DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS

CODE OF ETHICS FOR OAH ADMINISTRATIVE LAW JUDGES

(Adopted by Office Order 2004-01 on August 31, 2004, and amended on June 15, 2005 and April 14, 2006, by the Chief Administrative Law Judge pursuant to Section 8(a)(9) of the Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76, codified at D.C. Official Code § 2-1831.05(a)(9))

Chapters

I.	**Upholding the Integrity and Independent of the Administrative Judiciary**
II.	**Avoidance of Actual Impropriety and Appearance of Impropriety**
III.	**Impartiality and Diligent in Duty**
IV.	**Quasi-Judicial Activities**
V.	**Extra-Judicial Activities**
VI.	**Miscellaneous**

This Code shall apply to the Chief Administrative Law Judge and all Administrative Law Judges appointed to a position in the Office of Administrative Hearings (OAH) pursuant to Office of Administrative Hearings Establishment Act of 2001, D.C. Law 14-76, codified at D.C. Official Code §§ 2-1831.01 *et seq.*, as amended.

I. UPHOLDING THE INTEGRITY AND INDEPENDENCE OF THE ADMINISTRATIVE JUDICIARY

A. An Administrative Law Judge shall uphold the integrity and independence of the administrative judiciary.

B. An independent and honorable administrative court is indispensable to justice in our society. An Administrative Law Judge shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards of conduct so that the integrity and independence of this administrative court will be preserved. This Code should be construed and applied to further that objective.

II. AVOIDANCE OF ACTUAL IMPROPRIETY AND APPEARANCE OF IMPROPRIETY

A. An Administrative Law Judge shall avoid impropriety and the appearance of impropriety in all activities.

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

C. An Administrative Law Judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment.

D. An Administrative Law Judge shall not lend the prestige of the office to advance the private interests of the Administrative Law Judge or others, nor convey or permit others to convey the impression that they are in a special position of influence.

E. An Administrative Law Judge shall not testify voluntarily as a character witness.

F. An Administrative Law Judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status or other basis prohibited by applicable law.

III. IMPARTIALITY AND DILIGENCE IN DUTY

A. An Administrative Law Judge shall perform the duties of the office impartially and diligently.

B. The judicial duties of an Administrative Law Judge shall take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

(1) an Administrative Law Judge shall be faithful to the law and maintain professional competence in it;

(2) an Administrative Law Judge shall not be swayed by partisan interests, public clamor or fear of criticism;

(3) an Administrative Law Judge shall maintain order and decorum in proceedings; and

(4) an Administrative Law Judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers and others with whom the Administrative Law Judge deals in an official capacity and, consistent with applicable law, shall require similar conduct of lawyers or other representatives, staff members and others subject to the Administrative Law Judge's direction and control.

C. An Administrative Law Judge shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law.

D. An Administrative Law Judge shall not initiate, permit or consider *ex parte* communications or consider other communications made to the Administrative Law Judge 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 deal with substantive matters or issues on the merits are authorized; provided:

(a) the Administrative Law Judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

(b) the Administrative Law Judge makes provisions promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond;

(2) an Administrative Law Judge may consult other Administrative Law Judges and support personnel whose function is to aid the Administrative Law Judge in carrying out his or her adjudicative responsibilities;

(3) an Administrative Law Judge 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 Administrative Law Judge; and

(4) an Administrative Law Judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

E. Decisions of an Administrative Law Judge shall be based exclusively on the law and on all evidence in the record of the proceeding.

F. An Administrative Law Judge shall dispose of all judicial matters promptly, officially and fairly.

G. An Administrative Law Judge shall require participants in proceedings before the Administrative Law Judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status or other basis prohibited under applicable law, against parties, witnesses, counsel or others. This Section does not preclude non-frivolous advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

H. An Administrative Law Judge shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The Administrative Law Judge shall require similar abstention on the part of agency personnel subject to the Administrative Law Judge's direction and control. This Section does not prohibit Administrative Law Judges from making public statements in the course of their official duties or from explaining for public information the procedures of the agency. This Section does not apply to proceedings in which the Administrative Law Judge is a litigant in a personal capacity.

I. An Administrative Law Judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law is not available to the general public. This includes, without limitation, all information learned that is privileged under the deliberative process privilege, the attorney-client privilege, and the work-product doctrine. This provision applies to information learned both while presiding in a matter, discussing a matter with another Administrative Law Judge or other OAH employee, or in any administrative, managerial or other capacity while serving in OAH.

J. An Administrative Law Judge should not be subject to the authority, direction or discretion of one who has served as investigator, prosecutor or advocate in a proceeding before the Administrative Law Judge or in its pre-adjudicative stage.

K. An Administrative Law Judge shall diligently discharge assigned administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other Administrative Law Judges.

L. An Administrative Law Judge shall require staff and other persons subject to the Administrative Law Judge's direction and control to observe the standards of fidelity and diligence that apply to the Administrative Law Judge.

