

**CODE OF CONDUCT FOR
ADMINISTRATIVE HEARING OFFICERS
State of Idaho – Office of Administrative Hearings**

CANON I

***AN ADMINISTRATIVE HEARING OFFICER SHALL UPHOLD AND PROMOTE THE
INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE OFFICE OF
ADMINISTRATIVE HEARINGS***

Section 1.1: Compliance with the Law

An Administrative Hearing Officer shall, at all times, comply with the law, including, but not limited to, this Code of Conduct for Administrative Hearing Officers, the Idaho State Bar’s “Idaho Rules of Professional Conduct,” and Idaho Code §§67-5280 through 5286.

Section 1.2: Promoting Confidence in the Administrative Law Process

An Administrative Hearing Officer shall act, at all times, in a manner that promotes public confidence in the independence, integrity, and impartiality of the Office of Administrative Hearings, and shall avoid impropriety and the appearance of impropriety.

Comment

[1] An Administrative Hearing Officer 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 Office of Administrative Hearings is preserved. The provisions of this Code shall be construed and applied to further that objective.

[2] Deference to the judgments and rulings in administrative proceedings depends upon public confidence in the integrity and independence of Administrative Hearing Officers. The integrity and independence of Administrative Hearing Officers depends in turn upon their acting without fear or favor. Although Administrative Hearing Officers should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the administrative law process is maintained by the adherence of each Administrative Hearing Officer to this responsibility. Conversely, violation of this Code diminishes public confidence in the administrative law process and thereby does injury to our system of government.

Section 1.3: Avoiding Abuse of Prestige of Service as an Administrative Hearing Officer

An Administrative Hearing Officer shall, at all times, not abuse the prestige of service as an Administrative Hearing Officer to advance the personal or economic interests of the Administrative Hearing Officer or others, or allow others to do so.

Comment

[1] It is improper for an Administrative Hearing Officer to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, an Administrative Hearing Officer must not use OAH letterhead to gain an advantage in conducting their personal business.

[2] Subject to approval by the Chief Administrative Hearing Officer or their designee, an Administrative Hearing Officer may provide a reference or recommendation for an individual based upon the Administrative Hearing Officer's personal knowledge, using official letterhead 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 Hearing Officer's position with OAH.

[3] Special considerations arise when Administrative Hearing Officers write or contribute to publications of for-profit entities, whether related or unrelated to the law. An Administrative Hearing Officer should not permit anyone associated with the publication of such materials to exploit the Administrative Hearing Officer's position with OAH in a manner that violates this Section or other applicable law. The Administrative Hearing Officer should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

AN ADMINISTRATIVE HEARING OFFICER SHALL PERFORM THE DUTIES OF OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Section 2.1: Giving Precedence to the Duties of Office

The duties of office, as prescribed by law, shall take precedence over all of an Administrative Hearing Officer's personal and other activities outside of their service as an Administrative Hearing Officer with OAH.

Comment

[1] To ensure that Administrative Hearing Officers are available to fulfill their duties, Administrative Hearing Officers must conduct their personal and non-OAH activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of office unless prescribed by law, Administrative Hearing Officers are encouraged to participate in activities that promote public understanding of and confidence in the administrative justice system, including participation in Idaho State Bar sections, CLE presentations, and similar activities.

Section 2.2: Impartiality and Fairness

An Administrative Hearing Officer shall uphold and apply the law and shall perform all duties of office fairly and impartially.

Comment

[1] To ensure impartiality and fairness to all parties, an Administrative Hearing Officer must be objective and open-minded.

[2] Although each Administrative Hearing Officer comes to the OAH with a unique background and personal philosophy, an Administrative Hearing Officer must interpret and apply the law without regard to whether the Administrative Hearing Officer approves or disapproves of the law in question.

[3] When applying and interpreting the law, an Administrative Hearing Officer sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Section.

[4] It is not a violation of this Section for an Administrative Hearing Officer to make reasonable accommodations to ensure self-represented litigants are afforded the opportunity to have their matters fairly heard.

Section 2.3: Bias, Prejudice and Harassment

(A) An Administrative Hearing Officer shall perform the duties of office, including administrative duties, without bias or prejudice.

(B) An Administrative Hearing Officer shall not, in the performance of official duties, by words or conduct manifest bias or prejudice, or engage in harassment based upon race, sex, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit support staff, or others subject to the Administrative Hearing Officer's direction and control to do so.

