

ARTICLE 13. SEIZURE, FORFEITURE, AND DISCIPLINARY HEARINGS

Rule 1. Seizure, Forfeiture, and Disciplinary Hearings

68 IAC 13-1-1 Coverage of rule

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3-9; IC 4-33; IC 4-35

Sec. 1. (a) All commission licensees have a continuing duty to maintain suitability for licensure. A commission license does not create a property right, but is a privilege contingent upon continuing compliance and suitability for licensure.

(b) The commission may initiate an investigation or a disciplinary action, or both, against a licensee if the commission has reason to believe at least one (1) of the following:

- (1) The licensee is not maintaining suitability for licensure.
- (2) The licensee is not complying with licensure conditions.
- (3) The licensee is not complying with the Act or this title.

(c) The commission may initiate an investigation or a disciplinary action, or both, against a licensee that the commission has reason to believe has engaged in a fraudulent act.

(d) As used in this article, "respondent" means the person against whom a disciplinary or seizure and forfeiture action has been initiated.

(e) The respondent and the commission must attach a certificate of service to each pleading. The certificate of service indicates that the pleading has been served on each attorney or party of record.

(f) A disciplinary action under this rule must comply with IC 4-21.5-3. (*Indiana Gaming Commission; 68 IAC 13-1-1; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-2 Rights of respondents

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-33

Sec. 2. In a disciplinary or seizure and forfeiture hearing, the respondent is entitled to the following:

(1) Proper notice of all allegations contained in the complaint.

(2) The ability to confront the evidence presented against the respondent, including, but not limited to, the right to the following:

- (A) Counsel at respondent's expense.
- (B) Present a defense and participate fully in the proceeding.
- (C) Call witnesses.
- (D) Request the issuance of subpoenas under section 9 of this rule.
- (E) Cross-examine witnesses testifying against the respondent.
- (F) Submit legal arguments.
- (G) Participate fully in the proceeding.

(*Indiana Gaming Commission; 68 IAC 13-1-2; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1036; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA*)

68 IAC 13-1-3 Complaints

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5; IC 4-33; IC 4-35

Sec. 3. (a) If the commission knows facts sufficient to support a seizure and forfeiture of a gaming device under the Act, IC 4-35, or 68 IAC 2-6 or a disciplinary action against an applicant or a licensee under the Act, IC 4-35, or this title, the commission may, after investigation:

- (1) order the seizure and forfeiture of the gaming device; or

- (2) initiate a disciplinary action against a licensee.
 - (b) The commission may initiate a seizure and forfeiture of a gaming device or a disciplinary action by filing a complaint under this rule.
 - (c) The complaint must meet the following requirements, if applicable:
 - (1) Be in writing.
 - (2) State the name of the respondent.
 - (3) State the address and telephone number of the respondent that are on file with the commission.
 - (4) Identify the gaming device that is the subject matter of the seizure and forfeiture action.
 - (5) State in detail the reasons why and the facts upon which the commission will rely to show that the:
 - (A) respondent should be disciplined; or
 - (B) gaming device should be seized and forfeited.
 - (6) Have a title and case number assigned to the matter.
 - (7) Be signed and dated by the executive director or the executive director's designee.
 - (8) Be accompanied by a certificate of service indicating the date of service in accordance with IC 4-21.5.
- (Indiana Gaming Commission; 68 IAC 13-1-3; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-4 Answer

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3-1; IC 4-21.5-3-24; IC 4-33; IC 4-35

- Sec. 4. (a) The respondent must file an answer within twenty (20) days of service of the complaint.
- (b) The respondent may submit an answer in accordance with IC 4-21.5-3-1.
 - (c) An answer must meet the following requirements:
 - (1) Be in writing.
 - (2) Contain an admission or denial of each factual allegation contained in the complaint.
 - (3) Set forth any affirmative defense that the respondent wishes to plead.
 - (4) All answers must be signed, verified, and dated by the respondent. This verification must:
 - (A) be notarized; and
 - (B) include a certification stating, "Under the penalty of perjury, the undersigned has examined the answer and to the best of my knowledge and belief, it is true, complete, and correct."
 - (d) 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 must be entered against the party or the case must be dismissed. *(Indiana Gaming Commission; 68 IAC 13-1-4; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-5 Appearances; service

