

**CODE OF JUDICIAL CONDUCT**  
**FOR LABOR COMMISSION ADMINISTRATIVE LAW JUDGES**

**PREAMBLE**

Our state administrative legal system is based on the principle that an independent, fair and competent administrative judiciary will interpret and apply the laws that govern consistent with American concepts of justice. Intrinsic to all sections of this Code are the precepts that Labor Commission Administrative Law Judges, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in our legal system. The Labor Commission Administrative Law Judge decides questions of fact and law for the resolution of disputes and is a highly visible symbol of government under the rule of law.

This Code of Judicial Conduct for Labor Commission Administrative Law Judges is intended to establish standards for ethical conduct. The Canons and Sections contained in this code 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 to not impinge on the essential independence of the Labor Commission Administrative Law Judge in making judicial decisions.

This Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of Labor Commission Administrative Law Judges. They should also be governed in their official adjudicative and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist such judges in establishing and maintaining high standards of judicial and personal conduct.

Except where modified, this Code follows the language of the Utah Code of Judicial Conduct.

**SCOPE**

1. The Utah Code of Judicial Conduct consists of three Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule.
2. The Canons state overarching principles of judicial ethics that all judges must observe and provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the Administrative Law Judge in question, and disciplinary action shall not be taken for action or inaction within the bounds of such discretion.
3. The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct.

Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

4. Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

5. The Utah Labor Commission Code of Judicial Conduct are rules of reason that should be applied consistent with the law and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

6. Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

7. The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

## **CANON 1**

**A LABOR COMMISSION ADMINISTRATIVE LAW JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.**

### **RULE 1.1 - Compliance with the Law**

A Labor Commission Administrative Law Judge shall comply with the law.

## **RULE 1.2 - Promoting Confidence in the Judiciary**

A Labor Commission Administrative Law Judge should act at all times in a manner that promotes - and shall not undermine – public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

### *COMMENT*

- 1. Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a Labor Commission Administrative Law Judge.*
- 2. A Labor Commission Administrative Law Judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.*
- 3. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a Labor Commission Administrative Law Judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.*
- 4. A Labor Commission Administrative Law Judge should approach the hearing with an open mind, without bias or prejudice toward the issues. He/She must maintain impartiality toward the case and, perhaps most importantly, maintain an appearance of impartiality so that the parties truly believe that the judge is not favoring one side over the other.*
- 5. Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.*
- 6. Actual improprieties include violations of law or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the Administrative Law Judge engaged in impropriety.*

## **RULE 1.3 - Avoiding Abuse of the Prestige of Judicial Office**

A Labor Commission Administrative Law Judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A Labor Commission 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. A Labor Commission Administrative Law Judge shall not testify voluntarily as a character witness.

## COMMENT

*Labor Commission Administrative Law Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for judges to allude to their office to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial or official letterhead must not be used for conducting a Labor Commission Administrative Law Judge's personal business.*

*The testimony of a Labor Commission Administrative Law Judge as a character witness injects the prestige of the Administrative Law Judge's office into the proceeding in which the Administrative Law Judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford the Administrative Law Judge a privilege against testifying in response to an official summons.*

## CANON 2

### **A LABOR COMMISSION ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

#### **RULE 2.1 - Impartiality and Fairness**

A Labor Commission Administrative Law Judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

## COMMENT

- 1. Although each judge comes to the bench with a unique background and personal philosophy, a Labor Commission Administrative Law Judge must interpret and apply the law without regard to whether the Administrative Law Judge approves or disapproves of the law in question.*
- 2. When applying and interpreting the law, a Labor Commission Administrative Law Judge may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.*
- 3. It is not a violation of this Rule for a Labor Commission Administrative Law Judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.*

## **RULE 2.3 – Discourtesy, Bias, Prejudice, and Harassment**

(A) A Labor Commission Administrative Law Judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A Labor Commission Administrative Law Judge shall conduct hearings in an orderly manner.

(C) A Labor Commission Administrative Law Judge shall be patient, dignified, and courteous to claimants, respondents, witnesses, lawyers, parties and other with whom he/she deals in his/her official capacity, and should require similar conduct of lawyers, Labor Commission staff and others subject to his/her control.