(C) An Administrative Hearing Officer shall require lawyers in proceedings before the Administrative Hearing Officer to refrain from manifesting bias or prejudice, or engaging in harassment, based on attributes or factors enumerated in (B) above, against parties, witnesses, lawyers, or others.

Comment

[1] An Administrative Hearing Officer who manifests bias or prejudice impairs the fairness of proceedings and brings the OAH into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based on stereotypes; threatening; intimidating; or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers, the media, and others an appearance of bias or prejudice. An Administrative Hearing Officer must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C) is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as the factors enumerated in (2) above.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Section 2.4: External Influences on Conduct

(A) An Administrative Hearing Officer shall not be swayed by public clamor or fear of criticism.

(B) An Administrative Hearing Officer shall not permit family, social, political, financial, or other interests or relationships to influence the Administrative Hearing Officer's conduct or judgment.

(C) An Administrative Hearing Officer shall not convey or permit others to convey the impression that any person or organization is in a position to influence the Administrative Hearing Officer.

Comment

An independent Office of Administrative Hearings requires that Administrative Hearing Officers decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular. Confidence in the OAH is eroded if decision making is perceived to be subject to inappropriate outside influences.

Section 2.5 Competence, Diligence, and Cooperation

(A) An Administrative Hearing Officer shall perform all of their duties competently and diligently.

(B) An Administrative Hearing Officer shall cooperate with other Administrative Hearing Officers, legal professionals, and other officials in the administration of official business.

Comment

[1] Competence in the performance of hearing officer duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform such responsibilities.

[2] An Administrative Hearing Officer should seek the necessary time and resources to discharge all of their responsibilities.

[3] Prompt disposition of the Administrative Hearing Officer's business requires the Administrative Hearing Officer to devote adequate time to hearing officer duties, to be punctual in attending hearings and expeditious in determining matters, and to take reasonable measures to ensure that staff, litigants, and their lawyers or lay representatives cooperate with the Administrative Hearing Officer to that end.

[4] In disposing of matters promptly, an Administrative Hearing Officer must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. An Administrative Hearing Officer should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. Attention to prompt resolution of the Administrative Hearing Officer's docket, and issuing decisions without undue delay, is critical to the effectiveness and efficiency of the administrative process.

Section 2.6: Ensuring the Right to Be Heard

(A) An Administrative Hearing Officer shall accord to every person who has a legal interest in a proceeding, or that person's lawyer or lay representative, the right to be heard according to law.

(B) An Administrative Hearing Officer may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Section 2.7 Responsibility to Decide

An Administrative Hearing Officer shall hear and decide matters assigned to the Administrative Hearing Officer, except where disqualification is required by Section 2.11 or other law.

Section 2.8: Decorum and Demeanor

(A) An Administrative Hearing Officer shall require order and decorum in proceedings before the Administrative Hearing Officer.

(B) An Administrative Hearing Officer shall be patient, dignified, and courteous to litigants, witnesses, lawyers, staff and others with whom the Administrative Hearing Officer deals in an official capacity, and shall require similar conduct of lawyers, staff, officials, and others subject to the Administrative Hearing Officer's direction and control.

Section 2.9: Ex Parte Communications

(A) Unless required for the disposition of ex parte matters specifically authorized by statute, an Administrative Hearing Officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

(B) An Administrative Hearing Officer may consult with staff and officials whose functions are to aid the Administrative Hearing Officer in carrying out the Administrative Hearing Officer's responsibilities in a contested case (but excluding agency personnel with regard to a pending or impending matter before the Administrative Hearing Officer), such as other Administrative Hearing Officers or Law Clerks under the direction and control of the Administrative Hearing Officer, provided the Administrative Hearing Officer makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility to personally decide the matter.

(C) If an Administrative Hearing Officer inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the Administrative Hearing Officer shall promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(D) An Administrative Hearing Officer shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be subject to administrative notice. This prohibition includes independent internet research, including, but not limited to, online news sources and/or social media..

(E) An Administrative Hearing Officer shall make reasonable efforts, including providing appropriate supervision, to ensure that this Section is not violated by staff, law clerks, and others subject to the Administrative Hearing Officer's direction and control.

