

**TITLE 315 OFFICE OF ENVIRONMENTAL ADJUDICATION****Proposed Rule**  
LSA Document #10-482**DIGEST**

Amends [315 IAC 1-1-2](#), which identifies provisions of the code of judicial conduct that are applicable to environmental law judges of the Office of Environmental Adjudication under [IC 4-21.5-7-6\(b\)\(3\)](#), to accommodate amendments received by the Indiana Supreme Court through October 15, 2008, and to allow environmental law judges to provide mediation services. Amends [315 IAC 1-2-1](#) concerning definitions. Amends [315 IAC 1-3-1](#) concerning the powers and duties of the director, presiding environmental law judge, and office of environmental adjudication. Amends [315 IAC 1-3-2](#) concerning procedures for correcting incomplete petitions for review. Amends [315 IAC 1-3-3](#) concerning the use of electronic mail. Amends [315 IAC 1-3-4](#) concerning page limits for briefs. Adds [315 IAC 1-3-4.1](#) concerning deadlines for filing responses. Adds [315 IAC 1-3-13.1](#) concerning the record of proceeding and transcripts. 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 1-2-1](#); [315 IAC 1-3-1](#); [315 IAC 1-3-2](#); [315 IAC 1-3-3](#); [315 IAC 1-3-4](#); [315 IAC 1-3-4.1](#); [315 IAC 1-3-13.1](#)

SECTION 1. [315 IAC 1-1-2](#) IS AMENDED 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](#)

**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~~. **October 15, 2008**).
- (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)~~ **2.8(c)** and ~~3B(13)~~ **2.17**.

(2) Canon ~~4C~~ **3.2 and 3.4**.

**(3) Canon 3.9 if mediation services are provided in the ordinary course of employment or on a pro bono publico basis.**

~~(3)~~ **(4) Canon 4G, 3.10**, 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)~~ **(5) Canon 4H(2), 3.15(B) and 3.15(C).**

~~(5)~~ **(6) Canon 5A(3), 5A(4), 5B(1), 5C, 5D, and 5F. 4.**

(Office of Environmental Adjudication; [315 IAC 1-1-2](#); filed Jan 26, 2007, 10:53 a.m.:

[20070214-IR-315060091FRA](#); readopted filed May 18, 2010, 1:45 p.m.: [20100602-IR-315100174RFA](#))

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

**[315 IAC 1-2-1](#) Definitions**

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

**Affected:** [IC 4-21.5](#); [IC 13-11-2-51](#); [IC 13-17-2](#); [IC 13-18-1](#); [IC 13-19-2](#); [IC 13-23-11](#); [IC 14-10-1](#); [IC 14-10-2-2](#)

Sec. 1. In addition to the definitions in [IC 4-21.5-1](#), the definitions in this section apply throughout this title:

(1) "Administrative law judge" or "ALJ" means a person appointed by the natural resources commission under [IC 14-10-2-2](#) to function as an administrative law judge under [IC 4-21.5](#).

(2) "Board" means a board established or created under ~~[IC 13-17-1](#)~~, [IC 13-17-2](#), [IC 13-18-1](#), [IC 13-19-2](#), or [IC 13-23-11](#).

(3) "Commissioner" means the commissioner of the agency **department** or the commissioner's designee.

(4) "Confidential information" means any information that:

(A) is entitled to treatment as; or

(B) has been determined to be;

confidential information under [326 IAC 17.1](#), [327 IAC 12.1](#), or [329 IAC 6.1](#) and includes any information submitted to the office under claim of confidentiality during the pendency of a final determination of the claim.

(5) "Decision" means an agency action as ~~prescribed by~~ **defined in** [IC 4-21.5-1-4](#) of the department **or as described in** [IC 4-21.5-7-3](#).

(6) "Department" has the meaning set forth in [IC 13-11-2-51](#).

(7) "Director" means the director of the office.

(8) "Division of hearings" means the division established by [IC 14-10-2-2](#).

~~(9) "Electronic facsimile transmission" or "fax" means a method of transmitting and receiving information in eight and one-half (8 1/2) inch by eleven (11) inch paper medium over telephone lines or other forms of electronic transmissions available to the office.~~

~~(10) (9) "Environmental law judge" or "ELJ" means an individual acting in the capacity of an administrative law judge in a proceeding under~~ [IC 4-21.5](#).

