

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #2

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JUN 23 P 4:20

WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

RULE TYPE: Legislative CITE AUTHORITY: W.Va. Code § 6B-2-5a et. seq.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Code of Conduct for Administrative Law Judges

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 29, 2004 AT 5:00 p. m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

W. Va. Ethics Commission

4th Floor - Litton Building

1207 Quarrier Street

Charleston, W. Va. 25301-1838

558-0664 Fax 558-2169

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**

Form #3

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WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Ethics Commission TITLE NUMBER: 158

CITE AUTHORITY: W.Va. Code § 6B-2-5a et. seq.

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Code of Conduct for Administrative Law Judges

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

BRIEF SUMMARY OF PROPOSED RULE
Title 158, series 13

The rule creates a code of conduct for administrative law judges. The rule is based in part upon the National Association of Administrative Law Judges Model Code of Conduct for State Administrative Law Judges (1999) and the American Bar Association Model Code of Conduct for State Administrative Law Judges (1995).

The rule prescribes conduct for administrative law judges and other persons in state government who have the authority to conduct an administrative adjudication. It also provides a mechanism for applying for an advisory opinion.

The rule creates a procedure for filing complaints against persons and sets forth penalties for persons found to be in violation of the Code of Conduct.

STATEMENT OF CIRCUMSTANCES

The Legislature passed an Act during the 2004 session which directs the West Virginia Ethics Commission, in consultation with the West Virginia State Bar, to propose rules for legislative approval establishing a code of conduct for state administrative law judges. (W.Va. Code § 6B-2-5a *et. seq.*) The legislation enumerates the major provisions which should be incorporated into the code of conduct. It also directs that the rule should provide for appropriate civil penalties and sanctions for violations.

The Act also directs the Ethics Commission to consider model codes of conduct for state administrative law judges as drafted by the National Association of Administrative Law Judges and the American Bar Association.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Code of Conduct for Administrative Law Judges

Type of Rule: X Legislative Interpretive Procedural

Agency: West Virginia Ethics Commission

Address: 4th Floor - Litton Building, 1207 Quarrier Street

Charleston, West Virginia 25301-1838

558-0664 FAX 558-2169

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 27,207.00		00.00	27,207.00	\$ 27,207.00
PERSONAL SERVICES	\$ 25,600.00		00.00	\$ 25,60.00	\$ 25,600.00
CURRENT EXPENSE	\$ 900.00		00.00	\$ 900.00	\$ 900.00
REPAIRS & ALTERATIONS	00.00		00.00	00.00	00.00
EQUIPMENT	\$ 600.00		00.00	\$ 600.00	\$ 600.00
OTHER	\$ 107.00		00.00	\$ 107.00	\$ 107.00

2. Explanation of Above Estimates:

See attached

3. Objectives of These Rules:

The rule establishes a code of conduct for administrative law judges. It also sets forth a complaint process and provides penalties for violations.

Rule Title: Code of Conduct for Administrative Law Judges

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

The economic impact is discussed under section 1. A person who violates the code may be subject to a \$ 1,000.00 fine per violation. However, the decision of whether to impose a fine rests with the Ethics Commission. It is not expected that the collection of fines will be a significant source of state revenue.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens:

None anticipated.

C. Economic Impact on Citizens/Public at Large.

None anticipated.

Date: 6/28/04

Signature of Agency Head or Authorized Representative:

Lewis D. Burr

Attachment to Fiscal Note

Explanation of above estimates

Personal Services - this figure includes an estimate on the cost of investigative and paralegal services. The estimate is based in part on the number of complaints which required actual investigation by the West Virginia Judicial Investigation Commission (JIC). The JIC oversees Judges, Circuit Court Judges, Family Court Judges, Magistrates and Mental Hygiene Commissioners and enforces the code of conduct for these officials. The total number of individuals in these categories is 258. In 2003, the JIC received 234 complaints. The percentage of complaints per number of judicial officers for 2003 was 91 %.

Using the statistics from the JIC as a baseline, it is estimated that the Ethics Commission will receive 80 complaints. This number is calculated by taking 91 % of full-time administrative law judges and hearing examiners (84) for a total of 74 complaints. The figure then includes an estimate of approximately 6 additional complaints as there are also 47 part-time/contract hearing examiners who are employed by State agencies. Further there are other individuals who serve on commissions with adjudicatory responsibilities. These individuals may fall within the definition of a person covered by the rule.

The most significant expenses will be associated with complaints which require an investigation and/or hearing. According to the JIC 2003 annual report, of the 323 pending complaints in 2003, 46 required a formal investigation. The percentage is 14 %.

Applying this percentage to the number of full-time administrative law judges and hearing examiners employed by the State of West Virginia, it is estimated that approximately 15 would require a formal investigation. This number is calculated as follows: (1) 14 % of 84 full-time hearing examiners = 11.76; and, (2) 7 % of 47 part-time hearing examiners = 3.29.

Each investigation would require an investigator. The Commission currently contracts with an investigator. The cost of the investigator is \$ 40.00 per hour. If he spends 10 hours on each case, then the total projected cost would be \$ 7,200.00. (18 complaints x 10 hours per complaint x \$ 40.00).

