

## ARTICLE 10. DUE PROCESS AND DISCIPLINARY ACTION

### Rule 1. General Provisions

#### 71 IAC 10-1-1 General provisions

Authority: IC 4-31-3-9

Affected: IC 4-21.5; IC 4-31-13-1

Sec. 1. (a) All disciplinary hearings conducted by the judges shall be conducted in accordance with this article. All other proceedings conducted on behalf of the commission shall be conducted in accordance with this article and with IC 4-21.5.

(b) A licensee, permit holder, subject of exclusion (under IC 4-31-13-1 and 71 IAC 2-10-1), or other person may represent himself or herself or may be represented by an attorney or representative who is in compliance with 71 IAC 10-4-1 [Renumbered by Publisher as 71 IAC 10-5-1.]. (*Indiana Horse Racing Commission; 71 IAC 10-1-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1198; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2109; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### 71 IAC 10-1-2 Suspensions

Authority: IC 4-31-3-9

Affected: IC 4-21.5; IC 4-31

Sec. 2. At their respective discretion, the suspension of a license by the judges, the commission, or the commission's designee may:

- (1) commence immediately or as of a specified date and run for the number of consecutive days imposed, not to exceed the maximum;
- (2) commence at the start of the next race meeting in Indiana and run for the number of consecutive days imposed, not to exceed the maximum; or
- (3) commence immediately or as of a specified date and run for the number of consecutive days left in the current race meeting, with the remaining suspension running from the start of the next race meeting in Indiana for the remaining number of consecutive days imposed, not to exceed the maximum.

(*Indiana Horse Racing Commission; 71 IAC 10-1-2; emergency rule filed Aug 29, 1994, 2:15 p.m.: 18 IR 122; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

### Rule 2. Proceedings by Judges

#### 71 IAC 10-2-1 Rights of the licensee

Authority: IC 4-31-3-9

Affected: IC 4-21.5-2-2; IC 4-31-13

Sec. 1. (a) In a disciplinary hearing conducted by the judges, a person who is the subject of the disciplinary hearing is entitled to:

- (1) proper notice of all charges against the person; and
- (2) confront the evidence presented against the person, including the right:
  - (A) to counsel at the person's expense;
  - (B) to present a defense;
  - (C) to call witnesses; and
  - (D) to cross examine witnesses testifying against the person.

(b) After being informed by the judges of a violation and the proposed penalty to be imposed, a licensee may waive his or her right to a disciplinary hearing by executing a written waiver. In so doing, the licensee consents to the imposition of the penalty. (*Indiana Horse Racing Commission; 71 IAC 10-2-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1198; emergency rule filed Sep 30, 1994, 1:30 p.m.: 18 IR 274; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-2-2 Complaints**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 2. (a) On their own motion or on receipt of a complaint from an official or other person regarding the actions of a licensee, the judges may conduct an inquiry and disciplinary hearing regarding a licensee's actions.

(b) A complaint must be in writing and filed with the judges. (*Indiana Horse Racing Commission; 71 IAC 10-2-2; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1198; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-2-3 Summary suspension**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-4; IC 4-31-13

Sec. 3. (a) If the judges determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, or are not in the best interest of racing, or compromise the integrity of operations at a track or satellite facility, the judges may summarily suspend the license pending a hearing pursuant to the provisions of IC 4-21.5-4.

(b) A licensee whose license has been summarily suspended by the judges is entitled to a hearing following a written request by the licensee.

(c) The judges shall conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling.

(d) Notwithstanding the provisions of 71 IAC 10-3-20, the commission delegates to the executive director the authority to summarily suspend licenses at any time that a live race meeting is not being conducted on association premises or when the judges are not otherwise available. The commission delegates to the executive director the authority to summarily suspend licenses at satellite facilities at any time. In the event of a summary suspension by the executive director and if the licensee makes a written request for a hearing, a hearing on the summary suspension shall be conducted by the commission or an administrative law judge as quickly as is practicable. (*Indiana Horse Racing Commission; 71 IAC 10-2-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1198; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1505; emergency rule filed Nov 30, 1995, 1:00 p.m.: 19 IR 688; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2162; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2426; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-2-4 Notice**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-1; IC 4-31-13

Sec. 4. (a) Except as provided by these rules regarding summary suspensions, the judges shall provide written notice, at least twelve (12) hours before the hearing, to a person who is the subject of a disciplinary hearing. The person may waive his or her right to twelve (12) hours' notice by executing a written waiver.

