Independence”** means an ALJ should not be influenced by partisan demands, public clamor, or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character.

**“Invidious discrimination”** is a classification which is arbitrary, irrational, and not reasonably related to a legitimate purpose. Differing treatment of individuals based upon race, sex, gender, religion, national origin, ethnicity, sexual orientation, age, or other classification protected by law, are situations where invidious discrimination may exist.

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

**“Nonpublic information”** means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated *in camera*, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports.

**“Pending matter”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

## CANON 1

### **AN ALJ SHALL UPHOLD THE INDEPENDENCE, INTEGRITY AND IMPARTIALITY OF THE ADMINISTRATIVE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.**

(A) 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, and shall avoid impropriety and the appearance of impropriety.

#### *Comments:*

*1.1 Deference to the judgments and rulings of administrative judiciaries depends upon public confidence in the integrity and independence of ALJs. The integrity and independence of ALJs depends in turn upon their acting without fear or favor. Although ALJs 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 ALJ 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.*

*1.2 To the extent that this code conflicts with applicable statutes, regulations, policies or codes, including but not limited to Chapter 34.12 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 10-08 WAC, Chapter 10-16 WAC, the OAH Conflict of Interest Policy, the OAH Use of State Resources Policy, Chapter 42.52 RCW and Chapter 292-110 WAC, and any codes adopted by individual agencies, the more restrictive rule will govern.*

*1.3 Public confidence in the administrative judiciary is eroded by improper conduct by ALJs. An ALJ must expect to be the subject of public scrutiny, and therefore must accept restrictions on the ALJ's conduct that might be viewed as burdensome by the ordinary citizen.*

*1.4 The prohibition against behaving with impropriety and the appearance of impropriety applies to both the professional and personal conduct of an ALJ. Whether an ALJ has failed to act in a manner that avoids impropriety and the appearance of impropriety and promotes public confidence in the integrity and impartiality of the administrative judiciary shall be determined by use of an objective reasonable person test, not by subjective perceptions.*

(B) An ALJ shall not allow family, social, political or other relationships to influence the ALJ's judicial conduct or judgment.

(C) An ALJ shall not abuse the prestige of office to advance the personal or economic interests of such ALJ or others, or allow others to do so.

*Comments:*

*1.5 It is improper for an ALJ to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for an ALJ to allude to his or her administrative judicial status to gain favorable treatment in encounters with traffic officials. Similarly, an ALJ must not use agency letterhead to gain an advantage in conducting his or her personal business.*

*1.6 An ALJ should not act as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.*

*1.7 An ALJ may provide a reference or recommendation for an individual based upon the ALJ's personal knowledge. The ALJ may use agency letterhead, provided the ALJ indicates that the reference is 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 administrative judicial office.*

*1.8 ALJs may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.*

*1.9 Special considerations arise when ALJs write or contribute to publications of for-profit entities, whether related or unrelated to the law. An ALJ should not permit anyone associated with the publication of such materials to exploit the ALJ's office in a manner that violates this Canon or other applicable law. In contracts for publication of an ALJ's writing, the ALJ should retain sufficient control over the advertising to avoid such exploitation. The publication shall include a disclaimer that the views and opinions expressed are those of the author and not the position of OAH.*

## CANON 2

### **AN ALJ SHALL PERFORM THE DUTIES OF ADMINISTRATIVE JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

(A) Administrative judicial duties include all of the duties of the office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative responsibilities.

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

*Comment:*

*2.1 When applying and interpreting the law, an ALJ sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Canon.*

(2) An ALJ shall require order and decorum in proceedings before the ALJ.

(3) An ALJ shall be patient, dignified and courteous to parties, witnesses, lawyers, representatives and others with whom the ALJ deals in an official capacity, and shall require similar conduct of lawyers, representatives, staff members and others subject to the ALJ's direction and control.

*Comment:*

*2.2 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.*

(4) An ALJ shall perform administrative judicial duties without bias or prejudice against or in favor of any person. An ALJ in the performance of administrative judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law. Supervisory ALJs shall require staff and others subject to their direction and control to refrain from such words or conduct.