In order to save on administrative costs, the Ethics Commission no longer employs a full-time paralegal. The Commission does employ the contract services of a paralegal. In order to assist the Commission in technology management, and in the organization of files and investigative materials, the estimated cost of paralegal services is \$ 3,750.00 (250 hours x \$ 15.00 per hour).

The rules also provide that if a complaint proceeds to hearing, then a hearing examiner will hear the case. The estimated cost for a hearing examiner is \$ 7,500.00. This figure is calculated based upon - 5 hearings x 20 hours per hearing x rate of \$ 75.00 per hour.

For the hearings, the services of a Court reporter would be required. These costs would

be in the range of \$ 1, 750.00. Last, the filing of complaints will in certain instances require an investigative panel and/or advisory panel to meet. The meetings may be on separate days from the monthly meeting of Commissioner. The per diem rate for commissioners is \$ 150.00 per day plus travel expenses. If an investigative or advisory panel meets 12 times per year, then the cost will be approximately \$ 5,400.00 for the commissioners (12 meetings x 3 commissioners x \$ 150.00 per diem cost). In addition the travel reimbursement expenses are estimated at \$ 400.00.

In conclusion a summary of other costs are as follows:

ACTIVITY	COST
Investigator	\$ 7,200.00
Paralegal	\$ 3,750.00
Court Reporter	\$ 1,750.00
Hearing Examiner	\$ 7,500.00
Per diem for Commissioners	\$ 5,400.00
TOTAL:	\$ 25,600.00

Current Expenses - Expenses would include: (1) travel expenses for commissioners for investigative and/or advisory panels - \$ 400.00; (2) office supplies - \$ 350.00; (3) Mailing costs - \$ 150.00. **Total** = \$ 900.00

Equipment - new filing cabinet. Total = \$ 600.00

Other - Total = \$ 107.00 - The Ethics Commission was charged with the duty of promulgating a code of conduct for administrative law judges during the 2004 regular legislative session. If the Legislature adopts the rules, then the Commission will need to issue advisory opinions and to enforce the rule. In order to fulfill this task, it is necessary for the Commission staff to have access to resources on this subject matter. These resources and the associated cost would include:

Professional trade organization - American Judicature Society - Membership fee is \$ 75.00. Membership services include access to written opinions from other states interpreting the judicial code of ethics. The Administrative Law Judge Code of Ethics contains similar provisions. As states have only recently begun to adopt the ALJ Code of Ethics, the states will have to rely upon interpretations of the judicial code of ethics for assistance in interpreting the code.

Subscription to the Judicial Conduct Reporter - \$ 32.00 - a quarterly magazine which reports developments in judicial discipline.

TITLE 158
LEGISLATIVE RULE
WEST VIRGINIA ETHICS COMMISSION

FILED

SERIES 13
CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES

JUN 28 P 4:17

WEST VIRGINIA
SECRETARY OF STATE

§158-13-1. General.

1.1. Scope. -- These legislative rules establish a code of conduct for state administrative law judges.

1.2. Authority. -- W. Va. Code §6B-2-5a.

1.3. Filing Date. -

1.4. Effective Date. -- July 1, 2005

§158-13-2. Interpretation.

2.1. This rule is taken, in part, from the National Association of Administrative Law Judges Model Code of Conduct for State Administrative Law Judges (1999) and the American Bar Association Model Code of Conduct for State Administrative Law Judges (1995). In interpreting this rule, the Ethics Commission shall consider the commentaries contained in these model codes.

§158-13-3. Definitions.

3.1. "State administrative law judge": any public employee, public officer, or contractor functioning as a hearing officer, referee, trial examiner or other position in state government to whom the authority to conduct an administrative adjudication has been delegated by an agency or by statute, and who exercises independent and impartial judgment in conducting hearings and in issuing decisions, recommended decisions or reports containing findings of fact and conclusions of law in accordance with applicable statutes or rules, but does not include any person whose conduct is subject to the code of judicial conduct promulgated by the West Virginia supreme court of appeals.

3.2. "Compensation": any money, thing of value or financial benefit. The term "compensation" does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one's official duties.

3.3. "Complainant": a person who files a complaint with the ethics commission.

3.4. "Respondent": a person against whom a complaint has been filed with the ethics commission.

3.5. "De minimis": an insignificant interest that could not raise reasonable question as to an administrative law judge's impartiality.

3.6. "political organization": a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

§158-13-4. Standards of Conduct.

4.1. A state administrative law judge shall uphold the integrity and independence of the administrative judiciary.

4.1.a. An independent and honorable administrative judiciary 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 the administrative judiciary will be preserved. The provisions of this rule should be construed and applied to further that objective.

4.1.b. The fact that an administrative law judge rules in favor of the agency by which he or she is employed or serves under contract, standing alone, does not establish a lack of independence.

4.1.c. The compensation of an administrative law judge may not be conditioned upon the outcome of a proceeding before that judge.

4.1.d. No provision in this rule prohibits an agency or administrative judiciary, in the interest of uniformity and consistency, from establishing policies interpreting case law and statutory law.

4.2. A state administrative law judge shall avoid impropriety and the appearance of impropriety in all activities.

4.2.a. 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.

4.2.b. An administrative law judge shall not allow family, social, political, employment or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others, nor convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify voluntarily as a character witness.

