

ARTICLE 7. DENIAL AND EXCLUSION HEARINGS

Rule 1. General Provisions

68 IAC 7-1-1 Coverage of rule

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 1. (a) A person whose application for a license or a transfer of ownership has been denied or has not been renewed under IC 4-33-6-1, IC 4-33-7-1, or IC 4-33-8-2, or who has been placed on an exclusion list under IC 4-33-4-7, may request a hearing under IC 4-33-4-17.

(b) As used in this rule, "petitioner" refers to the person whose application has been denied by the commission, whose license has not been renewed, whose request for transfer of ownership has been denied, or who has been placed on the exclusion list.

(c) The petitioner shall submit an original and two (2) copies of any request, pleading, or other written document submitted to the commission or the hearing officer, or both.

(d) The petitioner must attach a certificate of service to each pleading. The certificate of service shall indicate that the pleading has been served on each attorney or party of record.

(e) An action involving a denial, nonrenewal, or exclusion hearing under this rule must also comply with IC 4-21.5-3. (*Indiana Gaming Commission; 68 IAC 7-1-1; filed Nov 10, 1994, 11:00 a.m.: 18 IR 507; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-2 Requests for hearings

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3-1; IC 4-21.5-3-24; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-8-3

Sec. 2. (a) A request for hearing shall meet the following requirements:

(1) Be in writing.

(2) State the name, current address, and current telephone number of the petitioner.

(3) State in detail the reasons why and the facts upon which the petitioner will rely to show that the petitioner's application for a license should not have been denied, the license should have been renewed, the transfer of ownership should have been approved, or the petitioner should not have been placed on the exclusion list, including specific responses to any facts enumerated in the commission's notice of denial, notice of nonrenewal, or notice of exclusion.

(4) All requests for hearing shall be signed, verified, and dated by the petitioner. Such verification shall be notarized and shall include a certification stating, "Under the penalty of perjury, the undersigned has examined this request for hearing and to the best of my knowledge and belief, it is true, complete, and correct."

(b) A request for hearing shall be submitted within ten (10) days after service of the notice of denial or notice of nonrenewal. A request for hearing shall be submitted within fifteen (15) days after service of the notice of exclusion. A petitioner who has been denied an occupational license due to a felony conviction under IC 4-33-8-3 must have first undergone a review under 68 IAC 2-4. The request for hearing shall meet the following requirements:

(1) The petitioner may submit a request for hearing in accordance with IC 4-21.5-3-1.

(2) A request for a hearing must be submitted to the executive director at the commission's office in Indianapolis, Indiana.

(3) A request for a hearing submitted by certified mail or overnight express mail shall be deemed timely submitted if it is postmarked no later than ten (10) days after service of a notice of denial or notice of nonrenewal, or fifteen (15) days after service of a notice of exclusion in accordance with the Act.

(c) A request for a hearing shall be deemed granted unless denied. The commission may deny a request for hearing if the statement of reasons and facts does not establish a prima facie case.

(d) Once a request for a hearing is granted, the executive director shall assign a title and case number to the matter.

(e) A request for a hearing may not be withdrawn or voluntarily dismissed if the commission determines that withdrawal or voluntary dismissal is not in the best interest of the public and the gaming industry. If the commission allows a petitioner to withdraw a hearing request, the initial denial, nonrenewal, or placement on the exclusion list becomes a final commission order.

(f) The commission shall appoint a commission member or an administrative law judge to conduct a hearing in accordance with this rule. The petitioner shall be served with a copy of the letter of appointment, and such letter shall serve as notice of the pendency of the hearing. The hearing officer who is to conduct the hearing shall establish a hearing date and notify the parties

thereof. The hearing officer may hold prehearing conferences to resolve discovery disputes or any other matters.

