

Information Item: Overview of application to the Commission of AOPA and Rule Adoption Amendments in P.L. 72-2014 (HEA 1121)

I.C. 4-21.5-3-11

Ex parte communications; violations

Sec. 11. (a) Except as provided in subsection (b) or unless required for the disposition of ex parte matters specifically authorized by statute, an administrative law judge serving in a proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding while the proceeding is pending, with:

- (1) any party;
- (2) any individual who has a direct or indirect interest in the outcome of the proceeding;
- (3) any individual who presided at a previous stage of the proceeding; or
- (4) any individual who is prohibited from assisting the administrative law judge under section 13 of this chapter;

without notice and opportunity for all parties to participate in the communication.

(b) A member of a multimember panel of administrative law judges may communicate with other members of the panel regarding a matter pending before the panel, and any administrative law judge may receive aid from staff assistants. However, a staff assistant may not communicate to an administrative law judge any:

- (1) ex parte communications of a type that the administrative law judge would be prohibited from receiving under subsection (a); or
- (2) information that would furnish, augment, diminish, or modify the evidence in the record.

(c) Unless required for the disposition of ex parte matters specifically authorized by statute, a person described by subsection (a)(1), (a)(2), (a)(3), or (a)(4) may not communicate, directly or indirectly, in connection with any issue in that proceeding while the proceeding is pending, with any person serving as administrative law judge without notice and opportunity for all parties to participate in the communication.

(d) If, before serving as administrative law judge in a proceeding, an individual receives an ex parte communication of a type that would not properly be received while serving, the individual, promptly after starting to serve, shall disclose the communication in the manner prescribed in subsection (e).

(e) An administrative law judge who receives an ex parte communication in violation of this section shall:

- (1) place on the record of the pending matter all written communications received, all written responses to the communications, and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each individual from whom the administrative law judge received an ex parte communication; and

Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in this style type or this style type reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1121

AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-2-7-3, AS AMENDED BY P.L.126-2012, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The inspector general shall do the following:

- (1) Initiate, supervise, and coordinate investigations.
- (2) Recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.
- (3) Receive complaints alleging the following:
 - (A) A violation of the code of ethics.
 - (B) Bribery (IC 35-44.1-1-2).
 - (C) Official misconduct (IC 35-44.1-1-1).
 - (D) Conflict of interest (IC 35-44.1-1-4).
 - (E) Profiteering from public service (IC 35-44.1-1-5).
 - (F) A violation of the executive branch lobbying rules.
 - (G) A violation of a statute or rule relating to the purchase of goods or services by a current or former employee, state officer, special state appointee, lobbyist, or person who has a business relationship with an agency.
- (4) If the inspector general has reasonable cause to believe that a crime has occurred or is occurring, report the suspected crime to:

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- (A) the governor; and
- (B) appropriate state or federal law enforcement agencies and prosecuting authorities having jurisdiction over the matter.
- (5) Adopt rules under IC 4-22-2 to implement IC 4-2-6 and this chapter.
- (6) Adopt rules under IC 4-22-2 and section 5 of this chapter to implement a code of ethics.
- (7) Ensure that every:
 - (A) employee;
 - (B) state officer;
 - (C) special state appointee; and
 - (D) person who has a business relationship with an agency;
 is properly trained in the code of ethics.
- (8) Provide advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency.
- (9) Recommend legislation to the governor and general assembly to strengthen public integrity laws, including the code of ethics for state officers, employees, special state appointees, and persons who have a business relationship with an agency, including whether additional specific state officers, employees, or special state appointees should be required to file a financial disclosure statement under IC 4-2-6-8.
- (10) Annually submit a report to the legislative council detailing the inspector general's activities. The report must be in an electronic format under IC 5-14-6.
- (11) Prescribe and provide forms for statements required to be filed under IC 4-2-6 or this chapter.
- (12) Accept and file information that:
 - (A) is voluntarily supplied; and
 - (B) exceeds the requirements of this chapter.
- (13) Inspect financial disclosure forms.
- (14) Notify persons who fail to file forms required under IC 4-2-6 or this chapter.
- (15) Develop a filing, a coding, and an indexing system required by IC 4-2-6 and IC 35-44.1-1.
- (16) Prepare interpretive and educational materials and programs.
- (17) **Adopt rules under IC 4-22-2 and section 9 of this chapter to implement a statewide code of judicial conduct for administrative law judges. The inspector general may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement a statewide code of judicial conduct for**



administrative law judges.

