

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules

Proposed Repeal and New Rule: N.J.A.C. 1:1 Appendix

Authorized By: Lisa James-Beaders, Acting Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-068.

Submit comments by October 5, 2018, to:

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The agency proposal follows:

Summary

The Office of Administrative Law (OAL) is proposing to repeal and replace N.J.A.C. 1:1 Appendix, which would result in the adoption of a new Code of Conduct for Administrative Law Judges (Code). The proposed adoption of a new Code is prompted by the Supreme Court of New Jersey (Supreme Court) having adopted a revised New Jersey Code of Judicial Conduct, effective September 1, 2016, which applies to judges who serve within the judicial branch of State government, as opposed to those, like administrative law judges (ALJs), who serve within the executive branch of State government. A similar rulemaking was proposed and adopted effective January 2, 2018, pertaining to the Code of Conduct for Judges of Compensation by the Department of Labor and Workforce Development (see 49 N.J.R. 2887(a); 50 N.J.R. 201(a)). The existing OAL Code was modeled on the prior New Jersey Code of Judicial Conduct. Consequently, it only follows that with the recent revision of the New Jersey Code of Judicial Conduct, the OAL would update its Code of Conduct for Administrative Law Judges, so as to ensure that ALJs are held to the same exacting standards as are their counterparts in the Judiciary.

Thus, the OAL is proposing the repeal and replacement of N.J.A.C. 1:1 Appendix, which contains the Code of Conduct for Administrative Law Judges, which will be virtually identical to the recently revised New

Jersey Code of Judicial Conduct. As to the nature of the revisions to the New Jersey Code of Judicial Conduct recently made by the Supreme Court, which are reflected in the proposed new Code of Conduct for Administrative Law Judges, the December 12, 2014 letter from Deborah T. Poritz, Chief Justice (Ret.), Chair of the Ad Hoc Committee on the Code of Judicial Conduct to Chief Justice Stuart Rabner is instructive (available online at <https://www.njcourts.gov/courts/assets/supreme/reports/2016/judicialconduct2016.pdf>). In that document, the Committee Chair explained, for example, that in general, the Committee had sought more precisely to describe the conduct prohibited (or permitted) by the rules, adding that language in the Code had been modified, not necessarily to conform to the language found in the American Bar Association (ABA) Model but, rather, to achieve the goals of clarity and specificity, for example, the phrase "in All Activities" at the end of Canon 2 was deleted as too vague. Also, the Chair explained that, consistent with its goal of "certainty," it had unanimously recommended that the word "should" be changed to "shall" in every Canon and Rule where it previously existed, except in Canon 1 as is evident within the revised Code itself. According to the Chair, this recommendation had followed the approach implemented in the revision of the 1990 ABA Model Code and found in the current Model Code.

Specifically regarding format, the Chair stated the following:

The Committee members found that the disciplinary process had become more formal and public over the past several years and concluded, in that context, that the format of our Code could be confusing and that it is sometimes difficult to differentiate between general principles, rules (the violation of which can result in discipline), and interpretive comments. The Committee therefore determined that there is a need for greater specificity in respect of those actions requiring discipline but that aspirational goals found in our current Code should be retained. That approach continues to build on both the bedrock principles under which our current system has operated and the over 30 years of New Jersey precedent interpreting the Canons. Thus, as does the ABA Model Code, the Committee's proposal contains Canons that express general principles of conduct followed by rules that prescribe specific standards of conduct.

The primary difference between the Code of Conduct for Administrative Law Judges and the Code of Judicial Conduct is in Canon 4, which allows for ALJs to "speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of [the] Code," which difference is also in the existing Code of Conduct for Administrative Law Judges proposed for repeal. A similar difference also appears in the new Code of Conduct for Judges of Compensation.

As the Office of Administrative Law has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed repeal and new rule would have a positive social impact in that they would ensure that ALJs are held to the same high standard of conduct as are their counterparts in the Judiciary and the Judges of Compensation. The OAL has always modeled its Code of Conduct for Administrative Law Judges on the New Jersey Code of Judicial Conduct. As explained in the Summary above, with the Supreme Court's revision of the New Jersey Code of Judicial Conduct, it only follows that the OAL would revise its Code of Conduct for Administrative Law Judges accordingly.

