

Emergency Rule
LSA Document #06-499(E)

DIGEST

Temporarily adds provisions pertaining to forfeiture, civil penalties, and a procedure for removal from the exclusion list. Temporarily amends [68 IAC 6-1-5](#) to give more information regarding petitions for removal from the exclusion list. Authority: [IC 4-33-4-1](#); [IC 4-33-4-2](#); [IC 4-33-4-3](#); [IC 4-33-4-7](#). Effective October 23, 2006.

SECTION 1. (a) An individual who violates his or her exclusion by entering the gaming area of a facility under the jurisdiction of the commission shall forfeit any jackpot or thing of value won as a result of a wager made at any such facility. The forfeited jackpots or items will be withheld by the riverboat licensee or operating agent and remitted to the commission. The commission shall collect such funds and items as fines levied against the excluded individual for violating [68 IAC 6-1](#).

(b) The executive director or commission may assess a civil fine up to five hundred dollars (\$500) against any individual who violates his or her exclusion by entering the gaming area of a facility under the jurisdiction of the commission.

(c) Excluded individuals may appeal forfeiture or civil fine under this SECTION by following the procedures enumerated in [68 IAC 7](#).

(d) Nothing in this SECTION shall prohibit a riverboat licensee or operating agent from alerting local law enforcement authorities of an excluded person's presence in a facility under the jurisdiction of the commission to effect an arrest for trespassing.

SECTION 2. (a) Any person who has been placed on the exclusion list described in [68 IAC 6-1](#) by way of:

(1) a commission order following an exclusion hearing under [IC 4-33-4-7](#) and [68 IAC 7](#); or
(2) failure to satisfy the [68 IAC 6-1-4\(a\)\(4\)](#) fifteen (15) day deadline to request a hearing;
may petition the commission, in writing, and request that his or her name be removed from the exclusion list.

(b) The petition shall:

(1) Be addressed to the executive director.

(2) State with specificity facts believed by the petitioner to constitute evidence for removal of his or her name from the exclusion list.

(3) Be notarized.

(4) Include a certification in the following form: "Under the penalty of perjury, the undersigned has examined this request for removal from the exclusion list and to the best of my knowledge and belief it is true, complete, and correct."

(c) The executive director shall either deny the petition or designate the petition for hearing.

(d) The executive director shall deny a petition if it is submitted prior to the expiration of five (5) years from the date the petitioner was placed on the exclusion list or from the conclusion of any hearing, appeal, or prior petition for removal associated with placement on the list, whichever occurs later.

(e) The executive director may deny a petition for removal from the exclusion list if the petition fails to comply with any of the requirements of subsections (a) or (b) of this SECTION [subsection (a) or (b)] or if the facts contained in the petition are the same or substantially the same facts that the petitioner set forth in a request for hearing pursuant to [68 IAC 7-1](#) or a prior petition for removal from the exclusion list.

SECTION 3. (a) Upon designating a petition for hearing, the executive director shall assign one (1) person to serve as review officer to conduct the review. The executive director, deputy director, and staff members of the commission who are attorneys are eligible to serve as review officers. The petitioner shall be served with a copy of the letter of appointment, and this letter shall serve as notice of the pendency of the review.

(b) The review officer shall schedule the hearing for a date within ninety (90) days from the receipt of the request for removal. The review officer shall notify the petitioner in writing of the date, time, and place at which the hearing will be conducted.

(c) The review officer may grant continuances upon a showing of good cause.

SECTION 4. A petitioner may represent himself or be represented by an attorney or representative who is in compliance with [68 IAC 1-6](#). Service shall be made in accordance with [68 IAC 1-6-4\(c\)](#).

SECTION 5. The petitioner shall provide the review officer with the following information at least fifteen (15) days before the date of the review:

- (1) The name and address of any witness who may be called to testify on behalf of the petitioner.
- (2) All documents or other evidence, whether or not in the possession and control of the petitioner, that the petitioner reasonably expects will be necessary to introduce at the hearing.

SECTION 6. (a) The burden of proof is at all times upon the petitioner. The petitioner shall have the affirmative responsibility of establishing that he or she is eligible for removal from the exclusion list.

(b) Any testimony shall be given under oath or affirmation.

(c) The petitioner may present his or her case. The review officer may question witnesses called by the petitioner. The review officer may question the petitioner based on the testimony and evidence presented by the petitioner and the information gathered by the commission.

(d) At the discretion of the review officer, the petitioner may present a closing argument. The review officer shall set the length of the closing argument.

