

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 ENACTS:

35 **67-19e-101**, Utah Code Annotated 1953

36 **67-19e-102**, Utah Code Annotated 1953

37 **67-19e-103**, Utah Code Annotated 1953

38 **67-19e-104**, Utah Code Annotated 1953

39 **67-19e-105**, Utah Code Annotated 1953

40 **67-19e-106**, Utah Code Annotated 1953

41 **67-19e-107**, Utah Code Annotated 1953

42 **67-19e-108**, Utah Code Annotated 1953

43 **67-19e-109**, Utah Code Annotated 1953



45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **67-19e-101** is enacted to read:

47 **CHAPTER 19e. ADMINISTRATIVE LAW JUDGES**

48 **67-19e-101. Title.**

49 This chapter is known as "Administrative Law Judges."

50 Section 2. Section **67-19e-102** is enacted to read:

51 **67-19e-102. Definitions -- Application of chapter -- Exceptions.**

52 (1) In addition to the definitions found in Section 67-19-3, the following definitions
53 apply to this chapter.

54 (a) "Administrative law judge" means an individual who is employed or contracted by
55 a state agency that:

56 (i) presides over or conducts formal administrative hearings on behalf of an agency;

57 (ii) has the power to administer oaths, rule on the admissibility of evidence, take

58 testimony, evaluate evidence, and make determinations of fact; and
59 (iii) issues written orders, rulings, or final decisions on behalf of an agency.
60 (b) "Administrative law judge" does not mean:
61 (i) an individual who reviews an order or ruling of an administrative law judge; or
62 (ii) the executive director of a state agency.
63 (c) "Committee" means the Administrative Law Judge Conduct Committee created in

64 Section 67-19e-108.

65 (2) This chapter applies to all agencies of the state except the:

- 66 (a) Board of Pardons and Parole;
- 67 (b) Department of Corrections; and
- 68 (c) State Tax Commission.

69 Section 3. Section **67-19e-103** is enacted to read:

70 **67-19e-103. Administrative law judges -- Standard of conduct.**

71 (1) All agency administrative law judges who conduct formal administrative hearings
72 are subject to this chapter.

73 (2) All administrative law judges are subject to the code of conduct promulgated by the
74 department in accordance with Section 67-19e-104.

75 (3) An administrative law judge who tampers with or destroys evidence submitted to
76 the administrative law judge is subject to the provisions of Section 76-8-510.5. This section
77 does not apply to documents destroyed in accordance with Title 63G, Chapter 2, Government
78 Records Access and Management Act.

79 Section 4. Section **67-19e-104** is enacted to read:

80 **67-19e-104. Rulemaking authority.**

81 The department shall make rules, in accordance with Title 63G, Chapter 3, Utah
82 Administrative Rulemaking Act:

- 83 (1) establishing minimum performance standards for all administrative law judges;
- 84 (2) providing procedures for filing, addressing, and reviewing complaints against
85 administrative law judges;

86 (3) providing standards for complaints against administrative law judges; and
87 (4) promulgating a code of conduct for all administrative law judges in all state
88 agencies.

89 Section 5. Section **67-19e-105** is enacted to read:

90 **67-19e-105. Performance evaluation of administrative law judges.**

91 (1) Beginning January 1, 2014, the department shall prepare a performance evaluation
92 for each administrative law judge contracted or employed by a state agency.

93 (2) The performance evaluation for an administrative law judge shall include:

94 (a) the results of the administrative law judge's performance evaluations conducted by
95 the employing agency since the administrative law judge's last performance evaluation
96 conducted by the department in accordance with the performance evaluation procedure for the
97 agency;

98 (b) information from the employing agency concerning the administrative law judge's
99 compliance with minimum performance standards;

100 (c) the administrative law judge's disciplinary record, if any;

101 (d) the results of any performance surveys conducted since the administrative law
102 judge's last performance review conducted by the department; and

103 (e) any other factor that the department considers relevant to evaluating the
104 administrative law judge's performance.

105 (3) If an administrative law judge fails to meet the minimum performance standards the
106 department shall provide a copy of the performance evaluation and survey to the employing
107 agency.

108 (4) The department shall conduct performance reviews every four years for
109 administrative law judges contracted or employed by an agency.

110 Section 6. Section **67-19e-106** is enacted to read:

111 **67-19e-106. Performance surveys.**

112 (1) For administrative law judges contracted or employed before July 1, 2013,
113 performance surveys shall be conducted initially at either the two-, three-, or four-year mark

114 beginning January 1, 2014. By July 1, 2018, all administrative law judges shall be on a
115 four-year staggered cycle for performance evaluations.

116 (2) The performance survey shall include as respondents a sample of each of the
117 following groups as applicable:

118 (a) attorneys who have appeared before the administrative law judge as counsel; and

119 (b) staff who have worked with the administrative law judge.

120 (3) The department may include an additional classification of respondents if the
121 department:

122 (a) considers a survey of that classification of respondents helpful to the department;

123 and

124 (b) establishes the additional classification of respondents by rule made in accordance
125 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

126 (4) A survey response is anonymous, including any comment included with a survey
127 response.

128 (5) If the department provides any information to an administrative law judge or the
129 committee, the information shall be provided in such a way as to protect the confidentiality of a
130 survey respondent.