Economic Impact

The proposed repeal and new rule would have no economic impact in that the proposed repeal and new rule simply revise the Code of Conduct for Administrative Law Judges, so as to ensure consistency with the New Jersey Code of Judicial Conduct.

Federal Standards Statement

A Federal standards analysis is not required because the proposed repeal and new rule are promulgated in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Jobs Impact

The proposed repeal and new rule will not generate or cause the loss of any jobs.

Agriculture Industry Impact

The proposed repeal and new rule will not impact the agriculture industry.

Regulatory Flexibility Statement

The proposed repeal and new rule impose no reporting, recordkeeping, or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Rather, the proposed repeal and new rule would simply adopt a new Code of Conduct for Administrative Law Judges, none of whom are small businesses as defined under the Regulatory Flexibility Act.

Housing Affordability Impact Analysis

The proposed repeal and new rule will have no impact on housing affordability or average costs associated with housing as they pertain to the Code of Conduct for Administrative Law Judges.

Smart Growth Development Impact Analysis

The proposed repeal and new rule will have no impact on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan as they pertain to the Code of Conduct for Administrative Law Judges.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The OAL has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 1:1 Appendix.

Full text of the proposed new rule follows:

(OAL Note: The text of the new appendix appears with boldface and italics; such symbolization is intended to be a permanent part of the appendix to aid in the readability of the Code.)

APPENDIX

CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES

PREAMBLE

The Code of Judicial Conduct for Administrative Law Judges is intended to establish basic ethical conduct standards for administrative law judges. The Code is intended to govern the conduct of these administrative law judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the New Jersey Code of Judicial Conduct as adopted by the New Jersey Supreme Court, effective September 1, 2016.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to administrative law judges and to provide a structure for regulating conduct.

CANON 1

AN INDEPENDENT AND IMPARTIAL JUDICIARY IS INDISPENSABLE TO JUSTICE. AN ADMINISTRATIVE LAW JUDGE, THEREFORE, SHALL UPHOLD AND SHOULD PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE ADMINISTRATIVE JUDICIARY

RULE 1.1 Independence, Integrity, and Impartiality of the Administrative Judiciary

An administrative law judge shall participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct, so that the integrity, impartiality, and independence of the administrative judiciary is preserved. This Code shall be construed and applied to further these objectives.

RULE 1.2 Compliance with the Law

An administrative law judge shall respect and comply with the law.

Commentary: Violations of this Code, or violations of law or N.J.A.C. 1:1 through 1:31 that reflect adversely on a judge's honesty, impartiality, temperament, or fitness constitute a failure to respect and comply with the law.

CANON 2

AN ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

RULE 2.1 Promoting Confidence in the Administrative Judiciary

An administrative law judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the administrative judiciary, and shall avoid impropriety and the appearance of impropriety.

Commentary: Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by judges. An administrative law judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny. This principle applies to both the professional and personal conduct of an administrative law judge. An administrative law judge must, therefore, accept restrictions on personal conduct that might be

viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Actual impropriety is conduct that reflects adversely on the honesty, impartiality, temperament, or fitness to serve as a judge.

With regard to the judicial conduct of an administrative law judge, an appearance of impropriety is created when a reasonable, fully informed person observing the judge's conduct would have doubts about the judge's impartiality. With regard to the personal conduct of an administrative law judge, an appearance of impropriety is created when an individual who observes the judge's personal conduct has a reasonable basis to doubt the judge's integrity and impartiality.

RULE 2.2 External Influences on Judicial Conduct

Administrative law judges shall decide cases according to the law and facts. Administrative law judges shall not permit family, social, political, financial, or other relationships or interests to influence their judicial conduct or judgment.

RULE 2.3 Use of the Prestige of Judicial Office

(A) An administrative law judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

(B) An administrative law judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Commentary: It is improper for administrative law judges to use or attempt to use their position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for an administrative law judge to allude to his or her judicial status to gain favorable treatment in encounters with others, such as persons in official positions and members of the public.

The Office of Administrative Law has determined that in certain limited situations an administrative law judge may write a letter of recommendation for a current or former law clerk or intern on Office of Administrative Law letterhead; in all other situations, if a letter of recommendation is appropriate, it should be on the administrative law judge's personal stationery. The situations in which the administrative law judge may use the Office of Administrative Law letterhead for letters of recommendation for law clerks or interns are as follows: (a) when the letter is addressed to another state or federal government official (this would include letters regarding subsequent additional clerkships or internships); (b) when the letter is addressed to a law school, university, or college in connection with a possible teaching position for the law clerk or intern; and (c) when a potential employer requests a recommendation.