4.2.c. An administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion, or national origin. For the purposes of this section, an "organization which practices invidious discrimination" shall mean any organization which arbitrarily excludes persons from membership upon the basis of race, gender, religion, or national origin. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical, or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

4.3. A state administrative law judge shall perform the duties of the office impartially and diligently.

4.3.a. The judicial duties of an administrative law judge 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:

4.3.b. Adjudicative responsibilities.

4.3.b.1. An administrative law judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, employment status or fear of criticism.

4.3.b.2. An administrative law judge shall maintain order and decorum in proceedings.

4.3.b.3. An administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers or other representatives, staff members and others subject to the judge's direction and control.

4.3.b.4. 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. An administrative law judge shall not initiate, permit or consider *ex parte* communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

4.3.b.4.A. 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:

4.3.b.4.A.1. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

4.3.b.4.A.2. the judge makes provisions promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

4.3.b.4.B. A judge may obtain the advice of a disinterested expert on the law applicable to the proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

4.3.b.4.C. A judge may consult other judges and support personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

4.3.b.4.D. A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

4.3.b.4.E. Decisions of an administrative law judge shall clearly identify the person or persons responsible for the contents of a decision, and shall be based exclusively on evidence in the record of the proceeding, material that has been officially noticed, and material which agency policy or applicable statutes ordinarily permit consideration or reference.

4.3.b.5. An administrative law judge shall require participants in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This provision does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

4.3.b.6. 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 judge shall require similar

abstention on the part of agency personnel subject to the judge's direction and control. This provision does not prohibit an administrative law judge from making public statements in the course of their official duties or from explaining for public information the procedures of the agency. Further, this provision does not apply to proceedings in which the judge is a litigant in a personal capacity.

4.3.b.7. 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.

4.3.b.8. 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 judge.

4.3.b.9. An administrative law judge shall not be subject to influence from the head of an agency whose decision is being reviewed.

4.3.c. Administrative responsibilities.

4.3.c.1. 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 state administrative law judges.

4.3.c.2. An administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

4.3.c.3. An administrative law judge shall take appropriate action or initiate appropriate disciplinary measures against a state administrative law judge, lawyer, representative or others for unprofessional conduct of which the judge may become aware. Appropriate action may include communication with the state administrative law judge, lawyer or representative, who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority, or other agency or body.

4.3.d. Disqualification.

4.3.d.1. An administrative law judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

4.3.d.1.A. 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;

4.3.d.1.B. the administrative law judge served as lawyer or representative in the matter in controversy, or a lawyer with whom the judge practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it. Ordinarily, a lawyer in a governmental agency is not considered to have an association with other lawyers employed by that agency within the meaning of this provision.

4.3.d.1.C. 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;

4.3.d.1.D the administrative law judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the 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;

4.3.d.1.E. the administrative law judge or the judge's spouse or a person within the third degree of relationship to either of them or the spouse of such a person:

4.3.d.1.E.1. is a party to the proceeding, or an officer, director or trustee of a party;

4.3.d.1.E.2. is acting as a lawyer or representative in the proceeding.

4.3.d.1.E.3. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

4.3.d.1.E.4. is to the judge's knowledge likely to be a material witness in the proceeding.

4.3.d.2. An administrative law judge should be aware of his or her personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of his or her spouse and minor children residing in the judge's household.

4.3.d.3. For the purposes of this section, the following words or phrases shall have the meaning indicated:

4.3.d.3.A. the degree of relationship is calculated according to the civil law system;

4.3.d.3.B. "fiduciary" includes such relationships as executor, administrator, trustee and guardian;

4.3.d.3.C. "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:

4.3.d.3.C.1. ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the state administrative law judge participates in the management of the fund;

4.3.d.3.C.2. an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

4.3.d.3.C.3. 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;

4.3.d.3.C.4. 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.

4.3.d.3.C.5. "proceeding" includes pre-hearing or other stages of litigation.

4.3.e. Remittal of disqualification.

4.3.e.1. An administrative law judge disqualified by the means of § 4.3.d. 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 judge's participation, all agree that the judge should not be disqualified and the judge is willing, the administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

4.4. A state administrative law judge may engage in activities to improve the law, the legal system, and the administration of justice.

4.4.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 judge:

4.4.a.1. Speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.

4.4.a.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.

4.4.a.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 raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge 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.

4.5. A state administrative law judge shall regulate the judge's extra-judicial activities to minimize the risk of conflict with judicial duties.

4.5.a. Extra-judicial activities in general.

4.5.a.1. An administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

4.5.a.1.A. cast reasonable doubt on the judge's capacity to act impartially as a judge;

4.5.a.1.B. demean the judge's office; or

4.5.a.1.C. interfere with the proper performance of the judge's duties.

4.5.b. Avocational activities.

4.5.b.1. 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.

4.5.c. Civic and charitable activities.

4.5.c.1. 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. A judge may 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:

4.5.c.1.A. 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 judge or will be regularly engaged in adversary proceedings before any agency in which the judge serves.

4.5.c.1.B. An administrative law judge should not use or permit the use of the prestige of the judge's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal or civic organization, but the judge may be listed as an officer, director or trustee of such an organization. The judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

4.5.d. Financial activities.