(D) A Labor Commission Administrative Law Judge shall be respectful and shall listen politely to claimants, respondents, witnesses, lawyers, parties and other with whom he/she deals in his/her official capacity.

(E) A Labor Commission Administrative Law Judge shall not, in the performance of judicial duties, by words or conduct manifest disrespect, bias or prejudice or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit Labor Commission staff or others subject to the Administrative Law Judge's direction and control to do so.

(F) A Labor Commission Administrative Law Judge shall take reasonable measures to require lawyers in proceedings before the court to refrain from manifesting disrespect, bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(G) The restrictions of paragraphs (E) and (F) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

### **COMMENT**

*1. A Labor Commission Administrative Law Judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.*

*2. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; stereotyping; attempted humor based upon 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 and lawyers in the proceeding, jurors, the media, and others an appearance of bias or*

*prejudice. A Labor Commission Administrative Law Judge must avoid conduct that may reasonably be perceived as disrespectful, prejudiced or biased.*

*3. It is incumbent upon a Labor Commission Administrative Judge to be polite and respectful of those appearing before him/her. Examples of disrespect include but are not limited to eye rolling, ridiculing, smirking, hostile body language (such as crossing your arms), throwing down a pen or papers in anger or frustration, frequently and unnecessarily interrupting attorneys or witnesses, and arguing or becoming angry with attorneys, parties, witnesses or others appearing before him/her.*

*4. Examples of sexual harassment include but are not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.*

#### **RULE 2.4 - External Influences on Judicial Conduct**

(A) A Labor Commission Administrative Law Judge shall not be swayed by public clamor or fear of criticism.

(B) A Labor Commission Administrative Law Judge shall not permit family, social, political, financial, or other interests or relationships to influence the Administrative Law Judge's judicial conduct or judgment.

(C) A Labor Commission 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 Administrative Law Judge.

#### **COMMENT**

*1. An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the Administrative Law Judge's friends or family. Confidence in the adjudicative process is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.*

#### **RULE 2.5 - Competence, Diligence, and Cooperation**

(A) A Labor Commission Administrative Law Judge shall competently and diligently perform judicial and administrative duties.

(B) A Labor Commission Administrative Law Judge shall cooperate with other administrative law judges and Labor Commission staff in the administration of Commission business.

## COMMENT

- 1. Competence in the performance of adjudicative duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a Labor Commission Administrative Law Judge's responsibilities of judicial office.*
- 2. Competent and diligent disposition of the court's business requires a Labor Commission Administrative Law Judge to devote adequate time to judicial duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to take reasonable measures to ensure that Labor Commission staff, litigants, and their lawyers cooperate with the Administrative Law Judge to that end.*
- 3. In competently and diligently performing adjudicative and administrative duties, a Labor Commission Administrative Law Judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A Labor Commission Administrative Law Judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.*

## **RULE 2.6 - Ensuring the Right to Be Heard**

(A) A Labor Commission Administrative Law Judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A Labor Commission Administrative Law Judge shall not deliberately turn off or stop the recording of a hearing in order to chastise, berate or insult a claimant, respondent, attorney, witness or anyone else appearing before him/her.

(C) A Labor Commission Administrative Law Judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

## COMMENT

- 1. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. It is incumbent on a Labor Commission Administrative Law Judge to allow parties or their attorneys if they are represented to make their record for purposes of an appeal.*
- 2. If a Labor Commission Administrative Law Judge participates in the settlement of disputes, the Administrative Law Judge should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The*

*Administrative Law Judge should keep in mind the effect that the Administrative Law Judge's participation in settlement discussions may have, not only on the Administrative Law Judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the Administrative Law Judge after settlement efforts are unsuccessful.*

*3. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a Labor Commission Administrative Law Judge's best efforts, there may be instances when information obtained during settlement discussions could influence a Labor Commission Administrative Law Judge's decision making during trial, and, in such instances, the Administrative Law Judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).*

## **RULE 2.7 - Responsibility to Decide**

A Labor Commission Administrative Law Judge shall hear and decide matters assigned to the Administrative Law Judge, except when disqualification is required or permitted.