*Comment:*

*2.3 An ALJ must perform administrative 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 judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give parties or representatives in the proceeding, the media, and others an impression of judicial bias. An ALJ must be alert to avoid behavior that may be perceived as prejudicial.*

(5) An ALJ shall require participants in proceedings before the ALJ to refrain from manifesting, by words or conduct, bias or prejudice based upon actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law, against parties, representatives or others. This paragraph does not preclude legitimate advocacy when age, race, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, any other protected status enumerated by law, or other similar factors, are issues in the proceeding.

*Comment:*

*2.4 An ALJ must refrain from speech, gestures or other conduct that could reasonably be perceived as harassment of any kind, including sexual harassment and harassment against any protected class member, among others. The ALJ must require the same standard of conduct of others subject to the ALJ's direction and control.*

(6) An ALJ shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law.

(a) Where the ALJ deems it necessary to advance the ability of a party not represented by an attorney or other relevant professional to be fully heard, the ALJ may:

(i) liberally construe and allow amendment of papers that a party not represented by an attorney has prepared;

(ii) provide brief information concerning statutory procedures and substantive law;

(iii) provide brief information about the nature of the hearing, who else is participating in the hearing and how the hearing will be conducted;

(iv) provide brief information about what types of evidence may be presented;



- (v) question witnesses to elicit information and to obtain clarification;
- (vi) modify the traditional order of taking evidence;
- (vii) minimize the use of complex legal terms;
- (viii) explain the basis for a ruling when made during the hearing or when made after the hearing in writing;
- (ix) make referrals to resources that may be available to assist the party in the preparation of the case.

(b) An ALJ shall ensure that any steps taken in fulfillment of the obligations of this paragraph are reflected in the record of the proceeding. A communication between an ALJ and a party made in fulfillment of the obligations of this paragraph remains subject to the restrictions on *ex parte* communications contained in paragraph 7.

*Comment:*

*2.5 Administrative proceedings often involve pro se parties and non-attorney representatives. An ALJ should conduct hearings with pro se and non-attorney parties in a manner that is fair to both parties, that ensures the efficient conduct of administrative justice, that ensures the rights of the parties, and that equalizes the field for the parties. Canon 2(B)(6) provides specific guidance to ALJs in dealing with these issues.*

(7) Unless otherwise authorized by law and except as provided in paragraphs (a) through (e) below, an ALJ shall not communicate, directly or indirectly, in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending or impending before the ALJ with any person except upon notice and opportunity for all parties to participate.

(a) *Ex parte* communications that are made for scheduling, procedural, administrative or emergency purposes and that do not affect a substantial right of any party are authorized, provided the ALJ reasonably believes that no party will gain a procedural, substantive or tactical advantage as a result of the *ex parte* communication.

(b) An ALJ may consult with support staff, court reporters and interpreters on ministerial matters such as scheduling or the location of a hearing, and may consult with other ALJs provided the ALJ makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

- (c) Unless otherwise prohibited by law, an ALJ may obtain the advice of a disinterested expert on the law applicable to a proceeding before the ALJ if the ALJ gives notice to the parties of the person consulted and a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally and affords the parties reasonable opportunity to respond.
- (d) An ALJ, with the consent of the parties, may confer separately with the parties and their representatives on agreed-upon matters including, but not limited to, settlement or mediation.
- (e) An ALJ may initiate or consider any *ex parte* communications when authorized by law to do so.
- (f) Decisions of an ALJ shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed.
- (8) Unless otherwise authorized by law, an ALJ shall not independently investigate facts in a matter pending or impending before that judge, and shall consider only evidence in the record and any facts that may properly be judicially noticed.

