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**TITLE 41 OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

**Emergency Rule**  
LSA Document #20-518(E)

DIGEST

Temporarily adds provisions to clarify the requirements pertaining to administrative law judges employed by the office of administrative law proceedings. Statutory authority: [IC 4-15-10.5-10](#). Effective October 8, 2020.

**SECTION 1. This document 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.**

**SECTION 2. This document applies to any individual serving as an administrative law judge for the office of administrative law proceedings. All the provisions of the document 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 document that apply solely to the conduct of administrative law judges.**

**SECTION 3. (a) The definitions in this SECTION apply throughout this document.**

**(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](#).**

**SECTION 4. (a) The following provisions are incorporated into this document:**

**(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](#).**

**SECTION 5. 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.**

**SECTION 6. (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.**

**SECTION 7. 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.

**SECTION 8. (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.**

**SECTION 9. 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.**

**SECTION 10. (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.**

**SECTION 11. (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.**

**SECTION 12. (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.**

**SECTION 13. (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.

SECTION 14. (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.

SECTION 15. (a) The director may require an administrative law judge who has violated this article [document] 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 document are discretionary personnel actions exempt under [IC 4-21.5-2-5\(4\)](#).

SECTION 16. 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 document, the director shall assign another administrative law judge to preside over the proceeding.

SECTION 17. This document expires on the earlier of: December 29, 2020, or upon publication of a final rule by the Indiana Register.

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