

10-15-1990

Model Code of Judicial Conduct for Federal Administrative Law Judges

National Conference of Administrative Law Judges, Judicial Administration Division, American Bar Association

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/naalj>

 Part of the [Administrative Law Commons](#), [Ethics and Professional Responsibility Commons](#), and the [Judges Commons](#)

Recommended Citation

National Conference of Administrative Law Judges, Judicial Administration Division, American Bar Association, *Model Code of Judicial Conduct for Federal Administrative Law Judges*, 10 J. Nat'l Ass'n Admin. L. Judges. (1990)
available at <http://digitalcommons.pepperdine.edu/naalj/vol10/iss2/4>

This Model Code is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Journal of the National Association of Administrative Law Judiciary by an authorized administrator of Pepperdine Digital Commons. For more information, please contact Kevin.Miller3@pepperdine.edu.

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

National Conference of Administrative Law Judges
Judicial Administration Division
American Bar Association

As endorsed February, 1989 ^{1/}

PREFACE

Judge Ronnie A. Yoder
Administrative Law Judge
Chair, Committee on Ethics and
Professional Responsibility
National Conference of
Administrative Law Judges

The Model Code of Judicial Conduct for Federal Administrative Law Judges (Model Code) was endorsed by the Executive Committee of the National Conference of Administrative Law Judges at the 1989 mid-winter meeting in Denver, Colorado. The conference approved the distribution of the code to federal administrative law judges as a reference for them in considering their own conduct and for others in considering the Code of Judicial Conduct appropriately applicable to federal administrative law judges. The Code is based upon the Model Code of Judicial Conduct of the American Bar Association (ABA Code), with modifications considered appropriate in adapting the Code for federal administrative law judges. ^{2/}

^{1/} The opinions expressed herein are not necessarily those of the American Bar Association. Copyright (c) 1989 American Bar Association; reprinted here with permission.

^{2/} The Code has not been adapted to apply to state administrative law judges and hearing officers, because of the wide variations in the nature of those positions. See ABA Informal Opinion 86-1522 dated December 24, 1986, holding that, if the applicability of the ABA Model Code to federal administrative law judges is assumed, then they are "judges" within the meaning of the Code and that applicability of the Code to state administrative law judges "depends upon the facts of the particular case."

The ABA Code was adopted in 1972 and amended in 1982. Neither the model ABA Code nor the Model Code for federal administrative law judges applies to any Judge unless it is adopted by the responsible adjudicatory. The ABA Code has been adapted and adopted by 47 states and the District of Columbia. ^{3/} Adaption and endorsement of the Model Code for Administrative Law Judge by NCALJ does not make that Code applicable to any administrative law judge but is intended to reflect the considered judgment of the Conference on appropriate provisions in adapting the ABA Code for federal administrative law judge. ^{4/}

The Model Code was developed in 1981 by the Joint Association Drafting Committee composed of representatives from NCALJ (then called CALJ), the Federal Administrative Law Judges Conference, and the Association of Administrative Law Judges of the Department of Health and Human Services (See Appendix A). The draft was circulated to all federal administrative law judges at that time for comments, and those comments were considered by the Joint Committee in developing the draft.

The Code was presented at a NCALJ symposium in November 6, 1987 in San Francisco, and, following preliminary endorsement of the

^{3/} All states other than Montana, Rhode Island, and Wisconsin had adopted the Code as of January 1987. Wisconsin is currently considering adoption. Judicial Conduct Reporter, Vol. 8, no. 4, Winter 1987, pp. 1, 4; "Ethics for Judges" (National College of the State Judiciary 2d ed. 1975). New York City requires all of its ALJs to comply with the ABA Code of Judicial Conduct as promulgated by the New York State Bar Association. Ad. Law News, Vol. 12, No. 2, Spring 1987, p. 10.

^{4/} Several federal agencies have adopted provisions concerning conduct of federal administrative law judges, but those provisions have not specifically considered the appropriate applicability of individual ABA Model Code provisions to administrative law judges. See, e.g., 43 C.F.R. 4.1122 and 4.27, 50 C.F.R. 18.76(d) (Interior Department); 14 C.F.R. 300.1 (DOT); 46 C.F.R. 201.681(a) (Maritime Administration); 40 C.F.R. 164.40(c) (EPA). Cf., 21 C.F.R. 12.90 (FDA); 24 C.F.R. 2.111 (HUD); 45 C.F.R. 81.111 (HHS); 34 C.F.R. 101.111 (Department of Education), applying to "participants" or "parties and their representatives." Endorsement of this Code does not affect the applicability of those provisions to individual judges at those agencies or any other agency. The Code may, however, serve as a reference in lending definition to general language concerning appropriate conduct in the rules of those agencies and elsewhere.