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3-1; IC 4-21.5-3-15; IC 4-33; IC 4-35

- Sec. 5. (a) A respondent may:
- (1) represent himself or herself; or
 - (2) be represented by an attorney or duly authorized representative under IC 4-21.5-3-15.
- (b) Service of appearances must be made in accordance with IC 4-21.5-3-1. *(Indiana Gaming Commission; 68 IAC 13-1-5; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-6 Hearings

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4-2; IC 4-35-4-3

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 6. (a) A hearing conducted under this rule is:

(1) subject to IC 4-21.5-3; and

(2) open to the public.

Witnesses may be excluded or sequestered.

(b) Hearings must be held in Indianapolis, Indiana, unless, for good cause stated in an open meeting, the commission designates another place for the hearing.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing, including, but not limited to, the following:

(1) Disposition by stipulation.

(2) Agreed settlement.

(3) Consent order.

(Indiana Gaming Commission; 68 IAC 13-1-6; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1037; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)

68 IAC 13-1-7 Administrative law judges (Repealed)

Sec. 7. *(Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-8 Discovery

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 8. Pursuant to Trial Rule 28(F) of the Indiana Rules of Trial Procedure, the discovery provisions of Trial Rules 26 through 37 apply to all proceedings subject to this rule. *(Indiana Gaming Commission; 68 IAC 13-1-8; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1038; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-9 Subpoenas (Repealed)

Sec. 9. *(Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-10 Prehearing conferences (Repealed)

Sec. 10. *(Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-11 Motions for summary judgment and other appropriate motions (Repealed)

Sec. 11. *(Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-12 Depositions (Repealed)

Sec. 12. *(Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-1-13 Continuances

Authority: IC 4-33-3-23; IC 4-33-4-1; IC 4-33-4-2; IC 4-33-4-3

Affected: IC 4-21.5-3; IC 4-33

Sec. 13. (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 administrative law judge upon a showing of good cause.

(c) The administrative law judge may order a continuance of a hearing on the administrative law judge's own initiative. (*Indiana Gaming Commission; 68 IAC 13-1-13; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1039; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; readopted filed Nov 14, 2008, 12:51 p.m.: 20081210-IR-068080730RFA*)

68 IAC 13-1-14 Proceedings

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 14. (a) The burden of proof is at all times on the commission. The commission has the affirmative responsibility of establishing by a preponderance of the evidence that the:

(1) respondent should be disciplined; or

(2) gaming device or gaming devices should be seized and forfeited.

(b) The respondent has the:

(1) burden of proof to prove the allegations contained in any affirmative defense contained in the answer; and

(2) affirmative responsibility of establishing the elements of an affirmative defense by a preponderance of the evidence.

(c) Any testimony must be given under oath or affirmation. The administrative law judge and recorder are authorized to administer oaths.

(d) Both parties may present an opening statement on the merits. The commission proceeds first, followed by the respondent. The respondent may not reserve opening statement for a later time. The administrative law judge may determine the length of opening statements.

(e) The commission must then present the commission's case-in-chief.

(f) Upon conclusion of the commission's case-in-chief, the respondent may move for a directed finding. The administrative law judge may:

(1) hear arguments on the motion; or

(2) grant, deny, or reserve any decision thereon, with or without argument.

(g) If:

(1) no motion for directed finding is made; or

(2) such motion is denied or decision reserved thereon;

the respondent may present its case.

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

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

(j) The administrative law judge may:

(1) ask questions of the witnesses; and

(2) request or allow additional evidence at any time, including additional rebuttal evidence.

