

Code of Hearing Officer Conduct Statutes and Regulations

Alaska Statutes

Sec. 44.64.050. Hearing officer conduct.

(a) An administrative law judge employed full time by the office or a hearing officer employed full time by an agency may not serve in any other judicial or quasi-judicial capacity or engage in the private practice of law.

(b) The chief administrative law judge shall, subject to [AS 39.52.920](#) and by regulation, adopt a code of hearing officer conduct. The code shall apply to the chief administrative law judge, administrative law judges of the office, and hearing officers of each other agency. The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall

- (1) uphold the integrity and independence of the office;
- (2) avoid impropriety and the appearance of impropriety;
- (3) perform the duties of the office impartially and diligently;

(4) conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and

(5) refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

(c) Except as provided in (e) of this section, the chief administrative law judge shall receive and consider all complaints against administrative law judges or hearing officers employed or retained by the office or another agency alleging violations of (a) of this section or of the code of hearing officer conduct. The chief administrative law judge shall deliver the complaint to the attorney general when the chief administrative law judge determines that the conduct alleged, if true, would constitute a violation of

(1) subsection (a) of this section; or

(2) the code and would warrant disciplinary action under the regulations adopted under (b) of this section.

(d) If the attorney general determines that a violation has occurred, the attorney general shall submit written findings to the agency that employed or retained the administrative law judge or hearing officer who is the subject of the complaint together with recommendations for corrective or disciplinary action. If the administrative law judge is employed or retained by the office, the chief administrative law judge shall take appropriate corrective or disciplinary action.

(e) The attorney general shall, by regulation, establish procedures to implement (d) of this section, including procedures for investigating and holding hearings on complaints. The attorney

general shall receive and consider any complaint filed against the chief administrative law judge under this section, and may investigate or hold a hearing on the complaint in compliance with the regulations adopted under this subsection.

Alaska Administrative Code

Article 1
Code of Hearing Officer Conduct

Section

[10. Purpose and applicability of code of hearing officer conduct.](#)

[20. Prohibition against serving in another judicial or quasi-judicial capacity and against the private practice of law.](#)

[30. Canons of conduct.](#)

[40. Conflicts.](#)

[50. Executive Branch Ethics Act violation.](#)

[60. Corrective or disciplinary action.](#)

[70. Filing complaints.](#)

[80. Consideration of complaints.](#)

[90. Referral to attorney general.](#)

[2 AAC 64.010. Purpose and applicability of code of hearing officer conduct](#)

(a) The purpose of 2 AAC [64.010](#) - 2 AAC [64.090](#) is to implement the requirement of [AS 44.64.050](#) to adopt a code of hearing officer conduct.

(b) The provisions of 2 AAC [64.010](#) - 2 AAC [64.090](#) apply as provided in [AS 44.64.050](#) to an individual conducting a state administrative hearing without regard to status as an employee of the state or an independent contractor, except as otherwise provided by statute.

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

[2 AAC 64.020. Prohibition against serving in another judicial or quasi-judicial capacity and against the private practice of law](#)

The prohibition in [AS 44.64.050](#) against serving in another judicial or quasi-judicial capacity and against the private practice of law applies to a person employed by the state to work 30 hours or more each week, regardless of the number of hours the employee works in a particular week

performing nonhearing-related duties, if the employee's primary essential duties relate to conducting administrative hearings.

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

2 AAC 64.030. Canons of conduct

(a) The canons of conduct in [AS 44.64.050](#) (b) are part of the code of hearing officer conduct. A hearing officer or administrative law judge shall comply with the canons and requirements of 2 AAC [64.010](#) - 2 AAC [64.090](#). Noncompliance may be grounds for corrective or disciplinary action under [AS 44.64.050](#) (d) and 2 AAC [64.060](#).

(b) To comply with the requirement

(1) to uphold the integrity and independence of the office and of the hearing function, a hearing officer or administrative law judge shall establish and personally observe high standards of conduct, and avoid improper ex parte communications with private and agency parties about the subject of a hearing request, so that the integrity and independence of the office and the hearing function will be preserved;

(2) to avoid impropriety and the appearance of impropriety, a hearing officer or administrative law judge shall

(A) respect and follow the law;

(B) act in a manner that promotes public confidence in the hearing function; and

(C) refrain from allowing familial, social, political or other relationships to influence the conduct of the hearing;

(3) to perform the duties of the office or of the hearing function impartially and diligently, a hearing officer or administrative law judge

(A) shall faithfully follow the law;

(B) shall maintain professional competence in the law;