*Comments:*

*2.6 The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.*

*2.7 To the extent reasonably possible, all parties or their representatives shall be included in communications with an ALJ.*

*2.8 Certain ex parte communication is approved by Canon 2(B)(7) to facilitate scheduling, other administrative purposes, or emergencies. In general, however, an ALJ must discourage ex parte communication and allow it only if all the criteria stated in Canon 2(B)(7) are clearly met. See also RCW 34.05.455 and RCW 42.36.060.*

*2.9 An appropriate and often desirable procedure for an ALJ to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.*

*2.10 An ALJ may consult ethics advisory committees or personnel, other ALJs, supervisors, outside counsel or legal experts concerning the ALJ's compliance with this Code. Such consultations are not subject to the restrictions of Canon 2(B)(7).*

*2.11 An ALJ must not independently investigate facts in a case, unless authorized by law, and must consider only the evidence in the record. The prohibition against independent investigation of facts extends to information available in all mediums, including electronic. An ALJ's exercise of authority granted in WAC 10-08-200 is not a violation of this Canon.*

2.12 An ALJ may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

2.13 An ALJ may delegate the responsibilities of the ALJ under Canon 2(B)(7) to a member of the ALJ's staff. An ALJ must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 2(B)(7) is not violated through law clerks or other personnel on the ALJ's staff. This provision does not prohibit the ALJ or the ALJ's staff from informing all parties individually of scheduling or administrative decisions.

2.14 The *ex parte* communication rule applies primarily in adjudicatory proceedings where the ALJ is presiding as an impartial decision maker in a judicial role. The *ex parte* communication rule may be modified in other administrative proceedings presided over by an ALJ, such as mediation or settlement proceedings and legislative or rule making proceedings, depending on the requirements and necessities of such hearings, and any applicable law and regulations.

(9) An ALJ shall dispose of all judicial matters promptly, efficiently and fairly.

*Comments:*

2.15 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 cost or delay. Delay in the administration of justice is a common cause of complaint. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public.

2.16 An ALJ should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. An ALJ should encourage and seek to facilitate settlement, but the ALJ should not take any action or make any comment that might reasonably be interpreted by any party or its counsel as (a) coercion to settle, or (b) impairing the party's right to have the controversy resolved by the administrative tribunal in a fair and impartial manner in the event settlement negotiations are unsuccessful. In matters that will be tried before the ALJ without a separate fact finder, an ALJ who seeks to facilitate settlement should exercise extreme care to avoid prejudging or giving the appearance of prejudging the case.

2.17 Prompt disposition of the ALJ's business means an ALJ should devote adequate time to judicial duties, be punctual in attending hearings and expeditious in determining matters under submission, and to insist that personnel subject to the ALJ's direction and control, parties and their representatives cooperate with the ALJ to that end.

(10) An ALJ shall not make any public comment that would reasonably be expected to affect the outcome or impair the fairness of a pending or impending proceeding before any: (i) state administrative agency, or (ii) court within the United States or its territories, concerning a matter which originated within OAH. The ALJ shall require similar abstention on the part of OAH personnel subject to the ALJ's direction and control. This paragraph does not prohibit ALJs from making public statements in the course of their official duties or from explaining for public information the procedures of the administrative judiciary. This paragraph does not apply to proceedings in which the ALJ is a litigant or representative in a personal capacity.

*Comments:*

*2.18 The requirement that ALJs abstain from prohibited public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. An ALJ should not be influenced by the potential for personal publicity when making decisions in pending cases. Release of decisions to the media or notifying the media that the decision is available before counsel or representatives for the parties have been notified may be embarrassing or prejudicial to the private rights of the litigants. Canon 2(B)(10) does not prohibit an ALJ from commenting on proceedings in which the ALJ is a litigant in a personal capacity.*

*2.19 Canon 2(B)(10) is not intended to preclude participation in an association of ALJs merely because such association makes public comments about a pending or impending proceeding in the administrative process. The Section is directed primarily at public comments by an ALJ concerning a proceeding before another judge.*

(11) An ALJ shall not:

(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the tribunal, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(12) An ALJ shall comply with agency confidentiality standards and 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 ALJ shall diligently discharge the ALJ's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and cooperate with other ALJs and non-judicial personnel in the administration of judicial business.

(2) An ALJ shall require staff, hearing officials, non-judicial personnel and others subject to the ALJ's direction and control to act in a manner consistent with the ALJ's obligations under this Code, and to refrain from manifesting bias or prejudice in the performance of their official administrative duties.