(k) Both parties may present closing argument. The commission proceeds first, then the respondent, and, thereafter, the commission may present rebuttal argument. The administrative law judge may determine the length of closing arguments.

(l) The administrative law judge may require or allow the parties to submit posthearing briefs or proposed findings of fact and conclusions of law, or both, within:

(1) ten (10) days of the conclusion of the hearing; or

(2) such other time period the administrative law judge might order.

(*Indiana Gaming Commission; 68 IAC 13-1-14; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1039; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-15 Behavior

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 15. (a) Each party, witness, attorney, or other representative must behave in all commission hearings and proceedings with dignity, courtesy, and respect for:

- (1) the commission;
- (2) the administrative law judge; and
- (3) all participants to the proceeding.

(b) An individual who violates this section may be excluded from the hearing or proceeding by the commission member or administrative law judge. (*Indiana Gaming Commission; 68 IAC 13-1-15; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1039; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-16 Evidence (Repealed)

Sec. 16. (*Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-17 Transmittal of record and recommendation to the commission (Repealed)

Sec. 17. (*Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-18 Settlement offers

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 18. (a) The parties may propose settlement offers to the administrative law judge, the commission, or the executive director at any stage of the proceedings where time, the nature of the proceeding, and public interest permit. Settlement offers may be made at any time prior to the entry of a final order, including prior to the initiation of the proceedings. The administrative law judge, the commission, or the executive director may require that any of the parties to the offer make an oral or written presentation to the administrative law judge, the commission, or the executive director regarding the settlement offer.

(b) Settlement agreements must meet the following requirements:

- (1) Be in writing.
- (2) Be 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:
 - (A) hand delivery;
 - (B) certified mail; or
 - (C) overnight mail.
- (6) Be accompanied by a proposed order.

(c) If the commission or the executive director rejects a settlement offer, the commission or the executive director must 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 are not a part of the record. (*Indiana Gaming Commission; 68 IAC 13-1-18; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1040; errata filed Apr 9, 1996, 12:15 p.m.: 19 IR 2044; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-19 Prohibition on ex parte communication (Repealed)

Sec. 19. (*Repealed by Indiana Gaming Commission; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-20 Penalties

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 20. (a) The administrative law judge may impose penalties as outlined in Indiana Rules of Trial Procedure 26 through 37 and IC 4-21.5-3.

(b) If a respondent fails to testify on the respondent's own behalf with respect to any question propounded to that person, the administrative law judge may infer therefrom that such testimony or answer would have been adverse to the case of the party refusing to testify.

(c) If the respondent or the respondent's agent fails to answer a subpoena or refuses to testify fully at the request of the executive director or the executive director's designee, such failure may be deemed independent grounds for a finding that the:

(1) gaming device should have been seized and forfeited; or

(2) respondent should be disciplined.

The administrative law judge may also infer therefrom that such testimony would have been adverse to the respondent.

(d) The unexcused failure of the respondent to appear at a hearing constitutes an admission of all matters and facts contained in the notice of a seizure and forfeiture action or a disciplinary action, or both. In such case, the administrative law judge may take action based upon such admission or upon any other evidence, including affidavits, without any further notice to the respondent. (*Indiana Gaming Commission; 68 IAC 13-1-20; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1041; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-21 Actions available to the administrative law judge and the commission

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 21. (a) The commission may take any of the following actions in a proceeding to seize and forfeit a gaming device:

(1) Seize and forfeit any gaming device that does not comply with the Act, IC 4-35, or this title.

(2) Require the destruction or other appropriate disposal of any gaming device that does not comply with the Act, IC 4-35, or this title. Prior to the disposal of any gaming device, the commission must:

(A) take a photograph that demonstrates the nature of the gaming device; and

(B) record an adequate description of the gaming device.

(3) Impose any appropriate action set forth in subsection (b) on a person who possesses any gaming device that does not comply with the Act, IC 4-35, or this title.