Section 2.10: Statements on Pending and Impending Cases

(A) An Administrative Hearing Officer shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any tribunal, or make any non-public statement that might substantially interfere with a fair hearing.

(B) An Administrative Hearing Officer shall not, in connection with cases, controversies, or issues that are likely to come before the Administrative Hearing Officer, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of office.

(C) An Administrative Hearing Officer shall require staff and others subject to the Administrative Hearing Officer's direction and control to refrain from making statements that the Administrative Hearing Officer would be prohibited from making by paragraph (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), an Administrative Hearing Officer may make public statements regarding the general performance of their official duties, such as explaining contested case procedures.

(E) Subject to the requirements of paragraph (A), an Administrative Hearing Officer may respond directly or through a third party to allegations in the media or elsewhere concerning the Administrative Hearing Officer's conduct in a matter, subject to advance approval by the Chief Administrative Hearing Officer or their designee..

Section 2.11: Disqualification

(A) An Administrative Hearing Officer shall disqualify themselves in any proceeding in which the Administrative Hearing Officer's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The Administrative Hearing Officer has a personal bias or prejudice concerning a party or party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The Administrative Hearing Officer knows that the Administrative Hearing Officer, the Administrative Hearing Officer's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such person is:

(a) a party to the proceeding, or an officer, director, deputy director, administrator, deputy administrator, Board member, general partner, major shareholder, managing member, or trustee of a party;

- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or,
- (d) likely to be a material witness in the proceeding.

(3) The Administrative Hearing Officer knows that they, individually or as a fiduciary, or the Administrative Hearing Officer's spouse, domestic partner, parent or child, or any other member of the Administrative Hearing Officer's family residing in the Administrative Hearing Officer's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The Administrative Hearing Officer has made a public statement, other than in a tribunal proceeding, adjudicative decision, or adjudicative opinion, that commits or appears to commit the Administrative Hearing Officer to reach a particular result or ruling in a particular way in the proceeding or controversy.

(5) The Administrative Hearing Officer:

- (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
- (b) served in government employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed an opinion concerning the merits of the particular matter in controversy;
- (c) was a material witness concerning the matter; or
- (d) previously presided as an Administrative Hearing Officer, mediator, arbitrator, adjudicator, administrative law judge, or judge over the matter in another tribunal or court.

(B) An Administrative Hearing Officer shall keep informed about the Administrative Hearing Officer's personal and fiduciary economic interests, and make reasonable effort to keep informed about the personal economic interests of the Administrative Hearing Officer's spouse or domestic partner and minor children residing in the Administrative Hearing Officer's household.

Section 2.12: Supervisory Duties

(A) An Administrative Hearing Officer shall require staff and others subject to the Administrative Hearing Officer's direction and control to act in a manner consistent with the Administrative Hearing Officer's obligations under this Code.

(B) An Administrative Hearing Officer with supervisory authority for the performance of other Administrative Hearing Officers shall take reasonable measures to ensure that those Administrative Hearing Officers properly discharge their adjudicative responsibilities, including the prompt disposition of matters before them.

Comment

[1] An Administrative Hearing Officer is responsible for their own conduct and for the conduct of others, such as staff, when those persons are acting at the Administrative Hearing Officer's direction or control. An Administrative Hearing Officer may not direct OAH personnel to engage in conduct on the Administrative Hearing Officer's behalf or as the Administrative Hearing Officer's representative when such conduct would violate the Code if undertaken by the Administrative Hearing Officer.

[2] Public confidence in the OAH depends upon timely justice. To promote the efficient administration of justice, an Administrative Hearing Officer with supervisory authority must take the steps needed to ensure that Administrative Hearing Officers under their supervision administer their workloads promptly.

[3] A supervisory Administrative Hearing Officer should not interfere with the decisional independence of other Administrative Hearing Officers. Reasonable case control, case assignments, logistical matters, and other administrative concerns are appropriate, provided that these are done in an impartial manner and in no way operate to favor any particular outcome in any case.

Section 2.13: Responding to Misconduct

(A) An Administrative Hearing Officer having knowledge or who has received information that another Administrative Hearing Officer has committed a violation of this Code that raises a substantial question regarding the Administrative Hearing Officer's honesty, trustworthiness, or fitness as an Administrative Hearing Officer in other respects shall inform the appropriate authority.