(C) may not be swayed by partisan interests or fear of criticism;

(D) shall maintain order and decorum in hearings and related proceedings;

(E) shall show patience, dignity, and courtesy to all parties, their representatives, witnesses, and others with whom the hearing officer or administrative law judge deals in an official capacity, and shall require similar behavior from parties and their representatives;

(F) shall refrain from initiating, permitting, or considering improper ex parte communications;

(G) shall dispose of all hearing-related matters promptly, officially, and fairly;

(H) shall require participants in proceedings to refrain from manifesting personal bias or prejudice against parties, witnesses, their representatives, or others;

(I) shall refrain from making public comment outside of the proceedings on a case before the hearing officer or administrative law judge while the case is pending; and

(J) shall refrain from disclosing or using, for any purpose unrelated to official duties, information acquired in an official capacity that by law is not available to the general public;

(4) to conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office or the hearing function, a hearing officer or administrative law judge shall

(A) seek reassignment of a case in which the hearing officer or administrative law judge has a conflict of interest under 2 AAC [64.040](#); and

(B) conduct unofficial activities so that they do not cast reasonable doubt on the hearing officer's or administrative law judge's adjudicatory capacity or impartiality, demean the office or the hearing function, or interfere with the proper performance of the hearing officer's or administrative law judge's official duties; activities that could interfere with a hearing officer's or administrative law judge's official duties include

(i) advocating a position before an executive branch agency on a subject related to decisions that may be heard by the hearing officer or administrative law judge;

(ii) representing a person in litigation with, or relating to a decision of, a state agency; and

(iii) advising a person about the person's rights and responsibilities regarding legal issues that have or might come before the hearing officer or administrative law judge for a ruling;

(5) to refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment, a hearing officer or administrative law judge may not discuss the matters that are before the hearing officer or administrative law judge with a prospective employer or take or promise any action that could be understood reasonably as using the hearing officer's or administrative law judge's official position to benefit the prospective employer, other than the benefits resulting from employing a person with the skills and experience of a hearing officer or administrative law judge.

(c) Commentary on and decisions applying the Alaska Code of Judicial Conduct may be used as guidance in interpreting and applying 2 AAC [64.010](#) - 2 AAC [64.050](#).

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

2 AAC 64.040. Conflicts

(a) A hearing officer or administrative law judge shall refrain from hearing or otherwise deciding a case presenting a conflict of interest. A conflict of interest may arise from a financial or other personal interest of the hearing officer or administrative law judge, or of an immediate family member. A conflict of interest exists if

(1) the financial or other personal interest reasonably could be perceived to influence the official action of the hearing officer or administrative law judge; or

(2) a hearing officer or administrative law judge previously represented or provided legal advice to a party on a specific subject before the hearing officer or administrative law judge.

(b) For purposes of this section, to determine whether membership in an organization whose interests may be affected by a decision in a case before a hearing officer or administrative law judge is a conflict of interest, the hearing officer or administrative law judge shall consider

(1) the impact of the decision on the organization's interests;

(2) the beneficial or harmful effect on a financial or other personal interest described in (a) of this section; and

(3) whether the hearing officer's or administrative law judge's official position requires membership in the organization.

(c) As soon as a hearing officer or administrative law judge discovers a conflict of interest, the hearing officer or administrative law judge shall disclose the conflict to the parties and, unless the parties waive the conflict on the record orally or in writing, shall notify the chief administrative law judge or other state official who assigned the case of the need for reassignment. Noncompliance with the requirements of this subsection may be grounds for corrective or disciplinary action under [AS 44.64.050](#) (d) and 2 AAC [64.060](#).

(d) Nothing in this section prohibits a hearing officer or administrative law judge from performing, as part of the hearing officer's or administrative law judge's employment, general legal work such as drafting, reviewing or proposing legislation or regulations, conducting training or continuing education courses, drafting or negotiating contracts, or supervising employees, even if the work is related to a subject that may come before the hearing officer or administrative law judge acting as an adjudicator.

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

2 AAC 64.050. Executive Branch Ethics Act violation

Violation of a provision of the [AS 39.52](#) (Executive Branch Ethics Act) by a hearing officer or administrative law judge is grounds for corrective or disciplinary action under [AS 44.64.050](#) (d) and 2 AAC [64.060](#).

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

2 AAC 64.060. Corrective or disciplinary action

(a) A violation of 2 AAC [64.010](#) - 2 AAC [64.050](#) warrants corrective or disciplinary action unless the violation is mitigated as provided in (b) or (c) of this section.

