



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

July 27, 2015

Heather McTeer Toney
Regional Administrator
USEPA Region 4
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

Subject: Supplement to North Carolina Certification of Infrastructure SIP Element
110(a)(2)(E)(ii)

Dear Ms. Toney:

I am pleased to submit the supplement to the February 5, 2013 110(a)(2)(E)(ii) submission for the 1997 8-hour Ozone National Ambient Air Quality Standard (NAAQS). This submittal responds to the United States Environmental Protection Agency's (EPA) request for additional information to address Section 128(a)(2) requirements for the board or body that makes the final agency decision on contested permit or enforcement actions. This supplement contains the means by which public disclosure requirements are met for the Chief Administrative Law Judge and the administrative law judges of the Office of Administrative Hearings (OAH) that make the final agency decision. We are requesting the EPA to approve the submission for the following standards:

- 2010 Nitrogen Dioxide (NO₂) NAAQS,
- 2010 Sulfur Dioxide (SO₂) NAAQS,
- 2008 8-hour Ozone NAAQS,
- 2008 Lead NAAQS,
- 1997 8-hour ozone NAAQS (conditional approval), and
- 1997 Annual Fine Particulate Matter (PM_{2.5}) and 2006 24-hour PM_{2.5} NAAQS (conditional approval)

The Division of Air Quality (DAQ) issued a public notice announcement indicating that the supplement to the infrastructure State Implementation Plan (SIP) element 110(a)(2)(E)(ii) was available for public comment and posted on the DAQ website for review. The DAQ website has Rich Site Summary feed which regularly delivers changes to the website content to those that have signed up for it.

In addition to posting on the DAQ website, the public notice announcement was sent to a number of email distribution lists managed by the DAQ, which include numerous stakeholders

Heather McTeer Toney
July 27, 2015
Page 2

from industry and environmental groups. The DAQ believes that sending the public notice announcement to these groups is more effective than publishing the notices in a few local newspapers and is consistent with the requirements described in the April 6, 2011, memorandum, "*Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of Letter Notices.*"

The comment period was open from June 19, 2015 through July 20, 2015. The public notice announcement indicated that anyone may request a public hearing; however, the DAQ did not receive any requests for a public hearing. The EPA submitted a letter to the DAQ indicating that it did not have any comments on the announcement. The DAQ did not receive any other comments on the announcement. Attachment B includes the public notice and the EPA's letter.

The DAQ believes it has in good faith addressed the requirements of Section 110(a)(1) and (2) through the various SIP submittals. An exact duplicate electronic copy is being mailed to your attention. If you have any questions regarding this submittal, please contact Sushma Masemore of my staff at (919) 707-8700.

Sincerely,



Sheila C. Holman
Division of Air Quality, NCDENR

SCH/ssm

Attachment

cc: Michael Abraczinskas, DAQ
Sushma Masemore, DAQ
Randy Strait, DAQ
Joelle Burtleson, DAQ
Scott Davis, EPA
Lynorae Benjamin, EPA
Leslie Rhodes, Mecklenburg County Air Quality
William Barnette, Forsyth County Office of Environmental Assistance and Protection
David Brigman, Western Regional Air Quality Agency

Supplement to
North Carolina Certification for
Clean Air Act Section 110(a)(2)(E)(ii)

By

The North Carolina Department of Environment and Natural Resources
Division of Air Quality

On February 5, 2013, the North Carolina Division of Air Quality (DAQ) submitted a certification to the U.S. Environmental Protection Agency (EPA) stating that North Carolina has satisfied Clean Air Act Section 110(a)(2)(E)(ii) infrastructure state implementation plan (SIP) requirements for the 1997 8-hour ozone national ambient air quality standards¹. The EPA notified the DAQ that additional information is needed to address Section 128(a)(2) requirements for the board or body that makes the final agency decision on contested permit or enforcement actions. Section 128(a)(2) states that any potential conflicts of interest by members of such board or body be adequately disclosed. The purpose of this SIP supplement is to demonstrate the means by which disclosure requirements are met for the Chief Administrative Law Judge and the administrative law judges of the Office of Administrative Hearings (OAH) that make the final agency decision.

Chapter 7A of the North Carolina General Statutes (NCGS) contains provisions related to OAH. §7A-754 states the following regarding the qualifications, standards of conduct, and removal of OAH law judges:

“The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126-13 shall control as to political activity in lieu of Canon 5.”