(B) An Administrative Hearing Officer having knowledge or who has received information that a lawyer has committed a violation of the Idaho Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority consistent with the Idaho Rules of Professional Conduct.

Section 2.14: Cooperation with Disciplinary Authorities

(A) An Administrative Hearing Officer shall cooperate and be candid and honest with judicial and lawyer disciplinary and other official investigatory agencies, in a manner consistent with

confidentiality provisions provided by law.

(B) An Administrative Hearing Officer shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of the Administrative Hearing Officer or a lawyer.

Comment

Cooperation with investigations and proceedings of judicial and lawyer disciplinary agencies, as required in paragraph (A), instills confidence in administrative Hearing Officers' commitment to the integrity of the administrative law adjudication system and the protection of the public.

CANON 3

AN ADMINISTRATIVE HEARING OFFICER SHALL CONDUCT PERSONAL AND EXTRA-JUDICIAL ACTIVITIES IN A MANNER THAT WILL MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF THE OFFICE OF ADMINISTRATIVE HEARINGS

Section 3.1: Non-OAH Activities in General

An Administrative Hearing Officer may engage in activities outside of their service as an Administrative Hearing Officer with OAH, except as prohibited by law or this Code; however, when engaging in such outside activities, an Administrative Hearing Officer shall not:

- (A) Participate in activities that will interfere with the proper performance of the Administrative Hearing Officer's duties;
- (B) Participate in activities that will lead to frequent disqualification of the Administrative Hearing Officer;
- (C) Participate in activities that would appear to a reasonable person to undermine the Administrative Hearing Officer's independence, integrity, or impartiality;
- (D) Engage in conduct that would appear to a reasonable person to be coercive; or
- (E) Make use of OAH premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment

The actions, participation or engagements that are prohibited under this Section include any such activity within the realm and use of social media.

The ultimate determination pursuant to this Section is within the sole discretion of the Chief Administrative Hearing Officer.

Section 3.2: Appearance before Governmental Agencies and Consultation with Government Officials

An Administrative Hearing Officer shall not appear voluntarily at a public hearing before, or otherwise consult with, a legislative body or official, except:

- (A) In connection with matters concerning the law, the legal system, or the administration of justice, including, but not limited to, proposed statutes or regulations regarding the Office of

Administrative Hearings or relating to contested case proceedings conducted by the Office of Administrative Hearings;

(B) In connection with matters about which the Administrative Hearing Officer acquired knowledge or expertise in the course of the Administrative Hearing Officer's official duties; or

(C) When the Administrative Hearing Officer is acting in a self-represented capacity involving the Administrative Hearing Officer's legal or economic interests, or when the Administrative Hearing Officer is acting in a fiduciary capacity, provided that disclaimer is made that such appearance is made individually and not as a representative of the Office of Administrative Hearings.

Section 3.3: Testifying as a Character Witness

An Administrative Hearing Officer shall not testify 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 by subpoena.

Comment

An Administrative Hearing Officer who, without being subpoenaed, testifies as a character witness abuses the prestige of service as an Administrative Hearing Officer to advance the interests of another. See Section 1.3. Except in unusual circumstances where the demands of justice require, an Administrative Hearing Officer should discourage a party from requiring the Administrative Hearing Officer to testify as a character witness.

Section 3.4: Appointment to Governmental Positions

An Administrative Hearing Officer shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless such appointment does not conflict with the Administrative Hearing Officer's official duties and there is no appearance of conflict, bias or prejudice concerning the Administrative Hearing Officer's official position. As a licensed and practicing attorney, an Administrative Hearing Officer's service on any committee, board, commission, section, or other position with the Idaho State Bar is not a violation of this Section, provided that such participation in such Idaho State Bar activities does not otherwise violate Section 3.1.

Section 3.5: Use of Nonpublic Information

An Administrative Hearing Officer shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the Administrative Hearing Officer's adjudicative duties.

Section 3.6: Affiliation with Discriminatory Organizations

(A) An Administrative Hearing Officer shall not hold membership in any organization that practices discrimination on the basis of race, sex, gender identity, religion, national origin, ethnicity, sexual orientation, and/or disability.