Administrative law judges may participate in the process of judicial selection or judicial reappointment by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

RULE 2.4 Testifying as a Character Witness

An administrative law judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding, or otherwise vouch for the character of a person in a legal proceeding.

Commentary: An administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the office in support of the party for whom the administrative law judge testifies. Moreover, when an administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. An administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, an administrative law judge should discourage a party from requiring the judge to testify as a character witness.

CANON 3

AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

RULE 3.1 Precedence of Judicial Office

The judicial duties of an administrative law judge shall take precedence over all other activities. Judicial duties include the duties of the office prescribed by law, this Code, N.J.A.C. 1:1 through 1:31, and administrative directive.

RULE 3.2 Competence

An administrative law judge shall maintain professional competence.

Commentary: Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform judges' responsibilities of the office.

RULE 3.3 Judicial Independence

An administrative law judge shall be unswayed by partisan interest, public clamor, or fear of criticism.

Commentary: An administrative law judge shall decide cases without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the Office of Administrative Law is eroded if judicial decision-making is perceived to be subject to outside influences.

RULE 3.4 Decorum

An administrative law judge shall maintain order and decorum in judicial proceedings.

RULE 3.5 Demeanor

An administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the judge deals in an official capacity, and shall not permit lawyers, court officials, and others subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court.

RULE 3.6 Bias and Prejudice

(A) An administrative law judge shall be impartial and shall not discriminate because of race, creed, color, sex, gender identity or expression, religion/religious practices or observances, national origin/nationality, ancestry, language, ethnicity, disability or perceived disability, atypical hereditary cellular or blood trait, genetic information, status as a veteran or disabled veteran of, or liability for service in, the Armed Forces of the United States, age, affectional or sexual orientation, marital status, civil union status, domestic partnership status, socioeconomic status, or political affiliation.

(B) An administrative law judge shall require attorneys in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice on the bases specified in Rule 3.6(A), against parties, witnesses, attorneys, representatives, or others. This section does not preclude legitimate advocacy when the listed bases are issues in or relevant to the proceeding.

(C) An administrative law judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including, but not limited to, bias, prejudice, or harassment on the bases specified in Rule 3.6(A), and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. This section does not preclude reference to the listed bases when they are issues in or relevant to the proceeding.

Commentary: The prohibited bases in this rule are primarily drawn from the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

Examples of manifestations of bias or prejudice include, but are not limited to, epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating, or hostile acts, suggestions of connections between race, ethnicity, or nationality and crime, and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties, representatives, and attorneys in the proceeding, the media,

and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on prohibited bases listed in Rule 3.6(A).

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

RULE 3.7 Ensuring the Right to Be Heard

An administrative law judge shall accord to every person who is legally interested in a proceeding, or to that person's attorney or representative, the right to be heard according to law or court rule.

Commentary: An administrative law judge may make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

RULE 3.8 Ex Parte Communications

Except as authorized by law or N.J.A.C. 1:1 through 1:31, a judge shall not initiate or consider *ex parte* or other communications concerning a pending or impending proceeding.

Commentary: The proscription against communications concerning a proceeding generally includes communications with or from attorneys, representatives, and other persons who are participants in the proceeding. It does not preclude an administrative law judge from consulting with other administrative law judges on pending matters, provided that the judge avoids *ex parte* discussions of a case with judges who have previously been disqualified from hearing the matter, or from consulting with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities.

In general, settlement discussions, discussions regarding scheduling, and an administrative law judge's handling of emergent issues are not considered to constitute *ex parte* communications in violation of this rule.

RULE 3.9 Diligence

An administrative law judge shall dispose promptly of the business of the court.

Commentary: 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 cost or delay. 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 representatives cooperate with the judge to that end.

RULE 3.10 Judicial Statements on Pending and Impending Cases

An administrative law judge shall not publicly comment about a pending or impending proceeding in any court and shall not permit court personnel subject to the judge's direction and control to do so. This rule does not prohibit judges from making public statements in the course of their official duties or from explaining to the public the procedures of agencies.

Commentary: "Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by Rule 3.6 of the Rules of Professional Conduct.