### *COMMENT*

*1. 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 judiciary, judges must be available to decide matters that come before the courts. A Labor Commission Administrative Law Judge should not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.*

## **RULE 2.8 - Ex Parte Communications**

(A) A Labor Commission 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 or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

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

(b) the Administrative Law Judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

(2) In cases where he/she is not acting as an Administrative Law Judge, parties may consult with the Division Director regarding non-substantive procedural issues provided:

(a) the information provided to the party is of a general procedural nature only;

(b) the Director shall not provide any information which he/she reasonably believes will give the party a procedural, substantive, or tactical advantage as a result of the ex parte communication;

(c) the Director should not actively work on the case;

(d) the Director should not discuss the case with the Administrative Law Judge assigned to hear it in an attempt to improperly or unfairly influence the outcome of the matter; and

(e) the Director shall instruct the party that they are required to follow the Administrative Law Judge's rules and orders, irrespective of whether they conflict with the information provided by the Director.

(3) A Labor Commission Administrative Law Judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the Administrative Law Judge, if the Administrative Law Judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(4) A Labor Commission Administrative Law Judge may consult with Labor Commission staff whose functions are to aid the Administrative Law Judge in carrying out the Administrative Law Judge's adjudicative responsibilities, or with other judges, provided the Administrative Law Judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility to personally decide the matter.

(5) A Labor Commission Administrative Law Judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the Administrative Law Judge.

(6) A Labor Commission Administrative Law Judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a Labor Commission Administrative Law Judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the Administrative Law Judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A Labor Commission Administrative Law Judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A Labor Commission Administrative Law Judge shall make reasonable efforts to ensure that he/she does not receive inappropriate ex parte communications through or from Labor Commission staff and others subject to the Administrative Law Judge's direction and control.

#### *COMMENT*

- 1. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a Labor Commission Administrative Law Judge.*
- 2. Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.*
- 3. The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.*
- 4. A Labor Commission Administrative Law Judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.*
- 5. The prohibition against a Labor Commission Administrative Law Judge investigating the facts in a matter extends to information available in all mediums, including electronic.*
- 6. A Labor Commission Administrative Law Judge may consult ethics advisory committees, outside counsel, or legal experts concerning the Administrative Law Judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).*

#### **RULE 2.10 - Judicial Statements on Pending and Impending Cases**

(A) A Labor Commission Administrative Law Judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A Labor Commission Administrative Law Judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of their position.

(C) A Labor Commission Administrative Law Judge shall take reasonable measures to require Labor Commission staff and others subject to the Administrative Law Judge's direction and control to refrain from making statements that the Administrative Law Judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a Labor Commission Administrative Law Judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the Administrative Law Judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a Labor Commission Administrative Law Judge may respond directly or through a third party to allegations in the media or elsewhere concerning the Administrative Law Judge's conduct in a matter.

#### *COMMENT*

- 1. This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.*
- 2. This Rule does not prohibit a Labor Commission Administrative Law Judge from commenting on proceedings in which the judge is a litigant in a personal capacity.*
- 3. Depending upon the circumstances, the Administrative Law Judge should consider whether it may be preferable for a third party, rather than the Administrative Law Judge, to respond or issue statements in connection with allegations concerning his/her conduct in a matter.*

#### **RULE 2.11 – Disqualification**

(A) A Labor Commission Administrative Law Judge shall disqualify himself or herself in any proceeding in which his/her impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The Administrative Law Judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The Administrative Law Judge knows that he/she, his/her spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

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

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The Administrative Law Judge knows that he or she, individually or as a fiduciary, or his/her spouse, domestic partner, parent, or child, or any other member of the Administrative Law Judge's family residing in his/her household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) The Administrative Law Judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy; or

(c) was a material witness concerning the matter.