SECTION 2. IC 4-2-7-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) The inspector general shall adopt rules under IC 4-22-2 establishing a statewide code of judicial conduct for administrative law judges. The statewide code of judicial conduct for administrative law judges must apply to every person acting as an administrative law judge for a state agency.

(b) The inspector general:

- (1) shall review 312 IAC 3-1-2.5 and 315 IAC 1-1-2 in adopting a statewide code of judicial conduct for administrative law judges; and
- (2) may base the statewide code of judicial conduct for administrative law judges on 312 IAC 3-1-2.5 and 315 IAC 1-1-2.

(c) A state agency may adopt rules under IC 4-22-2 to establish a supplemental code of judicial conduct for a person acting as an administrative law judge for that agency, if the supplemental code is at least as restrictive as the statewide code of judicial conduct for administrative law judges.

(d) The inspector general may adopt emergency rules in the manner provided under IC 4-22-2-37.1 to implement a statewide code of judicial conduct for administrative law judges.

(e) The statewide code of judicial conduct for administrative law judges shall be enforced under IC 4-21.5. The inspector general is not responsible for enforcing the statewide code of judicial conduct for administrative law judges or for investigating a possible violation of the statewide code.

SECTION 3. IC 4-21.5-3-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8.5. (a) An agency may share an administrative law judge with another agency:

- (1) to avoid bias, prejudice, interest in the outcome, or another conflict of interest;
- (2) if a party requests a change of administrative law judge;
- (3) to ease scheduling difficulties; or
- (4) for another good cause.

An agency may adopt rules under IC 4-22-2 to implement this subsection.

(b) To the extent practicable, an administrative law judge must have expertise in the area of law being adjudicated.

(c) An agency shall post on the agency's Internet web site the:



- (1) name;
- (2) salary and other remuneration; and
- (3) relevant professional experience;

of every person who serves as an administrative law judge for the agency.

SECTION 4. IC 4-21.5-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 9. (a) Except to the extent that a statute other than this article limits an agency's discretion to select an administrative law judge, the ultimate authority for an agency may:

- (1) act as an administrative law judge;
- (2) designate one (1) or more members of the ultimate authority (if the ultimate authority is a panel of individuals) to act as an administrative law judge; or
- (3) designate one (1) or more: ~~other individuals~~
 - (A) attorneys licensed to practice law in Indiana; or
 - (B) persons who served as administrative law judges for a state agency before January 1, 2014;

not necessarily employees of the agency; to act as an administrative law judge.

A person designated under subdivision (3) is not required to be an employee of the agency. A designation under subdivision (2) or (3) may be made in advance of the commencement of any particular proceeding for a generally described class of proceedings or may be made for a particular proceeding. A general designation may provide procedures for the assignment of designated individuals to particular proceedings.

(b) An agency may not knowingly assign an individual to serve alone or with others as an administrative law judge who is subject to disqualification under this chapter.

(c) If the judge believes that the judge's impartiality might reasonably be questioned, or believes that the judge's personal bias, prejudice, or knowledge of a disputed evidentiary fact might influence the decision, an individual assigned to serve alone or with others as an administrative law judge shall:

- (1) withdraw as the administrative law judge; or
- (2) inform the parties of the potential basis for disqualification, place a brief statement of this basis on the record of the proceeding, and allow the parties an opportunity to petition for disqualification under subsection (d).

(d) Any party to a proceeding may petition for the disqualification of an individual serving alone or with others as an administrative law



judge upon discovering facts establishing grounds for disqualification under this chapter. The administrative law judge assigned to the proceeding shall determine whether to grant the petition, stating facts and reasons for the determination. If the administrative law judge ruling on the disqualification issue is not the ultimate authority for the agency, the party petitioning for disqualification may petition the ultimate authority in writing for review of the ruling within ten (10) days after notice of the ruling is served. The ultimate authority shall conduct proceedings described by section 28 of this chapter to review the petition and affirm, modify, or dissolve the ruling within thirty (30) days after the petition is filed. A determination by the ultimate authority under this subsection is a final order subject to judicial review under IC 4-21.5-5.

(c) If a substitute is required for an administrative law judge who is disqualified or becomes unavailable for any other reason, the substitute must be appointed in accordance with subsection (a).

(f) Any action taken by a duly appointed substitute for a disqualified or unavailable administrative law judge is as effective as if taken by the latter.