~~(11) (10) "Final order" means an order of the ELJ, acting as ultimate authority, disposing of the proceeding prescribed by~~ [IC 4-21.5-3-27](#).

~~(12) (11) "Natural resources commission" means the commission established under~~ [IC 14-10-1](#).

~~(13) (12) "Office" means the office of environmental adjudication.~~

~~(14) (13) "Presiding environmental law judge" means the environmental law judge~~ **ELJ** assigned by the director to preside over a particular proceeding.

*(Office of Environmental Adjudication; [315 IAC 1-2-1](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3732; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 469; filed Apr 3, 2009, 2:09 p.m.: [20090429-IR-315080689FRA](#); readopted filed May 18, 2010, 1:45 p.m.: [20100602-IR-315100174RFA](#))*

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

**[315 IAC 1-3-1](#) Powers and duties of the director, presiding environmental law judge, and office of environmental adjudication**

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

**Affected:** [IC 4-21.5](#); [IC 5-14-3-8](#); [IC 14-10-2-2.5](#)

Sec. 1. (a) An ELJ shall do the following:

- (1) Conduct a fair and impartial proceeding.
- (2) Maintain an accurate and complete record.
- (3) Adjudicate all issues necessary for resolution of the matter.
- (4) Avoid delay.

(b) The ELJ shall have authority to do the following:

- (1) Conduct administrative hearings under the following:
  - (A) [IC 4-21.5](#).
  - (B) This article.
- (2) Rule upon the following:

- (A) Motions.
- (B) Requests.
- (C) Offers of proof.
- (3) Dispose of procedural requests.
- (4) Issue all necessary orders.
- (5) Administer oaths and affirmations.
- (6) Consider affidavits submitted by the parties.
- (7) Examine witnesses.
- (8) Admit:
  - (A) purported scientific evidence; and
  - (B) related opinions;into evidence in accordance with applicable Indiana trial rules on admissibility of testimony by experts.
- (9) Allocate among the parties appropriate costs under [IC 5-14-3-8](#) for the office's production of documents.
- (10) Order the prefilings of testimony.
- (11) Solicit testimony in appropriate cases.
- (12) Receive documentary or other evidence.
- (13) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce:
  - (A) testimony;
  - (B) documents; or
  - (C) other nonprivileged evidence;and failing the production thereof without good cause being shown, draw an adverse inference against that party.
- (14) Admit, limit, or exclude evidence in accordance with [IC 4-21.5](#).
- (15) Hear and decide questions of facts and law.
- (16) Issue:
  - (A) subpoenas;
  - (B) subpoenas duces tecum.
- (17) Require parties to:
  - (A) attend conferences for the settlement or simplification of the issues;
  - (B) expedite the proceedings; or
  - (C) participate in alternative dispute resolution.
- (18) Where not inconsistent with [IC 4-21.5](#) and this title, the presiding environmental law judge may apply the Indiana Rules of Trial Procedure, except for those trial rules that provide for provisional and final remedies and special proceedings (TR 64 through 71), except as provided in section 2.1(c) of this rule.
- (19) In addition to the remedies provided in [IC 4-21.5-3-24](#), to impose reasonable and appropriate sanctions under the following:
  - (A) [IC 4-21.5-6-2](#).
  - (B) Indiana Trial Rules 26 through 37.
- (20) Do all other acts and take all measures necessary for the:
  - (A) maintenance of order; and
  - (B) efficient, fair, and impartial adjudication of issues arising;in proceedings governed by this article.
- (21) Determine whether mediation is an appropriate means of alternative dispute resolution for each type of administrative proceeding in accordance with [IC 4-21.5-3.5](#).
- (22) Conduct consolidated proceedings under [IC 14-10-2-2.5](#).

(c) For failure to attend a prehearing conference, **hearing, or other stage of the proceeding**, the presiding ELJ may do the following:

- (1) Strike claims or defenses.
- (2) Default or dismiss a party under [IC 4-21.5-3-24](#).

*(Office of Environmental Adjudication; 315 IAC 1-3-1; 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 469; filed Apr 3, 2009, 2:09 p.m.: [20090429-IR-315080689FRA](#); readopted filed May 18, 2010, 1:45 p.m.: [20100602-IR-315100174RFA](#))*

SECTION 4. [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.