(B) An Administrative Hearing Officer shall not use the benefits or facilities of an organization if the Administrative Hearing Officer knows or should know that the organization practices invidious discrimination or one or more of the bases identified in paragraph (A). An Administrative Hearing Officer's attendance at an event or facility of an organization that the Administrative Hearing Officer is not permitted to join is not a violation of this Section when the Administrative Hearing Officer's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

Section 3.7: Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Section 3.1 and Idaho Code §67-5282, an Administrative Hearing Officer may hold volunteer positions that are not inconsistent with their duties as an Administrative Hearing Officer. Accordingly, an Administrative Hearing Officer may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

- (1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;
- (2) soliciting contributions for such an organization or entity, but only from members of the Administrative Hearing Officer's family, or from Administrative Hearing Officers over whom the Administrative Hearing Officer does not exercise supervisory or adjudicatory authority;
- (3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;
- (4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting their title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the Administrative Hearing Officer may participate only if the event concerns the law, the legal system, or the administration of justice.

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or non-legal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the Administrative Hearing Officer; or

(b) will frequently be engaged in adversary proceedings in the Office of Administrative Hearings.

(B) An Administrative Hearing Officer may not serve as the agent, representative, officer, political treasurer, or employee, whether for profit or otherwise, of any political party, political committee, or candidate, whether as defined in either chapter 1, title 34, or chapter 66, title 67, Idaho Code, or otherwise.

(C) An Administrative Hearing Officer may encourage lawyers to provide pro bono public legal services.

Comment

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, an Administrative Hearing Officer should consider whether the membership and purposes of the organization, or the nature of the Administrative Hearing Officer's participation in or association with the organization, would conflict with the Administrative Hearing Officer's obligation to refrain from activities that reflect adversely upon an Administrative Hearing Officer's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for an Administrative Hearing Officer to serve as an usher or a food server or prepared, or to perform similar functions, at fund-raising events sponsored by educations, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of service as an Administrative Hearing Officer.

Section 3.8: Appointments to Fiduciary Positions

An Administrative Hearing Officer acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to an Administrative Hearing Officer personally.

Section 3.9: Service as Arbitrator, Mediator, or Adjudicator

(A) An Administrative Hearing Officer employed within the OAH shall not act as an arbitrator or a mediator or perform other adjudicatory functions except as expressly authorized by Idaho Code §67-5280(2)(b) and where specifically approved and assigned by the Chief Administrative Hearing Officer.

(B) An Administrative Hearing Officer who is an independent contractor with OAH shall not act as an arbitrator or a mediator or perform other adjudicatory functions apart from their official duties as a contracting Administrative Hearing Officer if their impartiality as an Administrative Hearing Officer might reasonably be questioned because of such work.

Comment

An Administrative Hearing Officer who contracts with OAH will generally be understood to have other financial, business, and/or remunerative activities outside of the OAH (including, but not limited to, private mediation, arbitration, and adjudicator services), and may thereby request waiver of such statutory restrictions thereon as outlined in this Section and Idaho Code §67-5282(2), as per Idaho Code §67-5283(d). However, by statute, the granting of such waiver is discretionary in nature, and may be refused where such activities may impair, or appear to impair, the impartiality and/or the ongoing operations of the OAH, such as where such activities may lead to frequent disqualification of the Administrative Hearing Officer.

Section 3.10: Practice of Law

(A) An Administrative Hearing Officer employed within OAH shall not engage in the practice of law outside of their role at OAH, except for the practice of law which is permitted for a judge by the Idaho Code of Judicial Conduct and is not otherwise inconsistent with this Code of Conduct or their duties as an Administrative Hearing Officer.

(B) An Administrative Hearing Officer who is an independent contractor with OAH may engage in the practice of law outside of their service as an Administrative Hearing Officer with OAH, provided that:

- (1) A disclosure is filed with the Chief Administrative Hearing Officer that states what other outside work the independent contractor is engaged;

(2) The independent contractor does not engage in outside work presenting a conflict of interest; and

(3) The independent contractor discloses such other information as required by this Code.

Comment

With respect to Section 3.10(A), the Idaho Code of Judicial Conduct generally addresses a judge's practice of law under Canon 3.10, which provides: "A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum." In turn, the Idaho Code of Judicial Conduct definitions provide that a "member of the judge's family" means "a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship."