M. An Administrative Law Judge shall take appropriate action or initiate appropriate disciplinary measures against an Administrative Law Judge, lawyer, representative or others for unprofessional conduct of which the Administrative Law Judge may become aware.

N. An Administrative Law Judge shall disqualify himself or herself in any proceeding in which the Administrative Law Judge's impartiality might reasonably be questioned, including but not limited to instances where:

(1) the Administrative Law Judge has a personal bias or prejudice concerning a party or a party's lawyer or other representative involved in the proceeding;

(2) the Administrative Law Judge served as lawyer or representative in the matter in controversy, or a lawyer with whom the Administrative Law Judge practiced law served during such association as a lawyer concerning the matter, or the Administrative Law Judge or such lawyer has been a material witness concerning it;

(3) the Administrative Law Judge has served in other governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) the Administrative Law Judge, individually or as a fiduciary, or the Administrative Law Judge's spouse or minor child residing in the Administrative Law Judge'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 substantially affected by the outcome of the proceeding; or

(5) the Administrative Law Judge or the Administrative Law Judge's spouse or a person within the third degree of relationship to either of them or the spouse of such a person:

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

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

(c) is known by the Administrative Law Judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(d) is to the Administrative Law Judge's knowledge likely to be a material witness in the proceeding.

O. Administrative Law Judges 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 Administrative Law Judges' households. For the purposes of this provision, the following words or phrases shall have the meaning indicated:

(1) "degree of relationship" shall be calculated according to the civil law system;

(2) "fiduciary" includes such relationships as executor, administrator, trustee and guardian;

(3) "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:

(a) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the Administrative Law Judge participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities; and

(4) "proceeding" includes pre-hearing or other stages of litigation.

P. An Administrative Law Judge disqualified by means of this provision may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers or representatives, independently of the Administrative Law Judge's participation and by informed consent, agree that the Administrative Law Judge should not be disqualified, and if the Administrative Law Judge concurs, the Administrative Law Judge may

preside over the proceeding. The agreement shall be incorporated in the record of the proceeding.

IV. QUASI-JUDICIAL ACTIVITIES

A. An Administrative Law Judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so doubt is not cast on the capacity to decide impartially any issue that may come before the Administrative Law Judge:

(1) speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice;

(2) may appear at a hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official, unless otherwise prohibited by law;

(3) may serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. An Administrative Law Judge may assist such an organization in the management and investment of the organization's funds, but may not personally participate in public or private fund raising activities or solicitation, except that, consistent with applicable law, an Administrative Law Judge may solicit funds from other Administrative Law Judges over whom the judge does not exercise supervisory or appellate authority. Except as permitted in this Section, an Administrative Law Judge may not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive, or if the membership solicitation is essentially a fund-raising mechanism; and

(4) may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

V. EXTRA-JUDICIAL ACTIVITIES

A. An Administrative Law Judge shall conduct all of the Administrative Law Judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the Administrative Law Judge's capacity to act impartially as an Administrative Law Judge;

(2) demean either the Office of Administrative Hearings or the position of Administrative Law Judge; or

(3) interfere with the proper performance of the Administrative Law Judge's duties.

B. An Administrative Law Judge may write, lecture, teach and speak on non-legal subjects and engage in the arts, sports and other social and recreational activities.

C. An Administrative Law Judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. An Administrative Law Judge may participate in or 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) an Administrative Law Judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the Administrative Law Judge or will be regularly engaged in adversary proceedings before OAH; and

(2) an Administrative Law Judge should not use or permit the use of the prestige of the Administrative Law Judge's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal, civic or political organization, but the Administrative Law Judge may be listed as an officer, director or trustee of such an organization. The Administrative Law Judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

D. An Administrative Law Judge shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the Administrative Law Judge's official position or involve the Administrative Law Judge in frequent financial transactions with lawyers or persons likely to come before OAH.

E. Subject to the requirements of Section D of this Chapter, an Administrative Law Judge may hold and manage personal investments, including real estate, and engage in other remunerative activity consistent with this Code and applicable law.

F. An Administrative Law Judge shall manage the Administrative Law Judge's investments and other financial interests to minimize the number

of cases in which the Administrative Law Judge is disqualified. As soon as Administrative Law Judges can do so without serious financial detriment, Administrative Law Judges shall divest themselves of investments and other financial interests that might require frequent disqualification.

G. Neither an Administrative Law Judge nor a member of the family residing in the Administrative Law Judge's household should accept a gift, bequest, favor or loan from anyone except as follows:

(1) an Administrative Law Judge may accept a gift incident to a public testimonial to the Administrative Law Judge, books supplied by publishers on a complimentary basis for official use, or an invitation to the Administrative Law Judge and the Administrative Law Judge's spouse to attend a function or activity devoted to the improvement of the law, the legal system or the administration of justice;

(2) an Administrative Law Judge or a member of the family residing in the household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative or close personal friend; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not Administrative Law Judges; or a scholarship or fellowship awarded on the same terms applied to other applicants; and

(3) an Administrative Law Judge or a member of the family residing in the 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 Administrative Law Judge, or the gift is otherwise consistent with relevant agency rules and is reported to the extent required by such rules and other applicable laws.