We are requesting that the above paragraph be adopted into the North Carolina SIP. The Model Code of Judicial Conduct referenced in this portion of the general statute was initially endorsed by the National Conference of Administrative Law Judges in August 1995, and revised later in August 1998. We believe the ethical standards for administrative law judges contained in this Code of Conduct satisfies Section 128(a)(2) requirements. The full text of NCGS 7A-754 and the model code are provided in Attachment A as reference material.

In conclusion, we believe adequate provisions are in place to assure compliance with Section 128(a)(2) for Administrative Law Judges.

¹ <http://ncair.org/planning/cert/>

ATTACHMENT A

**REFERENCED NORTH CAROLINA GENERAL STATUTES AND
MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES**

Chapter 7A
Judicial Department
SUBCHAPTER XII. ADMINISTRATIVE HEARINGS
Article 60
Office of Administrative Hearings

§ 7A-754. Qualifications; standards of conduct; removal.

Only persons duly authorized to practice law in the General Court of Justice shall be eligible for appointment as the Director and chief administrative law judge or as an administrative law judge in the Office of Administrative Hearings. The Chief Administrative Law Judge and the administrative law judges shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, as adopted by the National Conference of Administrative Law Judges, Judicial Division, American Bar Association, (revised August 1998), as amended from time to time, except that the provisions of this section shall control as to the private practice of law in lieu of Canon 4G, and G.S. 126-13 shall control as to political activity in lieu of Canon 5. Failure to comply with the applicable provisions of the Model Code may constitute just cause for disciplinary action under Chapter 126 of the General Statutes and grounds for removal from office. Neither the chief administrative law judge nor any administrative law judge may engage in the private practice of law as defined in G.S. 84-2.1 while in office; violation of this provision shall constitute just cause for disciplinary action under Chapter 126 of the General Statutes and shall be grounds for removal from office. Each administrative law judge shall take the oaths required by Chapter 11 of the General Statutes. An administrative law judge may be removed from office by the Director of the Office of Administrative Hearings for just cause, as that term is used in G.S. 126-35 and this section. (1985, c. 746, s. 2; 1985 (Reg. Sess., 1986), c. 1022, s. 6(1), 6(3); 1991, c. 103, s. 1; 2000-190, s. 3.)

Chapter 126
North Carolina Human Resources Act
Article 5
Political Activity of Employees

§ 126-13. Appropriate political activity of State employees defined.

(a) As an individual, each State employee retains all the rights and obligations of citizenship provided in the Constitution and laws of the State of North Carolina and the Constitution and laws of the United States of America; however, no State employee subject to the North Carolina Human Resources Act or temporary State employee shall:

- (1) Take any active part in managing a campaign, or campaign for political office or otherwise engage in political activity while on duty or within any period of time during which he is expected to perform services for which he receives compensation from the State;
- (2) Otherwise use the authority of his position, or utilize State funds, supplies or vehicles to secure support for or oppose any candidate, party, or issue in an election involving candidates for office or party nominations, or affect the results thereof.

(b) No head of any State department, agency, or institution or other State employee exercising supervisory authority shall make, issue, or enforce any rule or policy the effect of which is to interfere with the right of any State employee as an individual to engage in political activity while not on duty or at times during which he is not performing services for which he receives compensation from the State. A State employee who is or may be expected to perform his duties on a twenty-four hour per day basis shall not be prevented from engaging in political activity except during regularly scheduled working hours or at other times when he is actually performing the duties of his office. The willful violation of this subdivision shall be a Class 1 misdemeanor. (1967, c. 821, s. 1; 1985, c. 469, s. 1; c. 617, s. 5; 1993, c. 539, s. 930; 1994, Ex. Sess., c. 24, s. 14(c); 2013-382, s. 9.1(c).)

5-4-07
ALJ Meeting

HB 968 - in 2001... became law

**A MODEL CODE OF
JUDICIAL CONDUCT
FOR STATE
ADMINISTRATIVE LAW JUDGES**

National Conference of Administrative Law Judges
Judicial Division
American Bar Association

