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**TITLE 41 OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

**Proposed Rule**  
LSA Document #20-290

DIGEST

Adds [41 IAC](#), setting forth duties and ethical requirements that promote fairness and unbiased decisions made by administrative law judges employed by the office of administrative law proceedings. Effective 30 days after filing with the Publisher.

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

[41 IAC](#)

SECTION 1. [41 IAC](#) IS ADDED TO READ AS FOLLOWS:

**TITLE 41 OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

**ARTICLE 1. CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES**

**Rule 1. General Provisions**

[41 IAC 1-1-1 Purpose](#)

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5](#)

**Sec. 1. This article establishes a code of judicial conduct to ensure that administrative law judges carry out their duties with integrity and to promote fairness in administrative proceedings.**

*(Office of Administrative Law Proceedings; [41 IAC 1-1-1](#))*

[41 IAC 1-1-2 Applicability](#)

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5](#)

**Sec. 2. This article applies to any individual serving as an administrative law judge for the office of administrative law proceedings. All the provisions of this article apply to all administrative law judges employed or contracted by the office. State agencies not subject to the jurisdiction of the office of administrative law proceedings may adopt those provisions of this article that apply solely to the conduct of administrative law judges.**

*(Office of Administrative Law Proceedings; [41 IAC 1-1-2](#))*

[41 IAC 1-1-3 Applicability of definitions](#)

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-15-10.5-3](#); [IC 4-15-10.5-5](#); [IC 4-21.5-1-10](#); [IC 4-21.5-1-15](#)

**Sec. 3. (a) The definitions in this section apply throughout this article.**

**(b) "Administrative law judge" has the meaning set forth in [IC 4-15-10.5-3](#).**

**(c) "Director" has the meaning set forth in [IC 4-15-10.5-5](#).**

(d) "Office" means the office of administrative law proceedings established under [IC 4-15-10.5-7](#).

(e) "Party" has the meaning set forth in [IC 4-21.5-1-10](#).

(f) "Ultimate authority" has the meaning set forth in [IC 4-21.5-1-15](#).

*(Office of Administrative Law Proceedings; [41 IAC 1-1-3](#))*

## Rule 2. Rules of Conduct

### [41 IAC 1-2-1](#) Incorporation of standards

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-2-6](#); [IC 4-21.5](#)

Sec. 1. (a) The following provisions are incorporated into the administrative law judge code of conduct:

(1) The Indiana ethics code set forth in [IC 4-2-6](#) and [42 IAC 1-5](#).

(2) The Indiana Rules of Professional Conduct, available at [https://www.in.gov/judiciary/rules/prof\\_conduct/](https://www.in.gov/judiciary/rules/prof_conduct/) to an administrative law judge who is a lawyer.

(3) The provisions of the Administrative Orders and Procedures Act (AOPA) set forth in [IC 4-21.5](#) to a proceeding covered by [IC 4-21.5-2-3](#).

(b) If appropriate, the director may apply provisions of the Indiana Rules of Professional Conduct to non-lawyer administrative law judges.

(c) If appropriate, the director may apply provisions of AOPA to proceedings covered by [IC 4-21.5-2-4](#).

*(Office of Administrative Law Proceedings; [41 IAC 1-2-1](#))*

### [41 IAC 1-2-2](#) Deference to ultimate authority

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-1-15](#)

Sec. 2. Administrative law judges may recommend to an ultimate authority that ambiguous policies or rules be clarified to promote ease of interpretation and application; however, an administrative law judge shall afford deference to the ultimate authority's published rules or policies unless doing so is contrary to law.

*(Office of Administrative Law Proceedings; [41 IAC 1-2-2](#))*

### [41 IAC 1-2-3](#) Impartiality

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-9](#); [IC 4-21.5-3-12](#)

Sec. 3. (a) An administrative law judge shall uphold and apply the law and shall perform all duties of an administrative law judge impartially.

(b) An administrative law judge must interpret and apply the law without regard to whether the administrative law judge approves or disapproves of the law in question.

*(Office of Administrative Law Proceedings; [41 IAC 1-2-3](#))*

### [41 IAC 1-2-4](#) Interacting with pro se parties

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-15](#)

Sec. 4. Upon commencement of a proceeding, an administrative law judge must advise any unrepresented party of the following:

- (1) The prehearing, hearing, and posthearing processes.
- (2) The prohibition on ex parte communications.
- (3) The unrepresented party may be represented by counsel or a duly authorized representative consistent with [IC 4-21.5-3-15](#).
- (4) The unrepresented party will be held to the same burden of proof and legal standards as a represented party.

(Office of Administrative Law Proceedings; [41 IAC 1-2-4](#))

#### [41 IAC 1-2-5](#) Professional competence

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5](#)

Sec. 5. (a) An administrative law judge shall diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative law judges.

(b) An administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(Office of Administrative Law Proceedings; [41 IAC 1-2-5](#))

#### [41 IAC 1-2-6](#) Settlement

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-7](#); [IC 4-21.5-3.5-6](#); [IC 4-21.5-3.5-8](#)

Sec. 6. An administrative law judge may encourage parties and representatives of parties of a proceeding to settle matters in dispute but shall not coerce any party into settlement.