(3) An ALJ with supervisory authority for the performance of other ALJs should take reasonable measures to ensure that ALJs properly discharge their judicial responsibilities, including prompt disposition of matters before them.

*Comment:*

*2.20 Public confidence in the administrative judicial system depends upon timely justice. To promote the efficient administration of justice, an ALJ with supervisory authority should take the steps needed to ensure that ALJs administer their workloads promptly. Such steps include scheduling sufficient writing time for ALJs to properly discharge their duties.*

**(D) Disciplinary responsibilities.**

(1) An ALJ who receives information indicating a substantial likelihood that another ALJ has committed a violation of this Code shall take appropriate action.

(2) An ALJ who receives information indicating a substantial likelihood that a lawyer or other representative has engaged in unprofessional conduct shall take appropriate action.

*Comments:*

*2.21 Referral of an ALJ or lawyer to a substance abuse treatment agency is one example of "appropriate" action under paragraphs (1) and (2).*

*2.22 Appropriate action may include direct communication with the ALJ or lawyer who has committed the violation, other direct action if available, reporting the violation in accordance with agency policy, and reporting the violation to the appropriate authority or other agency or body.*

*2.23 Appropriate action may also include notification to the Chief ALJ or other members of the OAH management team.*

**(E) Disqualification.**

(1) 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 a party or a party's representative, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the ALJ knows that:

- (i) he or she served as a lawyer in the matter in controversy, or
- (ii) a lawyer with whom he or she previously practiced law served during such association as a lawyer concerning the matter, or
- (iii) he or she has been a material witness concerning it;

(c) the ALJ knows that he or she, individually or as a fiduciary, or the ALJ's spouse, or a person known by the ALJ to be within the third degree of relationship to either of them, or the spouse of such a person:

- (i) is a party to the proceeding;
- (ii) is an officer, director or trustee of a party;
- (iii) has an economic interest in the subject matter in controversy;
- (iv) has any other interest that could be substantially affected by the proceeding; or
- (v) is likely to be a material witness in the proceeding; or

(d) the ALJ knows that the ALJ or the ALJ's spouse, or a person known by the ALJ to be within the third degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding.

(e) Notwithstanding the provisions of subparagraph (c) above, if an ALJ would be disqualified because of the appearance or discovery, after the matter was assigned to the ALJ, that the ALJ individually or as a fiduciary, the ALJ's spouse, or a person known by the ALJ to be within the third degree of relationship to either of them, or the spouse of such a person has an economic interest in a party to the proceeding, disqualification is not required if the ALJ, spouse or other relevant person, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

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

*Comments:*

*2.24 Under this rule, an ALJ is disqualified whenever the ALJ's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Canon 3(E)(1) apply.*

*2.25 An ALJ should disclose on the record information that the ALJ believes the parties or their representatives might consider relevant to the question of disqualification, even if the ALJ believes there is no real basis for disqualification.*

*2.26 The rule of necessity may override the rule of disqualification. For example, an ALJ might be required to participate in judicial review of a matter where no other forum is available to decide the matter and no provision is available for delegating the authority to hear the matter to another adjudicator. Or, an ALJ might be the only judge available in a matter requiring immediate judicial action. In the latter case, the ALJ must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as possible.*

*2.27 A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Canon 2(E)(1)(b). An ALJ formerly employed as agency counsel, however, should disqualify himself or herself in a proceeding if the ALJ's impartiality might reasonably be questioned because of such association.*

*2.28 The fact that a lawyer in a proceeding is affiliated with a law firm with which a 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 Canon 2(E)(1), or that the relative is known by the ALJ to have an interest in the law firm that could be "substantially affected by the proceeding" under Section 2(E)(1)(c)(iv) may require that ALJ's disqualification.*

(3) An ALJ subject to disqualification under this Canon, other than for bias or prejudice under paragraph 2(E)(1)(a) may disclose on the record the basis of the ALJ's disqualification and may ask the parties and lawyers to consider, outside of the presence of the ALJ, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the ALJ, that the ALJ should not be disqualified, the ALJ may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

