

**OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF NORTH DAKOTA**

Deskbook Section _____

TITLE: CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES

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1. Preface.

A. The director of the office of administrative hearings has elected to establish a code of judicial conduct for administrative law judges. See Section 2 for applicability. This code is included as part of the deskbook of the office of administrative hearings.

B. The bases for this code are the Model Code of Judicial Conduct for Federal Administrative Law Judges, the Model Code of Judicial Conduct for Administrative Law Judges of State Central Panels, A Model Code of Judicial Conduct for State Administrative Law Judges drafted by the American Bar Association National Conference of Administrative Law Judges, the Model Code of Judicial Conduct for State Administrative Law Judges adopted by the Board Governors of the National Association of Administrative Law Judges, the Maryland Code of Judicial Conduct for Administrative Law Judges at the Maryland Office of Administrative Hearings, and the North Dakota Code of Judicial Conduct. These other codes together provide a broad view of standards for ethical conduct of administrative law judges. These other codes have been carefully considered and portions incorporated into this code where appropriate. Some modifications to incorporated portions were made to ensure conformity with state law and the policy of the office of administrative hearings.

C. The code consists of seven canons (sections 4 through 10). The preface section, the applicability section, and the definitions section, are not canons. The applicability section states who is subject to the canon's provisions. The definitions section defines some of the terms used in the canons.

D. Each canon itself is the title to one of seven sections. Then, the section itself contains the explanation of the canon which is followed by a commentary containing further explanation. The canons and sections 4 through 10, along with the definitions and applicability sections, are authoritative. Commentary is not intended as a statement of additional rules. Commentary is made to provide, by explanation and example, more detailed guidance about the applicability of specific sections, or parts

thereof, and to further facilitate an understanding of and use of the code. Some of the canons, their explanation, or the commentary may contain references to other applicable statutes and rules regarding the conduct or activity of administrative law judges as state employees or as administrative law judges. In addition to complying with this code, administrative law judges must also comply with other applicable statutes and rules governing the conduct and activity of state employees and administrative law judges. Each administrative law judge is responsible for knowledge of and compliance with all other applicable laws.

2. Applicability - Compliance with Code of Judicial Conduct.

A. Anyone who is designated or appointed to serve as an administrative law judge for the office of administrative hearings is subject to this code, including both full-time administrative law judges employed by the office of administrative hearings and temporary, contract administrative law judges. This code is a policy of the office of administrative hearings. Violations of this code, as reasonably interpreted by the director of the office of administrative hearings, or other persons authorized to interpret this code, may be a basis for disciplinary action against an administrative law judge, termination of a contract for the provision of administrative law judge services, or cessation of designations or appointments as an administrative law judge. The code is not designed or intended as a basis for civil liability or criminal prosecution.

B. This code is to be construed so as not to impinge on the essential independence of administrative law judges in making judicial decisions. Although the text of the canons and sections is intended to govern conduct of administrative law judges and to be binding upon them, it is not intended that every transgression will

result in disciplinary action, or termination of a contract or cessation of designations or appointments. Whether disciplinary or other action is appropriate, and the degree of discipline to be imposed or of other action to be taken, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

C. All the rules of this code are rules of reason. See, e.g., section 3, subsection M regarding the meaning of the term “require” in this context.

3. Definitions.

A. “Appropriate authority” means the authority with responsibility for initiating disciplinary proceedings with respect to the violation to be reported.

B. “*De minimis*” means an insignificant interest that could not raise a reasonable question as to a judge’s impartiality.

C. “Code” means the code of judicial conduct of the office of administrative hearings, state of North Dakota.

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

- (1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (2) service by a judge as an officer, director, advisor, or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge’s spouse, parent, or child as an officer, director, advisor, or other active

participant in any such organization does not create an economic interest in securities held by that organization;

- (3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;
- (4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

E. “Fiduciary” means such relationships as executor, administrator, trustee, and guardian.

F. “Judge” means administrative law judge. Although the terms “judge” and “administrative law judge” are not otherwise necessarily synonymous, for purposes of this code they are synonymous. Similarly, the term “judicial” or “judiciary” means, for the purpose of this code, belonging to or referring to the office of an administrative law judge.

G. “Knowingly,” “knowledge,” “known,” or “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from facts and circumstances.

H. “Law” means constitutional provisions, statutes, rules, and decisional law.

I. “May” means permissible discretion or, depending upon the context, refers to action which is not covered by specific proscriptions.

J. “Member of the judge’s family” or “family member” means a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge

maintains a close familial relationship or who may reasonably appear to others to be a member of the judge's family.