SECTION 7. (a) Any relevant evidence may be admitted and shall be sufficient in itself to support a finding if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules of evidence that may make improper the admission of such evidence over objection in a civil action.

(b) Hearsay may support a finding of the review officer if it is the best evidence available and has sufficient indicia of trustworthiness and reliability.

(c) The review officer may take official notice of any generally accepted information or technical or scientific matter within the field of gaming and any other fact that may be judicially noticed by the courts of Indiana. The petitioner shall be informed of any information, matters, or facts so noticed and shall be given reasonable opportunity to refute such evidence.

SECTION 8. (a) The petitioner may be eligible for removal from the exclusion list if the petitioner demonstrates rehabilitation by a preponderance of the evidence.

(b) In determining whether an individual has demonstrated rehabilitation under subsection (a), the hearing officer and the commission shall consider the following factors:

- (1) The nature and seriousness of the offense, violation, or conduct.
- (2) The circumstances under which the offense, violation, or conduct occurred.
- (3) The date of the offense, violation, or conduct.
- (4) The age of the individual when he or she committed the offense, violation, or conduct.
- (5) Whether the offense, violation, or conduct was an isolated or a repeated incident.
- (6) A social condition that may have contributed to the offense, violation, or conduct.
- (7) The complete criminal record of the individual.
- (8) Whether the petitioner's name is included on a valid and current exclusion list from another jurisdiction in the United States.
- (9) Other evidence of rehabilitation, including, but not limited to, good conduct in prison or the community, counseling or psychiatric treatment received, or the recommendation of a person who has or has had the individual under the person's supervision.

SECTION 9. (a) The record shall consist of the following:

- (1) The notice of placement on the exclusion list and petition for removal.
- (2) Any information, including the record of evidence and testimony, if any, used by the executive

director or commission in making the original determination to exclude petitioner.

(3) All evidence received.

(4) A statement of matters officially noticed.

(5) The written recommendations and findings of fact made by the review officer.

(6) An original transcription or audio recording of the oral proceedings.

(7) The record from any previous petition for removal from the exclusion list or related proceeding.

(b) Oral proceedings shall be recorded, at the direction of the review officer, stenographically or by such other means as to adequately ensure the preservation of such testimony or oral proceedings and shall be transcribed at the request of the petitioner or the commission. The requesting party shall pay for the transcript at the prevailing rate. The original transcript, if prepared, shall be filed with the commission. A party that did not order the original transcript may obtain a copy of the transcript after paying the appropriate cost.

(c) At the conclusion of the review, the review officer shall issue to the commission written findings of fact and recommendations. Findings of fact may be based on any evidence in the record.

(d) Requirements for a final commission order shall be as follows:

(1) The commission shall issue its order in one (1) of the following manners:

(A) The commission may issue an order by adopting the written findings of fact and recommendations of the review officer without further review.

(B) After a review of the entire record, the commission may render a written order, including the basis for its decision. The commission may adopt the findings of fact and recommendations of the review officer as the final commission order after the review.

(C) The commission may review the petition for removal from the exclusion list de novo.

(2) A copy of the final commission order shall be served on petitioner by personal delivery or certified mail.

(3) A final commission order shall become effective upon personal delivery to the petitioner or upon posting of certified mail.

SECTION 10. A petitioner may withdrawal a request for removal from the exclusion list at any time prior to the hearing by notifying the commission in writing of the petitioner's intent to withdrawal. If the petitioner withdraws a request for removal from the exclusion list, the petitioner shall remain on the exclusion list and the commission shall take no further action on the request.

SECTION 11. (a) The review officer may impose sanctions and penalties if the review officer finds that a party has acted in bad faith, for the purpose of delay, or has otherwise abused the hearing process.

Such sanctions and penalties include, but are not limited to, default judgment or directed finding on one (1) or more issues or a fine.

(b) If a petitioner fails to testify on his or her own behalf with respect to any question propounded to him or her, the review officer may infer therefrom that such testimony or answer would have been adverse to the petitioner.

(c) If the petitioner fails to answer a subpoena or refuses to testify fully at the request of the commission, such failure may be deemed independent grounds for a finding that the petitioner's petition should be denied. The review officer may also infer therefrom that such testimony would have been adverse to the petitioner.

(d) The unexcused failure of the petitioner to appear at a review shall constitute an admission of all matters and facts contained in the notice of placement on the exclusion list. In such case, the review officer may take action based upon such admission or upon any other evidence, including affidavits, without any further notice to the petitioner.

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