4.5.d.1. 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 judge's official position or involve the judge in frequent transactions with lawyers or persons likely to come before the agency in which the judge serves.

4.5.d.2. Subject to the requirements in subsection 4.5.d.1. of this rule, an administrative law judge may hold and manage personal investments, including real estate, and engage in other remunerative activity.

4.5.d.3. An administrative law judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as judges can do so without serious financial detriment, judges shall divest themselves of investments and other financial interests that might require frequent disqualification.

4.5.d.4. Neither an administrative law judge nor a member of the family residing in the judge's household should accept a gift, bequest, favor or loan from anyone except as follows:

4.5.d.4.A. An administrative law judge may accept a gift incident to a public testimonial to the judge, books supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse to attend a function or activity devoted to the improvement of the law, the legal system or the administration of justice.

4.5.d.4.B. 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.

4.5.d.4.C. 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 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.

4.5.d.5. For purposes of this section "member of the family residing in the household" means any relative of the administrative law judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the household.

4.5.d.6. An administrative law judge is not required by this rule to disclose income, debts or investments, except as provided by law.

4.5.d.7. Information acquired by administrative law judges in their judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

4.5.e. Fiduciary activities.

4.5.e.1. 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 judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in an agency in which the judge serves or one under its appellate jurisdiction. While acting as a fiduciary, an administrative law judge is subject to the same restrictions on financial activities that apply to the judge in the judge's personal capacity.

4.5.f. Arbitration.

4.5.f.1. An administrative law judge may act as an arbitrator or mediator if such activity does not affect the independent professional judgment of the judge or the conduct of his official duties. An administrative law judge shall not be an arbitrator or mediator over a matter which the judge may later preside.

4.5.g. Practice of law.

4.5.g.1. Subject to applicable law and relevant agency rules, an administrative law judge may practice law if such

activity would neither affect the independent professional judgment of the administrative law judge nor the conduct of the judge's official duties. An attorney who is an administrative law judge shall not accept the representation of a client who is a litigant before the tribunal for whom the administrative law judge serves or if there is a likelihood that such person will appear before the judge. An administrative law judge shall not practice law before the administrative tribunal for which the judge serves.

4.5.h. Extra-judicial appointments.

4.5.h.1. An administrative law judge may accept appointment to a governmental committee, commission or other position that is concerned with issues of policy on matters which may come before the judge if such appointment neither affects the independent professional judgment of the administrative law judge nor the conduct of the judge's official duties.

4.6. A state administrative law judge shall limit compensation received for quasi-judicial and extra-judicial duties.

4.6.a. An administrative law judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this rule, if the source of such payments does not give the appearance of influencing the judge in the judge's official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

4.6.a.1. Compensation.

4.6.a.1.A. 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.

4.6.a.2. Expense reimbursement.

4.6.a.2.A. 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 judge's spouse or guest. Any payment in excess of such an amount is compensation.

4.7. A state administrative law judge shall refrain from political activity inappropriate to the office.

4.7.a. Consistent with applicable statutes and relevant agency rules, an administrative law judge shall not:

4.7.a.1. publicly display any campaign paraphernalia in any area where judicial activities are conducted or knowingly permit any such display.

4.7.a.2. personally solicit funds for a political organization or political candidate or be compelled to pay an assessment to a political organization or candidate or purchase tickets for political dinners or other similar functions.

4.7.b. A full-time administrative law judge shall resign from office prior to becoming a candidate in either a party primary or a general election for any elected public office.

4.7.b.1. For purposes of this rule, a full-time administrative law judge becomes a candidate for an elected public office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support.

4.7.c. An administrative law judge may engage in political activity on behalf of measures to improve the law, the legal system, or the administration of justice, or as expressly authorized by law.

§158-13-5. Advisory Opinions.

5.1. The chairman of the West Virginia Ethics Commission shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia Ethics Commission Committee on Standards of Conduct for Administrative Law Judges. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

5.2. In appointing the committee, the chairman of the commission shall not appoint all members of the same political affiliation.

5.3. Any person whose conduct is governed by the provisions of this code of conduct may make application for an advisory opinion from the commission's Committee on Standards of Conduct for

Administrative Law Judges. All applications for advisory opinions shall be in writing and be directed to the committee at 1207 Quarrier Street, Suite 407, Charleston, West Virginia 25301.

5.4. All applications for advisory opinions must contain the name, address and telephone number of the requester in the event additional information is needed.

5.5. All applications for advisory opinions should fully describe the applicant's official position, employment, or status under this rule.

5.6. All applications for advisory opinions should contain an explanation or paragraph summarizing the conduct for which the application is being made.

5.7. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion.

5.8. All advisory opinions issued pursuant to this rule will be submitted to the Secretary of State for publication and indexing in the Code of State Rules.

5.9. Before an advisory opinion is made public, any material which may identify the person who is the subject of the opinion, shall to the fullest extent possible, be deleted and the identity of the person shall not be revealed.

5.10. A person subject to the provisions of this rule may rely upon an advisory opinion of the committee, and any person acting in good faith reliance on any such opinion shall be immune from the sanctions provided in this rule.

§158-13-6. Filing Verified Complaints.