(b) Notice given under this section must include the following:

- (1) The names and mailing addresses of all parties and other persons to whom notice is being given by the judges.
- (2) The name, official title, and mailing address of any counsel or employee who has been designated to appear for the commission and a telephone number through which the counsel or employee can be reached.
- (3) The official file or other reference number, and the name of the proceeding.
- (4) A statement of the time, place, and nature of the hearing.
- (5) A statement of the legal authority and jurisdiction under which hearing is to be held.
- (6) A reference to the particular sections of the statutes or rules involved.
- (7) The name, official title, and mailing address of the judges and a telephone number through which information concerning hearing schedules and procedures may be obtained.
- (8) A short, plain description of the alleged conduct that has given rise to the disciplinary hearing.

(9) If there was a complaint, a copy of the complaint filed with the judges.

(10) The possible penalties that may be imposed.

(11) A statement that a party who fails to attend or participate in a hearing or other later stage of the proceeding may be held in default or have a proceeding dismissed.

(c) If possible, the judges or their designee shall hand deliver the written notice of the disciplinary hearing to the person who is the subject of the hearing. If hand delivery is not possible, the judges shall mail the notice to the person's last known address, as found in the commission's licensing files, by regular mail. If the identity, address, or existence of a person is not ascertainable, service shall be made by a single publication in a newspaper of general circulation under IC 4-21.5-3-1.

(d) The judges may take any appropriate action, including, but not limited to, the immediate suspension of the license of a person who fails to appear at a disciplinary hearing after receiving written notice of the hearing. (*Indiana Horse Racing Commission; 71 IAC 10-2-4; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1198; emergency rule filed Sep 30, 1994, 1:30 p.m.: 18 IR 275; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1505; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2889, eff. Jul 1, 1995; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2163; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2109; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-2-5 Continuances**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 5. (a) Upon receipt of a notice, a person may, for good cause, request a continuance of the hearing.

(b) The judges may grant a continuance of any hearing for good cause shown, which would include the possibility of settlement of the issues. The grant or denial of a continuance is within the sole discretion of the judges.

(c) The judges may at any time order a continuance on their own motion. (*Indiana Horse Racing Commission; 71 IAC 10-2-5; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1199; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2164; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2426; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-2-6 Evidence**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-26; IC 4-31-13

Sec. 6. (a) Each witness at a disciplinary hearing conducted by the judges must be sworn by the presiding judge.

(b) The judges shall allow a full presentation of evidence and are not bound by the technical rules of evidence. The judges may admit hearsay evidence under IC 4-21.5-3-26. Upon proper objection, the judges shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of any claim of privilege recognized by state law.

(c) The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a commission rule.

(d) The judges shall make a tape recording or other reliable recording of a disciplinary hearing and make a copy of the recording available on request, at the expense of the requesting person. (*Indiana Horse Racing Commission; 71 IAC 10-2-6; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1199; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-2-7 Ruling**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-1; IC 4-31-13-2

Sec. 7. (a) The issues at a disciplinary hearing shall be decided by a majority vote of the judges. If the vote is not unanimous, the dissenting judge shall include with the record of the hearing a written statement of the reasons for the dissent.

(b) A ruling by the judges must be on a form prescribed by the commission and include the following:

(1) The full name, Social Security number (optional), date of birth, last record address, license type, and license number of

the person who is the subject of the hearing.

(2) A statement of the charges against the person, including a reference to the specific section of the Act or rules of the commission that the licensee is found to have violated.

(3) The date of the hearing and the date the ruling was issued.

(4) The penalty imposed.

(5) If there was a settlement, the settlement that was agreed to.

(6) Any changes in the order of finish or purse distribution.