(b) The commission may take any of the following actions in a disciplinary action against a licensee:

(1) Suspend, revoke, restrict, or place conditions on the license of a licensee.

(2) Require the removal of a licensee or the employee of a licensee.

(3) Impose a civil penalty of not more than the greater of:

(A) ten thousand dollars (\$10,000); or

(B) an amount equal to the casino licensee's daily gross receipts for the day of the violation;

against a casino licensee.

(4) Impose a civil penalty of not more than five thousand dollars (\$5,000) against a supplier licensee for each violation of the Act, IC 4-35, or this title.

(5) Impose a civil penalty of not more than five thousand dollars (\$5,000) against an occupational licensee for each violation of the Act, IC 4-35, or this title.

(6) Impose an additional penalty of not more than one hundred dollars (\$100) for each day the original penalty goes unpaid.

(7) Any other action deemed necessary by the commission to ensure compliance with the Act, IC 4-35, or this title.

(*Indiana Gaming Commission; 68 IAC 13-1-21; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1041; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-1-22 Special proceedings

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-4; IC 4-33; IC 4-35

Sec. 22. (a) The commission may suspend a license issued to a casino licensee without notice or hearing if the commission determines that the safety or health of patrons or employees would be threatened by the continued operation of the casino.

(b) If the commission determines that an emergency exists, the commission may suspend a casino owner's license, a supplier's license, or an occupational license by one (1) of the following procedures:

- (1) Without notice or an evidentiary proceeding, by an authorized individual or panel of individuals.
- (2) After a hearing conducted by an administrative law judge.

The resulting order must include a brief statement of the facts and the law that justifies the commission's decision to take the specific action under IC 4-21.5-4.

(c) A special proceeding under this section must comply with IC 4-21.5-4.

(d) The suspension of the casino owner's license may continue until the commission determines that the cause for the suspension of the license has been abated.

(e) The commission may revoke the casino owner's license if the commission determines that the casino licensee has not made satisfactory progress toward abating the hazard to the safety or health of patrons or employees within a reasonable period of time. (*Indiana Gaming Commission; 68 IAC 13-1-22; filed Dec 11, 1995, 4:30 p.m.: 19 IR 1042; readopted filed Nov 25, 2002, 10:11 a.m.: 26 IR 1261; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA; filed Dec 6, 2012, 2:32 p.m.: 20130102-IR-068110786FRA*)

Rule 2. Action Against an Individual

68 IAC 13-2-1 Complaints

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 1. (a) If there are facts and circumstances sufficient to cause a prudent person to believe that an individual has committed a noncriminal violation of IC 4-33, IC 4-35, or this title, the commission may initiate an action for civil penalty against that individual for the violation.

(b) The civil penalty that the commission may seek for the violation of IC 4-33, IC 4-35, or this title must not exceed the greater of the following:

(1) The following amounts:

- (A) One thousand dollars (\$1,000) for the first violation.
- (B) Two thousand dollars (\$2,000) for the second violation.
- (C) Four thousand dollars (\$4,000), for the third and any subsequent violations.

(2) The amount of any jackpot or thing of value won contemporaneous to or because of the violation of IC 4-33, IC 4-35, or this title.

(c) The commission may order an additional penalty of not more than one hundred dollars (\$100) for each day the original penalty goes unpaid.

(d) The commission may take any other action deemed necessary by the commission to ensure compliance with IC 4-33, IC 4-35, or this title.

(e) The commission must initiate the action by filing a complaint.

(f) The complaint must meet the following requirements:

- (1) Be in writing.
- (2) State the name of the respondent.
- (3) State the address and telephone number of the respondent that are on file with the commission.
- (4) Identify the dollar amount of the requested civil penalty.
- (5) State in detail the reasons why and the facts upon which the commission will rely to show that the respondent should

be penalized.