Code in February 1988, the Code was presented at the NCALJ Symposium in Washington, D.C., on April 15, 1988. On each occasion comments were solicited, and based on those comments the 1981 draft was amended in February 1989 to reflect the 1982 Amendment of the ABA Code concerning broadcasting, televising, recording or photographing in hearing rooms (Canon 3A(7)).

CANON 1 ^{1/}

**An Administrative Law Judge
Should Uphold the Integrity and
Independence of the Administrative Judiciary**

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

CANON 2

**An Administrative Law Judge Should
Avoid Impropriety and the
Appearance of Impropriety in All Activities**

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

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

^{1/} Except where modified the Code follows the language of the Model ABA Code, or, where different, the version of that Code adopted by the Judicial Conference for United States judges. Initial references to "judge" in each canon have been changed to "administrative law judge," and the canons have been edited throughout to avoid the use of single-gender pronouns.

Commentary

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

It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors. Ultimately, each judge must determine in the judge's own conscience whether an organization of which the judge is a member practices invidious discrimination.

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

CANON 3

An Administrative Law Judge Should Perform the Duties of the Office Impartially and Diligently

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

A. Adjudicative Responsibilities

(1) An administrative law judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) An administrative law judge should maintain order and decorum in proceedings.

(3) An administrative law judge should be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, staff members, and others subject to the judge's direction and control.

Commentary

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

(4) An administrative law judge should accord to all persons who are legally interested in a proceeding, or their lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications as to substantive matters concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding if notice is given to the parties of the person consulted and the substance of the advice, and the parties are afforded a reasonable opportunity to respond.

Commentary

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted, but does not preclude a judge from consulting with other judges or with other subordinate personnel whose function is to aid the judges in carrying out adjudicative responsibilities. An appropriate procedure for a judge to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

(5) An administrative law judge should dispose promptly of the business before the judge.

Commentary

Prompt disposition of the judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants and their lawyers cooperate with the judge to that end.

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

Commentary

"Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the Model Code of Professional Responsibility and by Rule 3.6 of the Model Rules of Professional Conduct. This subsection is not intended to preclude participation in an association of judges merely because such an association makes public comments about a pending or impending proceeding in an agency where the judge serves. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge in an agency where the commenting judge serves.

(7) A judge should prohibit broadcasting, televising, recording or photographing in hearing rooms and areas immediately adjacent thereto during sessions of court, or recesses between sessions, except that under rules prescribed by an appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of proceedings in hearing rooms and areas immediately adjacent thereto consistent with the right of the parties to a fair trial and subject to express conditions, limitations, and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the trial participants, and will not otherwise interfere with the administration of justice.

B. Administrative Responsibilities

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

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

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

Commentary

Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

C. Disqualification

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

(a) the judge has a personal bias or prejudice concerning the proceeding;

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

Commentary

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection.

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

(d) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

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

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

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

Commentary

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require the judge's disqualification.

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

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

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

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

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

Commentary

According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if the judge's or his or her spouse's father, grandfather, uncle, brother, or niece's husband were a party or lawyer in the proceeding but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

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

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

(i) ownership in a mutual or common investment fund that holds securities is not a "financial inter-

est" in such securities unless the judge participates in the management of the fund;

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

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

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

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

Commentary

Canon 3C is derived, without substantial modification, from 28 U.S.C. 455, as amended in 1974.

D. Remittal of Disqualification

An administrative law judge disqualified by the means of Canon 3C(1)(c), except in the circumstances specifically set out in subsections (a) through (e), may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

Commentary

Canon 3D is derived from the ABA Model Code with amendments conforming to 28 USC 455. The procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his or her party's consent will be subsequently filed.

CANON 4

An Administrative Law Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

An administrative law judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so doubt is not cast on the capacity to decide impartially any issue that may come before the judge:

A. Speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. May appear at a public hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official, unless otherwise prohibited by law.

Commentary

Canon 4B of the Model ABA Code was modified to permit judges to appear at public hearings and consult with executive and legislative bodies and officials, if not prohibited by law, e.g. the Hatch Act, and no doubt is cast on the judge's ability to decide impartially any issue that may come before him or her.

C. May serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fundraising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

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

Extra-judicial activities are governed by Canon 5.