Rule 3.10 is not intended to preclude participation in an association of judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge.

RULE 3.11 Broadcasting

An administrative law judge should permit broadcasting, televising, recording, and the taking of photographs in the courtroom and areas immediately adjacent thereto during sessions of court and during recesses between sessions only in accordance with the guidelines promulgated by the Supreme Court and subject to the restrictions contained therein; except that where there is a conflict between the guidelines promulgated by the Supreme Court

and the provisions of N.J.A.C. 1:1 through 1:31, the provisions of N.J.A.C. 1:1 through 1:31 shall govern.

RULE 3.12 Judicial Administration

An administrative law judge shall diligently discharge the administrative responsibilities of the office without bias or prejudice, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

RULE 3.13 Supervisory Duties

An administrative law judge shall require staff, court officials, and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

RULE 3.14 Responding to Administrative Judicial and Lawyer Misconduct

An administrative law judge has the following disciplinary responsibilities:

(A) An administrative law judge who receives reliable information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. An administrative law 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.

(B) An administrative law judge who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. An administrative law judge having knowledge that a lawyer has committed a violation of the 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. (See also N.J.A.C. 1:1-5.3)

(C) Acts of an administrative law judge in the discharge of disciplinary responsibilities under this rule shall be absolutely privileged.

Commentary: Appropriate action includes notification to the Director/Chief Administrative Law Judge, Deputy Director of the Office of Administrative Law, or Administrative Law Assignment Judge.

RULE 3.15 Disqualification

(A) Administrative law judges shall hear and decide all assigned matters unless disqualification is required by this rule or other law.

(B) Administrative law judges shall disqualify themselves in proceedings in which their impartiality or the appearance of their impartiality might reasonably be questioned, including, but not limited to, the following:

(1) Personal bias, prejudice, or knowledge. Administrative law judges shall disqualify themselves if they have a personal bias or prejudice toward a party or a party's lawyer or have personal knowledge of disputed evidentiary facts involved in the proceeding;

(2) Financial interest. Administrative law judges shall disqualify themselves if they individually or as a fiduciary have a financial interest in an enterprise related to the litigation. Subject to (2)(a)(i), (ii), (iii), and (iv) below, a financial interest means ownership of a legal or equitable interest, however small, or a relationship as director or advisor or other participation in the affairs of a party.

(a) Financial interest does not include:

(i) Ownership of an interest in securities held by a mutual fund or common investment fund, or ownership of securities held in managed funds, provided, in respect of managed funds, that no investment discretion has been retained by the judge or the judge's spouse, civil union partner, or domestic partner;

(ii) Ownership in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge holds an office;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association,

or a similar proprietary interest, unless there is a reasonable possibility that the value of the interest will be affected by the judge's decision; or

(iv) Ownership of an interest in government securities, unless there is a reasonable possibility that the value of the interest will be affected by the judge's decision;

(3) Personal Relationships. Administrative law judges shall disqualify themselves if:

(a) The judge or the judge's spouse, civil union partner, or domestic partner, or a first cousin or more closely related relative to either of them, or the spouse, civil union partner, or domestic partner of such relative, or to the judge's knowledge, a second cousin or related relative to either of them, as defined below, or the spouse, civil union partner, or domestic partner of such relative is a party to the proceeding or is likely to be called as a witness in the proceeding.

(b) The judge or the judge's spouse, civil union partner, or domestic partner, or a first cousin or more closely related relative to either of them, or the spouse, civil union partner, or domestic partner of such relative is a lawyer or representative for a party.

(c) The judge or the judge's spouse, civil union partner, or domestic partner, or any member of the judge's family residing in the judge's household has an interest in the litigation, including among other things, a financial interest, as defined by Rule 3.15(B)(2), in an enterprise related to the litigation.

(d) The administrative law judge has a social relationship with a party, a lawyer for a party, or the representative for a party of a nature that would give rise to partiality or the appearance of partiality;

(4) Prior Professional Relationships. Administrative law judges shall disqualify themselves based on their prior professional relationships as follows:

(a) In proceedings in which the judge served as a lawyer in the matter in controversy or in which the judge has been a witness or may be called as a witness;

(b) In proceedings in which a party was a former private client for whose matter the judge had primary responsibility, disqualification is necessary for a period of seven years following the conclusion of that representation. However, disqualification for a period of time in excess of seven years from the conclusion of the representation may be required in certain circumstances. In making that determination, a judge should consider, among other relevant factors: 1. the scope of the representation, including, but not limited to, the cumulative number of matters handled by the judge, whether a continuous fiduciary relationship existed with the client over an extended period of time, and the length of time that has elapsed since the conclusion of that representation; 2. the duration of the representation; 3. the nature of the representation, including, but not limited to, the acrimonious nature of the underlying litigation and any information acquired about the client as a consequence of that representation that could cast doubt on the judge's impartiality; and 4. in respect of a corporate client, whether the principals of the entity are the same as existed during the representation.