As Endorsed August, 1995
Revised 8/98

A MODEL CODE OF JUDICIAL CONDUCT FOR STATE ADMINISTRATIVE LAW JUDGES

American Bar Association

PREAMBLE

The Model Code of Conduct for State Administrative Law Judges (hereinafter "State Model Code") is intended to establish basic ethical standards for administrative law judges or any other hearing officials, whatever their title, in any state. The Code is intended to govern the conduct of these administrative law judges and to provide guidance to assist state administrative law judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the Model Code of Judicial Conduct as adopted by the ABA on August 7, 1990; the February 1989 Model Code of Judicial Conduct For Federal Administrative Law Judges; The Model Code of Judicial Conduct for State Administrative Law Judges adopted by the National Association of Administrative Law Judges; and the Model Code of Judicial Conduct for State Central Panel Administrative Law Judges.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations, the violation of which can result in disciplinary

action. When "should" or "should not" is used, the text is a statement of what is or what is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The terms administrative law judge or judge are intended to include all hearing officers, referees, trial examiners or any other person holding non-partisan office to whom the authority to conduct an administrative adjudication has been delegated by the agency or by statute and who exercises independent and impartial judgment in conducting hearings and in issuing recommended decisions or reports containing findings of fact and conclusions of law in accordance with applicable statutes or agency rules and without *ex parte* communication or instruction. Such reports or decisions should be binding on all parties to the action, including the agency, unless amended, modified, supplemented or reversed by the agency as authorized by law. An administrative law judge should hold office for a term of years or be removable only for cause.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to administrative law judges and to provide a structure for regulating conduct. However, it is not intended, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned

application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the administrative system. The Code is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

CANON 1

A STATE ADMINISTRATIVE LAW JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE ADMINISTRATIVE JUDICIARY

An independent and honorable administrative judiciary is indispensable to justice in our society. An administrative law judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this Code shall be construed and applied to further that objective.

Commentary: Deference to the judgments and rulings of administrative proceedings depends upon public confidence in the integrity and independence of administrative law judges. The integrity and independence of administrative law judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this code. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each administrative law judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the administrative judiciary and thereby does injury to the system of government under law.

CANON 2

A STATE ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. A state administrative law judge shall respect and comply with the law and at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

Commentary: Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by judges. An administrative law judge must avoid all impropriety and appearance of impropriety. An administrative law judge must expect to be the subject of constant public scrutiny, therefore, an administrative law judge must expect and accept restrictions on the administrative law judge's conduct that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by administrative law judges that is harmful although not specifically mentioned in the code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the administrative law judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired. See also Commentary under Canon 2C.

B. A state administrative law judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. An administrative law

judge shall not lend the prestige of the office to advance the private interests of the administrative law judge or others; nor shall an administrative law judge convey or permit others to convey the impression that they are in a special position to influence the judge. An administrative law judge shall not testify voluntarily as a character witness.

Commentary: Maintaining the prestige of the administrative judiciary is essential to a system of government in which the administrative judiciary must to the maximum extent possible, function independently. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. Administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for an administrative law judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting an administrative law judge's personal business.

A state administrative law judge must avoid lending the prestige of the office for the advancement of private interests of others. For example, a judge must not use the judge's judicial position to gain an advantage in a civil suit involving a member of the judge's family.

Although an administrative law judge should be sensitive to possible abuse of the prestige of the office, an administrative law judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

A state administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the office in support of the party for whom the administrative law judge testifies. Moreover, when an administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. However, an administrative law judge may testify when properly summoned. Except in unusual circumstances where the demands of justice require, an administrative law judge should discourage a party from requiring the judge to testify as a character witness.

C. A state administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

Commentary: It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. Membership of an administrative law judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as, that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See New York State Club Ass'n v City of New York, 487 US 1; 108 S Ct 2225; 101 L Ed 2d 1 (1988); Board of Directors of Rotary International v Rotary Club of Duarte, 481 US 537; 107 S Ct 1940; 95 L Ed 2d 484 (1987); Roberts v United State Jaycees, 468 US 609; 104 S Ct 3224; 82 L Ed 2d 362 (1984).

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, or national origin, an administrative law judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Canon 2A for an administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by an administrative law judge of the judge's knowing approval of invidious discrimination

on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Canon 2A.

When a person who is a state administrative law judge at the time this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2 and Canon 2A, the administrative law judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but the judge is required to suspend participation in any activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the administrative law judge is required to resign immediately from the organization.

CANON 3

A STATE ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

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:

A. Adjudicative responsibilities:

- (1) A state administrative law judge shall hear and decide matters assigned to the judge.
- (2) A state administrative law judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(3) A state administrative law judge shall maintain order and decorum in proceedings before the judge.

(4) A state administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, representatives, and others with whom the judge deals in an official capacity, and shall require similar conduct of representatives, staff members, and others subject to the judge's discretion and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the judge. Judges can be efficient and businesslike while being patient and deliberate.

