

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-03  
(January 31, 1992)

**Application of Code of Judicial Conduct  
to Administrative Law Judges**

**Issue**

Are administrative law judges subject to the provisions of the Code of Judicial Conduct?

**Answer:** No.

**Discussion**

Judicial disciplinary proceedings are conducted by the Commission on Judicial Conduct in accordance with rules and procedures established by the Arizona Supreme Court. The commission's jurisdiction, which is set forth in article 6.1, § 5 of the Arizona Constitution, is limited to "all justices of the peace, judges in courts inferior to the superior court as may be provided by law, judges of the superior court, judges of the court of appeals and justices of the supreme court." Neither the commission's rules of procedure nor the constitution makes any mention of administrative law judges or hearing officers, as they are more commonly known. The commission strictly interprets this section of the constitution and does not accept jurisdiction over administrative law judges. Arizona Commission on Judicial Conduct, *Handbook 2* (1992).

In this state, administrative law judges do not function independently of the executive agencies in which they work. While their decision-making responsibilities are described generally in the state's administrative procedures act, their titles, qualifications and duties may vary from agency to agency. *See* A.R.S. §§ 41-1061, *et seq.*, for a description of agency adjudicative proceedings in general. For example, the Industrial Commission can appoint "administrative law judges" who must be members of the state bar and are subject to the state personnel commission. A.R.S. § 23-108.02. The director of the Department of Economic Security, on the other hand, is empowered to appoint "hearing officers" with no specific requirement for bar admittance. A.R.S. § 41-1992. The positions are essentially the same, however, and in both cases the hearing officers are subject to discipline and dismissal as are any other employees in the executive branch of state government.

While administrative law judges hear cases and exercise functions similar to those exercised by judges, they are not members of the state judiciary. Judges are independent of the other branches of government. "The hallmark of a judge is his independence and freedom from interference and control by any authority outside the judicial establishment." *Bonafield v. Cahill*, 308 A.2d 386, 389 (N.J. 1973). Consistent with this concept, judges are subject to

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a decidedly different disciplinary system that preserves the separation of powers and conscientiously avoids infringing on the power of the judiciary to make independent decisions. In contrast, administrative law judges are subject to some measure of direction and control by the heads of their agencies, e.g., when and where they sit, the nature and extent of their caseload, and the rules of practice and procedure to be followed in their hearings, provisions that are inconsistent with judicial independence. If an administrative law judge were meant to be a judicial officer in the true sense, "this control would undoubtedly subvert the administrative authority of the Chief Justice of the Supreme Court." *Id.* at 390.

For these reasons, the Advisory Committee is of the opinion that the Code of Judicial Conduct does not apply to administrative law judges.

### References

Arizona Constitution, Article 6.1, § 5.

Arizona Revised Statutes §§ 23-108.02, 41-1061 *et seq.*, and 41-1992.

Arizona Commission on Judicial Conduct, *Handbook 2* (1992).

*Bonafield v. Cahill*, 308 A.2d 386 (1973).