

WSR 23-21-081

PROPOSED RULES

OFFICE OF

ADMINISTRATIVE HEARINGS

[Filed October 16, 2023, 8:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-112.

Title of Rule and Other Identifying Information: WAC 10-16-010

Procedure for complaints regarding improper conduct of an administrative law judge. This proposal explains how any person may write to the office of administrative hearings (OAH) to complain if they believe there was improper conduct of an administrative law judge, and how OAH responds to those complaints.

Hearing Location(s): On Monday, November 27, 2023, at 1:00 p.m., virtual via Microsoft Teams or call in. See the OAH website at <https://oah.wa.gov/Content-Area-Management/Rule-Making-Hub/Rulemaking-Activities> for the most up-to-date information.

Date of Intended Adoption: January 1, 2024.

Submit Written Comments to: Johnette Sullivan, Deputy Chief ALJ, P.O. Box 42488, Olympia, WA 98504-2488, email [rulemaking@oah.wa.gov](mailto:rulemaking@oah.wa.gov), fax 360-664-8721. To request a language interpreter or free oral translation, call 360-407-2700; see Language Assistance List ([wa.gov](http://wa.gov)) [contact agency for link].

Assistance for Persons with Disabilities: Contact Johnette Sullivan, deputy chief ALJ, phone 509-867-7962, fax 360-664-8721, TTY 711, email [OAH\\_ADACoordinator@oah.wa.gov](mailto:OAH_ADACoordinator@oah.wa.gov), by Wednesday, November 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to clarify and update our complaint procedure and increase transparency.

Reasons Supporting Proposal: The current rule has a page limit, which is not apt for email communications. The proposed rule clearly states that the complaints must be in writing. It also clearly indicates where complaints may be mailed or faxed or filed online, and how OAH will assign a manager to investigate and respond. Consistent with the practice of the Washington state commission on judicial conduct, the proposal expands to allow any person to file a written complaint.

Statutory Authority for Adoption: RCW 34.12.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OAH, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Johnette Sullivan, Deputy Chief ALJ, 2420 Bristol Court S.W., Olympia, WA 98502, 360-407-2700; and Enforcement: Donald Capp, Deputy Chief ALJ, 2420 Bristol Court S.W., Olympia, WA 98502, 360-407-2700.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. OAH's proposed amendment does not involve rules of any of the agencies identified in RCW 34.05.328(5) for which a cost-benefit analysis is required.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state

if the rule is not adopted: [No information supplied by agency].

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is fully exempt.

October 10, 2023

Lorraine Lee

Chief Administrative Law Judge

## OTS-5017.2

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-16-010 Procedure for complaints regarding improper conduct of an administrative law judge.** (~~((1) Administrative law judges must at all times adhere to the fundamental principles of law, fairly and equitably. Administrative law judges should be fair in their rulings and should conduct the proceedings in a judicious manner.~~

~~(2) Any interested party to an administrative proceeding may file a complaint alleging improper conduct of an administrative law judge. For purposes of this section, an interested party is a person who has a right to receive notice of the administrative hearing.~~

~~(3) A complaint concerning a decision or order shall be handled through the appeal or petition for review process. This includes initial or final orders and interim orders or discretionary rulings from which further appeal may be taken.~~

~~(4) A complaint concerning the conduct of an administrative law judge, apart from a decision from which further appeal may be filed, shall be in writing and sent to the supervising administrative law judge.~~

~~(5) The written complaint must set forth in detail all pertinent facts and information. It shall include, among other things, the name of the administrative law judge, the date of the incident, the individuals present, and any other information which would assist in investigation of the complaint. The complaint should be no more than five pages.~~

~~(6) Within ten days of receipt of a written complaint, the supervising administrative law judge shall send a letter acknowledging receipt of the complaint. The supervising administrative law judge shall conduct an investigation of the complaint. For matters no longer pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response to the complaining party within thirty days of receipt of the complaint. However, for matters pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response within thirty days after issuance of the administrative law judge's~~

decision. If additional time is needed, the supervising administrative law judge shall notify the complaining party in writing and indicate an expected response date.

~~(7) If, after investigation, the complaint is found to have merit, the supervising administrative law judge shall take appropriate corrective action. If disciplinary action is warranted, it shall be handled internally subject to the individual's privacy rights as in other personnel matters.~~

~~(8) Should the complaining party not be satisfied with the result of the investigation, he or she may request review of the complaint by the chief administrative law judge. The chief administrative law judge shall review all facts and information pertinent to the complaint and issue a written response. The response of the chief administrative law judge shall be final.~~

~~(9) Any inquiries concerning the grievance procedure may be made through the administrative office or any field office of the office of administrative hearings. A directory listing the names and mailing addresses of supervising administrative law judges, deputy chief administrative law judges and the chief administrative law judge will be available through these offices.)~~

(1) Administrative law judges (ALJs) will follow the law and the code of ethics for ALJs. They should make fair rulings, and treat everyone fairly, equitably, and with respect during hearings.

(2) Any person may file a complaint if they believe that an ALJ has acted improperly.

(3) The written complaint must include:

(a) The name of the ALJ;

(b) What the ALJ said or did that was improper;

(c) The date of incident;

(d) The individuals present; and

(e) Any other facts and information that would help the office of administrative hearings (OAH) investigate the complaint.

(4) A person filing a complaint must send it to OAH by mail or facsimile (fax) to the location listed on the notice or order, or by mail to 2420 Bristol Ct. S.W., P.O. Box 42488, Olympia, Washington, 98504-2488. A person may also file a complaint online at [www.oah.wa.gov](http://www.oah.wa.gov).

(5) OAH will acknowledge the complaint within 10 days after receiving it. A managing ALJ (manager) will investigate the complaint. If the case is no longer pending before OAH when the complaint is filed, the manager will respond to the person in writing within 30 days after receiving the complaint. If the case is pending before OAH when the complaint is filed, the manager will respond within 30 days after the ALJ issues their decision. If additional time is needed, the manager will tell the person in writing and state when the manager expects to send a response.

(6) If the investigation finds that the ALJ acted improperly, OAH will take appropriate action. If discipline is warranted, it shall be handled internally. The person who filed the complaint will not be told about any action taken against an individual judge, but may be told of policy or practice changes that result from the complaint.

(7) If the person is not satisfied with the result of the investigation, they may ask the chief administrative law judge (chief) to review the complaint. The chief will review all facts and information related to the complaint and respond in writing. The chief's response will be final.

(8) Any questions concerning the complaint procedure may be asked by calling OAH at the number listed on the order or notice, or in writing by mail or fax as explained in subsection (4) of this section.

(9) Disagreements with an ALJ's decisions or rulings must only be handled through the appeal or petition for review process, rather than this complaint process. If the complaint is only about the decisions and rulings of the ALJ, it will not be investigated.

[Statutory Authority: RCW 34.05.020 and 34.12.030. WSR 99-20-115, § 10-16-010, filed 10/6/99, effective 11/6/99.]