(g) If there is a reasonable likelihood that the ultimate authority will be called upon to:

- (1) review; or**
- (2) issue a final order with respect to;**

a matter pending before or adjudicated by an administrative law judge, the provisions of section 11 of this chapter that apply to an administrative law judge or to a person communicating with an administrative law judge apply to a member of the ultimate authority and to a person communicating with a member of the ultimate authority.

SECTION 5. IC 4-21.5-3-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 24. (a) At any stage of a proceeding, if a party fails to:

- (1) satisfy the requirements of section 7(a) of this chapter;**
- (2) file a responsive pleading required by statute or rule;**
- ~~(2)~~ **(3) attend or participate in a prehearing conference, hearing, or other stage of the proceeding; or**
- ~~(3)~~ **(4) take action on a matter for a period of sixty (60) days, if the party is responsible for taking the action;**

the administrative law judge may serve upon all parties written notice of a proposed default or dismissal order, including a statement of the grounds.

(b) Within seven (7) days after service of a proposed default or



dismissal order, the party against whom it was issued may file a written motion requesting that the proposed default order not be imposed and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the administrative law judge may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interest of justice and the orderly and prompt conduct of the proceedings.

(c) If the party has failed to file a written motion under subsection (b), the administrative law judge shall issue the default or dismissal order. If the party has filed a written motion under subsection (b), the administrative law judge may either enter the order or refuse to enter the order.

(d) After issuing a default order, the administrative law judge shall conduct any further proceedings necessary to complete the proceeding without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party. The administrative law judge may conduct proceedings in accordance with section 23 of this chapter to resolve any issue of fact.

SECTION 6. IC 4-21.5-5-3, AS AMENDED BY P.L.219-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 3. (a) The following have standing to obtain judicial review of an agency action:

- (1) A person to whom the **final** agency action is specifically directed.
- (2) A person who was a party to the **agency proceedings of the ultimate authority** that led to the **final** agency action, **including the agency whose order was under review in the proceeding.**
- (3) A person eligible for standing under a law applicable to the **final** agency action.
- (4) A person otherwise aggrieved or adversely affected by the **final** agency action.

(b) A person has standing under subsection (a)(4) only if:

- (1) the **final** agency action has prejudiced or is likely to prejudice the interests of the person;
- (2) the person:
 - (A) was eligible for an initial notice of an order or proceeding under this article, was not notified of the order or proceeding in substantial compliance with this article, and did not have actual notice of the order or proceeding before the last date in the proceeding that the person could object or otherwise intervene to contest the agency action; or



- (B) was qualified to intervene to contest an agency action under IC 4-21.5-3-21(a), petitioned for intervention in the proceeding, and was denied party status;
- (3) the person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and
- (4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the final agency action.

SECTION 7. IC 4-22-2-22.5, AS ADDED BY P.L.152-2012, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 22.5. (a) This section applies to a rule that an agency intends to adopt under sections 24 through 36 of this chapter.

(b) As used in this section, "pending rulemaking action" means any rulemaking action in which:

(1) either:

(A) a notice of intent has been published under section 23 of this chapter; or

(B) a rulemaking action has been commenced under IC 13-14-9; and

(2) the rule has not become effective under section 36 of this chapter.

(c) Each agency shall maintain a current rulemaking docket that is indexed.

(d) A current rulemaking docket must list each pending rulemaking proceeding action. The docket must state or contain:

- (1) the subject matter of the proposed rule;
- (2) notices related to the proposed rule, or links to the Indiana Register where these notices may be viewed;
- (3) how comments may be made;
- (4) the time within which comments may be made;
- (5) where comments and the agency's written response to those comments may be inspected;
- (6) requests for a the date, time, and place where a public hearing required under:
 - (A) section 26 of this chapter; or
 - (B) IC 13-14-9;
 will be held;
- (7) appropriate information about a public hearing, if any, including the names of the persons making the request;
- (8) (7) a description of relevant scientific and technical findings related to the proposed rule, if applicable; and



~~(9)~~ **(8) a reasonable estimate of the timetable for action, updated periodically as circumstances change, if necessary.**

~~(d)~~ **(e)** The agency shall maintain the rulemaking docket on the agency's Internet web site. The information must be in an open format that can be easily searched and downloaded. Access to the docket shall, to the extent feasible and permitted by law, provide an opportunity for public comment on the pertinent parts of the rulemaking docket, including relevant scientific and technical findings. Upon request, the agency shall provide a written rulemaking docket.

SECTION 8. An emergency is declared for this act.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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