

Workers'

Compensation

Board

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Approved:

M. B. / J. W. M. / A. J. D.
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**CODE OF CONDUCT
FOR
WORKERS' COMPENSATION BOARD ADMINISTRATIVE LAW JUDGES**

**Maintaining the Integrity of the Workers' Compensation Board
Hearings Division.**

1-101 (A) An Administrative Law Judge (ALJ) shall observe high standards of conduct so that the integrity, impartiality and independence of the Hearings Division are preserved, and shall act at all times in a manner that promotes public confidence in the Hearings Division as a part of state government.

(B) An ALJ shall not engage in conduct that reflects adversely on the ALJ's character, competence, temperament or fitness to serve as an ALJ.

(C) An ALJ shall not, in the performance of official duties, by words or conduct, manifest bias or prejudice based upon sex, race, national origin, religion, sexual orientation, marital status, disability, age, or socioeconomic status.

(D) An ALJ shall not allow family, social or other relationships to influence official conduct or judgment.

(E) An ALJ shall not use the position to advance the private interests of the ALJ or any person, nor shall an ALJ convey the impression that anyone has a special influence with the ALJ.

(F) An ALJ shall not testify as a character witness except pursuant to subpoena; however, an ALJ may provide a character or ability reference for a person about whom the ALJ has personal knowledge.

(G) An ALJ shall not hold membership in any organization that the ALJ knows is a discriminatory organization. For purposes of this rule, "discriminatory organization" means an organization that, as a policy or practice and contrary to applicable federal or state law, treats persons less favorably in granting membership privileges, allowing participation or providing services on the basis of sex, race, national origin, religion, sexual orientation, marital status, disability, age or socioeconomic status.

Impartial and Diligent Performance of Official Duties

2-101 An ALJ shall perform diligently all official duties.

2-102(A) An ALJ shall provide to every person who has a legal interest in a proceeding, and to that person's lawyer, the right to be heard according to law.

(B) An ALJ shall not communicate ex parte, or cause another to communicate ex parte, with a party or a party's representative about any substantive matters or issues on the merits in an adversary proceeding outside the course of the proceeding, except with the consent of the parties or as expressly authorized by law or permitted by this rule.

(C) An ALJ may communicate ex parte when circumstances require for scheduling administrative purposes or emergencies that do not deal with substantive matters or issues on the merits, provided that the ALJ reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

(D) An ALJ shall promptly disclose to the parties any communication prohibited by this rule. The disclosure shall identify the person with whom the communication occurred and the substance of the communication and the ALJ shall give the parties a reasonable opportunity to respond to the information disclosed.

Revision 6/23/99: Language changes in (B) make it clear that it is only ex parte communications which are prohibited outside of the proceeding. This change in the language clarifies that it is only the party or the representative of a party with whom ex parte communications are prohibited. "Lawyer" has been changed to "representative" because non-lawyers may represent parties in expedited hearings and in safety hearings.

Language changes in (D) clarify that it is the communications which are prohibited which should be disclosed, as is currently required by the APA. As previously written, the rule required disclosure of communications which are not improper: e.g., discussions among ALJs as to the interpretation or application of laws and rules; seminars in which statutes or rules are interpreted.

(E) This rule does not apply where the ALJ is acting as a mediator.

2-103 An ALJ shall not, while a proceeding is pending in any forum within the ALJ's jurisdiction, make any public comment that might reasonably be expected to affect the outcome or impair the fairness of the proceeding. This rule shall not prohibit an ALJ from making public statements in the course of official duties, from explaining for public information the procedures of the forum, from establishing a defense to a criminal charge or civil claim against the ALJ, or from otherwise responding to allegations concerning the ALJ's conduct in the proceeding.

2-104(A) An ALJ possessing unprivileged knowledge that another ALJ or a lawyer has committed a violation of the Code of Conduct of the Workers' Compensation Board or of the Oregon State Bar's Code of Professional Conduct or of a law that raises a substantial question as to that individual's honesty, trustworthiness or fitness as an ALJ or lawyer shall inform the Presiding ALJ, the Workers' Compensation Board, or the Oregon State Bar Disciplinary Counsel, as appropriate.

(B) An ALJ possessing unprivileged knowledge or evidence concerning another ALJ or lawyer shall reveal that knowledge or evidence on request by the authority empowered to investigate or act upon the conduct.