(5) A state administrative law judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff and others subject to the judge's direction and control to do so.

Commentary: A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control. Facial expression and body language, in addition to oral communications, can give to parties or lawyers in the proceeding, the media, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudice.

(6) A state administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representative, full right to be heard according to law, and except as authorized by law, neither initiate nor consider *ex parte* or other communications as to substantive matters concerning a pending or impending proceeding. A judge may obtain the

advice of a disinterested expert on the law applicable to a proceeding before the judge, by *amicus curiae* or as otherwise authorized by law, if the judge affords the parties reasonable opportunity to respond. With the consent of the parties, a judge may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. *Ex parte* communications are prohibited except where authorized by law.

Commentary: The proscription against communications concerning a proceeding include communications from lawyers, law teachers, and other persons who are not participants in the proceeding except as authorized by law, but does not preclude a judge from consulting with other judges or subordinate personnel whose function is to aid the judges in carrying out adjudicative responsibilities. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(7) A state administrative law judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary: In disposing of matters promptly, efficiently, and fairly, a judge shall demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Prompt disposition of the judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants, and their representatives cooperate with the judge to that end.

(8) A state administrative law judge shall abstain from public comment about a pending or impending proceeding before any judge in the administrative process 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 proceeding and shall require similar abstention on the part of personnel subject to the judge's direction and control. This subsection does not

prohibit judges from making public statements in the course of their official duties or from explaining for public information the hearing procedures of agencies.

Commentary: "Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by rules of professional conduct. This subsection is not intended to preclude participation in an association of judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge.

(9) A state administrative law judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

B. Administrative responsibilities:

(1) A state administrative law judge shall diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative law judges.

(2) A state 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.

(3) A state administrative law judge shall take or initiate appropriate disciplinary measures against a judge or a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body. Internal agency procedure which routes the complaint can be utilized as long as the judge remains responsible for initiation of the action.

C. Disqualification:

(1) A state 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:

Commentary: By a decisional law, the rule of necessity may supersede the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the

matter to another judge as soon as practicable.

- (a) the judge has a personal bias or prejudice concerning the proceeding;
- (b) in private practice the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously 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;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection.

- (c) the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;
- (d) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or child wherever residing, or any other member of the judge's family or a person treated by the judge as a member of the judge's family 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 more than *de minimis* interest that could be affected substantially by the outcome of the proceeding;
- (e) the 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:
 - (i) is a party to the proceeding or an officer, director or trustee of a party;
 - (ii) is acting as a lawyer or other representative in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require the judge's disqualification.

(iii) is known by the judge to have a more than *de minimus* interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall inform himself or herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(3) For the purposes of this code, the following words or phrases have the meaning indicated:

(a) the degree of relationship is calculated according to the civil law system;

Commentary: According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if the judge's or his or her spouse's parent, grandparent, uncle or aunt, brother or sister, or niece or her husband, nephew or his wife were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee and guardian;

(c) "financial interest" means ownership of a more than *de minimis* legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder 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;

(iv) 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.

(d) "proceeding" includes prehearing or other stages of litigation.

D. Remittal of disqualification:

A state administrative law judge disqualified by Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based upon such disclosure, the parties and representatives, independently of the judge's participation, all

agree that the judge's relationship is immaterial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and representatives, shall be incorporated into the record of the proceeding.

Commentary: Canon 3D is derived from the ABA model code with amendments conforming to 28 U.S.C. 455. The procedure is designed to minimize the chance that a party or representative will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his or her party's consent will be subsequently filed.

CANON 4

A STATE ADMINISTRATIVE LAW JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

A. Extra-judicial activities in general:

A state administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, cast

reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Avocational activities:

A state administrative law judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including the revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

C. Governmental, civic, and charitable activities:

(1) A state administrative law judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or except when acting *pro se* in a matter involving the judge or the judge's interests.

Commentary: The judge has a professional obligation to avoid improper influence.

(2) A state administrative law judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of

fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

Commentary: Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the judge from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative judiciary.

(3) A state 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 non-legal 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:

(a) a judge shall 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 the agency in which the judge serves.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to reexamine regularly the activities of each organization with which he or she is affiliated to determine if it is proper to continue his or her relationship with that organization.

(b) A state administrative law judge as an officer, director, trustee or non-legal advisor, or as a member, or otherwise:

(i) may assist such an organization in planning fund-raising and

may participate in the management and investments of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fundraising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary: An administrative law judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge shall not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: 1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority; 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the agency in which the judge serves, and 3) a judge who is an officer of such an organization may send a general membership

solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Canon 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial activities:

(1) A state 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.