(Office of Administrative Law Proceedings; [41 IAC 1-2-6](#))

#### [41 IAC 1-2-7](#) Ex parte communications

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-11](#); [IC 4-21.5-3-33](#)

Sec. 7. (a) An administrative law judge may initiate or consider any ex parte communications when expressly authorized by [IC 4-21.5-3-11](#) or other law to do so.

(b) An administrative law judge may obtain the advice of a disinterested expert on the law applicable to the proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) An administrative law judge may consult other judges and support personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

(d) An administrative law judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(Office of Administrative Law Proceedings; [41 IAC 1-2-7](#))

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**[41 IAC 1-2-8](#) Civility**

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-8.5](#); [IC 4-21.5-3-25](#)

**Sec. 8. (a) An administrative law judge shall require civility, order, and decorum in proceedings in which the administrative law judge presides.**

**(b) An administrative law judge shall be civil, patient, dignified, and courteous to parties, witnesses, lawyers, representatives, staff, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, representatives, parties, staff, officials, and others subject to the administrative law judge's direction and control.**

**(c) An administrative law judge may take action as appropriate under [IC 4-21.5-3-25](#) to maintain civility, order, and decorum in proceedings in which the administrative law judge presides.**

*(Office of Administrative Law Proceedings; [41 IAC 1-2-8](#))*

**[41 IAC 1-2-9](#) Statements on pending and impending cases**

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-12](#); [IC 5-14-3](#)

**Sec. 9. (a) An administrative law judge shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing.**

**(b) An administrative law judge shall require similar abstention on the part of agency personnel subject to the judge's direction and control.**

**(c) This section does not prohibit administrative law judges from making public statements in the course of their official duties or from explaining for public information the procedures of the agency.**

**(d) This section does not apply to proceedings in which the administrative law judge is a litigant in a personal capacity.**

*(Office of Administrative Law Proceedings; [41 IAC 1-2-9](#))*

**Rule 3. Advisory Opinions, Complaints, Violations, and Disqualification**

**[41 IAC 1-3-1](#) Advisory opinions regarding the code of judicial conduct**

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-21.5-3-10](#)

**Sec. 1. (a) An administrative law judge may request in writing an advisory opinion concerning the code of judicial conduct from the director.**

**(b) The director must respond in writing to all requests for advisory opinions concerning the code of judicial conduct as soon as practicable.**

**(c) The director will refer requests for advisory opinions that involve the Indiana code of ethics to the inspector general or state ethics commission.**

**(d) Advisory opinions and requests for advisory opinions are confidential.**

(e) Acting in accordance with an advisory opinion is an absolute defense to an alleged violation of the code of judicial conduct, provided:

- (1) the administrative law judge requested an advisory opinion prior to the occurrence of the alleged violation;
- (2) the request for an advisory opinion accurately represented the facts; and
- (3) the administrative law judge acted in complete compliance with the advisory opinion.

(Office of Administrative Law Proceedings; [41 IAC 1-3-1](#))

#### [41 IAC 1-3-2](#) Complaints alleging violation of this article

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-15-2.2](#); [IC 4-21.5](#)

Sec. 2. (a) The director is responsible for oversight and enforcement of the code of judicial conduct.

(b) Any party or representative of a party to a proceeding may file a complaint in writing with the director that an administrative law judge has violated the code of judicial conduct.

(c) As soon as practicable after receipt of a complaint, the director shall investigate the complaint. This investigation must provide both the complainant and the respondent administrative law judge an opportunity to be heard and present information or evidence relevant to the complaint.

(d) Once the director concludes an investigation of a complaint, the director shall notify both the complainant and respondent administrative law judge of the outcome of the investigation in the manner the director deems appropriate.

(Office of Administrative Law Proceedings; [41 IAC 1-3-2](#))

#### [41 IAC 1-3-3](#) Violation determinations

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

Affected: [IC 4-15-2.2](#); [IC 4-21.5-2-5](#); [IC 4-21.5-10](#)

Sec. 3. (a) The director may require an administrative law judge who has violated this article to:

- (1) receive training;
- (2) be disqualified;
- (3) receive discipline; or
- (4) be subject to any other action the director deems appropriate and warranted.

(b) Decisions by the director under this article are discretionary personnel actions exempt under [IC 4-21.5-2-5\(4\)](#).

(Office of Administrative Law Proceedings; [41 IAC 1-3-3](#))

#### [41 IAC 1-3-4](#) Disqualification

Authority: [IC 4-15-10.5-10](#); [IC 4-15-10.5-11](#)

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

Sec. 4. If an administrative law judge is disqualified under [IC 4-21.5-3-10](#), [IC 4-21.5-3-11](#), [IC 4-21.5-3-12](#), [IC 4-21.5-3-13](#), or this article, the director shall assign another administrative law judge to preside over the proceeding.

(Office of Administrative Law Proceedings; [41 IAC 1-3-4](#))

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

*Posted: 07/15/2020 by Legislative Services Agency*  
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