Section 3.11 Financial, Business, or Remunerative Activities

(A) An Administrative Hearing Officer shall not hold any other public or private-sector position, whether for profit or otherwise, except for volunteer positions that are not inconsistent with their duties as an Administrative Hearing Officer.

(B) An Administrative Hearing Officer who is an independent contractor with OAH may request that the Chief Administrative Hearing Officer waive application of Section 3.11(A) to them, to the extent such activity does not create a conflict of interest.

Comment

An Administrative Hearing Officer who contracts with OAH will generally be understood to have other financial, business, and/or remunerative activities outside of the OAH, and may thereby request waiver of statutory restrictions thereon as outlined in this Section and Idaho Code §67-5282(2), as per Idaho Code §67-5283(d). However, by statute, the granting of such waiver is discretionary in nature, and may be refused where such activities may impair, or appear to impair, the impartiality and/or the ongoing operations of the OAH, such as where such activities may lead to frequent disqualification of the Administrative Hearing Officer.

Section 3.12: Compensation for Non-OAH Activities

(A) An Administrative Hearing Officer may accept reasonable compensation for activities outside of their service as an Administrative Hearing Officer with OAH where permitted by this Code or

other law, unless such acceptance would appear to a reasonable person to undermine the Administrative Hearing Officer's independence, integrity, or impartiality.

(B) An Administrative Hearing Officer shall, at all times, comply with the requirements of Idaho's Ethics in Government Act (Idaho Code §§74-401 *et seq.*) and Idaho's Bribery and Corrupt Influences Act (Idaho Code §§18-1301 *et seq.*).

Comment

An Administrative Hearing Officer should review and be familiar with the Idaho Attorney General's "Ethics in Government Manual."

Section 3.13: Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) An Administrative Hearing Officer shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the Administrative Hearing Officer's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law or by paragraph (A), an Administrative Hearing Officer may accept the following:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the Administrative Hearing Officer would in any event require disqualification of the Administrative Hearing Officer under Section 2.11;
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not Administrative Hearing Officers or judges;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not Administrative Hearing Officers or judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not Administrative Hearing Officers or judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of an Administrative Hearing Officer residing in the Administrative Hearing Officer's household, but that incidentally benefit the Administrative Hearing Officer.

(C) Unless otherwise prohibited by law or by paragraph (A), an Administrative Hearing Officer may accept the following items:

(1) gifts incidental to a public testimonial;

(2) invitations to the Administrative Hearing Officer and the Administrative Hearing Officer's spouse, domestic partner, or guest to attend without charge;

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

b) an event associated with the Administrative Hearing Officer's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to non-Administrative Hearing Officers an

(D) An Administrative Hearing Officer shall, at all times, comply with the requirements of Idaho's Ethics in Government Act (Idaho Code §§74-401 *et seq.*) and Idaho's Bribery and Corrupt Influences Act (Idaho Code §§18-1301 *et seq.*).

Comment

An Administrative Hearing Officer should review and be familiar with the Idaho Attorney General's "Ethics in Government Manual."

Section 3.14: Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Sections 3.1 and 3.13 (A) or other law, an Administrative Hearing Officer may accept reimbursement, if necessary, and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the Administrative Hearing Officer's employing entity, if the expenses or charges are associated with the Administrative Hearing Officer's participation in non-OAH activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the Administrative Hearing Officer and, when appropriate to the occasion, by the Administrative Hearing Officer's spouse, domestic partner, or guest.

(C) An Administrative Hearing Officer shall, at all times, comply with the requirements of Idaho's Ethics in Government Act (Idaho Code §§74-401 *et seq.*) and Idaho's Bribery and Corrupt Influences Act (Idaho Code §§18-1301 *et seq.*).

Comment

An Administrative Hearing Officer should review and be familiar with the Idaho Attorney General's "Ethics in Government Manual."

CANON 4

AN ADMINISTRATIVE HEARING OFFICER SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE ADMINISTRATIVE LAW PROCESS

Section 4.1 Political and Campaign Activities of Administrative Hearing Officers in General

(A) An Administrative Hearing Officer shall not hold, or be a candidate for, any federal, state, county, municipal, district, or other elective office. As a licensed and practicing attorney, an Administrative Hearing Officer's service on any committee, board, commission, section, or other position with the Idaho State Bar, which position is elected by members of the Idaho State Bar, is not a violation of this Section, provided that such elected position within the Idaho State Bar, and duties therewith, do not otherwise violate Section 3.1.