For purposes of this rule, an insurance company that retained the administrative law judge to defend its insureds in tort actions shall not be considered a former client of the judge.

(c) In proceedings in which a party is a governmental entity that previously employed the judge:

(i) for a period of two years following judicial appointment if the judge was employed as a State government attorney, county prosecutor, or assistant county prosecutor; provided, however, that prior employment as a State government attorney with broad supervisory authority shall not disqualify judges who had no actual involvement in the matter while in government service; and

(ii) for a period of five years following judicial appointment if the judge represented a local government entity;

(d) In proceedings in which the judge's former law firm is involved, for a period of at least seven years following termination of

the relationship or until all financial obligations of the law firm to the judge are satisfied, whichever is longer; and/or

(e) In proceedings in which the judge's former law clerk is appearing or has signed papers, for a period of six months following termination of the clerkship;

(5) Post-Retirement Employment. Administrative law judges shall disqualify themselves if the judge has initiated contact about or discussed or negotiated his or her post-retirement employment with any party, attorney, or law firm involved in any matter pending before the judge in which the judge is participating personally and substantially, regardless of whether or not the discussions or negotiations lead to employment of the judge by the party, attorney, or law firm; and/or

(6) Irrespective of the time periods specified in this rule, administrative law judges shall disqualify themselves whenever the nature of the relationship to a party or a lawyer, because of a continuing social relationship or otherwise, would give rise to partiality or the appearance of partiality.

(C) A disqualification required by this rule is not subject to the parties' waiver. The administrative law judge shall, however, disclose to the parties any circumstance not deemed by the judge to require disqualification, but which might be regarded by the parties as affecting the judge's impartiality.

(D) An administrative law judge shall address disqualification or issues of recusal and disqualification promptly upon recognition of grounds that would give rise to partiality or the appearance of partiality.

(E) An administrative law judge shall not be automatically disqualified upon learning that a complaint has been filed against the judge with the Director of the Office of Administrative Law, litigation naming the judge as a party, or any other complaint about the judge by a party. If, however, the judge concludes that there is a reasonable basis to question the court's impartiality, the judge may recuse himself or herself. An administrative law judge shall promptly disclose to the parties to the pending litigation that a complaint has been filed or made.

Commentary: Administrative law judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the Office of Administrative Law, unwarranted disqualification may bring public disfavor to the Office and to the judge personally. The dignity of the Office, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

In determining whether disqualification is necessary, the applicable standard is as follows: Would a reasonable, fully informed person have doubts about the judge's impartiality. DeNike v. Cupo, 196 N.J. 502.

For purposes of this rule, as with New Jersey Court Rule 1:12-1, a "first cousin or more closely related relative" includes first cousin, aunt or uncle, niece or nephew, grandparent, grandchild, child, parent, or sibling. A "second cousin or related relative" includes a second cousin, great aunt or uncle, first cousin once removed (for example, a first cousin's child or a great aunt or uncle's child), great grandparent, or grandniece or grandnephew, or great grandchild. Judges shall keep informed about their personal and fiduciary interests and make reasonable efforts to keep informed about the personal financial interests of their spouse, civil union partner, or domestic partner, and family members residing in the judge's household. "Knowledge" means actual knowledge of the fact in question. However, knowledge may be inferred from the circumstances.

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the administrative law judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (B), or the lawyer-relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (B)(3)(c), the judge's disqualification is required.