K. "Member of the judge's family residing in the judge's household" means not only any relative of a judge by blood or marriage, but also any person who is treated by the judge as a member of the judge's family, who resides in the judge's home.

L. "Nonpublic information" means information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is specifically made confidential by statute or rule, or sealed by court or agency order, communicated in camera to the administrative law judge, or otherwise not available under any provision of N.D.C.C. ch. 44-04.

M. "Require." Any rule prescribing that an administrative law judge "require" certain conduct of others is a rule of reason. The use of the term "require" in this context means an administrative law judge is to exercise reasonable discretion and control over the conduct of those persons subject to the administrative law judge's direction and control.

N. "Shall" or "shall not" means indication of a binding obligation the violation of which can result in disciplinary action.

O. "Should" or "should not" is intended as hortatory and as a statement of what is or is not appropriate conduct, but does not mean indication of a binding rule under which a judge may be disciplined.

P. "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

4. Canon 1 - An Administrative Law Judge Shall Uphold the Integrity and Independence of the Administrative Judiciary.

An independent and honorable administrative judiciary is indispensable to justice in our society. An administrative law judge shall participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved.

COMMENTARY - Canon 1.

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

5. Canon 2 - An Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities.

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

B. An administrative law judge shall not allow family, social, political, or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance private interest, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

C. An administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or disability.

COMMENTARY - Canon 2.

Subsection A:

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 public scrutiny, therefore, a judge must expect and accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practical to list all prohibited acts, the proscription is necessarily cast in general terms that extends to conduct by judges that is harmful although not specifically mentioned in this code. Actual improprieties under this standard include violations of law or specific provisions of this code. The test for appearance of impropriety is whether the conduct would create, in reasonable minds, a perception that the judge's ability to carry out adjudicatory responsibilities with integrity, impartiality, and competence is impaired.

Subsection B:

A judge shall not use the influence of the office to advance the judge's own personal interest or the private interest of others. For example, it would be improper for a judge to use the judge's position to gain a personal advantage, such as preferential treatment by an administrative agency to facilitate the disposition of a matter to gain a personal advantage.

Although a judge should be sensitive to potential abuse of office, a judge may, with careful consideration of the appearance of the circumstances and based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

This subsection does not afford the judge a privilege against testifying in response to an official summons or subpoena.

Subsection C:

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions 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, selection of members, and other relevant factors.

6. Canon 3 - An Administrative Law Judge Shall Perform the Duties of the Office Impartially and Diligently.

A. 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) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

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

(3) A judge shall require order and decorum in proceedings before the judge.

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

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including, but not limited to, bias or prejudice based upon race, sex, religion,

national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff members, lawyers, and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This subdivision does not preclude legitimate advocacy by counsel when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer or representative, the right to be heard according to law. However, a judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(8) Ex parte communications to and by a judge are subject to the provisions of § 28-32-12.1 of the North Dakota Century Code.

(9) A judge shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. A judge shall require similar abstention on the part of staff members subject to the judge's direction and control. This subdivision does not apply to proceedings in which the judge is a litigant in a personal capacity.

(10) Judges shall permit broadcasting, televising, recording, or photographing in hearing rooms, subject to the provisions of § 98-02-03-04 of the Uniform Rules of Administrative Procedure for Adjudicative Proceedings.

(11) A judge shall not disclose or use for any purpose unrelated to adjudicatory duties, nonpublic information acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge assigned administrative responsibilities, without bias or prejudice, and maintain professional competence in judicial administration, and shall cooperate with other judges and staff in the administration of the business of the office of administrative hearings.

(2) A judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge, and to perform their official duties without bias or prejudice.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other adjudicatory responsibilities.

D. Disciplinary Responsibility.

(1) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge having knowledge that a lawyer has committed a violation of the North Dakota Rules of Professional Conduct that raises a substantial question as to the

lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

E. Disqualification.

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

- (a) the judge has a personal bias or prejudice concerning the proceeding;
- (b) the judge served or serves as a lawyer in the matter in controversy;
- (c) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter in controversy;
- (d) a lawyer with whom the judge currently practices law serves or served as a lawyer in the matter in controversy;
- (e) the judge has been a material witness concerning the matter in controversy;
- (f) the judge has served in government employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the proceeding;
- (g) the judge knows that he or she, individually or as a fiduciary, or his or her spouse, parent or child, or other family member has an economic interest in the subject matter in controversy or is a party to the proceeding, or has any other interest of more than a *de minimis* nature that could be substantially affected by the proceeding;

- (h) the judge knows that he or she, individually, or his or her 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;
 - (iii) is known by the judge to have more than a *de minimis* interest to 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 shall keep informed about the judge's personal and economic interests, and make a reasonable effort to keep informed about the personal and economic interest of the judge's spouse and minor children residing in the judge's household.

