



STATE OF WASHINGTON
DEPARTMENT OF LICENSING
HEARINGS AND INTERVIEWS UNIT
P. O. Box 9031, Olympia, WA 98507-9031

DEPARTMENT OF LICENSING

CODE OF CONDUCT FOR HEARING EXAMINERS

PREAMBLE

The Hearings and Interviews unit of the Department of Licensing provides drivers a fair and independent review of driving privilege sanctions initiated by the Department pursuant to the Department's traffic safety mission. Although the Hearings and Interviews unit is a part of the Department of Licensing and hearings examiners have been appointed by the Director to preside over hearings on the Director's behalf, the hearings examiners appointed to this unit have a legal and ethical responsibility to maintain their independence and professionalism. This code of conduct is intended as a guide to ethical behavior for hearing examiners.

INDEPENDENCE

A hearings examiner shall act in a manner that promotes public confidence in the independence, integrity, and impartiality of the Hearings and Interviews Unit and cooperate with other hearing examiners and non-judicial personnel in the administration of judicial business.

Unless otherwise authorized by law, a hearings examiner shall not independently investigate facts in a matter pending or impending before that hearings examiner and shall consider only evidence in the record and any facts that may properly be judicially noticed.

A hearings examiner shall hear and decide matters assigned to the hearing examiner except where disqualification is required.

Comment

While a hearings examiner generally may not independently investigate facts in a matter, some administrative provisions permit a hearings examiners to take additional steps to develop the agency record. For example, WAC 308-103-150 authorizes hearings examiners to obtain or request additional exhibits in order to complete the

record, ask questions to develop necessary facts and examine certain public records subject to a full opportunity for cross-examination and rebuttal by the petitioner.

IMPARTIALITY

A hearings examiner shall perform all duties fairly and impartially, comply with the law, including the provisions of this Code, perform the duties of office, including administrative duties, without bias or prejudice, and shall avoid impropriety and the appearance of impropriety.

A hearings examiner shall not by words or conduct manifest bias or prejudice or engage in discrimination or harassment, allow family, social, political or other relationships to influence the hearings examiner's judgment nor abuse the prestige of office to advance the personal or economic interests of the hearings examiner or others.

A hearings examiner shall not be influenced by partisan demands, public clamor, or considerations of personal popularity or notoriety, nor be apprehensive of unjust criticism.

DECORUM

The hearings examiner shall maintain order and decorum during the hearing. The hearings examiner shall be patient, dignified and courteous to all participants and require similar conduct of all those participating in the hearing.

DILIGENCE

The hearings examiner shall be punctual in the performance of official duties and expeditious in the issuance of decisions.

COMPETENCE

The hearings examiner shall know and apply current substantive and procedural law, in his or her rulings and final orders. Good-faith errors of fact or law do not violate this Code.

The hearings examiner shall indicate the reasons for his or her findings and conclusions, showing that he or she has not disregarded or overlooked arguments of parties or counsel or any relevant fact or law.

The hearings examiner's decision shall be based exclusively on the evidence in the record of the proceeding and material that has been officially noticed. The hearings examiner will not consider any prohibited ex parte communications in making substantive determinations in any case.

EX PARTE COMMUNICATIONS

A hearings examiner shall not initiate, permit or consider ex-parte communications, or consider other communications made to the hearing examiner outside the presence of the parties or their lawyers concerning a pending matter except in the circumstances outlined in this section.

Ex parte communications are permitted for scheduling, procedural, administrative, or emergency purposes if the hearings examiner reasonably believes that no party will gain a procedural, substantive or tactical advantage as a result of the ex parte communication. If any such ex parte communications occur, the hearings examiner will make provision to notify the parties of the content of the communication and, if necessary, address any resulting issues on the record.

Hearings examiners may communicate with other members of the Hearings and Interviews Unit on a matter, provided that a hearings examiner assigned to a pending matter 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.

A hearings examiner may initiate or consider any ex parte communications when authorized by law or rule to do so.

Comment

Under current practice, a Department representative does not appear at a hearing. A hearings examiner has no obligation under this section to include or inform the Department about any communications concerning a matter so long as a Department representative has not appeared in a matter. A hearings examiner may presume that a Department employee testifying on behalf of the Department is not a representative of the Department, unless the employee has explicitly appeared in a representational capacity.

While a hearings examiner generally has a duty not to initiate, permit or consider ex-parte communications, in hearings under the Implied Consent Law, WAC 308-130-150 authorizes hearings examiners to obtain or request additional exhibits in order to complete the record and examine certain public records subject to a full opportunity for cross-examination and rebuttal by the petitioner.

DISQUALIFICATION

A hearings examiner shall not preside over hearings in which a close relative of the hearings examiner is the petitioner. "Close relative" is defined as a parent, sibling, child, grandparent, grandchild, parent's sibling or sibling's child, or spouse of the hearing examiner.

A hearings examiner should disqualify himself or herself in a proceeding in which the hearing examiner's impartiality may reasonably be questioned, including but not limited to situations in which:

- A) The hearings examiner has a personal bias or prejudice against the driver;
- B) The hearings examiner or a close relative has a financial or other interest in the matter;
- C) The hearings examiner or a close relative is a lawyer or a witness in the matter;
- D) The hearings examiner has a relationship with a party, lawyer or witness in the proceeding that would affect his or her ability to remain impartial or provide the petitioner a fair hearing.

When a hearings examiner determines that disqualification is appropriate, other than for personal bias or prejudice against the driver, the hearings examiner may disclose on the record the basis of the disqualification and may ask the parties and their lawyers to consider whether to waive disqualification.

A hearings examiner should not withdraw from a proceeding if the hearing examiner's impartiality is challenged solely on the basis that the hearing examiner is employed by an agency appearing in the proceeding.

A hearings examiner who is disqualified from a matter, or would be subject to disqualification if the matter were assigned to the hearing examiner, shall refrain from communicating with the presiding hearings examiner regarding the matter.

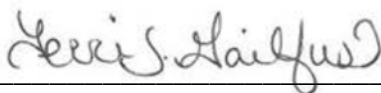
SUPERVISORY DUTIES

A hearings examiner with supervisory authority for the performance of other hearing examiners shall take reasonable measures to ensure that those hearings examiners properly discharge their adjudicative responsibilities as required by law and this Code.

Adopted this 2nd day of November, 2017.



Schuyler Rue
Hearings and Interviews Unit Administrator



Terri Gailfus
Hearings and Interviews Unit Assistant Administrator