6.1. Any person may file a verified complaint with the committee regarding the conduct of a person or persons subject to this rule. A verified complaint is one written and duly verified by oath or affirmation before a notary public.

6.2. A duly verified complaint must be filed with the committee at 1207 Quarrier Street, Suite 407, Charleston, West Virginia 25301.

6.3. The executive director or his or her designee shall within three working days of receipt in the committee's office acknowledge the verified complaint by first class mail.

§158-13-7. Acceptance or Dismissal of Complaints.

7.1. In considering a complaint, the committee shall act in the capacity of an investigative panel. The investigative panel must first determine whether the allegations stated in the complaint, if taken as true, would constitute a material violation of this rule.

7.2. If two members of the investigative panel determine that the complaint does not contain allegations which would constitute a material violation of this rule, then the investigative panel shall dismiss the complaint by order. A copy of the order shall be sent to the complainant by first class mail.

7.3. If the investigative panel determines that the allegations of the complaint, if taken as true, would constitute a material violation of this rule, then the executive director or his or her designee shall give notice of the initiation of an investigation (Notice of Investigation) by the panel to the complainant and respondent.

7.4. The Notice of Investigation, accompanied by a copy of the complaint, shall be mailed to the parties and be sent to the respondent by certified mail, return receipt requested, marked "Addressee only, personal and confidential."

7.5. The Notice of Investigation shall describe respondent's conduct which is the basis for the alleged violation of this rule.

7.6. The Notice of Investigation shall advise the respondent that the purpose of the investigation is to determine whether probable cause exists to believe a violation of the Code of Conduct for Administrative Law Judges has occurred which may subject the respondent to sanctions by the West Virginia Ethics Commission.

7.7. The Notice of Investigation shall also inform the respondent that he or she has the right to appear and make an oral response before the investigative panel if he or she reserves the right to make an appearance in writing within fifteen (15) days of the date of notice.

7.8. The Notice of Investigation shall also inform the respondent that he or she may respond in writing to the investigative panel within thirty (30) days of receipt of the notice, which time may be extended by the chairman of the investigative panel upon good cause shown by the respondent.

7.9. The Notice of Investigation shall also advise the respondent that his or her failure or refusal to respond to a fact or allegation is not taken as an admission of the truth of that fact or allegation.

§158-13-8. Investigation.

8.1. The investigative panel has forty five (45) days following the mailing of notice of investigation to consider:

8.1.a. The allegations raised in the complaint;

8.1.b. Any timely received written response of respondent;

8.1.c. Any oral response received from the respondent;

8.1.d. Other competent, relevant evidence submitted by any person to the commission; and

8.1.e. Other competent, relevant evidence gathered by the commission.

8.2. If the respondent requests an appearance before the investigative panel to present an oral response to the complaint, the investigative panel chairman will schedule a meeting to be held after the time has passed for the respondent to file a written response (within 30 days after the notice of investigation is received by the respondent). The respondent, his or her counsel, legal counsel to the commission and the commission investigator(s) may be present at the meeting.

8.3. The respondent has thirty minutes to make an oral response or statement of defense to the charges or allegation contained in the complaint. The respondent's testimony will be taken under oath or affirmation. The investigative panel, in its discretion, may allow the respondent additional time for the oral response. The investigative panel may either record the testimony electronically

or employ the services of a court reporter to record and transcribe the proceedings, as necessary.

8.4. The investigative panel may seek additional probative information from the respondent as is necessary for its investigation.

8.5. The ethics commission and the investigative panel may issue subpoenas as is necessary and any subpoena issued has the same effect as one issued by a circuit court of the state.

8.6. The commission may seek enforcement of any subpoena issued by the commission or a hearing examiner as provided under this rule by applying to the Circuit Court of Kanawha County, through the issuance of a rule or an attachment against the respondent in a contempt case.

§158-13-9. Findings of Probable Cause.

9.1. If a majority of the investigative panel fails to find probable cause the proceedings shall be dismissed by order of the commission signed by a majority of the members of the investigative panel.

9.2. The commission order shall be signed by the majority members of the panel and copies of the order shall be sent to complainant and respondent within three days of execution of the order by the panel members.

9.3. If a majority of the investigative panel finds probable cause to believe that a violation under this rule has occurred the majority members of the investigative panel shall sign an order directing the commission staff to prepare a statement of charges and to schedule a hearing within sixty (60) days after the date of the order.

§158-13-10. Confidentiality Requirements.

10.1. The commission shall keep all matters or information received by the commission and the investigative panel relating to a complaint, including the identity of the complainant and respondent, confidential except as otherwise provided by this rule.

10.2. If the respondent agrees in writing to a release of information, the commission may disclose any information relating to a complaint or an investigation to the public at any time.

10.3. Upon a finding by an investigative panel that probable cause exists to believe that there has been a material violation of one of the prohibitions in this rule, the complaint and all reports, records, non-privileged and non-deliberative material used to determine probable cause of a violation are thereafter not confidential: Provided, That confidentiality of the information remains in full force and effect until the respondent has been served by the commission with a copy of the investigative panel's order finding probable cause and with the statement of charges.

10.4. After a finding of probable cause any subsequent hearing held for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and non-deliberative materials introduced into evidence as well as the commission's orders, are not confidential.

10.5. The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any complaint filed with the commission immediately upon the respondent's request.