F. Remittal Of Disqualification.

A judge disqualified by any of the provisions of this section, may disclose on the record the basis of the disqualification. Following disclosure by the judge, if there exists any basis for disqualification other than personal bias or prejudice concerning the parties and lawyers, the parties and lawyers, independently of the judge's participation, may all agree that the judge should not be disqualified and may participate in the proceeding. If the judge is then willing to participate, the judge shall participate in the proceeding, pursuant to an agreement which shall be incorporated into the record of the proceeding.

COMMENTARY - Canon 3.

Subsection B, Subdivisions (1)-(4):

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.

Subsection B, Subdivision (5):

A judge must perform judicial duties impartially and fairly. A judge 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 lawyers in the proceeding, the media, and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

Subsection B, Subdivision (7):

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

Subsection B, Subdivision (9):

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any period of consideration by an administrative agency, during any appellate process and until final disposition of the matter. This subdivision does not prohibit judges from making public comments in the course of their official duties or from explaining to members of the public the hearing procedures of the agency. This subdivision is not intended to preclude participation in an association of administrative law judges merely because such an

association makes public comments about pending or impending proceedings before the office of administrative hearings.

Subsection C, Subdivision (3):

This subdivision emphasizes the responsibilities of supervisory judges to require the prompt disposition of agency business. Reasonable measures may include direct communication with the judge, referring the judge for further training or for appropriate treatment programs, or referring the judge for professional counseling.

Subsection D:

Subsection 3 requires judges to report to the appropriate disciplinary authority, significant misconduct of other judges or lawyers, thus diminishing the number of instances in which the judges take upon themselves to impose sanctions for misconduct.

Subsection E, Subdivision (1), Paragraphs (a) - (f):

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

Subsection E, Subdivision (1), Paragraph (g) and (h):

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 subsection E, subdivision 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 subsection E, subdivision 1, paragraphs g and h, may require the judge's disqualification.

Subsection F:

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek, or hear comments on possible remittal or waiver of the disqualification, unless the lawyers jointly propose remittal after consultation as provided in this subsection. A party must act

through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, the judge may wish to have all parties and their lawyers sign a remittal agreement. Although the remittal procedure is designed to permit a case to move forward with the consent of the parties, the judge, nevertheless, may be required to disqualify himself or herself under circumstances where the judge's involvement is prohibited under other law.

7. 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 may engage in activities to improve the law, the legal system, and the administration of justice, if in doing so reasonable doubt is not cast on the capacity to decide impartially an issue that may come before the judge, the activity does not demean the judicial office, or the activity does not interfere with the proper performance of judicial duties. Such activities may include speaking, writing, lecturing, teaching, and participating in other activities concerning the law, the legal system, and the administration of justice; appearing at a public hearing before an executive or legislative body or official and otherwise consulting with an executive or legislative body or official, unless otherwise prohibited by law; and serving as a member, officer, or director of a private or public organization devoted to the improvement of the law, the legal system, or the administration of justice.

COMMENTARY - Canon 4.

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. However, a judge should avoid contact with any organization or participation in any activity in which the judge may be asked to provide views on issues which may be litigated before the judge.

8. Canon 5 - An Administrative Law Judge Should Regulate Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties.

A. Extra-Judicial Duties In General.

A judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office, or interfere with the proper performance of judicial duties.

B. Avocational Activities.

A judge may write, lecture, teach, and speak on extra-judicial subjects and may participate in or engage in other extra-judicial activities, such as the arts, sports, and other social and recreational activities.

C. Civic and Charitable Activities.

A judge may participate in civic and charitable extra-judicial activities. A judge may serve as and be listed 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) A judge shall not use or permit the use of the prestige of the judge's office in public fund-raising activities.

(2) A judge should not serve if it is likely that such an organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adjudicative proceedings before any agency for which the judge serves.

D. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on impartiality, demean the judicial office, interfere with the proper

performance of judicial duties, exploit the judge's judicial position, or involve the judge in frequent transactions or continuing business relationships with lawyers or persons likely to come before the agency for which the judge serves.

(2) Subject to the requirements of subsection D, subdivision (1), a judge may hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity, unless otherwise prohibited by law.