H. For purposes of Section G of this Chapter, "member of the family residing in the household" means any relative of the Administrative Law Judge by blood or marriage or adoption, or a person treated by an Administrative Law Judge as a member of the family, who resides in the household.

I. An Administrative Law Judge is not required by this Code to disclose income, debts or investments, except as provided by law.

J. Information acquired by Administrative Law Judges in their judicial capacity shall not be used or disclosed by the Administrative Law Judge in financial dealings or for any other purpose not related to judicial duties.

K. An Administrative Law Judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary the Administrative Law Judge will be engaged in proceedings that would ordinarily come before the Administrative Law Judge, or if the estate, trust or ward becomes involved in adversary proceedings in OAH or in an agency under OAH's appellate jurisdiction. Subject to the requirements of this Code, and in accordance with Section M of this Chapter, nothing in this Section shall be construed to prevent an Administrative Law Judge from serving as an executor, administrator, trustee, guardian or other fiduciary for a member of the judge's family.

L. While acting as a fiduciary under this provision, an Administrative Law Judge is subject to the same restrictions on financial activities that apply to the Administrative Law Judge in the Administrative Law Judge's personal capacity.

M. An Administrative Law Judge may act as an arbitrator or mediator in any proceeding before OAH if such activity does not affect the independent professional judgment of the Administrative Law Judge or the conduct of his or her official duties. An Administrative Law Judge shall not be an arbitrator or mediator over a matter which the Administrative Law Judge may later preside. Subject to the requirements of this Section, an Administrative Law Judge may, without compensation, act as an arbitrator or mediator where such service contributes to the improvement of the law, the legal system or the administration of justice, but may not do so in any dispute if any party to the dispute is likely to appear before OAH, or if the subject matter of the dispute is similar to any subject matter within OAH's jurisdiction. An Administrative Law Judge may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

N. Subject to the requirements of this Code, an Administrative Law Judge may not give legal advice to and draft or review documents for persons who are not members of the judge's family, except in infrequent circumstances in which it would substantially advance equity and justice, and in which:

(1) the assistance is provided without compensation;

(2) the assistance is expressly limited in scope and duration; and

(3) the assistance is provided with the express written waiver of the Chief Administrative Law Judge.

O. Except as provided in Sections M and N of this Chapter, an Administrative Law Judge shall not practice law, or act as an arbitrator or mediator.

P. An Administrative Law Judge shall not serve as an officer, director, manager, general partner, advisor, independent contractor or employee of any business entity except that an Administrative Law Judge may, subject to the requirements of this Code, manage and participate in:

(1) a business closely held by the Administrative Law Judge or members of the Administrative Law Judge's family residing in the household, as defined in Section H of this Chapter; or

(2) a business entity primarily engaged in investment of the financial resources of the Administrative Law Judge or the members of the Administrative Law Judge's family residing in the household, as defined in Section H of this Chapter.

Q. An Administrative Law Judge may accept appointment to a governmental committee, commission or other position that is concerned with issues of policy, rather than issues affecting individuals and limited groups, on matters which may come before the Administrative Law Judge if such appointment neither affects the independent professional judgment of the Administrative Law Judge nor the conduct of the Administrative Law Judge's official duties. If a matter directly involving such an issue comes before the Administrative Law Judge, he or she shall promptly disclose the appointment to the parties before him or her, and shall recuse himself or herself on the motion of any party.

R. An Administrative Law Judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the Administrative Law Judge in the Administrative Law Judge's official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) compensation should not exceed a reasonable amount nor should it exceed what a person who is not an Administrative Law Judge would receive for the same activity; and

(2) expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the Administrative Law Judge and where appropriate to the occasion, by the Administrative Law Judge's spouse or guest. Any payment in excess of such an amount is compensation for purposes of this provision.

S. An Administrative Law Judge shall not act as a leader or hold an office in a political organization or party, a substantial purpose of which is to further the election or appointment of candidates to political office.

T. An Administrative Law Judge shall not solicit funds for or be compelled to pay an assessment to a political organization or candidate or purchase tickets for political dinners or other similar functions.

U. An Administrative Law Judge shall resign from judicial office when the Administrative Law Judge becomes a candidate either in a party primary or in a partisan general election except that the Administrative Law Judge may continue to hold office, while being a candidate for election to or serving as a delegate in a jurisdiction's constitutional convention, if otherwise permitted by law to do so.

V. An Administrative Law Judge should not engage in any other partisan political activity.

VI. MISCELLANEOUS

A. The commentaries provided in the 1995 ABA Model Code of Judicial Conduct for State Administrative Law Judges and the 1990 ABA Model Code of Judicial Conduct, as applicable, may be considered in interpreting this Code.

B. In complying with the provisions of this Code, an Administrative Law Judge may request advisory assistance, as available, from any persons or committee designated by the Chief Administrative Law Judge to render such assistance.