10.6. The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

10.7. The commission may order a person filing a complaint to be bound to confidentiality if the commission makes a finding that there is a reasonable likelihood that the dissemination of information regarding a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice.

§158-13-11. Notice of Hearing.

11.1. If an investigative panel finds probable cause to believe a violation of this rule has occurred, the executive director shall serve respondent by certified mail, return receipt requested, a notice of the hearing at least forty-five (45) days prior to the date of the hearing.

11.2. The notice shall contain a statement of the charges, and provide the date, time, and place of the hearing.

11.3. Copies of the panel's order finding probable cause and the statement of charges shall be forwarded to the government agency where the respondent is or was employed or was under contract at the time of the events alleged as a violation of this rule.

§158-13-12. Continuances.

12.1. The scheduled hearing may be continued only upon a showing of good cause by either party prior to the hearing.

§158-13-13. Hearing Board and Hearing Examiner.

13.1. The commission members who have not served as members of the investigative panel in a particular case shall comprise a hearing board responsible for adjudicating the case. A hearing examiner shall be employed by the commission to preside at the taking of evidence at the hearing and issue a recommended decision. The hearing examiner shall be known as the "presiding officer" at the hearing as that term is used in these rules.

13.2. The qualifications of the hearing examiner shall conform to the requirements of this rule. Hearing examiners must be attorneys licensed to practice in West Virginia, with a minimum of three years experience in the practice of law.

13.3. The hearing examiner will be selected by the chairperson of the commission, subject to approval at the next meeting by a majority vote of the commission members present and voting.

13.4. The hearing examiner presiding at a hearing may:

13.4.a. administer oaths and affirmations;

13.4.b. compel the attendance of witnesses and issue subpoenas for witnesses as provided in this rule;

13.4.c. compel the production of documents and issue subpoenas duces tecum as provided in this rule;

- 13.4.d. examine witnesses and parties;
- 13.4.e. rule on offers of proof;
- 13.4.f. rule on evidentiary matters;
- 13.4.g. regulate the course of the hearing;
- 13.4.h. hold conferences for the settlement or simplification of issues by consent of the parties;
- 13.4.i. dispose of procedural requests or similar matters;
- 13.4.j. accept stipulated agreements;
- 13.4.k. take other action authorized by the ethics commission consistent with the provisions of this rule; and,
- 13.4.l. continue the hearing date upon motion of the respondent or commission where good cause is shown.

§158-13-14. Disqualification of Hearing Examiners.

14.1. A party seeking the disqualification of a hearing examiner must file a written, verified motion stating the facts and reasons for disqualification. The motion should be filed at least fifteen (15) days prior to a scheduled hearing or state, with particularity, why it is filed later.

14.2. The hearing examiner may disqualify himself or herself without a hearing or may refuse to do so and inform the parties that a hearing is necessary.

14.3. A member of the investigative panel assigned to the case shall be appointed by the commission chairman to hear and decide a motion for disqualification. The hearing shall be held no sooner than three days and no later than seven days after the motion is filed, unless the parties agree to a shorter or longer time period.

14.4. The party seeking disqualification of the hearing examiner may make a full record. The costs thereof, including the cost of court reporter services, witness fees and expenses shall be borne by the moving party unless the moving party prevails on the motion or makes a showing of indigence.

14.5. The investigative panel member assigned to hear the motion for disqualification shall issue a written decision on the motion as soon as practicable, but no later than seven days after the motion was heard. If a motion is granted the commission chairperson shall appoint a new hearing examiner no later than seven days after the decision on the motion is received. If the motion is denied the hearing examiner shall proceed to hear the case within the time frame set forth in the notice of hearing or, if necessary and upon a showing of good cause, shall reschedule the hearing to a later date.

14.6. The decision on the merits of a motion to disqualify a hearing examiner shall be considered interlocutory in nature and not subject to direct or immediate appeal, except that this rule shall not prohibit any party from seeking redress by appropriate extraordinary remedy.

§158-13-15. Prehearing Discovery.

15.1. Information which is exempt from discovery includes, but is not limited to the following:

15.1.a. any record, report, memorandum, or communication dealing with the internal practice, policy and procedure of the commission.

15.1.b. any record, report, memorandum, or communication of the staff or commission member regarding the institution, progress or result of an investigation of a complaint.

15.1.c. the work product of an investigator or other staff member made in the course of an investigation of a complaint, or in preparation for an investigative panel, or in anticipation of or in preparation for a hearing on the complaint.

15.1.d. any memorandum, statement or opinion prepared or directed to be prepared by legal counsel to the commission.

15.2. The parties shall exchange within twenty-five (25) days of the mailing and receipt of notice of the hearing to the respondent:

15.2.a. reports of experts to be used at the hearing;

15.2.b. a list of witness names, addresses, and telephone numbers as available to be used at the hearing;

15.2.c. copies of documents to be used at the hearing; and

15.2.d. results of any inspection of tangible objects to be used at the hearing.

15.3.a. Witness Statements -- At least seven (7) days prior to the hearing the parties shall exchange written and signed statements, tape recorded statements, and statements adopted by individuals who will be witnesses at the hearing which are within the respondent's or commission's possession.