(g) Default judgment or dismissal may result at any stage of the proceeding in accordance with IC 4-21.5-3-24. If a party fails to take action for which it is responsible for a period of sixty (60) days, default judgment shall be entered against the party or the case shall be dismissed. (*Indiana Gaming Commission; 68 IAC 7-1-2; filed Nov 10, 1994, 11:00 a.m.: 18 IR 507; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2249; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-3 Appearances; service

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17

Sec. 3. A petitioner may represent himself or herself or may 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). (*Indiana Gaming Commission; 68 IAC 7-1-3; filed Nov 10, 1994, 11:00 a.m.: 18 IR 508; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-4 Discovery

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 4. (a) Upon written request served on a party, the requesting party shall be entitled to the following:

(1) The name and address of any witness who may be called to testify on behalf of a party. The parties shall be under a continuing duty to update this list.

(2) All documents or other materials in the possession or control of a party which the party reasonably expects will be necessary to introduce into evidence. The petitioner's burden of production includes those documents the petitioner reasonably expects to introduce into evidence either in the petitioner's case-in-chief or rebuttal. Rebuttal documents, to the extent that they are not immediately identifiable, shall be tendered to the respondent within two (2) weeks after receipt of documents tendered to petitioner by respondent unless additional time is granted by the hearing officer.

(b) Discovery may be obtained in accordance with rule 28(F) of the Indiana Rules of Trial Procedure. Witnesses and documents responsive to a proper request for production that were not produced shall be excluded from the hearing and additional sanctions or penalties may be imposed.

(c) The parties shall make every effort to resolve disputes regarding discovery. Disputes that are unresolved may be brought to the hearing officer for resolution via:

(1) a motion to compel;

(2) motion for protective order; or

(3) other appropriate motion;

under the Indiana Rules of Trial Procedure. The disputed discovery is stayed during the pendency of such motion unless the hearing officer orders discovery to continue. Discovery shall be stayed for a period of not more than ten (10) days. The hearing officer may extend the time during which discovery is stayed upon a showing of good cause. The filing of such a motion shall not extend the time to complete discovery, nor provide cause for a continuance of the hearing on the merits, unless the hearing officer orders an extension or continuance. (*Indiana Gaming Commission; 68 IAC 7-1-4; filed Nov 10, 1994, 11:00 a.m.: 18 IR 508; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-5 Subpoenas

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3-22; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 5. All subpoenas shall be issued in accordance with IC 4-21.5-3-22. (*Indiana Gaming Commission; 68 IAC 7-1-5; filed Nov 10, 1994, 11:00 a.m.: 18 IR 509; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2250; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-6 Prehearing conferences

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-8-2

Sec. 6. A hearing officer shall schedule a prehearing conference at the request of either party or on the hearing officer's own initiative on any matters deemed necessary to facilitate the denial, nonrenewal, or exclusion hearing. (*Indiana Gaming Commission; 68 IAC 7-1-6; filed Nov 10, 1994, 11:00 a.m.: 18 IR 509; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-7 Motions for summary judgment and other appropriate motions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 7. (a) The hearing officer may recommend a directed finding or summary judgment upon the filing of an appropriate motion by any party. These motions shall be made in compliance with the Indiana Rules of Trial Procedure and IC 4-21.5-3.

(b) The hearing officer may hear arguments on the motion for summary judgment or other appropriate motion. The hearing officer may require the parties to brief their positions in support of or against the motion for summary judgment or other appropriate motion. (*Indiana Gaming Commission; 68 IAC 7-1-7; filed Nov 10, 1994, 11:00 a.m.: 18 IR 509; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-8 Depositions

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 8. All depositions must be conducted in accordance with the Indiana Rules of Trial Procedure. (*Indiana Gaming Commission; 68 IAC 7-1-8; filed Nov 10, 1994, 11:00 a.m.: 18 IR 510; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-9 Continuances

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 9. (a) A motion to continue a hearing or deposition must be made at least ten (10) days before the hearing or deposition date unless the requesting party can show good cause.

(b) Continuances may be granted by the hearing officer upon a showing of good cause.

(c) The hearing officer may order a continuance of a hearing on the hearing officer's own initiative. (*Indiana Gaming Commission; 68 IAC 7-1-9; filed Nov 10, 1994, 11:00 a.m.: 18 IR 510; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-10 Proceedings

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 10. (a) The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing by a preponderance of the evidence that:

- (1) the petitioner should have been awarded a license;
- (2) the license should have been renewed;
- (3) the transfer of ownership should have been approved; or
- (4) the petitioner should not have been placed on the exclusion list.