CANON 5

**An Administrative Law Judge Should
Regulate His or Her Extra-Judicial
Activities to Minimize the
Risk of Conflict with Judicial Duties**

A. Avocational Activities

An administrative law judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the society in which he or she lives.

B. Civic and Charitable Activities

An administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) An administrative law judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings before any agency in which the judge serves.

Commentary

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

(2) An administrative law judge should not use or permit the use of the prestige of the judge's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal, or civic organization, but the judge may be listed as an officer, director, or trustee of such an organization. The judge

should not be a speaker or the guest of honor at an organization's fundraising events, but may attend such events.

Commentary

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

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

Commentary

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. Financial Activities

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

(2) Subject to the requirements of subsection (1), an administrative law judge may hold and manage his or her investments, including real estate, and engage in other remunerative activity.

Commentary

The specific prohibition contained in the Model ABA Code against a judge's service as an officer, director, manager, advisor, or employee of any business (which has sometimes been interpreted to bar such participation in a family business) has been deleted, because the general prohibitions in Canon 5(c)(1) and statutes prohibiting such activities by judges involving agencies where they serve render the specific prohibition somewhat superfluous and because generic prohibition of involvement in a family business was regarded as unnecessary and undesirable.

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

(4) Neither an administrative law judge nor a member of the family residing in the household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) an administrative law judge may accept a gift incident to public testimonial to the judge, books supplied by publishers on a complimentary basis for official use, or an invitation to the judge and his or her spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) an administrative law judge or a member of the family residing in the household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) an administrative law judge or a member of the family residing in the household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have some or are likely to come before the judge, or the gift is otherwise consistent with relevant agency rules and is reported to the extent required by such rules and the Ethics in Government Act of 1978.

Commentary

The ABA Model Code was modified to permit the acceptance of gifts permitted by agency rules.

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

(6) An administrative law judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

Commentary

Canon 3 requires a judge to disqualify himself or herself in any proceeding in which the judge has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his or her judicial duties; Canon 6 requires the judge to report all compensation he or she receives for activities outside the judge's judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his or her financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties.

(7) Information acquired by an administrative law judge in his or her judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

D. Fiduciary Activities

An administrative law judge should not serve as an executor, administrator, trustee, guardian or other fiduciary, if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in an agency in which the judge serves or one under its appellate jurisdiction. While acting as a fiduciary, an administrative law judge is subject to the same restrictions on financial activities that apply to the judge in the judge's personal capacity.

Commentary

A judge's obligation under this Canon and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3). The specific prohibitions contained in the ABA Code against a judge's service as executor, administrator, trustee, guardian or other fiduciary were deleted, because the general prohibition in Canon 5C(1) and 5 D, and statutes regulating conflicting activities in agencies where a judge serves, render such provisions somewhat superfluous, and because generic prohibition of

service in such fiduciary capacities was regarded as unnecessary and undesirable.

E. Arbitration

An administrative law judge should not act as an arbitrator or mediator.

F. Practice of Law

An administrative law judge should not practice law.

G. Extra-judicial Appointments

An administrative law judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters which may come before the judge.

Commentary

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

CANON 6

**An Administrative Law Judge Should
Limit Compensation Received for
Quasi-Judicial and Extra-Judicial Activities**

An administrative law judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the judge's

judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation

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

B. Expense Reimbursement

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

Commentary

Canon 6(c) ("Public Reports") was deleted because an administrative law judge must comply with the Ethics in Government Act provisions concerning filing public financial reports.

CANON 7

**An Administrative Law Judge Should Refrain
from Political Activity Inappropriate
to the Judicial Office**

A. Political Conduct in General

(1) An administrative law judge should not solicit funds for or pay an assessment to a political organization or candidate.

Commentary

Prohibitions in the ABA Code were deleted which were considered to be inappropriately and unnecessarily more restrictive than the Hatch Act provisions applicable to administrative law judges.

(2) An administrative law judge should resign from office when the judge becomes a candidate either in a party primary or in a general election except that the judge may continue to hold office, while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.

(3) An administrative law judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Compliance with the Code of Judicial Conduct

Anyone who is appointed as an administrative law judge under 5 USC section 3105 is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

Commentary

The ABA Code was changed so that the Model Code would apply fully to part-time, pro tempore, and retired judges.

Effective Date of Compliance

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

Commentary

Exceptions in the ABA Model Code were deleted which were rendered superfluous by changes in Canons 5 C and D.