(6) Have a title and case number assigned to the matter.

(7) Be accompanied by a certificate of service indicating the date of service in accordance with IC 4-21.5.

(Indiana Gaming Commission; 68 IAC 13-2-1; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA; errata filed Jan 27, 2009, 1:42 p.m.: 20090211-IR-068080430ACA)

68 IAC 13-2-2 Rights of respondents

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 2. In a hearing under this rule, the respondent is entitled to the following:

(1) Proper notice of all allegations contained in the complaint.

(2) The ability to confront the evidence presented against the respondent, including, but not limited to, the right to the following:

(A) Counsel at respondent's expense.

(B) Present a defense.

(C) Call witnesses.

(D) Request the issuance of subpoenas under section 9 of this rule.

(E) Cross-examine witnesses testifying against the respondent.

(F) Submit legal arguments.

(G) Participate fully in the proceeding.

(Indiana Gaming Commission; 68 IAC 13-2-2; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA; errata filed Jan 27, 2009, 1:42 p.m.: 20090211-IR-068080430ACA)

68 IAC 13-2-3 Answer

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3-1; IC 4-21.5-3-24; IC 4-33; IC 4-35

Sec. 3. (a) The respondent must file an answer within twenty (20) days of service of the complaint.

(b) The respondent may submit an answer in accordance with IC 4-21.5-3-1.

(c) An answer must meet the following requirements:

(1) Be in writing.

(2) Contain an admission or denial of each factual allegation contained in the complaint.

(3) Set forth any affirmative defense that the respondent wishes to plead.

(4) All answers must be signed, verified, and dated by the respondent. This verification must:

(A) be notarized; and

(B) include a certification stating, "Under the penalty of perjury, the undersigned has examined the answer and to the best of my knowledge and belief, it is true, complete, and correct."

(d) 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 must be entered against the party or the case must be dismissed. *(Indiana Gaming Commission; 68 IAC 13-2-3; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA)*

68 IAC 13-2-4 Appearances; service

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3-1; IC 4-21.5-3-15; IC 4-33; IC 4-35

Sec. 4. A respondent may:

(1) represent himself or herself; or

(2) be represented by an attorney or duly authorized representative under IC 4-21.5-3-15.

Service of appearances must be made in accordance with IC 4-21.5-3-1. (*Indiana Gaming Commission; 68 IAC 13-2-4; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-5 Hearings

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 5. (a) A hearing conducted under this rule is also subject to IC 4-21.5-3 and is open to the public. Witnesses may be excluded or sequestered.

(b) Hearings must be held in Indianapolis, Indiana, unless, for good cause stated in an open meeting, the commission designates another place for the hearing.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing, including, but not limited to, the following:

(1) Disposition by stipulation.

(2) Agreed settlement.

(3) Consent order.

(*Indiana Gaming Commission; 68 IAC 13-2-5; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-6 Discovery

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 6. Pursuant to Trial Rule 28(F) of the Indiana Rules of Trial Procedure, the discovery provisions of Trial Rules 26 through 37 apply to all proceedings subject to this rule. (*Indiana Gaming Commission; 68 IAC 13-2-6; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-7 Continuances

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 7. (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 administrative law judge upon a showing of good cause.

(c) The administrative law judge may order a continuance of a hearing on the administrative law judge's own initiative. (*Indiana Gaming Commission; 68 IAC 13-2-7; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-8 Behavior

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 8. (a) Each party, witness, attorney, or other representative must behave in all commission hearings and proceedings with dignity, courtesy, and respect for:

(1) the commission;

(2) the administrative law judge; and

(3) all participants to the proceeding.