15.3.b. If a party fails to comply with section 15.3.a. of this rule to produce witness statements in a timely manner the hearing examiner shall bar that witness' testimony at the hearing unless good cause can be shown and the hearing examiner allows the witness' testimony.

15.4.a. Production of Witnesses -- Each party is entitled to compel through subpoena the attendance of any witness whose testimony may be relevant and material, except that a party is not entitled to the presence of a witness who is determined unavailable. A witness is unavailable in, but not limited to, the following situations:

15.4.a.1. The witness is not subject to compulsory process in West Virginia by reason of non-residence within, or prolonged absence from the State of West Virginia;

15.4.a.2. The witness is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity;

15.4.a.3. The witness is exempted from testifying by ruling of a circuit court on the ground of privilege from testifying.

15.4.b. Where a subpoena is issued at the instance of a party to the hearing, the cost of service, and the witness and mileage fee shall be borne by the party at whose request the subpoena is issued, at the same rate as paid to witnesses in state circuit court proceedings. The party who uses an expert witness at the hearing is responsible for payment of the appearance fee of the witness.

15.4.c. The presence of a witness may be obtained by the issuance of a subpoena requiring the attendance of the witness at the designated place, time and hearing date. A subpoena for a witness may be issued by the hearing examiner upon the written application of any party. It is the responsibility of the party requesting the issuance of a subpoena to serve the subpoena on a witness by personal service or certified mail, return receipt requested.

15.5. Production of Documents -- Each party is entitled to compel through a subpoena duces tecum the production of documents which are relevant and material to the hearing. A subpoena duces tecum may be issued by the hearing examiner upon written application of any party. It is the responsibility of the party requesting the issuance of a subpoena duces tecum to serve the subpoena on the authorized records custodian by certified mail or personal service.

15.6. Depositions -- Depositions may be obtained by any party and used for evidentiary purposes.

15.6.a. Evidentiary objections may be made on the record during any deposition or at the time the deposition is offered into evidence.

15.6.b. It is not necessary that a hearing examiner be present at the deposition.

15.6.c. A party may be permitted to take a deposition of a witness, within or without the State of West Virginia upon written request to and approval by the hearing examiner. A request for deposition shall contain:

15.6.c.1. the name and address of the person whose deposition is requested;

15.6.c.2. a brief statement of the matters on which the person is to be examined; and

15.6.c.3. a brief statement of the reasons for taking the deposition in lieu of eliciting testimony at a hearing.

15.6.d. If approval is granted for the deposition, the party taking the deposition shall provide reasonable notice of the deposition to the person deposed, all parties, and their counsel of record.

15.6.e. The notice shall be in writing and contain the date, time and place of the deposition, as well as the name and address of each person to be deposed.

15.6.f. The cost of court reporter services, witness fees and expenses shall be borne by the party taking the deposition.

15.6.g. The deposition shall be taken in the manner proscribed by the laws of West Virginia for taking depositions in civil cases in courts of record except as set forth in this rule.

§158-13-16. Hearing Procedure.

16.1. The West Virginia Rules of Evidence shall be used in the hearing.

16.2. The complaint will be prosecuted by a member of the commission staff.

16.3. The hearing proceedings shall be electronically recorded or, the commission may employ the services of a court reporter to record and transcribe the proceedings by any means permitted in the circuit courts of this state.

16.4. Any party to a hearing has the right to be represented by an attorney duly qualified to practice in the State of West Virginia. No party may be represented at a hearing by a spokesperson, lay representative or anyone else not licensed or authorized to practice law in the State of West Virginia.

16.5. The respondent may appear without counsel and represent himself or herself at the hearing. At the beginning of the

hearing the presiding officer shall insure the respondent does not desire to obtain counsel and is thoroughly advised of the sanctions which may be imposed in the event of a finding that the respondent committed a material violation of this rule.

16.6. All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The presiding officer may, in his or her discretion, recess or continue any hearing in which the parties, attorneys, witnesses or spectators, conduct themselves in a disrespectful, disorderly or contemptuous manner which interferes with or prevents the proper conduct of the hearing.

16.7. All testimony to be considered by the presiding officer at the hearing shall be by sworn or affirmed testimony.

16.8. The purpose of the hearing is to further inquire into the matters set forth in the statement of charges, and to record evidence and arguments in support of and in opposition to the charges so that the commission may determine all issues.

16.9. Members of the commission and its officers, agents and employees are competent to testify at the hearing as to material and relevant matters: Provided, That no member of the commission who testifies at the hearing shall thereafter participate in the deliberations or decisions of the commission with respect to the case in which he or she testified.

16.10. Each party may make a brief opening statement setting forth the evidence he or she intends to prove.

16.11. Initially the complainant or the commission's counsel shall present competent and relevant evidence, including testimony or documents, in proof of the statement of charges.

16.12. The respondent or his or her counsel may present competent and relevant evidence following the conclusion of the complainant's case.

16.13. Each party has the right to cross-examine any witness who testifies.

16.14. Following the presentation of the respondent's evidence the complainant has the right to submit rebuttal evidence.

16.15. Following the presentation of all evidence all parties have the right to offer oral argument to summarize the evidence presented, not to exceed ten (10) minutes for each presentation, unless for good cause the period is extended by the presiding officer.