*Comment:*

*2.29 To assure that consideration of the question of waiver of disqualification is made independently of the ALJ, an ALJ must not solicit, seek or hear comment on possible waiver of the disqualification unless the lawyers jointly propose waiver after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents.*

### CANON 3

#### **AN ALJ SHALL CONDUCT THE ALJ'S EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH ADMINISTRATIVE JUDICIAL OBLIGATIONS.**

(A) Extra-judicial activities in general. An ALJ shall conduct all of the ALJ's extra-judicial activities so that they:

- (1) do not cast reasonable doubt on the ALJ's capacity to act impartially as an ALJ;
- (2) do not detract from the dignity of judicial office;
- (3) do not interfere with the proper performance of judicial duties; and
- (4) are not incompatible with judicial office.

*Comments:*

*3.1 Complete separation of an ALJ from extra-judicial activities is neither possible nor wise; an ALJ should not become isolated from the community in which the ALJ lives.*

*3.2 Expressions of bias or prejudice by an ALJ, even outside the ALJ's judicial activities, may cast reasonable doubt on the ALJ's capacity to act impartially as an ALJ. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law.*

*3.3 Whether an ALJ's extra-judicial activities cast a reasonable doubt on the ALJ's capacity to act impartially will be judged by an objective reasonable person standard.*

*3.4 An ALJ should take care that any appearance at a public hearing, consultation with an executive or legislative body, or appointment to a governmental committee, commission or position does not cast doubt on the ALJ's ability to decide impartially regarding any issue or party that with reasonable foreseeability might come before the ALJ, unless the issue or party is one with respect to which the ALJ would in any event be disqualified under this Code or any other provision of law.*

(B) Avocational activities. An ALJ may speak, write, lecture, teach and participate in extra-judicial activities subject to the requirements of this Code. Any publication shall include a disclaimer that the views and opinions expressed are those of the author and not the position of OAH.



*Comments:*

*3.5 In this and other Sections of Canon 3, lists of permissible activities are intended to be illustrative and not exclusive.*

*3.6 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 revisions of substantive and procedural law. 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. ALJs may participate in efforts to promote the fair administration of justice, the independence of the administrative judiciary and the integrity of the legal profession. If the ALJ is presenting the agency perspective, he or she shall confirm the agency position with the Chief ALJ or Deputy Chief ALJs.*

(C) An ALJ shall not hold membership in any organization that practices invidious discrimination on the basis of actual or perceived age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, or any other protected status enumerated by law. This provision does not prohibit an ALJ from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

*Comments:*

*3.7 Membership of an ALJ in an organization that practices invidious discrimination gives rise to perceptions that the ALJ's impartiality is impaired. This Canon refers to the current practice of the organization. Whether an organization practices invidious discrimination is often a complex question to which ALJs should be sensitive. The answer cannot be determined solely by 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 that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.*

*3.8 An ALJ's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Canon.*

*3.9 When a person who is an ALJ on the date this Code becomes effective learns that an organization to which the ALJ belongs engages in invidious discrimination that would preclude membership under this Code, the ALJ is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practice as promptly as possible (and in all events within a year of the ALJ's first learning of the practices), the ALJ is required to resign immediately from the organization.*

3.10 See Canon 2(B) regarding the obligation to avoid improper influence.

(D) Governmental, civic, or charitable activities.

(1) Unless otherwise prohibited by law, an ALJ may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit subject to the following limitations and the other requirements of this Code.

(a) An ALJ shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that ordinarily would come before the ALJ, or;

(ii) will be regularly engaged in adversary proceedings before OAH.

(b) In connection with civic or charitable activities, an ALJ may participate in fund-raising or solicitation for membership if:

(i) the ALJ does not use or permit use of the prestige of administrative judicial office for fund-raising or solicitation for membership;

(ii) the fund-raising or solicitation for membership is not directed at persons who have appeared, are appearing, or are foreseeably likely to appear before the ALJ;

(iii) the ALJ's participation in the fund-raising or solicitation for membership would not detract from the dignity of judicial office or interfere with the proper performance of judicial duties or be incompatible with judicial office; and

(iv) the fund-raising or solicitation for membership is not otherwise prohibited by law.