2-105(A) Except as provided in (C) herein, an ALJ shall disqualify himself or herself in a proceeding in which the ALJ's impartiality reasonably may be questioned, including but not limited to instances when

(1) the ALJ has a bias or prejudice concerning a party, a representative, or any other participant in the proceeding before the ALJ, or has knowledge, obtained from sources outside the proceeding, of disputed evidentiary facts concerning the proceeding;

(2) the ALJ served as a lawyer in the matter in controversy, or a lawyer with whom the ALJ previously was associated served during the period of association as a lawyer in the matter, or the ALJ or the lawyer has been a material witness in the matter;

(3) the ALJ knows that the ALJ, individually or as a fiduciary, or the ALJ's spouse, parent or child, wherever residing, or any other person residing in the ALJ's household has a financial interest in the subject matter in controversy, is a party to the proceeding or has any other interest that could be substantially affected by the outcome of the proceeding;

(4) the ALJ, the ALJ's spouse, parent or child wherever residing, or any other person residing in the ALJ's household

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

(b) is acting as a lawyer in the proceeding; or

(c) is, to the ALJ's knowledge, likely to be a material witness in the proceeding.

(B) For purposes of this rule

(1) "fiduciary" includes relationships such as personal representative, trustee, conservator and guardian;

(2) "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

(a) ownership in a mutual or common investment fund that owns securities is not a "financial interest" unless the ALJ participates in the management of the fund;

(b) holding an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in property of the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company, a depositor in 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; and

(d) 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.

(C) An ALJ who may be disqualified under this rule may, rather than withdraw from the proceeding, disclose to the parties the basis of the disqualification. If, after such disclosure, the parties all agree in writing or on the record that the ALJ's relationship is immaterial or that the ALJ's financial interest is insubstantial, or that the ALJ's impartiality cannot reasonably be questioned because of the basis of the potential disqualification, the ALJ may participate in the proceeding. Any writing, signed by or on behalf of all parties, shall be incorporated in the record of the proceeding; or in the case of a mediation, any such writing shall be made part of the ALJ's mediation file.

2-106 An ALJ shall be faithful to the law and shall decide matters on the basis of the facts and applicable law.

2-107 An ALJ shall not be swayed by partisan interests, public clamor or fear of criticism.

2-108 An ALJ shall maintain order and decorum in proceedings before the ALJ.

2-109 (A) An ALJ shall be patient, respectful, dignified and courteous to litigants, witnesses, lawyers, Board personnel and members of the public.

(B) An ALJ shall not act in a way that the ALJ knows, or reasonably should know, would be perceived by a reasonable person as biased or prejudiced toward any of the litigants, witnesses, lawyers or members of the public.

(C) An ALJ shall take all possible measures to ensure that lawyers and Board personnel involved in proceedings before the ALJ act in accord with the principles embodied in paragraphs (A) and (B) of this rule.

D) Paragraphs (B) and (C) of this rule do not preclude consideration or advocacy of any issue relevant to the proceeding.

Minimizing the Risk of Conflict with Official Obligations

3-101 An ALJ shall not serve as an officer, director, trustee or advisor of a private or public corporation or of an educational, religious, charitable, fraternal, political or civic organization if the corporation or organization recurrently participates in proceedings that would ordinarily come before the ALJ.

3-102 An ALJ shall not use his or her official position to solicit funds for any private or public corporation or for any educational, religious, charitable, fraternal, political or civic organization or permit the use of the prestige of the office for that purpose, but may be an officer, director or trustee of such an organization. This rule does not prohibit an ALJ from assisting an organization or governmental agency devoted to improvement of the law, legal education, the legal system, or the administration of justice in raising, managing or investing funds nor does it prohibit the ALJ from making recommendations to public and private granting agencies on projects and programs concerning the law, legal education, the legal system, and the administration of justice.

3-103 Nonpublic information acquired by an ALJ in an official capacity shall not be used or disclosed for any purpose not related to official duties.

Political Activity by an Administrative Law Judge

4-101(A) An ALJ shall not, in his or her official capacity as an ALJ, (1) make a public statement, (2) contribute or solicit funds, services or property, or (3) lend his name, for the promotion or influence of the adoption, passage or defeat of laws, rules or policies under the Workers' Compensation Law or Oregon Safe Employment Act or other matters under the jurisdiction of the Workers' Compensation Board. This rule does not apply to statements, solicited or unsolicited, made by an ALJ to the Board or its managers.

Clarification 9/23/98: Official capacity is defined by the Board as those duties and responsibilities described in the ALJ's position description.

(B) An ALJ shall follow all other laws, rules and policies governing political activities of the employees of the executive branch of government.