

10 000 002. GENERAL RULE FOR EXECUTIVE BRANCH ADMINISTRATIVE HEARING OFFICERS

This General Rule is intended to establish standards for ethical conduct of hearing officers, and guidelines and oversight for administrative hearing officers in the Executive Branch. It consists of a Code of Conduct containing broad statements called Canons, specific rules set forth in Sections under each Canon; and Agency Procedure Guidelines, Application, and Terminology Sections. The text of the Canons and the Sections, including the Application and Terminology Sections, is authoritative.

CODE FOR ADMINISTRATIVE HEARING OFFICERS

Preamble.

The Executive Branch administrative law system is based on the principle that independent, fair, and competent hearing officers will interpret and apply applicable laws consistent with American concepts of justice. Intrinsic to all sections of this Code are the precepts that hearing officers, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in the Executive Branch administrative law system.

This Code is not intended as an exhaustive guide for the conduct of hearing officers, but describes the standards of professionalism that every hearing officer should strive to achieve. It does not supersede state law, collective bargaining agreement, or performance expectations of management, and should be applied consistent with constitutional requirements, statutes, administrative rules and decisional law and in the context of all relevant circumstances.

Except where modified, this Code follows the language of the Model Code of Judicial Conduct for State Administrative Law Judges developed by the National Association of Administrative Law Judiciary.

Canon 1. A Hearing Officer Shall Uphold the Integrity and Independence of the Administrative Hearing Process.

1-101. A hearing officer shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards of conduct so that the integrity and independence of the administrative hearing process will be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. A Hearing Officer Shall Avoid Impropriety and the Appearance of Impropriety in all Activities.

2-101. A hearing officer shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the administrative process.

2-102. A hearing officer shall not allow financial interests, or family, social, political or other relationships to influence the officer's official conduct or judgment. A hearing officer shall not lend the prestige of the office to advance the private interests of the hearing officer or others, nor convey or permit others to convey the impression that they are in a special position of influence.

Canon 3. A Hearing Officer Shall Uphold the Integrity and Impartiality of the Administrative Hearings Process.

3-101. ADJUDICATIVE RESPONSIBILITIES

A. A hearing officer shall accord to all persons who are legally interested in a proceeding, and/or their representatives, the right to be heard according to law. A hearing officer shall not initiate, permit or consider ex parte communications or consider other communications made to the hearing officer outside the presence of the parties concerning a pending or impending proceeding except that:

1. Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not involve substantive matters or issues on the merits are authorized, provided:
 - i. the hearing officer reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
 - ii. the hearing officer makes provisions promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
2. A hearing officer may obtain the advice of a disinterested expert on the law applicable to the proceeding before the hearing officer if the hearing officer gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
3. A hearing officer may consult other hearing officers and support personnel whose function is to aid the hearing officer in carrying out adjudicative responsibilities.
4. A hearing officer may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the hearing officer.
5. A hearing officer may initiate or consider any ex parte communications when expressly authorized by law to do so.

B. A hearing officer shall perform official administrative duties without bias or prejudice. A hearing officer shall not, in the performance of administrative 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, gender, gender identity, sexual orientation or socioeconomic status.

C. A hearing officer shall not be swayed by partisan interests, public clamor or fear of criticism.

D. A hearing officer shall not disclose or use, for any purpose unrelated to administrative duties, nonpublic information acquired in an official capacity.

3-102. DISQUALIFICATION

A. A hearing officer shall disqualify himself or herself in any proceeding in which the hearing officer's impartiality might reasonably be questioned, including but not limited to instances where:

1. the hearing officer may have a personal bias or prejudice concerning a party or a party's lawyer or other representative involved in the proceeding.
2. the hearing officer served as a representative in the matter in controversy; or has been a material witness concerning the matter; or has participated as counsel, adviser or material witness concerning the proceeding, or expressed an opinion concerning the merits of the particular case in controversy.
3. the hearing officer, individually or as a fiduciary, or the hearing officer's spouse, domestic or civil union partner, minor child, or other member of a hearing officer's household has a more than de minimis financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be significantly affected by the outcome of the proceeding.
4. the hearing officer or the hearing officer's spouse, domestic or civil union partner, minor child, or other member of a hearing officer's household is a party to the proceeding or acting as a representative in the proceeding, or is known by the hearing officer to have an interest that could be substantially affected by the outcome of the proceeding.

B. Hearing officers should be aware of their personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of their spouse and minor children residing in the hearing officers' households. The burden is on the hearing officer to be aware of actual, potential or the appearance situations that could compromise their impartiality.

C. A hearing officer is not required to withdraw from a proceeding if the hearing officer's impartiality is challenged solely on the basis that the hearing officer is employed by an agency or department that is appearing in the proceeding.

