

Recusal Rules for Administrative Adjudicators

Committee on Adjudication

Proposed Recommendation for Committee | October 10, 2018

[PREAMBLE WILL BE INSERTED HERE]

RECOMMENDATION

1. Agencies should adopt rules for adjudicator recusal, separate and apart from the ethical conflict of interest rules that govern all agency employees. In so doing, they should consider both actual and perceived integrity of agency adjudications and seek to maximize the effectiveness and efficiency of their adjudicative proceedings.
2. Regulations promulgated in accordance with Recommendation 1, should be tailored to accommodate the specific features of an agency's adjudicative proceedings and its institutional needs, including but not limited to consideration of the following factors:
 - a. The degree of the adjudicator's independence from his or her agency;
 - b. The regularity of the agency's appearance as a party in proceedings before the adjudicator;
 - c. The nature of the adjudicative body or proceeding, including whether or not the hearing is part of enforcement proceedings;
 - d. The agency's adjudicative caseload volume and capacity, including the number of other adjudicators available to replace a recused adjudicator;
 - e. The level of public scrutiny that rests upon the agency's activities; and
 - f. Whether a single adjudicator renders a decision in proceedings, or whether multiple adjudicators render a decision as a whole.

3. The recusal rules adopted in accordance with Recommendation 2 should include the following features:
 - a. A provision requiring recusal in instances of bias, as defined in paragraph 5 of ACUS Recommendation 2016-4;
 - b. A provision requiring recusal in at least some instances where the adjudicator's impartiality might be reasonably questioned; and
 - c. Provisions outlining the procedures by which recusal issues will be resolved, including a private cause of action for litigants seeking recusal, initial determination by the presiding adjudicator, intra-agency appeal, and judicial review.