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

(4) A judge shall not accept, and members of the judge's family residing in the household of the judge should not accept a gift, bequest, favor, or loan from anyone except:

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

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

- (c) ordinary social hospitality;
- (d) a gift from a relative or friend for a special occasion, such as a wedding or engagement gift, or an anniversary or birthday gift;
- (e) a loan from a lending institution in its regular course of business upon the same terms generally available to persons who are not judges;
- (f) a scholarship or fellowship awarded on the same terms applied to other applicants;
- (g) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a matter would in any event require disqualification under section 6, subsection E;
- (h) any other gift, bequest, favor, or loan only if the donor is not a party or other person who has come or is likely to come, or whose interests have come or are likely to come, before the judge, and a gift is not otherwise prohibited by law.

(5) A judge is not required by this code to disclose income, debts, or investments, except as may be provided in sections 6, 8, and 9.

(6) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

E. Fiduciary Activities.

A judge should not serve as an executor, administrator, or other personal representative, trustee, guardian, attorney in fact, 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 before an agency which the judge serves. While acting as a fiduciary, the judge is subject to the same restrictions on financial activities that apply to the judge in the judge's personal capacity.

F. Arbitration And Mediation.

A full-time administrative law judge employed by the office of administrative hearings may act as an arbitrator or mediator only for that office, but shall not act as an arbitrator or mediator in the same proceeding in which the judge serves as the judge. A temporary, contract administrative law judge may act as an arbitrator or mediator, but shall not act as an arbitrator or mediator in the same proceeding in which the judge serves as judge.

G. Practice of Law.

A full-time administrative law judge employed by the office of administrative hearings shall not practice law. A temporary, contract administrative law judge may engage in the practice of law, but shall not represent a client in any matter which

involves or is likely to involve any agency for which the judge serves or has recently served. The agency for which the judge serves may waive this restriction on temporary, contract administrative law judges. Also, even though a judge may be disqualified under the provisions of this subsection, he or she may participate in the proceedings under the remittal of disqualification provisions of subsection F of section 6. A judge may act pro se and may, without compensation, give legal advice to and draft and review documents for a member of the judge's family.

H. Extra-Judicial Appointments.

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

COMMENTARY - Canon 5.

Subsection B:

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 the judge lives. However, a judge must be mindful that a judge's conduct and associations reflect upon the office and affect the public confidence in the office.

Subsection C, Subdivisions (1) and (2):

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly examine the activities of the organization with which the judge is affiliated to determine if it is proper to continue a relationship with it.

This subsection is not intended to discourage participation in the identified organizations or preclude the use of a judge's name on stationery or other material used to solicit contributions, provided the judge's name is in no way selectively emphasized.

Paragraph D, Subdivision (4), Paragraph (h):

This paragraph prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the client's interests have come or are likely to come before the judge.

Financial Matters, Canons 3, 5, and 6 Compared:

Section 6 (Canon 3) requires a judge to disqualify himself or herself in any proceeding in which the judge has a financial interest, however small. Section 8 (Canon 5) requires a judge to refrain from engaging in business and financial activities that might interfere with the impartial performance of judicial duties. Section 9 (Canon 6) allows a judge to receive compensation for activities outside the judge's judicial office under certain circumstances. A judge has the rights of an ordinary citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties.

Subsection E:

A judge's obligation under this section and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of another section of this code.

Subsection G:

This subsection recognizes that temporary, contract administrative law judges are part-time judges who must also be allowed to continue to engage in the private practice of law. Such engagement in the practice of law is permitted provided other provisions of this code are not violated.

Subsection H:

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness in confirming these assignments on judges must be assessed, however, in light of the demands on judicial resources 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 judiciary. However, judges may accept governmental appointments for entities which do not appear before the agency for which they serve.

9. Canon 6 - An Administrative Law Judge Shall Limit Compensation Received for Certain Activities.

An administrative law judge may receive compensation and reimbursement of expenses for 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. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity. Expense reimbursement should be limited to a reasonable per diem or the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

10. Canon 7 - An Administrative Law Judge Shall Refrain from Political Activity Inappropriate to the Judicial Office.

COMMENTARY - Canon 7.

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 North Dakota law applicable to administrative law judges as state employees. Section 44-08-19 of the North Dakota Century Code governs the political activity of public employees. For purposes of this Code, section 44-08-19 applies to full-time administrative law judges employed by the office of administrative hearings and to temporary, contract administrative law judges. However, temporary contract judges are not state employees, and section 44-08-19 applies to them only while they are engaged in the performance of their duties as a judge.