(2) Subject to the requirements of subsection (1), a state administrative law judge may hold and manage personal investments, including real estate, and engage in other remunerative activity.

Commentary: The specific prohibition contained in the Model A.B.A. Code against a judge's services as an officer, director, manager, advisor or an employee of any business (which has sometimes been interpreted to bar such participation in a family business) has been deleted, because the general prohibitions in Canon 3(C)(1) and statutes or rules prohibiting such activities by judges involving agencies wherein they serve render the specific prohibition somewhat superfluous and because generic prohibition of involvement in a family business is regarded as unnecessary and undesirable. Involvement in a business that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.

(3) A state 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) Neither a state 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:

(a) a state 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 an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a state administrative law judge or a member of the family residing in the household may accept ordinary social hospitality; a gift, bequest, favor, or a loan from a relative or a close 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.

Commentary: Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. However, a judge cannot reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.

(c) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification;

- (d) 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;
- (e) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (f) any other gift, bequest, favor, or loan only if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Commentary: Canon 4D(4)(f) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary activities:

- (1) A state administrative law judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
- (2) A state administrative law judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary 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 the agency in which the judge serves.
- (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

Commentary: The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge

in violation of Canon 4D(3).

F. Service as arbitrator or mediator.

A state administrative law judge may act as an arbitrator or mediator provided there is no conflict with the judge's official duties.

Commentary: Service as an arbitrator or mediator as part of an administrative law judge's official duties is not covered by this provision.

G. Practice of Law.

A state administrative law judge may practice law if such activity neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties. An attorney who is a state administrative law judge shall not accept the representation of a client who is a litigant before any tribunal or agency for which the state administrative law judge serves or if there is a likelihood that the client will appear before him [or her]. A state administrative law judge shall not practice law before the administrative tribunal or agency for which the judge serves.

Commentary: The American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges states that a federal administrative law judge should not practice law or act as an arbitrator or mediator. State administrative law judges should be encouraged to promote alternative methods of resolving disputes including mediation and other modalities. It is common for state administrative law judges to be hired on a part-time or as needed basis while maintaining a legal practice. Also, state administrative law judges are compensated at a much lower level than federal administrative law judges. As long as the professional judgment of the administrative law judge is not impaired by such unrelated activities and no appearance of impropriety, such ancillary legal practice should be permitted.

H. Compensation and reimbursement.

A state administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(1) Compensation shall not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

I. Disclosure.

A state administrative law judge shall disclose income, debts, investments, or other assets to the extent required by law.

Commentary: A judge has the right of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

Canon 5

A STATE ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THE JUDICIAL OFFICE

Commentary: Administrative law judges retain the right to participate in the political process as voters. Administrative law judges, depending upon their employment status, may engage in other appropriate political activity.

However, it is generally inappropriate for any full-time administrative law judge to act as a leader or hold office in a political organization or make speeches on behalf of a political organization. However, a part-time administrative law judge is not precluded from these activities as long as they do not impair the exercise of independent judicial judgment and there is no appearance of impropriety. While it may be inappropriate to publicly endorse or publicly oppose a candidate for public office, a full-time administrative law judge is not prohibited from privately expressing his or her views on candidates for public office. A part-time administrative law judge is not precluded from publicly endorsing or publicly opposing a candidate for public office as long as it does not impair the exercise of independent judicial judgment and there is no appearance of impropriety.

A candidate for reappointment to an administrative law judge position or an administrative law judge seeking another governmental office should not engage in political activity to secure the appointment. Such persons may communicate with the appointing authority and any entity or person designated to screen candidates, or seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment to the office. A state administrative law judge shall not solicit funds, in the office where the judge is employed, for any political candidates.

A full-time administrative law judge shall resign from office when the judge becomes a candidate either in a party primary or in a general election for an elective public office, other than a judicial office. However, a part-time administrative law judge is not required to resign as long as these activities do not impair the exercise of independent judicial judgment and there is no appearance of impropriety.