(b) A violation of 2 AAC [64.040](#) (Conflicts) may be mitigated if the hearing officer or administrative law judge disclosed a potential conflict of interest to the parties and

(1) a party did not request disqualification of the hearing officer or administrative law judge or reassignment of the case;

(2) the parties waived the conflict on the record orally or in writing; or

(3) the hearing officer or administrative law judge acted to remove the conflict by arranging for reassignment of the case.

(c) A violation of 2 AAC [64.010](#) - 2 AAC [64.050](#) may be mitigated if the hearing officer or administrative law judge reasonably relied on a written opinion of the chief administrative law judge or the attorney general that the conduct or activity would not violate 2 AAC [64.010](#) - 2 AAC [64.050](#)

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

[AS 44.64.070](#)

2 AAC 64.070. Filing complaints

(a) A person who believes that a hearing officer or administrative law judge has violated [AS 44.64.050](#) or a provision of 2 AAC [64.010](#) - 2 AAC [64.050](#) may file a complaint. The complaint must

(1) be in writing;

(2) identify the hearing officer or administrative law judge whose conduct is the subject of the complaint;

(3) describe the conduct and other facts on which the complaint is based;

(4) explain the reasons why the person believes the conduct violates [AS 44.64.050](#) or 2 AAC [64.010](#) - 2 AAC [64.050](#);

(5) identify the hearings or other proceedings conducted by the hearing officer or administrative law judge in which the person making the complaint is or has been involved;

(6) provide the name of the person making the complaint, and the mailing address and telephone number at which the person can be contacted if additional information is needed or to notify the person of the outcome; and

(7) be signed personally, under penalty of perjury, by the person making the complaint.

(b) A person who is unable to prepare a written complaint without assistance may contact the chief administrative law judge to arrange for an alternate method of filing the complaint.

(c) A complaint failing to meet the requirements of (a) of this section will be rejected or returned for additional information.

(d) The complaint must be mailed or delivered to the chief administrative law judge at the Juneau address of the office unless the complaint is about the chief's conduct. Complaints alleging a violation by the chief administrative law judge must be mailed or delivered to the attorney general.

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

Editor's note: The locations for mailing papers required in 2 AAC [64.070](#) are Chief Administrative Law Judge, Office of Administrative Hearings, Department of Administration, P.O. Box 110231, Juneau, Alaska 99811-0231 and Office of the Attorney General, P.O. Box. 110300, Juneau, Alaska 99811-0300.

2 AAC 64.080. Consideration of complaints

(a) If a complaint alleges facts that, if true, would show that a hearing officer or administrative law judge, who is employed as described in 2 AAC [64.020](#), violated a prohibition in [AS 44.64.050](#) (a), the chief administrative law judge will refer the complaint to the attorney general without further action.

(b) Except as provided in (a) of this section for a violation of [AS 44.64.050](#) (a), if the complaint alleges facts that, if true, would show a violation of 2 AAC [64.010](#) - 2 AAC [64.050](#), the chief administrative law judge will give the hearing officer or administrative law judge whose conduct is the subject of the complaint notice of the complaint and 10 days in which to respond, including submission of information on mitigating factors recognized in 2 AAC [64.060](#). If the allegations are of conduct that, if true, would warrant disciplinary action even after consideration of mitigating factors, the chief administrative law judge will refer the complaint to the attorney general.

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)

2 AAC 64.090. Referral to attorney general

(a) If the chief administrative law judge determines that [AS 44.64.050](#) (c) or 2 AAC [64.080](#) requires a complaint to be referred to the attorney general, the chief administrative law judge will provide the complaint file to the attorney general and will notify the person who filed the complaint, the hearing officer or administrative law judge whose conduct is the subject of the complaint, and the hearing officer's or administrative law judge's supervisor that the complaint has been referred to the attorney general.

(b) If the chief administrative law judge determines that [AS 44.64.050](#) (c) and 2 AAC [64.080](#) do not require a complaint to be referred to the attorney general, the chief administrative law judge will deny the complaint and give written notice of the denial to the person who filed the complaint and to the hearing officer or administrative law judge whose conduct is the subject of the complaint.

(c) If a person files a written complaint alleging that the chief administrative law judge violated [AS 44.64.050](#) (a) or 2 AAC [64.010](#) - 2 AAC [64.050](#), the office will refer the complaint to the attorney general and notify the person who filed the complaint of the referral.

History: Eff. 7/2/2006, Register 178

Authority: [AS 44.64.020](#)

[AS 44.64.050](#)