(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.
- (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) The presiding ELJ may, upon his or her own motion, provide a petitioner with notice that a petition for review is incomplete and order a petitioner to supplement the petition for review to comply with the requirements of this section.**

~~(d)~~ **(e)** 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.

**(3) Service of a notice of incomplete petition and order to supplement.**

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

~~(e)~~ **(f)** 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)~~ **(g)** 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*

SECTION 5. [315 IAC 1-3-3](#) IS AMENDED TO READ AS FOLLOWS:

**[315 IAC 1-3-3](#) Filing and service of pleadings and documents**

**Authority:** [IC 4-21.5-2-1](#); [IC 4-21.5-3-35](#); [IC 4-21.5-7-7](#)

**Affected:** [IC 4-21.5-3-1](#); [IC 4-21.5-3-2](#); [IC 13-15-6-1](#)

Sec. 3. (a) The requirements for the filing of pleadings and documents are as follows:

(1) The burden of proof for the timely filing of pleadings and documents with the office is on the person so filing.

(2) The computation of any period of time under these rules is prescribed by [IC 4-21.5-3-2](#).

(3) The filing of a petition for administrative review with an ELJ may be completed, under [IC 4-21.5-3-1\(f\)](#), by any of the following methods:

(A) Personal delivery.

(B) First class, priority, or express United States mail.

(C) Certified mail.

(D) Private carrier.

(E) Electronic **facsimile or** fax transmission. All documents filed by fax must be accompanied by a descriptive cover sheet that states the following:

(i) The title of the document.

(ii) The number of pages.

(iii) The identity and voice telephone number of the sending party.

Filing by fax shall be followed by the filing of the signed original and attachments with the office by one (1) of the methods specified in this subdivision within one (1) day after the document is filed by fax.

**(F) Petitions for review may not be filed by electronic mail.**

(4) The filing of any other document or pleading with an ELJ may be completed, under [IC 4-21.5-3-1\(f\)](#), by any of the following methods:

(A) Personal delivery.

(B) First class, priority, or express United States mail.

(C) Certified mail.

(D) Private carrier.

(E) Electronic facsimile transmission. All documents filed by fax must be accompanied by a descriptive cover sheet that states the following:

(i) The title of the document.

(ii) The case number.

(iii) The number of pages.

(iv) The identity and voice telephone number of the sending party.

(v) The instructions for filing.

(F) If all parties and the presiding ELJ consent, by any other means.

(5) Fax transmissions **and electronic mail** will be accepted for filing only during the regular business hours as set forth in subsection (d). Transmissions received by the office after close of business shall be filed effective the next regular business day.

(b) The requirements for service of pleadings and documents are as follows:

(1) All documents and pleadings filed with the presiding ELJ shall be served on all parties.

(2) If a party is represented by an attorney or another authorized representative, service of a document must be made upon the attorney or other authorized representative. If a party appears without separate representation, service must be made upon the party.

(3) A signed certificate of service, in substantially the following form, stating "I certify that on the \_\_\_\_ day of (month), (year), service of a true and complete copy of (document being forwarded) was made upon each party or attorney of record herein by (identifying any of the methods of service prescribed by subsection (a)(3) or (a)(4))", shall accompany each document filed or served.

(4) When the presiding ELJ corresponds directly with the parties:

(A) the original of the correspondence shall be maintained by the presiding ELJ in the official file; and

(B) a copy shall be sent to all parties.

(c) The filing of a document with the office is complete on the earliest of the following:

- (1) The date on which the document is delivered to the office.
- (2) The date of the postmark on the envelope containing the document if the document is mailed to the office by United States mail.
- (3) The date on which the document is deposited with a private carrier, as shown by a receipt issued by the carrier, if the document is sent to the office by private carrier.
- (4) The date on which the document is received by the office if the date of deposit or postmark cannot be determined.**

(d) Where the date of filing or service is determined by the date of delivery to or receipt at the office, all filing or service deliveries received after 4:30 p.m., **EST, ET**, will be deemed to have been received on the next following regular day. ~~However, a document filed by fax shall be deemed to be filed on the date on which it is electronically submitted.~~