In making such a determination, an administrative law judge should consider, among other relevant factors: (1) the degree of relationship between the judge and the relative affiliated with the firm (for example, sister, nephew, nephew's spouse); (2) the closeness of the relationship between the judge and the relative; (3) whether the relative's affiliation with the firm was known to the judge without counsel making the court aware of such affiliation; (4) the size of the law firm the relative is affiliated with; (5) the relative's role in the law firm (for example, owner or equity interest holder, associate, intern); (6) the relative's relationship, if any, to the lawyer in the proceeding; (7) whether the law firm represents a named party to the action as opposed to an entity proceeding (or seeking to proceed) as *amicus curiae*; (8) the timing of the law firm's commencement of participation in the proceeding; (9) whether the law firm is providing its services *pro bono*, if such an arrangement is known by the judge; and (10) the nature of the proceedings.

(Note that this comment addresses only whether a lawyer-relative renders the judge disqualified from hearing all matters involving the law firm with which the relative is affiliated. Nothing in this comment should be read to permit a judge to hear proceedings in which a lawyer in the case is related (as first cousin or closer) to the judge or the judge's spouse, civil union partner, or domestic partner.)

In evaluating whether a judge should be disqualified from proceedings in which a party was a former private client of the judge for a period of time in excess of seven years from the conclusion of the representation, judges should be guided by *DeNike v. Cupo*, 196 N.J. 502.

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this rule; judges formerly employed by governmental agencies, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of the association.

An administrative law judge may not initiate contact about or discuss or negotiate his or her post-retirement employment with any party, attorney, or law firm involved in any matter pending before the judge in which the judge is participating personally and substantially. A matter pending before the judge includes any matter or aspect of a matter that has not been completed, even if only the performance of a ministerial act remains outstanding, such as signing a consent order or a similar order. If the subject is raised in any fashion, the judge must put a halt to the discussion or negotiation at once, rebuff any offer, and disclose what occurred on the record in the presence of all parties and counsel. The judge, all parties, and attorneys on the record should then evaluate objectively whether any further relief is needed.

A judge who engages in post-retirement employment negotiations or discussions while still on the bench with any party, attorney, or law firm that does not have a matter pending before the judge, must do so in a way that minimizes the need for disqualification, does not interfere with the proper performance of the judge's judicial duties, and upholds the integrity of the Office of Administrative Law. A judge should delay starting any such negotiations or discussions until shortly before his or her planned retirement, and should discuss post-retirement employment opportunities with the fewest possible number of prospective employers. A judge should also inform the Director/Chief Judge of the Office of Administrative Law about the post-retirement employment negotiations or discussions to the extent that such negotiations or discussions will interfere with the judge's regular assignments.

A judge should not initiate contact about or discuss or negotiate his or her post-retirement employment with a party, attorney, or law firm that has in the past appeared before the judge until the passage of a reasonable interval of time, so that the judge's impartiality in the handling of the case cannot reasonably be questioned. What is reasonable depends on the circumstances. For instance, it may be that an uncontested matter resolved swiftly by entry of a default judgment; such a circumstance may not call for the passage of a lengthy intervening period of time. Prolonged or particularly acrimonious litigation may caution in favor of a longer delay. Actions likely to result in continuing post-judgment matters would also warrant a lengthier intervening period of time.

The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

The provision in Rule 3.15(C) is designed to avoid the possibility that a party or lawyer will feel coerced into consent.

CANON 4

AN ADMINISTRATIVE LAW JUDGE MAY ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

RULE 4 Activities Related to the Administrative Judicial Function

An administrative law judge, subject to the proper performance of administrative judicial duties, may engage in the following related activities if, in doing so, the administrative law judge does not cast doubt on his or her capacity to decide impartially any issue that may come before the court:

(A) An administrative law judge may speak, write, lecture, and participate in other activities concerning the law, the legal system, and the administration of justice.

(B) An administrative law judge may teach concerning the law, the legal system, and the administration of justice.

(C) An administrative law judge may serve as a member, officer, or director of a nongovernmental organization devoted to the improvement of the law, the legal system, or the administration of justice, but may not assist the organization in raising funds or participate in their management and investment. A full-time judge may participate as a member of a local or state bar association, but may not serve as an officer or trustee, and may only serve on committees of the association subject to such conditions as determined by the Supreme Court.

(D) A judge may encourage lawyers to provide *pro bono* legal services.

Commentary: An administrative law 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 and improvement of the justice system. To the extent that time permits, a judge is encouraged to do so through a bar association, judicial conference, other organization dedicated to the improvement of the law or through an appropriate administrative judicial official charged with administrative responsibility.