(7) A statement of the available procedures and time limit for appealing the ruling to the commission.

(8) Other information required by the commission.

(c) A ruling must be signed by a majority of the judges.

(d) If possible, the judges or their designee shall hand deliver a copy of the ruling to the person who is the subject of the ruling.

If hand delivery is not possible, the judges shall mail the ruling to the person's last known address, as found in the commission's licensing files, by regular mail. If the identity, address, or existence of a person is not ascertainable, service shall be made by a single publication in a newspaper of general circulation under IC 4-21.5-3-1. If the ruling includes the disqualification of a horse, the judges shall provide a copy of the ruling to the owner of the horse in the manner provided by this subsection.

(e) At the time the judges inform a person who is the subject of the proceeding of the ruling, the judges shall inform the person of the person's right to appeal the ruling to the commission.

(f) The suspension of a license or the imposition of a civil penalty must occur within sixty (60) days after the date of the violation under IC 4-31-13-2(b).

(g) All fines imposed by the judges shall be paid to the commission in accordance with 71 IAC 7-5-3. (*Indiana Horse Racing Commission; 71 IAC 10-2-7; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1199; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1506; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2164; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-2-8 Effect of rulings**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 8. (a) Rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee.

(b) The fraudulent transfer of a horse to avoid application of a commission rule or ruling is prohibited.

(c) The judges shall honor the rulings issued by other pari-mutuel racing commissions.

(d) A ruling approving and accepting a settlement involving a licensee shall have no substantive precedent.

(e) Unless a ruling specifically states otherwise, any person suspended or determined to be ineligible for licensing shall be excluded and denied access to all facilities under the jurisdiction of the commission, including satellite facilities, during the period of suspension or ineligibility. (*Indiana Horse Racing Commission; 71 IAC 10-2-8; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1200; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2165; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2426; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-2-8.1 Effect of ruling – trainers**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 8.1. (a) The horse(s) of a trainer suspended for more than fifteen (15) days in Indiana shall not be transferred to a spouse, member of the immediate family, assistant, employee, or household member of the trainer.

(b) The horse(s) of a trainer suspended in another jurisdiction, may, at the discretion of the executive director, judges, or stewards, be placed on the judge's/steward's list and be ineligible to compete in Indiana if such horse(s) is trained by a licensee that is a spouse, member of the immediate family, business associate, assistant, employee, or household member of the suspended trainer.

(c) The executive director, judges, or stewards may require a horse(s) previously trained by a suspended trainer, a horse owned

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by a person employing a suspended trainer, and/or a horse owned by a person who employed the trainer at the time of suspension to be stabled on the grounds of the association.

(d) The above provisions of this rule shall not apply to trainers who are suspended from driving privileges only. (*Indiana Horse Racing Commission; 71 IAC 10-2-8.1; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-2-9 Appeals**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 9. (a) A person who has been aggrieved or adversely affected by a ruling of the judges may appeal to the commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) An appeal under this section must be filed not later than fifteen (15) days after the ruling is served upon the person. The appeal must be filed with the commission. The appeal must be accompanied by a deposit of five hundred dollars (\$500) in the form of a cashier's check or money order to defray the costs of appeal. The costs of appeal shall consist of the cost of the court reporter, the cost of the transcript required for the appeal, and the cost of the administrative law judge. If a person is wholly or partially successful in prosecuting an appeal and a final order is entered on their behalf, the costs of appeal will be assessed against the commission. In all other instances, the costs of appeal will be assessed against the person bringing the appeal. The deposit provided for by this subsection will be applied toward any such assessment. To the extent that such an assessment is less than the amount of the deposit, that difference shall be refunded to the person initiating the appeal. To the extent that the assessment exceeds the amount of the deposit, the person initiating the appeal is responsible for remitting the balance to the commission within ten (10) days of such a request after the issuance of a final order.

(c) An appeal must be in writing on a form prescribed by the commission. The appeal must include:

(1) the name, address, telephone number, and signature of the person making the appeal; and

(2) a statement of the basis for the appeal, identified with reasonable particularity.