*(Office of Environmental Adjudication; [315 IAC 1-3-3](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 471; readopted filed May 18, 2010, 1:45 p.m.: [20100602-IR-315100174RFA](#))*

SECTION 6. [315 IAC 1-3-4](#) IS AMENDED TO READ AS FOLLOWS:

**[315 IAC 1-3-4](#) Form of pleadings and documents**

**Authority:** [IC 4-21.5-2-1](#); [IC 4-21.5-3-35](#); [IC 4-21.5-7-7](#)

**Affected:** [IC 4-21.5-3](#); [IC 13](#)

Sec. 4. (a) The form of pleadings and documents shall be as follows:

- (1) The petition for administrative review shall be in the form prescribed by section 2 of this rule.
- (2) The first page of every pleading, letter, or other document filed thereafter shall contain a caption identifying the:
  - (A) action;
  - (B) the case number;that has been assigned by the office.
- (3) The original of any pleading, letter, or other document, excepting exhibits, shall be signed by the party filing or by the party's counsel. The signature constitutes a representation by the signer that:
  - (A) the signer has read the pleadings, letter, or other document;
  - (B) to the best of the signer's knowledge, information, and belief, the statements made therein are true; and
  - (C) it is not interposed for delay.
- (4) Attachments to pleadings, including, but not limited to, the permit, may be submitted electronically as follows:
  - (A) In a compatible format to the office.
  - (B) To the other parties only with their consent.

(b) Any changes in name, mailing address, or telephone number occurring during the course of a proceeding shall be communicated promptly in writing to the presiding ELJ and all parties to the proceeding. Service of orders or correspondence from the office shall be made to the last known address on file.

(c) Nothing in this section shall be construed to modify the time in which a party is otherwise required to file under:

- (1) [IC 4-21.5](#);
- (2) [IC 13](#); or
- (3) this article.

**(d) A brief, excluding attachments, filed in support of any motion shall not exceed thirty (30) pages in length unless the presiding ELJ has granted leave to file an oversized brief. A motion requesting leave to file an oversized brief shall be filed at least seven (7) days before the brief is due.**

*(Office of Environmental Adjudication; [315 IAC 1-3-4](#); filed Jun 2, 1998, 3:47 p.m.: 21 IR 3734; readopted filed Aug 11, 2004, 12:04 p.m.: 28 IR 323; filed Sep 16, 2005, 1:40 p.m.: 29 IR 472; readopted filed May 18, 2010, 1:45*



SECTION 7. [315 IAC 1-3-4.1](#) IS ADDED TO READ AS FOLLOWS:

**[315 IAC 1-3-4.1](#) Response deadlines for motions**

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

Affected: [IC 4-21.5-3-23](#)

Sec. 4.1. (a) An adverse party shall have the following:

(1) Thirty (30) days after service of a motion for summary judgment or dismissal to serve a response and any opposing affidavits. The moving party shall have fifteen (15) days after service of a response to file a reply.

(2) Twenty (20) days after service of any procedural motion other than a motion for continuance or extension of time to serve a response.

(3) Five (5) business days after service of a motion for continuance or extension of time to file a response.

(b) The deadlines may be shortened or extended with leave of the presiding ELJ.

(Office of Environmental Adjudication; [315 IAC 1-3-4.1](#))

SECTION 8. [315 IAC 1-3-13.1](#) IS ADDED TO READ AS FOLLOWS:

**[315 IAC 1-3-13.1](#) Record of proceedings; court reporter; transcript**

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

Affected: [IC 4-21.5-3-14](#); [IC 4-21.5-3-33](#)

Sec. 13.1. (a) The record required to be kept by an ELJ under [IC 4-21.5-3-14](#) commences when a proceeding is initiated under section 2 of this rule and includes the items described in [IC 4-21.5-3-33](#).

(b) The office shall engage the services of a stenographer or court reporter to record evidence taken during a hearing.

(c) A party may obtain a transcript of the evidence upon a written request to the ELJ.

(d) The party who requests a transcript under subsection (b) shall pay the cost of the transcript:

(1) as billed by the court reporting service; or

(2) if the transcript is prepared by an employee of the office, as determined from time to time by the director on a per page basis after consideration of all expenses incurred in the preparation of the transcript.

(Office of Environmental Adjudication; [315 IAC 1-3-13.1](#))

**[Notice of Public Hearing](#)**

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