EFFECTIVE DATE OF COMPLIANCE

A person to whom this code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Reprinted 9/98

ATTACHMENT B

**PUBLIC NOTICE REPORT, COMMENTS
RECEIVED AND RESPONSES**

(This page intentionally left blank)

Public Notice Report
For the

Supplement to North Carolina Certification for
Clean Air Act Section 110(a)(2)(E)(ii)

Introduction

On June 19, 2015, a pre-hearing version of the “Supplement to 1997 8-hour Ozone 110(a) Infrastructure Certification of Element 110(a)(2)(E)(ii)” was released for public comment. A request for public hearing, in accordance with 40 CFR 51.102, and the public comment period were posted on the North Carolina Division of Air Quality (DAQ) website, as well as being distributed via email to stakeholder lists managed by the DAQ. The public comment period was open from June 19, 2015 through July 20, 2015. No requests for a public hearing were received. The public comment period elicited comments from the United States Environmental Protection Agency (EPA).

Background

See narrative.

Summary of Public Comment Period

EPA comment: We have completed our review of the prehearing submittal and offer no comments at this time.

DAQ response: The DAQ acknowledges this comment. No revisions are required.

Attachments to Public Notice Report

- 1) Written comments from R. Scott Davis, Chief of the Air Planning and Implementation Branch, EPA, dated June 29, 2015.
- 3) Public Notice Announcement by the North Carolina Department of Environment and Natural Resources.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

June 29, 2015

Ms. Sheila C. Holman
Director
Division of Air Quality
North Carolina Department of Environment
and Natural Resources
1641 Mail Service Center
Raleigh, North Carolina 27699-1641



Dear Ms. Holman:

Thank you for your letter dated June 19, 2015, transmitting a prehearing package regarding conflict of interests requirements of section 128(a)(2) of the Clean Air Act concerning Sub-element 110(a)(2)(E)(ii) as they apply to appealed matters decided by the "Administrative Law Judge". This prehearing package is open to the public for comment, with written comments due by the close of business on July 20, 2015. We have completed our review of the submittal and have no comments.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Ms. Nacosta Ward at (404) 562-9140.

Sincerely,

A handwritten signature in blue ink that reads "R. Scott Davis".

R. Scott Davis
Chief
Air Planning and Implementation Branch

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES
PUBLIC NOTICE**

PURPOSE: The North Carolina Department of Environment and Natural Resources, Division of Air Quality (NCDAQ), hereby gives notice regarding a Pre-hearing Draft Supplement to its 1997 8-hour Ozone Standard Infrastructure State Implementation Plan (SIP) Element 110(a)(2)(E)(ii). This supplement contains the means by which public disclosure requirements are met for the Chief Administrative Law Judge and the administrative law judges of the Office of Administrative Hearings that make the final agency decision on contested permit or enforcement actions. Persons wishing to submit comments or request a public hearing are invited to do so.

COMMENT PROCEDURES: Any person wishing to comment may submit a written statement for inclusion in the record of proceedings regarding the Supplement to the Infrastructure SIP element 110(a)(2)(E)(ii). Written comments should be received by no later than July 20, 2015.

REQUESTS FOR A PUBLIC HEARING: Requests for a public hearing must be in writing and include a statement supporting the need for such a hearing, an indication of your interest in the subject, and a brief summary of the information intended to be offered at such hearing. A public hearing will be scheduled if requested. A separate notice will be announced for the hearing including the date, time and location. Written requests for a public hearing should be received no later than July 20, 2015, and addressed to Sushma Masemore, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699-1641.

INFORMATION: Copies of the Pre-hearing Draft Supplement to Infrastructure SIP element 110(a)(2)(E)(ii) may be downloaded from the NCDAQ website at http://www.ncair.org/planning/nc_sip.shtml.

Comments can be submitted electronically to:
daq.publiccomments@ncdenr.gov
(Please type "Infrastructure SIP" in the subject line)

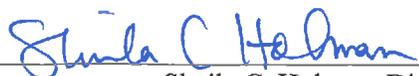
Comments can be mailed or faxed to:
Sushma Masemore
NC Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641
Fax: (919) 707-8715

The Pre-hearing Draft Supplement to Infrastructure SIP element 110(a)(2)(E)(ii) may be reviewed in person during normal business hours at the following North Carolina Department of Environment and Natural Resources, Division of Air Quality offices:

Raleigh Central Office, Planning Section (919) 707-8700

Asheville Regional Office	(828) 296-4500
Fayetteville Regional Office	(910) 433-3300
Mooreville Regional Office	(704) 663-1699
Raleigh Regional Office	(919) 791-4200
Washington Regional Office	(252) 946-6481
Wilmington Regional Office	(910) 796-7215
Winston-Salem Regional Office	(336) 771-5000

Date: 6/19/2015



Sheila C. Holman, Director