(d) On notification by the commission that an appeal has been filed, the judges shall forward to the commission the record of the proceeding on which the appeal is based.

(e) If a person against whom a fine has been assessed files an appeal of the ruling that assesses the fine, payment of the fine is not due until seven (7) days after a final determination or order has been entered which supports the imposition of such a sanction.

(f) A decision by the judges regarding a disqualification involving the running of the race that does not result in a ruling is final and may not be appealed. (*Indiana Horse Racing Commission; 71 IAC 10-2-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1200; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3415; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2427; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2110; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2387; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-2-10 Stay**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 10. (a) A person who has been disciplined by a ruling of the judges may apply to the commission for a stay of the ruling, pending action on an appeal by the commission.

(b) An application for a stay must be filed with the commission not later than the deadline for filing an appeal.

(c) An application for a stay must be in writing and include the following:

(1) The name, address, telephone number, and signature of the person requesting the stay.

(2) A statement of the justification for the stay.

(3) The period of time for which the stay is requested.

(d) On a finding of good cause, the commission may grant the stay. A ruling on the stay must be rendered within five (5) days from the time of the application for stay is filed with the commission or the stay is deemed granted. The commission shall notify the

person in writing of the commission's decision. The commission may rescind a stay granted under this subsection for good cause.

(e) The fact that a stay is granted is not a presumption that the ruling by the judges is invalid. (*Indiana Horse Racing Commission; 71 IAC 10-2-10; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1201; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2427; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

### **Rule 3. Proceedings by the Commission**

#### **71 IAC 10-3-1 Initiation of proceedings**

Authority: IC 4-31-3-9; IC 4-31-3-13

Affected: IC 4-21.5-3-22; IC 4-21.5-3-29; IC 4-31

Sec. 1. (a) A proceeding before the commission may be initiated by a person who timely files an appeal from a judge's ruling.

(b) The commission may in its discretion initiate a disciplinary action against any person under IC 4-31. Such an action may be brought upon the recommendation of the executive director, by the commission on its own motion, or by the commission for the purpose of modifying or assessing penalties or sanctions, or both, in addition to any penalties or sanctions assessed by the judges. If the commission or the executive director brings an action under this section, such action is to be initiated pursuant to the provisions of section 20 of this rule.

(c) The commission may institute a proceeding for the enforcement of a subpoena which is issued in support of its power to investigate licensees of the commission and/or any suspected violation of the pari-mutuel statutes or a rule adopted by the commission.

(d) In the event that the commission initiates a proceeding under section 20 of this rule, the issues in that proceeding or on any subsequent appeal shall be limited to those raised by the commission or its designee. In no way shall the issuance of a preliminary report act as a waiver or otherwise extend the time limits for the appeal of a ruling set forth in this article. (*Indiana Horse Racing Commission; 71 IAC 10-3-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1201; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1506; errata filed Mar 23, 1995, 4:30 p.m.: 18 IR 2126; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2086; emergency rule filed Feb 12, 1998, 4:15 p.m.: 21 IR 2397; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-3-2 Party designations**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 2. (a) The staff of the commission is always a party to a proceeding before the commission. A person who is the subject of a disciplinary hearing, who filed an appeal from a judges' ruling, or who otherwise seeks relief from the commission is a party to that proceeding.

(b) A party to a proceeding has the right to present a direct case, cross examine each witness, submit legal arguments, and otherwise participate fully in the proceeding.

(c) A party may represent himself or herself or appear and be represented by a person of the party's choosing.

(d) A member of the public who desires to support or oppose a matter in a contested case proceeding pending before the commission must file a motion for nonparty participant status which includes a written statement regarding the person's position on the matter. The motion must be filed not later than the date set by the administrative law judge for the proceeding. At the time of filing, the person shall serve a copy of the statement on each party of record and file a certificate of service with the commission. A nonparty participant's statement may be stricken from the record if the commission determines that it does not substantially comply with this subsection. A nonparty participant may present views and may otherwise participate in a proceeding at the discretion of the administrative law judge and subject to the rules of the commission. (*Indiana Horse Racing Commission; 71 IAC 10-3-2; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1201; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-3 Pleadings**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 3. (a) Pleadings filed with the commission include the following:

- (1) Appeals.
- (2) Applications.
- (3) Answers.
- (4) Complaints.
- (5) Exceptions.
- (6) Replies.
- (7) Motions.

Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding in which it is filed.

(b) A request for discovery or a response to a request for discovery is not a pleading and is not a part of the administrative record of a contested case unless the request or response is offered into evidence.

(c) A pleading for which the commission staff has not prepared an official form must contain:

- (1) the name of the pleader;
- (2) the telephone number and street address of the pleader's residence and business and the telephone number and street address of the pleader's representative, if any;
- (3) the jurisdiction of the commission over the subject matter;
- (4) a concise statement of the facts relied on by the pleader;
- (5) a request stating the type of commission action desired by the pleader;
- (6) the name and address of each person who the pleader knows or believes will be affected if the request is granted;
- (7) a proposed order containing proposed findings of fact and conclusions of law;
- (8) any other matter required by statute or commission rule; and
- (9) a certificate of service.

(d) A party filing a pleading shall mail or deliver a copy of the pleading to each party of record. If a party is being represented by an attorney or other representative, service may be made on the attorney or representative instead of on the party. The knowing failure of a party to make service in accordance with this subsection is grounds for the commission to strike the pleading from the record.

(e) An objection to a defect, omission, or fault in the form or content of a pleading must be specifically stated in a motion or an exception presented not later than the prehearing conference if one is held and not later than fifteen (15) days before the date of the hearing if a prehearing conference is not held. A party who fails to timely file an objection under this subsection waives the objection.

(f) Except as otherwise provided by this subsection, a pleader may amend or supplement a pleading at any time before the twenty-first day after the date the pleading was filed, but not later than five (5) days before the date of the hearing. A pleader may amend or supplement a pleading at any time:

- (1) on written consent of each party of record; or
- (2) as permitted by the administrative law judge for the proceeding;

when justice requires the amendment or supplementation and when the amendment or supplementation will not unfairly surprise another party.

(g) A pleading may adopt or incorporate by specific reference any part of a document in the official files and records of the commission. This subsection does not relieve the pleader of the duty to allege in detail all facts necessary to sustain the pleader's burden of proof. (*Indiana Horse Racing Commission; 71 IAC 10-3-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1201; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-4 Filing pleadings**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 4. (a) Except as otherwise provided by this section, an original and one (1) copy of each pleading must be filed with the

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commission. An original and one (1) copy of each pleading relating to discovery must be filed with the commission. A pleading is considered filed only when actually received by the commission. Each pleading must include a certification that a copy has been served on each party of record, stating the name of each party served and the date and manner of service.

(b) If a pleading is sent to the commission by first class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail one (1) day or more before the last day for filing the pleading, the pleading is considered received and filed in time if the pleading is actually received not more than ten (10) days after the deadline. A legible postmark affixed by the United States postal service is prima facie evidence of the date of mailing. For purposes of responsive pleadings for which the deadline for filing is set by the filing of another pleading, the pleading to be filed first is considered filed when actually received by the commission.

(c) Unless otherwise provided by statute, the administrative law judge for a proceeding may extend the time for filing a pleading on a motion made by a party before the filing deadline if the administrative law judge determines that there is good cause for the extension and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of a motion made under this section must be served on all parties of record contemporaneously with the filing of the motion.

(d) A pleading may be filed by facsimile, provided an original and the required number of copies are received in the commission's office not later than 5 p.m. of the third day after the date the document was filed by facsimile. The inability to transmit a document due to equipment malfunction or any other cause does not relieve the person attempting to file the document of the filing deadline.

(e) If the deadline for filing a pleading falls on a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(f) The failure to file a pleading in accordance with this section may result in the pleading being struck. (*Indiana Horse Racing Commission; 71 IAC 10-3-4; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1202; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2110; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-5 Notice**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 5. (a) Not less than five (5) days before the date set for a hearing, the commission shall serve written notice on each party of record to the proceeding.