131 (6) If the department establishes an additional classification, in accordance with
132 Subsection (3), a survey shall be provided to a potential survey respondent within 30 days of
133 the day on which the case in which the person appeared before the administrative law judge is
134 closed, exclusive of any appeal. Staff and attorneys may be surveyed at any time during the
135 survey period.

136 (7) Survey categories may include questions concerning an administrative law judge's:

137 (a) legal ability, including the following:

138 (i) demonstration of understanding of the substantive law and any relevant rules of
139 procedure and evidence;

140 (ii) attentiveness to factual and legal issues before the administrative law judge;

141 (iii) adherence to precedent and ability to clearly explain departures from precedent;

- 142 (iv) grasp of the practical impact on the parties of the administrative law judge's
143 rulings, including the effect of delay and increased litigation expense;
144 (v) ability to write clear opinions and decisions; and
145 (vi) ability to clearly explain the legal basis for opinions;
146 (b) temperament and integrity, including the following:
147 (i) demonstration of courtesy toward attorneys, staff, and others in the administrative
148 law judge's department;
149 (ii) maintenance of decorum in the courtroom;
150 (iii) demonstration of judicial demeanor and personal attributes that promote public
151 trust and confidence in the administrative law judge system;
152 (iv) preparedness for oral argument;
153 (v) avoidance of impropriety or the appearance of impropriety;
154 (vi) display of fairness and impartiality toward all parties; and
155 (vii) ability to clearly communicate, including the ability to explain the basis for
156 written rulings, court procedures, and decisions; and
157 (c) administrative performance, including the following:
158 (i) management of workload;
159 (ii) sharing proportionally the workload within the department; and
160 (iii) issuance of opinions and orders without unnecessary delay.
161 (8) If the department determines that a certain survey question or category of questions
162 is not appropriate for a respondent group, the department may omit that question or category of
163 questions from the survey provided to that respondent group.
164 (9) (a) The survey shall allow respondents to indicate responses in a manner
165 determined by the department, which shall be:
166 (i) on a numerical scale from one to five; or
167 (ii) in the affirmative or negative, with an option to indicate the respondent's inability
168 to respond in the affirmative or negative.
169 (b) To supplement the responses to questions on either a numerical scale or in the

170 affirmative or negative, the department may allow respondents to provide written comments.

171 (10) The department shall compile and make available to each administrative law
172 judge that administrative law judge's survey results with each of the administrative law judge's
173 performance evaluations.

174 Section 7. Section **67-19e-107** is enacted to read:

175 **67-19e-107. Complaints.**

176 (1) A complaint against an administrative law judge shall be filed with the department.

177 (2) Upon receipt of a complaint, the department shall conduct an investigation.

178 (3) If the department's investigation determines that the complaint is frivolous or
179 without merit, it may dismiss it without further action. A complaint that merely indicates
180 disagreement, without further misconduct, with the administrative law judge's decision shall be
181 treated as without merit.

182 (4) The contents of all complaints and subsequent investigations are classified as
183 protected under Title 63G, Chapter 2, Government Records Access and Management Act.

184 Section 8. Section **67-19e-108** is enacted to read:

185 **67-19e-108. Administrative Law Judge Conduct Committee.**

186 (1) There is created the Administrative Law Judge Conduct Committee to investigate,
187 review, and hear complaints filed against administrative law judges.

188 (2) The committee shall be composed of:

189 (a) the executive director of the department, or the executive director's designee, as
190 chair; and

191 (b) four executive directors, or their designees, of agencies that employ or contract with
192 administrative law judges, to be selected by the executive director as needed.

193 (3) The department shall provide staff for the committee as needed.

194 Section 9. Section **67-19e-109** is enacted to read:

195 **67-19e-109. Procedure for review of complaint by conduct committee.**

196 (1) Upon a determination that a complaint requires further action, the executive
197 director shall select four executive directors or their designees and convene the committee.

198 The executive director of the agency that employs or contracts with the administrative law
199 judge who is the subject of the complaint may not be a member of the committee.

200 (2) The department shall provide a copy of the complaint, along with the results of the
201 department's investigation, to the committee and the administrative law judge who is the
202 subject of the complaint. If the committee directs, a copy of the complaint and investigation
203 may also be provided to the attorney general.

204 (3) The committee shall allow an administrative law judge who is the subject of a
205 complaint to appear and speak at any committee meeting, except a closed meeting, during
206 which the committee is deliberating the complaint.

207 (4) The committee may meet in a closed meeting to discuss a complaint against an
208 administrative law judge by complying with Title 52, Chapter 4, Open and Public Meetings
209 Act.

210 (5) After deliberation and discussion of the complaint and all information provided, the
211 committee shall provide a report, with a recommendation, to the agency. The recommendation
212 shall include:

213 (a) a brief description of the complaint and results of the department's investigation;

214 (b) the committee's findings; and

215 (c) a recommendation from the committee whether action should be taken against the
216 administrative law judge.

217 (6) Actions recommended by the committee may include no action, disciplinary action,
218 termination, or any other action an employer may take against an employee.

219 (7) The record of an individual committee member's vote on recommended actions
220 against an administrative law judge is a protected record under Title 63G, Chapter 2,
221 Government Records Access and Management Act.