(b) An individual who violates this section may be excluded from the hearing or proceeding by the commission member or administrative law judge. (*Indiana Gaming Commission; 68 IAC 13-2-8; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-9 Settlement offers

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-33; IC 4-35

Sec. 9. (a) The parties may propose settlement offers to the administrative law judge, the commission, or the executive director at any stage of the proceedings where time, the nature of the proceeding, and public interest permit. Settlement offers may be made at any time prior to the entry of a final order, including prior to the initiation of the proceedings. The administrative law judge, the commission, or the executive director may require that any of the parties to the offer make an oral or written presentation to the administrative law judge, the commission, or the executive director regarding the settlement offer.

(b) Settlement agreements must meet the following requirements:

- (1) Be in writing.
- (2) Be 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:
 - (A) hand delivery;
 - (B) certified mail; or
 - (C) overnight mail.
- (6) Be accompanied by a proposed order.

(c) If the commission or the executive director rejects a settlement offer, the commission or the executive director must 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 are not a part of the record. (*Indiana Gaming Commission; 68 IAC 13-2-9; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-10 Penalties

Authority: IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 10. (a) The administrative law judge may impose penalties as outlined in Indiana Rules of Trial Procedure 26 through 37 and IC 4-21.5-3.

(b) If a respondent fails to testify on the respondent's own behalf with respect to any question propounded to that person, the administrative law judge may infer therefrom that such testimony or answer would have been adverse to the case of the party refusing to testify.

(c) If the respondent or the respondent's 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 respondent should be penalized. The administrative law judge may also infer therefrom that such testimony would have been adverse to the respondent.

(d) The unexcused failure of the respondent to appear at a hearing constitutes an admission of all matters and facts contained in the complaint. In such case, the administrative law judge may take action based upon such admission or upon any other evidence, including affidavits, without any further notice to the respondent. (*Indiana Gaming Commission; 68 IAC 13-2-10; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA*)

68 IAC 13-2-11 Proceedings

Authority: IC 4-33-3-23; IC 4-33-4; IC 4-35-4

Affected: IC 4-21.5-3; IC 4-33; IC 4-35

Sec. 11. (a) The burden of proof is at all times on the commission. The commission has the affirmative responsibility of establishing by a preponderance of the evidence that the:

- (1) respondent has committed a noncriminal violation of IC 4-33, IC 4-35, or this title; and
- (2) proposed penalty is appropriate.

(b) The respondent has the:

- (1) burden of proof to prove the allegations contained in any affirmative defense contained in the answer; and
- (2) affirmative responsibility of establishing the elements of an affirmative defense by a preponderance of the evidence.

(c) Any testimony must be given under oath or affirmation. The administrative law judge and recorder are authorized to administer oaths.

(d) Both parties may present an opening statement on the merits. The commission proceeds first, followed by the respondent. The respondent may not reserve opening statement for a later time. The administrative law judge may determine the length of opening statements.

(e) The commission must then present the commission's case-in-chief.

(f) Upon conclusion of the commission's case-in-chief, the respondent may move for a directed finding. The administrative law judge may:

- (1) hear arguments on the motion; or
- (2) grant, deny, or reserve any decision thereon, with or without argument.

(g) If:

- (1) no motion for directed finding is made; or
- (2) such motion is denied or decision reserved thereon;

the respondent may present its case.

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

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

(j) The administrative law judge may:

- (1) ask questions of the witnesses; and
- (2) request or allow additional evidence at any time, including additional rebuttal evidence.

(k) Both parties may present closing argument. The commission proceeds first, then the respondent, and, thereafter, the commission may present rebuttal argument. The administrative law judge may determine the length of closing arguments.

(l) The administrative law judge may require or allow the parties to submit posthearing briefs, or proposed findings of fact and conclusions of law, or both, within:

- (1) ten (10) days of the conclusion of the hearing; or
- (2) such other time period the administrative law judge might order.

(Indiana Gaming Commission; 68 IAC 13-2-11; filed Dec 15, 2008, 11:29 a.m.: 20090114-IR-068080430FRA; errata filed Jan 27, 2009, 1:42 p.m.: 20090211-IR-068080430ACA)

*