(B) An Administrative Hearing Officer shall not serve as the agent, representative, officer, political treasurer, or employee, whether for profit or otherwise, of any political party, political committee, or candidate, whether as defined in either chapter 1, title 34, or chapter 66, title 67, Idaho Code, or otherwise.

(C) An Administrative Hearing Officer shall not:

- (1) make speeches on behalf of a political organization;
- (2) publicly endorse or oppose a candidate for any partisan public office;
- (3) seek, accept, or use endorsements from a political organization;
- (4) make any public statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any tribunal; or
- (5) in connection with cases, controversies, or issues that are likely to come before the tribunal, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of office.

(D) An Administrative Hearing Officer shall take reasonable measures to ensure that other persons do not undertake, on behalf of the Administrative Hearing Officer, any activities prohibited under paragraph (C).

(E) An Administrative Hearing Officer who is an independent contractor with OAH may request that the Chief Administrative Hearing Officer waive application of Section 4.1(A)-(B) to them, to the extent such activity does not create a conflict of interest.

Comment

An Administrative Hearing Officer who contracts with OAH may request waiver of

the statutory provisions restricting political activity as outlined in parts (A) and (B) of this Section and Idaho Code §67-5282(2), as per Idaho Code §67-5283(d). However, by statute, the granting of such waiver is discretionary in nature, and may be refused where such activities may impair, or appear to impair, the impartiality and/or the ongoing operations of the OAH, such as where such activities may lead to frequent disqualification of the Administrative Hearing Officer.

Section 4.2: Political and Campaign Activities of Administrative Hearing Officers in Public Elections

[Reserved]

Section 4.3: Candidates for Appointive Administrative Hearing Officer Positions

A candidate for appointment to an Administrative Hearing Officer position may:

- (A) Communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar organization and
- (B) Seek endorsements for the appointment from any person or organization other than a partisan political organization.

Section 4.4: Campaign Committees

[Reserved]

Section 4.5: Activities of Administrative Hearing Officers Who Become Candidates for Judicial or Nonjudicial Office

(A) Upon becoming a candidate for a judicial or non-judicial elective office, an Administrative Hearing Officer shall resign from the Administrative Hearing Officer office, unless such Administrative Hearing Officer is an independent contractor with OAH who has requested, and received, a waiver from the Chief Administrative Hearing Officer to continue serving as an Administrative Hearing Officer.

(B) Upon becoming a candidate for a judicial or non-judicial appointive office, an Administrative Hearing Officer is not required to resign as an Administrative Hearing Officer, provided that the Administrative Hearing Officer complies with the other provisions of this Code.

(C) Upon successful election or appointment to judicial or non-judicial appointive office, an Administrative Hearing Officer shall resign as an Administrative Hearing Officer prior to taking such office, at a time and date as directed by the Chief Administrative Hearing Officer, unless the Administrative Hearing Officer is an independent contractor with OAH who has requested, and received, a waiver from the Chief Administrative Hearing Officer to continue serving as an Administrative Hearing Officer.

Comment

“Elective office” does not appear to be defined by Idaho Code; however, for purpose of this Code of Conduct, Section 4.5(A) is intended to apply only to those Administrative Hearing Officers who become candidates in public elections, as generally governed by Title 34 of the Idaho Code.

Likewise, “appointive office” does not appear to be defined by the Idaho Code; however, for purposes of this Code of Conduct, Section 4.5(B) is intended to apply to those offices where the candidate’s selection is being made by means of appointment.

A successful candidate may continue to serve as an Administrative Hearing Officer up until the date they take office, as may be permitted by the Chief Administrative Hearing Officer. Considerations as to how long an Administrative Hearing Officer may continue to serve prior to taking office should include considerations to ensure an orderly transition of caseload, such as caseload transition memoranda and/or completion of outstanding cases.

EFFECTIVE DATE OF COMPLIANCE

This revised Code of Conduct for Administrative Hearing Officers shall be in full effect on August 18, 2023.

Thereafter, any person to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it.

This Code may be amended from time to time by the Chief Administrative Hearing Officer, or by his designee subject to final approval by the Chief Administrative Hearing Officer; an Administrative Hearing Officer shall be familiar with, and shall comply with, the most recently-updated version of this Code.