*Comments:*

*3.11 The changing nature of some organizations and of their relationship to the law makes it necessary for an ALJ regularly to reexamine the activities of each organization with which the ALJ is affiliated to determine if it is proper for the ALJ to continue the relationship to that organization.*

*3.12 Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 3(D)(1)(b) provided the letterhead lists only the ALJ's name and office or other position in the organization and, if comparable designations are listed for other persons, the ALJ's judicial designation. For example, an ALJ's name and title appearing on the charity's letterhead with the names and titles of others is permissible. Except as allowed through the annual Combined Fund Drive, an ALJ must also make reasonable efforts to ensure that staff, and others subject to the ALJ's direction and control, do not solicit funds on the ALJ's behalf for any purpose, charitable or otherwise.*

(2) Unless otherwise proscribed by law or agency regulation, an ALJ may accept duty assignments in addition to serving as an ALJ provided (i) such duties do not conflict with the ALJ's responsibilities as an ALJ, and (ii) such duties do not involve functions related to prosecutions or adversarial presentations of agency positions.

(E) Financial activities.

(1) An ALJ shall not engage in financial and business dealings that;

(a) adversely affect the ALJ's impartiality or exploit the ALJ's judicial position;

(b) involve the ALJ with any business, organization or activity that ordinarily will come before the ALJ; or

(c) involve the ALJ in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the agency in which the ALJ serves.

(2) An ALJ, subject to the requirements of this Code, may hold and manage investments of the ALJ and members of the ALJ's family, including real estate, and engage in other remunerative activity.

(3) 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.

(4) ALJs are subject to RCW 42.52.140 and 42.52.150, Ethics in Public Service Act.

(5) Consistent with the Ethics in Public Service Act and agency regulation or policy, 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:

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

(c) a gift which is customary on family and social occasions;

(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;

(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 under this Code;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not ALJs;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied 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 agency. If the gift is required by law to be reported, the ALJ shall do so.

*Comments:*

*3.13 When an ALJ acquires in a judicial capacity information, such as materials contained in filings with the administrative tribunal, that is not yet generally known, the ALJ must not use the information for private gain.*

*3.14 An ALJ must avoid financial and business dealings that involve the ALJ in frequent transactions or continuing business relationships with persons likely to come before the ALJ. In addition, an ALJ should discourage members of the ALJ's family from engaging in dealings that would reasonably appear to exploit the ALJ's judicial position.*

3.15 Participation by an ALJ in financial and business dealings is subject to the general prohibitions in Canon 3(A) against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety and the prohibition against the misuse of the prestige of judicial office. In addition, an ALJ must maintain high standards of conduct in all of the ALJ's activities, as set forth in Canon 1.

3.16 Subject to the requirements of this Code, an ALJ may hold and manage investments owned solely by the ALJ, investments owned solely by a member or members of the ALJ's family, and investments owned jointly by the ALJ and members of the ALJ's family.

3.17 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.

3.18 Acceptance of an invitation to a law-related function is governed by Section 3(E)(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 3(E)(5)(h).

3.19 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 and gift are otherwise in compliance with other provisions of this Code.

3.20 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 might require disqualification of the ALJ where disqualification would not otherwise be required. See, however, Section 3(E)(4)(e).

3.21 Section 3(E)(5)(h) prohibits ALJs from accepting any gifts, favors, bequests or loans not otherwise enumerated in Section 3E(5) from lawyers or their firms if they have come or are likely to come before the ALJ; 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 ALJ.

(F) Fiduciary activities.

(1) An ALJ shall not serve as an executor, administrator, trustee, guardian or other fiduciary if such service interferes with the proper performance of judicial duties.

(2) An ALJ shall not serve in a fiduciary position if the ALJ as fiduciary will likely be engaged in proceedings that would ordinarily come before the ALJ, or if the estate, trust or ward becomes involved in adversary proceedings before OAH.