16.16. All exhibits offered into evidence shall be labeled and marked as exhibits of the respective parties, such as "Complainant Exhibit," or "Respondent Exhibit".

16.17. All exhibits offered into evidence, or copies thereof, shall be appended to the record of proceedings, and if any exhibit is not susceptible to attachment or copying either a photograph, facsimile, or description of the exhibit may be substituted.

16.18. The presiding officer may order witnesses sequestered upon his or her own motion or on the motion of a party.

16.19. The respondent is entitled to be present and to present evidence at the hearing; however, the taking of evidence and a final determination of the issues shall not be prevented, and the respondent shall be considered to have waived the right to be present if:

16.19.a. after being notified of the date, time and place of hearing he or she does not appear, absent a prior showing of good cause, or

16.19.b. after being advised by the presiding officer that disruptive conduct will cause removal from the hearing, he or she persists in conduct which justifies his or her exclusion from the hearing.

16.20. The cost of preparing a transcript of the hearing shall be borne by the party requesting it. Upon a showing of indigence by the respondent, however, the commission may provide a transcript of the hearing without charge.

§158-13-17. Findings of Fact, Conclusions of Law, and Briefs.

17.1. Any party, within fifteen (15) days from the conclusion of the hearing, may submit proposed findings of fact, conclusions of law and a brief containing argument. All proposed findings of fact, conclusions of law and briefs shall be filed with the West

Virginia Ethics Commission at 1207 Quarrier Street, Charleston, West Virginia 25301.

17.2. Findings of fact shall be limited to the facts admitted into evidence at the hearing or made part of the record and any facts found through judicial notice.

§158-13-18. Decision by Hearing Examiner.

18.1. The hearing examiner shall prepare a recommended decision following the fifteen (15) day period after the hearing reserved to the parties to submit proposed findings of fact, conclusions of law and any briefs containing argument.

18.2. The hearing examiner has forty five (45) days from receipt of the proposed findings and conclusions from the parties to issue his or her recommended decision.

18.3. The hearing examiner shall serve copies of this recommended decision on the parties by certified mail, return receipt requested, and submit the recommended decision, along with the entire record, to the commission for final decision by the hearing board.

18.4. The parties may submit briefs to the commission's hearing board in support of or in opposition to the hearing examiner's recommended decision within fourteen (14) days of receipt of the recommended decision.

18.5. The commission's hearing board shall then have forty-five days (45) within receipt of the entire record to make a final decision on behalf of the commission.

18.6. Any party may request an opportunity to make an oral argument to the hearing board members prior to their deliberations on the hearing examiner's recommended decision and the imposition of appropriate sanctions, if applicable. The request must be made in writing and submitted with the party's brief regarding the hearing examiner's recommended decision filed pursuant to section 18.1 of this rule. Oral argument shall not exceed ten (10) minutes for each presentation, unless for good cause the period is extended by the chairperson of the hearing board.

§158-13-19. Hearing Board Record.

19.1. The exclusive record for decision is:

19.1.a. the transcript or recording of testimony at the hearing;

19.1.b. exhibits introduced into evidence at the hearing;

19.1.c. all documents filed in the proceeding, and

19.1.d. the proposed decisions and any briefs submitted by the parties.

19.2. A party permitted by the commission to take and file an evidentiary deposition, or otherwise exercise discovery may make that part of the record.

§158-13-20. Final Decision.

20.1. All final decisions of the commission must be in writing and copies mailed within three days of the final decision by certified mail, return receipt requested, to all parties.

20.2. A final decision must be approved by at least six members of the commission's hearing board.

§158-13-21. Recusal of Ethics Commissioners.

21.1. Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission shall by majority vote, select a temporary member to serve in the place of a recused member.

21.2. The temporary replacement for a recused commission member shall be a person of the same status or category provided in W. Va. Code §6B-2-1(b) as the recused member.

§158-13-22. Sanctions.

22.1. In its final decision the commission may impose one or more of the following sanctions upon the respondent if it finds, by clear and convincing evidence, that one or more charges are true and constitute a material violation of this rule:

22.1.a. a written admonishment;

22.1.b. a cease and desist order;

22.1.c. an order of restitution of money, thing of value, or services taken or received in violation of this rule; and,

22.1.d. fines not to exceed one thousand dollars for each violation.

22.2. The commission may institute civil proceedings in the circuit court of the county wherein a violation occurred for the enforcement of sanctions imposed in its final decision.

22.3. In addition to the foregoing sanctions, the commission may recommend to the appropriate governmental body that the respondent be suspended or terminated from employment, removed from office, or disqualified from serving in the capacity of an administrative law judge either permanently or until such time as the respondent has completed an approved course of remedial training.

§158-13-23. Conciliation Agreements.

23.1. At any stage of the proceedings, the commission may enter into a conciliation agreement with a respondent if such agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent.

23.2 Any conciliation agreement must be disclosed to the public.

23.3. Upon acceptance of a conciliation agreement, a majority of the members of the commission may elect to impose one or more of the sanctions provided in the preceding section.

§ 158-13-24. Appeal.

24.1 The respondent may appeal final decisions of the commission involving the issuance of sanctions to the circuit court of Kanawha County, West Virginia, only upon grounds set forth in W. Va. Code §29-5-4.