(b) Any testimony shall be given under oath or affirmation. The hearing officer or recorder shall be authorized to administer oaths.

(c) Both parties may present an opening statement on the merits. The petitioner proceeds first followed by the respondent. The respondent may not reserve opening statement for a later time. The hearing officer may determine the length of time each party

is permitted for the presentation of an opening statement.

(d) The petitioner shall then present the petitioner's case-in-chief.

(e) Upon conclusion of the petitioner's case-in-chief, the respondent may move for a directed finding. The hearing officer may hear arguments on the motion or may grant, deny, or reserve any decision thereon, with or without argument.

(f) If no motion for directed finding is made, or, if such motion is denied or decision reserved thereon, the respondent may present its case.

(g) Each party may conduct cross-examination of adverse witnesses.

(h) Upon conclusion of the respondent's case, the petitioner may present evidence in rebuttal.

(i) The hearing officer may ask questions of the witnesses and may request or allow additional evidence at any time, including additional rebuttal evidence.

(j) Both parties may present closing argument. The petitioner proceeds first, then the respondent, and, thereafter, the petitioner may present rebuttal argument. The hearing officer may determine the length of time each party is permitted for the presentation of closing argument.

(k) The hearing officer may require or allow the parties to submit posthearing briefs, proposed findings of fact and conclusions of law, or both within ten (10) days of the conclusion of the hearing or within such other time period the hearing officer might order. (*Indiana Gaming Commission; 68 IAC 7-1-10; filed Nov 10, 1994, 11:00 a.m.: 18 IR 510; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2251; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-11 Evidence

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3-25; IC 4-21.5-3-26; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 11. (a) The hearing shall be conducted in accordance with IC 4-21.5-3-25 and IC 4-21.5-3-26.

(b) A petitioner must afford the commission an opportunity to investigate and verify information or documents that the petitioner intends to offer in support of his or her case. The petitioner shall not be permitted to introduce into evidence any information or documents that the commission has not been afforded the opportunity to investigate and verify.

(c) The parties shall, to the fullest extent possible, stipulate all matters that are not or should not be in dispute.

(d) The parties may make objections to evidentiary offers. When an objection is made, the hearing officer may receive the disputed evidence subject to a ruling at a later time.

(e) The hearing 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 courts of Indiana. The parties shall be informed of any information, matters, or facts so noticed and shall be given reasonable opportunity to refute such evidence. (*Indiana Gaming Commission; 68 IAC 7-1-11; filed Nov 10, 1994, 11:00 a.m.: 18 IR 510; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2251; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-12 Prohibition on ex parte communication

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 12. A party or its representative shall not communicate directly or indirectly with the hearing officer regarding any pending matter, except upon notice and opportunity for all parties to participate. A party who does have ex parte communication with the hearing officer may be subject to the sanctions and penalties set forth in section 13 of this rule. (*Indiana Gaming Commission; 68 IAC 7-1-12; filed Nov 10, 1994, 11:00 a.m.: 18 IR 511; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-13 Sanctions and penalties

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 13. (a) The hearing officer may impose sanctions and penalties if the hearing 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 hearing officer may infer therefrom that such testimony or answer would have been adverse to the case of the party refusing to testify.

(c) If the petitioner or its agent 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 should have been denied a license or the transfer of ownership. The hearing 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 hearing shall constitute an admission of all matters and facts contained in the notice of denial, nonrenewal, or placement on the exclusion list. In such case, the hearing officer may take action based upon such admission or upon any other evidence, including affidavits, without any further notice to the petitioner. (*Indiana Gaming Commission; 68 IAC 7-1-13; filed Nov 10, 1994, 11:00 a.m.: 18 IR 511; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898*)

68 IAC 7-1-14 Transmittal of record and recommendation to the commission

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 14. (a) The record shall consist of those items set forth in IC 4-21.5-3-33.

(b) Oral proceedings involving contested issues shall be recorded stenographically or by such other means as to adequately ensure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party. The transcript shall be paid for by the requesting party.