(b) A notice of the hearing must include:

- (1) the names and mailing addresses of all parties and other persons to whom notice is being given by the commission;
- (2) the name, official title, and mailing address of any counsel or employee who has been designated to appear for the commission and a telephone number through which the counsel or employee can be reached;
- (3) the official file or other reference number and the name of the proceeding;
- (4) a statement of time, place, and nature of the hearing;
- (5) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (6) a reference to the particular sections of the Act and rules of the commission involved;
- (7) the name, official title, and mailing address of the administrative law judge and a telephone number through which information concerning hearing schedules and procedures may be obtained;
- (8) a short, plain statement of the matters asserted;
- (9) a statement that a party who fails to attend or participate in a hearing or other later stage of the proceeding may be held in default or have a proceeding dismissed; and
- (10) any other statement required by law.

(c) If the commission determines that a material error has been made in a notice of hearing, or that a material change has been made in the nature of a proceeding after notice has been issued, the commission shall issue a revised notice. The party who has caused the change or error requiring revised notice shall bear the expense of giving revised notice.

(d) A party to a proceeding may move to postpone the proceeding. The motion must be in writing, set forth the specific grounds on which it is sought, and be filed with the commission before the date set for hearing. If the person presiding over the proceeding grants the motion for postponement, the commission shall cause new notice to be issued.



(e) After a hearing has begun, the administrative law judge may grant a continuance on oral or written motion, without issuing new notice, by announcing the date, time, and place for reconvening the hearing before recessing the hearing. (*Indiana Horse Racing Commission; 71 IAC 10-3-5; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1203; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-6 Place, time, and nature of hearings**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 6. (a) A hearing in a commission proceeding is open to the public, however, witnesses may be excluded or sequestered.

(b) A hearing shall be held in Indianapolis, Indiana unless:

- (1) for good cause stated in open meeting, the commission designates another place for the hearing; or
- (2) the Act requires otherwise.

(c) Unless precluded by law or objected to by a party, the commission may allow informal disposition of a proceeding without a hearing. Informal disposition includes disposition by stipulation, agreed settlement, consent order and default. (*Indiana Horse Racing Commission; 71 IAC 10-3-6; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1203; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-7 Administrative law judges**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 7. (a) One (1) or more members of the commission acting as the administrative law judge or an administrative law judge may serve as the administrative law judge for a commission proceeding.

(b) The administrative law judge may:

- (1) authorize the taking of depositions;
- (2) issue subpoenas to compel the attendance of witnesses and the production of papers and documents;
- (3) administer oaths;
- (4) receive evidence;
- (5) rule on the admissibility of evidence and amendments to pleadings;
- (6) examine witnesses;
- (7) set reasonable times within which a party may present evidence and within which a witness may testify;
- (8) permit and limit oral argument;
- (9) issue interim orders;
- (10) recess a hearing from day to day and place to place;
- (11) request briefs before or after the administrative law judge files a report or proposal for decision;
- (12) propose findings of fact and conclusions of law;
- (13) propose orders and decisions; and
- (14) perform other duties necessary to a fair and proper hearing.

(c) A person serving as the administrative law judge of a proceeding must be a disinterested party to the proceeding. (*Indiana Horse Racing Commission; 71 IAC 10-3-7; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1203; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-8 Conferences**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 8. (a) On written notice, the administrative law judge may, on his or her own motion or on the motion of a party, direct each party to appear at a specified time and place for a prehearing conference to formulate issues and consider any of the following:

- (1) Simplifying issues.
- (2) Amending the pleadings.

- (3) Making admissions of fact or stipulations to avoid the unnecessary introduction of proof.
- (4) Designating parties.
- (5) Setting the order of procedure at a hearing.
- (6) Identifying and limiting the number of witnesses.
- (7) Resolving other matters that may expedite or simplify the disposition of the controversy, including settling issues in dispute.

(b) The administrative law judge shall issue an order with respect to the action taken at the prehearing conference unless the parties enter into a written agreement as to the action. The administrative law judge may enter appropriate orders concerning prehearing discovery, stipulations of uncontested matters, presentation of evidence, and scope of inquiry.