(B) A Labor Commission Administrative Law Judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the Administrative Law Judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the Administrative Law Judge and Labor Commission personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the Administrative Law Judge or Labor Commission personnel, that the judge should not be disqualified, the Administrative Law Judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

## COMMENT

1. *Under this Rule, a Labor Commission Administrative Law Judge is disqualified whenever the Administrative Law Judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply.*
2. *A Labor Commission Administrative Law Judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.*
3. *The rule of necessity may override the rule of disqualification. For example, a Labor Commission Administrative Law Judge might be the only judge available in a matter requiring immediate judicial action. In matters that require immediate action, the Administrative Law 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.*
4. *A Labor Commission Administrative Law Judge is disqualified in proceedings involving a law firm that employs the Administrative Law Judge's spouse, domestic partner, parent, or child, or any other member of the Administrative Law Judge's family residing in the Administrative Law Judge's household as an equity holder in the law firm. A Labor Commission Administrative Law Judge is not disqualified in other situations unless his/her impartiality might reasonably be questioned under paragraph (A), or a relative is known by the Administrative Law Judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c).*
5. *A Labor Commission Administrative Law Judge should disclose on the record information that the Administrative Law Judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the Administrative Law Judge believes there is no basis for disqualification.*

## **RULE 2.12 - Supervisory Duties**

(A) A Labor Commission Administrative Law Judge shall take reasonable measures to require Labor Commission staff and others subject to the Administrative Law Judge's direction and control to act in a manner consistent with the judge's fulfillment of his or her obligations under this Code.

(B) A Labor Commission Administrative Law Judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges

properly discharge their judicial responsibilities, including the timely disposition of matters before them.

*COMMENT*

*1. A Labor Commission Administrative Law Judge may not direct Labor Commission personnel to engage in conduct on the Administrative Law Judge's behalf or as his/her representative when such conduct would violate the Code if undertaken by the Administrative Law Judge.*

*2. Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a Labor Commission Administrative Law Judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision timely administer their workloads.*

**RULE 2.14 – Impairment**

A Labor Commission Administrative Law Judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

*COMMENT*

*1. "Appropriate action" means action intended and reasonably likely to help the Administrative Law Judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.*

*2. Taking or initiating corrective action by way of referral to an assistance program may satisfy a Labor Commission Administrative Law Judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the Administrative Law Judge's attention, however, the Administrative Law Judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.*

**RULE 2.15 - Responding to Judicial and Lawyer Misconduct**

(A) A Labor Commission Administrative Law Judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the Administrative Law Judge's honesty, trustworthiness, or fitness as a Labor Commission Administrative Law Judge in other respects shall inform the appropriate authority.

(B) A Labor Commission Administrative Law Judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A Labor Commission Administrative Law Judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.

(D) A Labor Commission Administrative Law Judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.

## COMMENT

1. *A Labor Commission Administrative Law Judge has an obligation to address a known violation by another Labor Commission Administrative Law Judge or a lawyer of the Code or the Utah Rules of Professional Conduct. Paragraphs (A) and (B) impose an obligation on the Administrative Law Judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's adjudicative colleagues or members of the legal profession undermines a Labor Commission Administrative Law Judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.*

2. *A Labor Commission Administrative Law Judge who does not have actual knowledge that another judge or a lawyer may have violated the Code or the Utah Rules of Professional Conduct, but receives information indicating a substantial likelihood of such misconduct, should take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the Administrative Law Judge who may have violated this Code or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation or reporting the suspected violation to the appropriate authority or other agency or body.*

## **RULE 2.16 - Cooperation with Disciplinary Authorities**

(A) A Labor Commission Administrative Law Judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A Labor Commission Administrative Law Judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a Labor Commission Administrative Law Judge or a lawyer.

## COMMENT

1. *Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.*

## CANON 3

### **A LABOR COMMISSION ADMINISTRATIVE LAW JUDGE SHALL CONDUCT THE ADMINISTRATIVE LAW JUDGE'S EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.**

#### **RULE 3.1 - Extrajudicial Activities in General**

A Labor Commission Administrative Law Judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a Labor Commission Administrative Law Judge shall not:

- (A) participate in activities that will interfere with the proper performance of the Administrative Law Judge's judicial duties;
- (B) participate in activities that will lead to unreasonably frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality; or
- (D) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

#### *COMMENT*

*1. To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.*

*2. Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.*

*3. Discriminatory actions and expressions of bias or prejudice by a Labor Commission Administrative Law Judge, even outside the Administrative Law Judge's official or judicial actions, are likely to appear to a reasonable person to call into question the Administrative Law Judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national*

*origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a Labor Commission Administrative Law Judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.3.*

### **RULE 3.2 - Use of Nonpublic Information**

A Labor Commission Administrative Law Judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the Administrative Law Judge's judicial duties.

