
TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION

Proposed Rule
LSA Document #06-91

DIGEST

Amends [315 IAC 1-3-2](#) concerning a change in address. Adds [315 IAC 1-1-2](#) regarding the statutory mandate that the director and environmental law judges in the Office of Environmental Adjudication may be removed for cause under the applicable provisions of the Code of Judicial Conduct. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[315 IAC 1-1-2](#); [315 IAC 1-3-2](#)

SECTION 1. [315 IAC 1-1-2](#) IS ADDED TO READ AS FOLLOWS:

[315 IAC 1-1-2](#) Applicable provisions of the code of judicial conduct to environmental law judges

Authority: [IC 4-21.5-7-7](#)

Affected: [IC 4-21.5-7-6](#)

Sec. 2. (a) The following definitions apply throughout this section:

(1) "Code of judicial conduct" refers to the code of judicial conduct adopted by the Indiana supreme court, effective March 1, 1993 (including amendments received through January 1, 2006).

(2) "Environmental law judge" means an environmental law judge for the office of environmental adjudication.

(b) This section is intended to assist with the implementation of [IC 4-21.5-7-6\(b\)\(3\)](#) applicable to environmental law judges, which requires their compliance with the applicable provisions of the code of judicial conduct.

(c) For purposes of this section, wherever in the code of judicial conduct the term:

(1) "court personnel" or a term of similar application is used, the term applies to an employee, other than an environmental law judge, of the office of environmental adjudication; and

(2) "judge" is used, the term applies to an environmental law judge.

(d) Unless otherwise specified in subsection (e), the provisions of the code of judicial conduct are applicable to an environmental law judge. These provisions shall be liberally construed to implement the intention of [IC 4-21.5-7-6](#).

(e) The following provisions of the code of judicial conduct are inapplicable to an environmental law judge:

(1) Canon 3B(11) and 3B(13).

(2) Canon 4C.

(3) Canon 4G, to the extent that the practice of law in a representational capacity on a pro bono publico basis pursuant to the Indiana Rules of Professional Conduct, Rule 6.1 is prohibited. Such practice of law shall, however, be conducted subject to all applicable requirements of the code of judicial conduct.

(4) Canon 4H(2).

(5) Canon 5A(3), 5A(4), 5B(1), 5C, 5D, and 5F.

(Office of Environmental Adjudication; [315 IAC 1-1-2](#))

SECTION 2. [315 IAC 1-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[315 IAC 1-3-2](#) Initiation of a proceeding for administrative review

Authority: [IC 4-21.5-7-7](#)

Affected: [IC 4-21.5-3-7](#); [IC 4-21.5-3-15](#); [IC 4-21.5-4](#); [IC 13-15-6-1](#)

Sec. 2. (a) A proceeding before the office is initiated when a petition for administrative review, which may include a request for a stay, in writing, is filed with the Office of Environmental Adjudication. ~~Indiana Government Center North, 100 North Senate Avenue, Room N1049, Indianapolis, Indiana 46204-2211.~~

(b) The petition for administrative review shall contain the following information:

(1) The:

- (A) name;
- (B) address;
- (C) telephone number;

of each person filing the petition.

(2) Identification of the interest of each petitioner in the subject of the petition.

(3) A statement demonstrating that the petitioner is:

- (A) a person to whom the order is directed;
- (B) aggrieved or adversely affected by the order; or
- (C) entitled to review under any law.

(4) State with particularity the legal issues proposed for consideration in the proceedings as follows:

(A) In a case involving an appeal of a permit, identify the following:

- (i) Environmental concerns or technical deficiencies related to the action of the commissioner that is the subject of the petition. ~~and~~
- (ii) Permit terms and conditions that the petitioner contends would be appropriate to comply with the law applicable to the contested permit.

(B) In a case involving any other appeal of an order of the commissioner, identify those:

- (i) facts;
- (ii) terms; or
- (iii) conditions;

for which the petitioner requests review.

(c) The petition for administrative review shall also contain the following information:

(1) Identification of any persons represented by the person making the request under [IC 4-21.5-3-15](#).

(2) A statement identifying the person against whom administrative review is sought.

(3) A copy of the pertinent portions of the notice of the commissioner's action issued by the department that is the basis of the petition for administrative review. This shall, at a minimum, consist of that portion of the commissioner's action that identifies the following:

- (A) The person to whom the action is directed.
- (B) The identification number of the action.

(4) A statement indicating the identification of the petitioner's attorney or other representative.

(d) A petition for administrative review, filed under [IC 4-21.5-3-7](#)(a), may be amended as a matter of course at any time within thirty (30) days after the earlier of the following dates:

- (1) The initial prehearing conference.
- (2) The filing of a motion to dismiss.

Otherwise, a party may amend his or her petition only by leave of the presiding ELJ or by written consent of all parties.

(e) If the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

(f) Copies of the petition for administrative review shall be sent to the following:

- (1) The department.
- (2) All persons to whom the order is directed.

(Office of Environmental Adjudication; [315 IAC 1-3-2](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3733; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 470)

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