

R477. Government Operations, Human Resource Management.

R477-101. Administrative Law Judge Conduct Committee.

R477-101-1. Authority and Purpose.

This rule is enacted pursuant to Section 63A-17-703, requiring the DHRM to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

R477-101-2. Definitions.

In addition to the terms defined in Section 63A-17-701:

- (1) "Administrative Law Judge" (ALJ) includes hearing officers employed or contracted by a state agency that meet the criteria described in Subsection 63A-17-701(1)(a).
- (2) "Chair" means the Division Director, Division of Human Resource Management, or designee.
- (3) "Code of conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.
- (4) "Committee" means the Administrative Law Judge Committee created in Section 67-19e-108.
- (5) "Committee meeting" means a proceeding at which a complaint is presented to the committee by the investigator. respondent ALJ shall also have the opportunity to appear and speak regarding the complaint and its allegations.
- (6) "Complaint" means a written document filed with the Department under Section R477-101-8 alleging misconduct by an ALJ.
- (7) "Division" means the Division of Human Resource Management.
- (8) "Final agency action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.
- (9) "Full investigation" means an investigation where the respondent ALJ may respond, in writing, to specific allegations identified in a complaint. A full investigation may also include: examination by the investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, respondent ALJ, interested parties, and other witnesses.
- (10) "Good cause" means a cause or reason in law, equity or justice that provides a responsible basis for action or a decision.
- (11) "Interested party" means an individual or entity who participated in an event or proceeding giving rise to a complaint against the respondent ALJ.
- (12) "Investigator" means a person employed by the division to perform investigations mandated under Section 63A-17-707 and present information at the committee meeting.
- (13) "Misconduct" means a violation of the code of conduct or Sections 67-19e-101 and 63A-17-701 through 710.
- (14) "Preliminary investigation" means that portion of an investigation conducted by the division upon receipt of a Complaint. A preliminary investigation may include:
 - (a) examination of documents or correspondence; and
 - (b) interviews of the complainant, counsel, hearing staff, and other witnesses.
- (15) "Respondent ALJ" means an ALJ against whom a complaint is filed.

R477-101-3. Jurisdiction.

- (1) Administrative Law Judges. The committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding complaints filed against ALJs.
- (2) Former ALJs. The committee has continuing jurisdiction over former ALJs regarding allegations that misconduct occurred during service as an ALJ if a complaint is received before the ALJ's appointment concludes.

R477-101-4. Records Classification and Retention.

- (1) Records prepared by and for the committee, including any complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Section 63G-2-305.
- (2) The division shall maintain committee records for a period of three years following the conclusion of any committee activity.

R477-101-5. Committee.

- (1) The Division Director or designee shall serve as chair of the committee, and appoint four executive directors or their designees to serve on the committee.
- (2) Only executive directors of agencies that employ or contract with ALJs may serve on the committee.
- (3) If a division investigation establishes a Complaint requires further action, the chair shall convene the committee.
- (4) An executive director of the agency that employs or contracts with the respondent ALJ may not participate in a committee proceeding involving the respondent ALJ.
- (5) After convening the committee, the division shall provide a copy of the complaint and its investigative results to the committee and the respondent ALJ.

(6) Within 30 days of the date the committee is convened on a complaint the committee shall schedule a committee meeting. At the committee meeting the respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a complaint.

(7) Committee members may attend committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

(8) After consideration of any information provided at the committee meeting, the committee shall dispose of the complaint by issuing a decision or report with a recommendation to the agency containing:

- (a) a brief description of the complaint and the investigative results;
- (b) findings, and;
- (c) recommendations.

(9) Committee members may not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

R477-101-6. Duties of the Chair.

(1) The chair shall:

- (a) receive, acknowledge receipt of and review complaints;
- (b) notify complainants about the status and disposition of their complaints,
- (c) make recommendations to the committee regarding further proceedings or the disposition of a complaint;
- (d) stay investigations or committee proceedings pending final agency action of the matter giving rise to the complaint against the respondent ALJ;
- (e) maintain records of the committee's operations and actions;
- (f) compile data to aid in the administration of the committee's operations and actions;
- (g) prepare and distribute an annual report of the committee's operations and actions;
- (h) direct the operations of the committee's office, and supervise other members of the committee's staff;
- (i) make available to the public the laws, rules, and procedures of the committee and its operations; and
- (j) consider requests for extension of time periods and, upon a showing of good cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the chair may delegate any of the foregoing duties to other members of the committee's staff.