(c) Within ninety (90) days of the conclusion of the hearing, or the submission of posthearing briefs or proposed findings of fact under section 10(k) of this rule, the hearing officer shall issue to the commission, and to the parties, written findings of fact, conclusions of law, and recommendations. Findings of fact shall be based exclusively on testimony, evidence, and matters within the record. The findings of fact shall be stated separately and be in accordance with IC 4-21.5-3-27 and IC 4-21.5-3-28. The parties may file objections to the written findings of fact, conclusions of law, and recommendations issued by the hearing officer in accordance with IC 4-21.5-3-29.

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

(1) The commission shall review the entire record and shall render a written order, including the basis for its decision. The commission may require that the parties present oral argument before the commission. The commission may take any of the following actions:

(A) The commission may affirm the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer as its final commission order.

(B) The commission may modify the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer.

(C) The commission may dissolve the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer.

(D) The commission may remand the matter, with instructions, to the hearing officer for further proceedings.

(E) In the absence of an objection or notice by the commission to review any issue relating to the written recommendations, findings of fact, and conclusions of law submitted by the hearing officer, the commission shall affirm the written recommendations, findings of fact, and conclusions of law.

(F) The written order shall be issued by the commission, or the proceeding shall be remanded to the hearing officer for further proceedings within sixty (60) days of the latter of:

(i) the date that the written recommendations, findings of fact, and conclusions of law were issued under subsection (c);

(ii) the receipt of briefs or proposed findings of fact; or

(iii) the close of oral argument;

unless the period is waived or extended with the written consent of all parties or for good cause shown.

(2) Copies of the final commission order shall be served on the 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.

(4) The findings of fact shall be stated separately, and be in accordance with IC 4-21.5-3-27, IC 4-21.5-3-28, and IC 4-21.5-3-

29.

(5) The commission may modify the final order in accordance with IC 4-21.5-3-31.

(Indiana Gaming Commission; 68 IAC 7-1-14; filed Nov 10, 1994, 11:00 a.m.: 18 IR 511; filed Apr 19, 1996, 3:00 p.m.: 19 IR 2252; errata filed Jun 20, 1996, 1:15 p.m.: 19 IR 3114; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)

68 IAC 7-1-15 Settlement offers

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 15. (a) The parties may propose settlement offers to the hearing officer or the commission at any stage of the proceedings where time, the nature of the proceeding, and public interest permit. Such offers may be made at any time prior to the entry of a final order, including prior to the initiation of the proceedings. The commission or the hearing officer may require that any of the parties to the offer make an oral or written presentation to the hearing officer or the commission regarding the settlement offer.

(b) Settlement agreements shall meet the following requirements:

(1) Be in writing.

(2) Signed by the parties to the settlement offer.

(3) Be consistent with the provisions and objectives of the law.

(4) Accurately reflect all the terms of the settlement.

(5) Be served on the commission at the commission's office in Indianapolis, Indiana, by hand delivery, certified mail, or overnight mail.

(6) Be accompanied by a proposed order.

(c) If the commission votes to reject a settlement offer, the commission shall direct the executive director to notify the parties in writing, by certified mail or personal delivery, that the settlement offer was rejected. The offer and any documents relating to the offer shall not constitute a part of the record. *(Indiana Gaming Commission; 68 IAC 7-1-15; filed Nov 10, 1994, 11:00 a.m.: 18 IR 512; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)*

68 IAC 7-1-16 Status of applicant for licensure or transfer upon filing request for hearing on a notice of denial

Authority: IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33-3-23; IC 4-33-4-7; IC 4-33-4-17; IC 4-33-6-1; IC 4-33-7-1; IC 4-33-8-2

Sec. 16. An applicant who has been denied a license, whose license has not been renewed, has had a request for transfer of ownership denied, whose request for transfer of an ownership interest, or who has been placed on an exclusion list, and who has requested a hearing under this rule shall still be considered an applicant for purposes of compliance with applicable statutory provisions and commission rules. *(Indiana Gaming Commission; 68 IAC 7-1-16; filed Nov 10, 1994, 11:00 a.m.: 18 IR 512; readopted filed Oct 15, 2001, 4:34 p.m.: 25 IR 898)*

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