3-103. DISCLOSURE AND REMITTAL OF DISQUALIFICATION

A hearing officer has an obligation to recuse himself or herself from a proceeding if a conflict as described in 3-102 exists. Alternatively, instead of withdrawing from the proceeding, a hearing officer may disclose to the parties on the record the basis of the conflict. If, following disclosure of any basis for disqualification, the parties and representatives, independently of the hearing officer's participation, all agree that the

hearing officer should not be disqualified, and the hearing officer is willing, the hearing officer may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Canon 4. A Hearing Officer Shall Regulate the Officer's Extra-Administrative Activities to Minimize the Risk of Conflict with Administrative Duties.

4-101. EXTRA-ADMINISTRATIVE ACTIVITIES IN GENERAL

A. A hearing officer is prohibited from engaging in outside employment or activities which cause a conflict of interest, a lack of impartiality, or the perception thereof.

B. A hearing officer may participate in civic and charitable activities that do not reflect - adversely upon impartiality or interfere with the performance of administrative duties. A hearing officer may serve as an officer, director, trustee or 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 hearing officer should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the hearing officer or will be regularly engaged in adversary proceedings before any agency in which the hearing officer serves.
2. A hearing officer should not use or permit the use of the prestige of the hearing officer's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal or civic organization, but the hearing officer may be listed as an officer, director or trustee of such an organization.

4-102. FINANCIAL ACTIVITIES

A. A hearing officer shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of administrative duties, or may reasonably be perceived to exploit the hearing officer's official position.

B. A hearing officer shall not accept, and shall urge members of the hearing officer's family residing in the hearing officer's household not to accept, a gift, bequest, favor, or loan from any person or entity that has interests that may be substantially affected by the performance of the hearing officer's official duties. This prohibition does not include:

1. ordinary social hospitality;
2. a gift, bequest, favor, or loan from a relative or close personal friend, if the gift, bequest, favor, or loan is fairly commensurate with the occasion and the relationship;
3. a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not hearing officers, or a

scholarship or fellowship awarded on the same terms applied to other applicants;
or

4. any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the hearing officer, or the gift is otherwise consistent with relevant agency rules and is reported to the extent required by such rules and other applicable laws.

4-103. FIDUCIARY ACTIVITIES.

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

Agency Procedure Guidelines.

5-101. All State departments/agencies that employ a hearing officer to whom the above Code of Conduct applies shall make this Code readily accessible to the public and to parties in proceedings presided over by a hearing officer.

5-102. All State departments/agencies that employ a hearing officer to whom the above Code of Conduct applies shall designate procedures for the receipt, consideration, and determination of complaints about the conduct of hearing officers, and these procedures shall be provided to all parties in a proceeding presided over by a hearing officer. Such procedures shall allow for the filing of hearing officer conduct complaints with the head of the relevant agency, board, or tribunal, and shall provide a review process with agency counsel not appearing before the hearing officer in question.

5-103. All State departments/agencies that employ a hearing officer to whom the above Code of Conduct applies shall ensure that all parties in a proceeding presided over by a hearing officer are provided with a copy of the rules of procedure that apply to the proceedings. The rules of procedure shall prominently and specifically describe any appeal rights a party has and the procedure for filing an appeal.

Application.

6-101. Any full-time employee of the Executive Branch of the State of Vermont whose exclusive job duty is to resolve contested cases when a decision of an Executive Branch agency is challenged shall abide by this Rule.

6-102. This Rule shall take effect July 1, 2017. All persons to whom this Rule becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Terminology.

7-101. For the purposes of this Code, the following words or phrases shall have the following meanings:

A. "De minimis" denotes an insignificant interest that could not raise reasonable question as to a hearing officer's impartiality.

C. "Fiduciary" includes such relationships as executor, administrator, trustee and guardian.

D. "Financial interest" means ownership of more than a de minimis legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

1. ownership of government securities or in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the hearing officer participates in the management of the fund, or a proceeding pending or impending before the hearing officer could substantially affect the value of the interest; and

2. a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, or a similar proprietary interest, is not a financial interest in the organization unless a proceeding pending or impending before the hearing officer could substantially affect the value of the interest.

E. "Hearing officer" refers to a person with the authority to make a ruling when the final decision of an Executive Branch agency is challenged. A hearing officer is charged with articulating agency policy and determining whether it was followed when the agency made the decision being challenged. Similar to a judge, a hearing officer listens to testimony, evaluates evidence, and makes a decision in the matter. A hearing officer is also sometimes referred to as a referee, presiding officer, or administrative law judge.

F. "Law" denotes statutes, administrative rules and regulations, constitutional provisions, and decisional law.

G. "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, juvenile cases or psychiatric reports.

H. "Proceeding" includes pre-hearing or other stages of the administrative hearing process.

Statutory Authority

STATUTORY AUTHORITY:

3 V.S.A. § 221

History

EFFECTIVE DATE:

July 1, 2017 Secretary of State Rule Log #17-003