R477-101-7. Code of Conduct.

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) In order to suit a specific agency need, an agency may make an addendum or modification to the code of conduct. Any such addendum or modification is specific to that agency. In addition, an agency may not make any addendum or modification to the code of conduct unless the committee reviews and approves the changes prior to implementation. The chair may convene the committee for the purpose of reviewing any proposed addendum or modification.

R477-101-8. Filing Procedure.

(1) Each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily available to parties, at the commencement of administrative proceedings.

(2) An individual who alleges a violation of the code of conduct or otherwise has a complaint against an ALJ may file a timely written complaint with the division. An interested party shall file a written complaint with the division within 20 working days of final administrative action in the matter in which the individual is an interested party. Any complaint filed after the 20th working day of the final administrative action is untimely.

(3) The filing date is the date the division actually receives the complaint. The division shall date-stamp any complaints on the date received. Any filing and other time periods are based upon the division's working days.

(4) The person filing a complaint or that person's authorized representative shall:

- (a) specify facts and allegations of misconduct;
- (b) sign the complaint; and

(c) include the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if applicable.

R477-101-9. Investigation.

(1) Preliminary investigation.

(a) The division shall review any timely filed complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a preliminary investigation.

(b) If the preliminary investigation determines that the complaint is untimely, frivolous, without merit, or if the complaint merely indicates disagreement with the respondent ALJ's decision, without further alleged misconduct, the complaint may be dismissed without further action.

(c) If, after a preliminary investigation is completed, there is a reasonable basis to find misconduct occurred, the investigator shall initiate a full investigation.

(2) Full investigation.

Within ten days after a determination to conduct a full investigation is made, the investigator shall notify the respondent ALJ that a full investigation is being conducted. The notice shall:

- (a) inform the respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;
- (b) inform the respondent ALJ that the investigation may be expanded if appropriate;
- (c) invite the respondent ALJ to respond to the complaint in writing within 10 working days;
- (d) include a copy of the complaint, any preliminary investigation reports, and any other documentation reviewed in determining whether to authorize a full investigation; and
- (e) inform the respondent ALJ that a full investigation shall be completed within three months of the determination to conduct a full investigation unless continued by the chair.

R477-101-10. Full Investigative Findings.

The investigator shall provide the results of the investigation to the chair, who shall determine whether to convene a committee meeting.

R477-101-11. Notice.

- (1) If after review of the full investigative result and findings the chair determines the complaint is factually or legally insufficient to establish misconduct, the chair shall dismiss the complaint and take no further action.
- (2) If after review of the full investigative result and findings the chair determines the complaint requires further action, the chair shall convene the committee and order a committee meeting be scheduled.
- (3) After convening the committee the chair shall provide respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the committee meeting. The chair shall also provide the respondent ALJ with a copy of the complaint and the results of the division's investigation.
- (4) The chair shall delivery notice that a committee has been convened and a committee meeting ordered by personal service or certified mail upon the respondent ALJ or the respondent ALJ's representative. Service of any other notices or papers may be regular mail.
- (5) Within 20 days after receiving written notice from the chair that a committee has been convened the respondent ALJ may provide the committee a written response to the complaint.
- (6) After receipt of the respondent ALJ's response or after expiration of the time to respond the committee shall, in consultation with the ALJ, schedule a committee meeting. The committee shall notify the ALJ in writing of the date, time, and place of the committee meeting. Unless continued for good cause, committee meeting shall be held within four months of the date a committee is convened on a complaint.
- (7) No later than 20 days before the scheduled committee meeting the chair shall provide the respondent ALJ with copies of any documents proposed for use at the committee meeting or to be relied upon in making its report and recommendation.
- (8) respondent ALJ is entitled to representation at every stage of the committee proceedings or the committee meeting.
- (9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in committee proceedings.