CANON 5

AN ADMINISTRATIVE LAW JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH ADMINISTRATIVE JUDICIAL OBLIGATIONS

RULE 5.1 Extrajudicial Activities in General

(A) Administrative law judges shall conduct their extrajudicial activities in a manner that would not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the Office of Administrative Law, or interfere with the proper performance of administrative judicial duties.

(B) An administrative law judge shall not:

(1) Participate in activities that can be reasonably anticipated to lead to frequent disqualification;

(2) Participate in activities that would appear to reasonable, fully informed persons to undermine the administrative law judge's independence, integrity, or impartiality;

(3) Make use of court premises, staff, stationery, equipment, or other resources for extrajudicial activities, except for incidental use involving activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted

by law, administrative directive, or Office of Administrative Law policy. *De minimis* or other incidental personal use of judiciary equipment or facilities, such as telephones, computers, scanners, fax machines, and copiers, do not violate this rule.

(C) Upon notice to and approval by the Director of the Office of Administrative Law, an administrative law judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system or the administration of justice.

(D) An administrative law judge may communicate with government officials on matters concerning the administration of justice within the judge's official responsibility.

(E) An administrative law judge may act *pro se* in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity as permitted in Rule 5.8.

RULE 5.2 Avocational Activities

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

RULE 5.3 Affiliation with Discriminatory Organizations

(A) An administrative law judge shall not hold membership in any organization that practices invidious discrimination on any of the bases prohibited by Rule 3.6(A)

(B) An administrative law judge shall not accept benefits from or use the facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on any of the bases prohibited by Rule 3.6(A), or as otherwise proscribed by law.

Commentary: An administrative law judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the bases prohibited by Rule 3.6(A), persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination cannot be determined from an examination of an organization's current membership rolls, but rather depends on how the organization selects members, as well as other relevant factors, including, but not limited to, whether the organization is dedicated to religious, ethnic, or cultural values of legitimate common interest to its members. Organizations dedicated to the preservation of religious, spiritual, charitable, civic, or cultural values that do not stigmatize any excluded persons are not considered to discriminate invidiously.

When an administrative law judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

RULE 5.4 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

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

(A) An administrative law judge shall 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 adversarial proceedings in any court.

(B) An administrative law judge shall not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the Office of Administrative Law for that purpose. A judge shall not be listed as an officer, director, or trustee of such an organization in any letters or other documents used in such solicitations. A judge shall not be a speaker

or the guest of honor at an organization's fundraising events, but may attend such events and contribute to such organizations.

(C) An administrative law judge shall not give investment advice to such an organization, nor may a judge serve on its board of directors or trustees, if the board has the responsibility for approving investment decisions.

(D) An administrative law judge's name, but not a judge's position and title, may appear on the organization's letterhead and in literature regarding that organization.

Commentary: The changing nature of some organizations and their relationship to the law makes it necessary for judges to reexamine regularly the activities of each organization with which they are affiliated to determine whether the relationship should be continued.

Administrative law judges shall inform organizations of the limitations associated with their participation in educational, religious, charitable, fraternal, or civic organizations and activities. Specific prohibitions include identification of a judge's position and title on the letterhead of an organization, regardless of the intended use of that letterhead, and any involvement of a judge in the solicitation of funds for the organization.

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

RULE 5.5 Financial, Business, or Remunerative Activities

(A) Administrative law judges shall refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in transactions with lawyers or persons likely to come before the Office of Administrative Law.

(B) Administrative law judges may hold investments, including real estate, but shall not serve as an officer, director, manager, advisor, or employee of any business, except upon notice to and approval by the Director of the Office of Administrative Law.

(C) Administrative law judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified.

RULE 5.6 Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value

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

(A) An administrative law judge may accept a gift of nominal value incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice, except as limited by Canon 6, Rule 6;

(B) An administrative law judge may accept gifts, loans, bequests, benefits, or other things of value from persons whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 3.16, including Rule 3.16(B)(6), which requires disqualification of a judge when the nature of the judge's relationship to a party or an attorney would give rise to partiality or the appearance of partiality;

(C) An administrative law judge or a member of the judge's family residing in the same household may accept ordinary social hospitality; gifts, favors, or commercial loans made in the regular course of business on the same terms available to the general public; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(D) An administrative law judge or a member of the judge's family residing in the same household may accept 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 judge.