(3) While acting as a fiduciary, an ALJ is subject to the same restrictions on financial activities that apply to the ALJ in the ALJ's personal capacity.

*Comment:*

*3.22 The restrictions imposed by this Canon may conflict with the ALJ's obligation as a fiduciary. For example, an ALJ should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the ALJ in violation of Canon 3(E)(3).*

(G) Service as arbitrator, mediator or hearing officer.

Unless otherwise prohibited by law or agency regulation, an ALJ may act as an arbitrator or mediator independent of his or her administrative judicial duties, so long as such activity does not affect matters before the agency, the independent professional judgment of the ALJ or conflict with the ALJ's official duties.

*Comments:*

*3.23 Service as an arbitrator or mediator as part of an ALJ's official duties is not covered by this provision. See WAC 10-08-200(15).*

*3.24 This Code does not prohibit ALJs from acting as arbitrators or mediators in capacities outside their official administrative judicial duties and in circumstances where it is unlikely that their decisions as arbitrators or mediators will be submitted to their agency for administrative review.*

(H) Practice of law.

(1) Consistent with all other provisions of this Code, any applicable agency regulations and all other provisions of law, an ALJ may practice law, as long as such activity does not affect the independent professional judgment of the ALJ or conflict with the ALJ's official duties.

(2) An ALJ shall not represent or appear on behalf of private interests before OAH.

(3) An ALJ shall not, without prior approval of the Chief ALJ (or designee), represent or appear on behalf of private interests before any state administrative tribunal or agency.

(4) An ALJ shall not be associated or affiliated with any firm, company or organization that regularly represents or appears on behalf of private interests before OAH.

*Comments:*

*3.25 This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. An ALJ 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, an ALJ must not abuse the prestige of office to advance the interests of the ALJ or the ALJ's family.*

*3.26 An ALJ who maintains a private legal practice should use letterhead for matters involving official administrative judicial duties that is separate and distinct from the letterhead for matters in private practice. The letterhead for private practice shall omit any reference to the person's status as an ALJ.*

(I) Compensation and reimbursement. Consistent with applicable law and regulation, an ALJ may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, subject to the following restrictions:

(1) Compensation shall not exceed a reasonable amount, nor shall it exceed what a person who is not an ALJ would receive for the same activity.

(2) 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.

*Comments:*

*3.27 See Canon 3(E)(5) regarding reporting of gifts, bequests and loans.*

*3.28 The Code does not prohibit an ALJ from accepting honoraria or speaking fees provided the compensation is reasonable and commensurate with the task performed. An ALJ should ensure, however, that no conflicts are created by the arrangement. An ALJ must not appear to trade on the judicial position for personal advantage. Nor should an ALJ spend significant time away from judicial duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the ALJ's ability or willingness to be impartial.*

## CANON 4

### AN ALJ SHALL REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY.

An ALJ shall abide by RCW 42.52.180 and WAC 292-110-020 governing political activity of state employees.

#### *Comments:*

*4.1 Participation in political activities is a right of every person. Unless specifically prohibited by law, an ALJ may engage in political activity that does not affect the fairness, impartiality or dignity of the ALJ's office. Further language of prohibition such as found in other codes of ethics was not included in this section because it is considered to be inappropriately and unnecessarily more restrictive than Washington law applicable to ALJs as state employees. Of course, depending upon a variety of factors, statutes and regulations other than those cited may apply, but they are beyond the scope of this Canon.*

*4.2 The following are examples of political activities in which an ALJ may engage without violation of this Code:*

- a. An ALJ may display a bumper sticker on the ALJ's vehicle.*
- b. An ALJ may display a sign on the ALJ's residence or yard.*
- c. An ALJ may contribute money to a political campaign, but shall not attach to his or her name the title of administrative law judge.*
- d. An ALJ may attend and vote at a neighborhood political party caucus.*
- e. An ALJ may endorse a candidate for elected office and may allow the ALJ's name to be published as such, excluding the title of administrative law judge.*