R477-101-12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.

If the respondent ALJ resigns or retires during the proceedings, the committee shall determine whether to proceed or dismiss the proceedings.

R477-101-13. Committee Meetings.

- (1) The chair shall rule on any motions or objections raised during a committee meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The chair may limit the time allowed for the presentation of information, may bifurcate any issues to be considered, and may make any other rulings regarding any committee proceeding or committee meeting.
- (2) To hold a committee meeting there must be at least 3 members of the committee present.
- (3) The respondent ALJ may present information to, make statements, and produce witnesses for the committee's consideration.
- (4) Committee members may ask questions of any witness including the respondent ALJ.
- (5) Immediately following the conclusion of the committee meeting, the committee shall deliberate and decide whether there is sufficient evidence the respondent ALJ violated the code of conduct or otherwise engaged in misconduct. Any such decision shall require a majority vote of the participating committee members.
- (6) The committee shall use the preponderance of the evidence standard when making decisions.
- (7) Within 30 days of the conclusion of the committee meeting, the chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action, and shall forward the decision and recommendation to the respondent ALJ and the agency head of the respondent ALJ.
- (8) After deliberation, if the committee finds insufficient evidence or reason to determine misconduct occurred, the complaint shall be dismissed.

R477-101-14. Discipline.

(1) At any time after the commencement of a full investigation and before any committee action, the ALJ may admit to any of the allegations in exchange for a stated sanction. The committee shall make a recommendation based on the admission.

(2) An employing agency shall comply with applicable division or state rule governing discipline when taking any corrective action or disciplinary action against a career service employee.

R477-101-15. Reinstatement of Proceedings.

(1) Reinstatement upon request by complainant.

(a) If a complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the committee reinstate the complaint. The complainant shall specify the grounds upon which reinstatement is sought in the written request.

(b) The committee shall consider the written request and determine whether to reinstate the complaint at the next available meeting of the committee.

(c) A determination not to reinstate the complaint is not reviewable.

(2) Reinstatement by the chair.

(a) If the committee dismisses a complaint, the chair may, at any time upon the receipt of newly discovered evidence, request that the committee reinstate the complaint. The chair shall specify the grounds upon which the reinstatement is sought in the request.

(b) The committee shall consider the request and determine whether to reinstate the complaint at the next available meeting of the committee.

R477-101-16. Performance Standard.

(1) The following minimum performance standards apply to each ALJ:

(a) an ALJ may not have more than one agency disciplinary action or one committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) an ALJ shall receive a satisfactory rating on the survey. A satisfactory rating is achieved when an average of at least 65% of collected responses to survey questions for an ALJ is "Agree". Any survey question with a response of "Not enough information to respond" will not be used when calculating the rating.

(2) For any question that does not use the "Agree"/"Disagree" response option, the committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by Section 63A-17-705.

R477-101-17. Performance Surveys.

(1) The division shall establish and follow a schedule to survey the performance of each ALJ every four years in a staggered schedule to survey the performance of approximately one quarter of ALJ's each calendar year.

(2) Survey respondents shall include:

(a) an attorney who has appeared before the administrative law judge as counsel in the proceeding; and

(b) staff who have worked with the administrative law judge.

(3) Additional respondents may include any other persons who have appeared on record before the administrative law judge, including pro se parties and witnesses.

(4) The division shall maintain survey results separate from the ALJ's personnel file.

(5) The division shall make survey results available to the ALJ's supervisor for consideration in completing annual performance evaluations.

R477-101-18. Training.

(1) The division shall provide an annual webcast on the topic of procedural fairness for administrative law judges. The content of the webcast shall comply with the provisions and requirements set forth in Section 63A-17-710.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the division under this section, the administrative law judge shall complete the procedural fairness training program established by the division.

R477-101-19. Hiring of Administrative Law Judges.

(1) Hiring of administrative law judges must comply with Section 63A-17-704 and Section R477-4-15.

KEY: administrative law judges, conduct committee

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Notice of Continuation: January 7, 2019

Authorizing, and Implemented or Interpreted Law: 63A-17-701 through 63A-17-710