(c) During a hearing, on written notice or notice stated into the record, the administrative law judge may direct each party or the representative of each party to appear for a conference to consider any matter that may expedite the hearing and serve the interests of justice. The administrative law judge shall prepare a written statement regarding the action taken at the conference. (*Indiana Horse Racing Commission; 71 IAC 10-3-8; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1204; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2111; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-9 Discovery**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 9. (a) On written request by a party, the administrative law judge may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers, or other objects shall:

- (1) be addressed to the appropriate person;
- (2) be verified; and
- (3) specify the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.

(b) All motions for discovery shall be subject to the civil procedures statutes of this jurisdiction. (*Indiana Horse Racing Commission; 71 IAC 10-3-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1204; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-10 Order of hearing**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 10. (a) The administrative law judge shall:

- (1) open the hearing;
- (2) make a concise statement of its scope and purposes; and
- (3) announce that a record of the hearing is being made.

(b) When a hearing has begun, a party or a party's representative may make statements off the record only as permitted by the administrative law judge. If a discussion off the record is pertinent, the administrative law judge shall summarize the discussion for the record.

(c) Each appearance by a party, a party's representative, or a person who may testify must be entered on the record.

(d) The administrative law judge shall receive motions and afford each party of record an opportunity to make an opening statement.

(e) Except as otherwise provided by this subsection, the party with the burden of proof is entitled to open and close. The administrative law judge shall designate who may open and close in a hearing on a proceeding if the proceeding was initiated by the commission or if several proceedings are heard on a consolidated record.

(f) After opening statements, the party with the burden of proof may proceed with the party's direct case. Each party may cross examine each witness.

(g) After the conclusion of the direct case of the party having the burden of proof, each other party may present their direct

case and their witnesses will be subject to cross examination.

(h) The members of the commission or the administrative law judge, or both, may examine any witnesses.

(i) At the conclusion of all evidence and cross examination, the administrative law judge shall allow closing statements.

(j) Before writing a report or proposal for decision if required by law, the administrative law judge may call on a party for further relevant and material evidence on a issue. The administrative law judge may not consider the evidence or allow it into the record without giving each party an opportunity to inspect and rebut the evidence. (*Indiana Horse Racing Commission; 71 IAC 10-3-10; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1204; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-11 Behavior**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 11. (a) Each party, witness, attorney, or other representative shall behave in all commission proceedings with dignity, courtesy, and respect for the commission, the administrative law judge and all other parties and participants.

(b) An individual who violates this section may be excluded from a hearing by the administrative law judge. (*Indiana Horse Racing Commission; 71 IAC 10-3-11; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1205; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

**71 IAC 10-3-12 Evidence**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 12. (a) All testimony must be given under oath administered by the administrative law judge. The administrative law judge may limit the number of witnesses and shall exclude all irrelevant, immaterial, or unduly repetitious evidence.

(b) The administrative law judge shall follow the rules of evidence as applied in administrative hearing procedures in this state. If necessary to ascertain facts not reasonably susceptible of proof under those rules, the administrative law judge may, unless precluded by statute, admit evidence not admissible under those rules, provided the evidence is of a type commonly relied on by reasonably prudent persons in the conduct of their affairs. The rules of privilege recognized by law in this jurisdiction apply in commission proceedings.

(c) A party may object to offered evidence and the objection shall be noted in the record. Formal exceptions to rulings by the administrative law judge during a hearing are unnecessary. A party, at the time an objection is made or sought, shall make known to the administrative law judge the action the party desires.

(d) When the administrative law judge rules to exclude evidence, the party offering the evidence may make an offer of proof by dictating or submitting in writing the substance of the proposed evidence before the closing of the hearing. The offer of proof preserves the point for review. The administrative law judge may ask a witness or offered witness questions necessary to indicate that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination is preserved without making an offer of proof.