#### **COMMENT**

*1. In the course of performing judicial duties, a Labor Commission Administrative Law Judge may acquire information of commercial or other value that is unavailable to the public. The Administrative Law Judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.*

*2. This Rule is not intended, however, to affect a Labor Commission Administrative Law Judge's ability to act on information as necessary to protect the health or safety of the Administrative Law Judge or a member of a Labor Commission Administrative Law Judge's family, if consistent with other provisions of this Code.*

### **RULE 3.3 - Affiliation with Discriminatory Organizations**

(A) A Labor Commission Administrative Law Judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. A Labor Commission Administrative Law Judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

(B) A Labor Commission Administrative Law Judge shall not use the benefits or facilities of an organization if the Administrative Law Judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A Labor Commission Administrative Law Judge's attendance at an event in a facility of an organization that the Administrative Law Judge is not permitted to join under paragraph (A) is not a violation of this Rule when his/her attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

## COMMENT

1. *A Labor Commission Administrative Law Judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A Labor Commission Administrative Law Judge's membership in an organization that practices invidious discrimination creates the perception that the Administrative Law Judge's impartiality is impaired.*
2. *An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited, such as scouting organizations.*
3. *When a Labor Commission Administrative Law Judge learns that an organization to which he/she belongs engages in invidious discrimination, the Administrative Law Judge must resign immediately from the organization.*
4. *This Rule does not apply to national or state military service.*

### **RULE 3.4 – Outside Employment**

A Labor Commission Administrative Law Judge shall comply with Labor Commission policies relating to outside employment.

### **RULE 3.5 - Acceptance of Gifts, Loans, Bequests, Benefits, or Other Things of Value**

(A) A Labor Commission Administrative Law Judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by State or Labor Commission policy or law, or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a Labor Commission Administrative Law Judge may accept the following:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) ordinary social hospitality;
- (3) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;
- (4) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;
- (5) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;
- (6) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (7) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a Labor Commission Administrative Law Judge residing in the Administrative Law Judge's household, but that incidentally benefit the Administrative Law Judge; or
- (8) invitations to the Administrative Law Judge and the Administrative Law Judge's spouse, domestic partner, or guest to attend without charge:
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
  - (b) an event associated with any of the Administrative Law Judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the Administrative Law Judge.

#### COMMENT

*1. Whenever a Labor Commission Administrative Law Judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the Administrative Law Judge's decision in a case. Rule 3.5 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the Administrative Law Judge's independence, integrity, or impartiality is low.*

2. *Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the Administrative Law Judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the Administrative Law Judge's decision making.*

3. *Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A Labor Commission Administrative Law Judge may freely accept such benefits if they are available to the general public, or if the Administrative Law Judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a Labor Commission Administrative Law Judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the Administrative Law Judge also possesses.*

### **RULE 3.6 - Reimbursement of Expenses and Waivers of Fees or Charges**

(A) Unless otherwise prohibited by Rules 3.1 and 3.5 or other law or State or Labor Commission policy, a Labor Commission Administrative Law Judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the Administrative Law Judge's employing entity, if the expenses or charges are associated with the Administrative Law Judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the Administrative Law Judge and, when appropriate to the occasion, by the Administrative Law Judge's spouse, domestic partner, or guest.

#### **COMMENT**

1. *Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A Labor Commission Administrative Law Judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances.*

*The Administrative Law Judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.*

*2. The factors that a Labor Commission Administrative Law Judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:*

*(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;*

*(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;*

*(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the Administrative Law Judge, or to matters that are likely to come before the Administrative Law Judge;*

*(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;*

*(e) whether information concerning the activity and its funding sources is available upon inquiry;*

*(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the Administrative Law Judge's court, thus possibly requiring disqualification of the Administrative Law Judge under Rule 2.11;*

*(g) whether differing viewpoints are presented; and*

*(h) whether a broad range of judicial and non-judicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.*