(E) For the purposes of this rule, "member of the judge's family residing in the same household" means any relative of an administrative law judge by blood or marriage, civil union partner, domestic partner, or a person treated by a judge as a member of the family, who resides in the same household as the judge.

RULE 5.7 Disclosure of Information

Information acquired by an administrative law judge in an administrative judicial capacity shall not be used or disclosed by the judge in financial dealings or for any purpose not related to judicial duties.

Commentary: In the course of performing administrative judicial duties, an administrative law judge may acquire information of commercial or other value that is unavailable to the public. Judges shall not reveal or use such information for personal gain or for any purpose unrelated to their administrative judicial duties.

This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers when consistent with other provisions of this Code.

RULE 5.8 Fiduciary Activities

An administrative law judge shall not serve as an executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only when such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" includes a spouse, civil union partner, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains or maintained a familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(A) The administrative law judge shall not serve as a fiduciary if that service is likely to result in litigation that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or under its appellate jurisdiction.

(B) While acting as a fiduciary for a member of the judge's family, an administrative law judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(C) On becoming an administrative law judge, persons serving as fiduciaries shall comply with this rule as soon as reasonably practicable, upon notice to and approval by the Director of the Office of Administrative Law.

Commentary: When an administrative law judge who is a beneficiary of an estate serves as an executor or administrator as permitted by this rule and receives a fee solely for the purpose of reducing the tax liability of the estate, receipt of that fee does not constitute "compensation" under Canon 6.

RULE 5.9 Serving as Arbitrator or Mediator

An administrative law judge shall not act as an arbitrator or mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

Commentary: This Rule does not prohibit an administrative law judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties is prohibited unless it is expressly authorized by law.

RULE 5.10 Practice of Law

An administrative law judge shall not practice law, with or without compensation.

RULE 5.11 Appointments to Governmental Positions

An administrative law judge shall not accept appointment to a governmental committee, commission, or other position, except with prior approval of the Director of the Office of Administrative Law.

CANON 6

AN ADMINISTRATIVE LAW JUDGE SHALL NOT RECEIVE COMPENSATION FOR QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES

RULE 6 Compensation for Quasi-Judicial and Extrajudicial Activities

(A) Except as otherwise provided in (B) below, an administrative law judge shall not receive compensation for quasi-judicial and

extrajudicial activities permitted by this Code, but may receive reimbursement of actual expenses that the judge reasonably incurred for travel, food, and lodging, provided that the source or amount of such reimbursement, or the location of the activity, does not give the appearance of influencing the judge in the exercise of judicial duties or otherwise create an appearance of impropriety.

(B) Upon notice to, and approval by, the Director of the Office of Administrative Law, an administrative law judge may receive compensation for teaching at law schools or colleges, provided that the source of the payment does not give the appearance of impropriety.

CANON 7

AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

RULE 7 Political Activity

(A) An administrative law judge shall not engage in any political activity, including, but not limited to:

- (1) Holding membership or office in a political organization;
- (2) Making speeches for a political organization or candidate, or publicly endorsing a candidate for public office;
- (3) Attending political functions that are likely to be considered as political in nature; or
- (4) Soliciting funds, paying an assessment, or making a contribution to a political organization or candidate, or purchasing tickets for political party dinners or other functions.

(B) An administrative law judge shall resign from office when the judge becomes a candidate for an elective public office or is nominated thereto.

Commentary: The proscription against membership in a political organization does not prohibit an administrative law judge from registering with a political party to vote.

Applicability

All administrative law judges, including temporary assignment administrative law judges and administrative law judges on recall, shall comply with the Code of Conduct for Administrative Law Judges.

AGRICULTURE

(a)

DIVISION OF MARKETING AND DEVELOPMENT

Dairy Licensing Fees and Penalties

Proposed Amendments: N.J.A.C. 2:56-1.1 and 1.2

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-11.1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2018-069.

Submit comments by October 5, 2018, to:

Thomas L. Beaver, Director
 Division of Marketing and Development
 New Jersey Department of Agriculture
 PO Box 330
 Trenton, NJ 08625-0330
 or to: proposedrulesMarkets@ag.nj.gov

The agency proposal follows:

Summary

The State Board of Agriculture (State Board) and the Department of Agriculture (Department) are proposing amendments to the licensing fees for milk dealers, milk processors, and stores pursuant to N.J.S.A. 4:1-11.1. The State Board and Department find the proposed