(e) The administrative law judge may take official notice of judicially recognizable facts and of facts generally recognized within the area of the commission's specialized knowledge. The commission shall notify each party of record before the final decision in a proceeding of each specific fact officially noticed, including any facts or other data in staff memoranda. A party must be given an opportunity to rebut the facts to be noticed.

(f) The special skills and knowledge of the commission and the commission staff may be used in evaluating the evidence. In addition, during the course of any proceedings under these rules which are brought by or are pending before the commission, the commission staff may recommend the imposition of penalties and sanctions authorized by statute which the administrative law judge may in its discretion accept, reject, or modify.

(g) The administrative law judge may receive documentary evidence in the form of copies or excerpts if the original is not readily available. On request, the administrative law judge shall allow a party to compare the copy with the original. If many similar documents are offered in evidence, the administrative law judge may limit the documents admitted to a number which are representative of the total number, or may require that the relevant data be abstracted from the documents and presented as an exhibit. If the administrative law judge requires an abstract, the administrative law judge shall allow each party or the party's representative

to examine the documents from which the abstracts are made.

(h) The administrative law judge may require prepared testimony in a hearing if the administrative law judge determines that it will expedite the hearing without substantially prejudicing the interests of a party. Prepared testimony consists of any document that is intended to be offered as evidence and adopted as sworn testimony by a witness who prepared the document or supervised its preparation. A person who intends to offer prepared testimony at a hearing shall prefile the testimony with the commission on the date set by the administrative law judge and shall serve a copy of the prepared testimony on each party of record. The administrative law judge may authorize the late filing of prepared testimony on a showing of extenuating circumstances. The prepared testimony of a witness may be incorporated into the record as if read or received as an exhibit, on the witness being sworn and identifying the writing as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness is subject to clarifying questions and to cross examination, and the prepared testimony is subject to a motion to strike either in whole or in part.

(i) Documentary exhibits must be of a size which will not unduly encumber the record. Whenever practicable, exhibits must conform to the size requirements in these rules for pleadings. The first sheet of the exhibit must briefly state what the exhibit purports to show and the pages of the exhibit must be numbered consecutively. Exhibits may include only facts material and relevant to the issues of the proceeding. Maps or drawings must be rolled or folded so as not to encumber the record. Exhibits not conforming to this subsection may be excluded.

(j) The party offering an exhibit shall tender the original of the exhibit to the administrative law judge for identification. The party shall furnish one (1) copy to the administrative law judge and one (1) copy to each party of record. A document received in evidence may not be withdrawn except with the permission of the administrative law judge. If an exhibit has been offered, objected to, and excluded, and the party offering the exhibit withdraws the offer, the administrative law judge shall return the exhibit to the party. If the party does not withdraw the offered exhibit, the exhibit shall be numbered for identification, endorsed by the administrative law judge with the ruling on the exhibit, and included in the record to preserve the exception.

(k) The administrative law judge may allow a party to offer an exhibit in evidence after the close of the hearing only on a showing of extenuating circumstances and a certificate of service on each party of record. (*Indiana Horse Racing Commission; 71 IAC 10-3-12; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1205; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-3-13 Reporters and transcripts**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-25; IC 4-31-13

Sec. 13. (a) If necessary, the commission shall engage a court reporter to make a stenographic record of a hearing. The commission may allocate the cost of the reporter and transcript among the parties.

(b) If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person under IC 4-21.5-3-25.

(c) A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than ten (10) days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter, and the administrative law judge. If proposed corrections are not objected to before the fifteenth day after the date the corrections were filed with the commission, the administrative law judge may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the administrative law judge shall determine whether to change the record. (*Indiana Horse Racing Commission; 71 IAC 10-3-13; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1206; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-3-14 Findings of fact and conclusions of law**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 14. (a) The administrative law judge may direct a party to draft and submit proposed findings of fact and conclusions of law or a proposal for decision that includes proposed findings of fact and conclusions of law. The administrative law judge may limit the request for proposed findings to a particular issue of fact.

(b) Proposed findings of fact submitted under this section must be supported by concise and explicit statements of underlying facts developed from the record with specific reference to where in the record the facts appear.

(c) Only if the administrative law judge requires the filing of proposed findings of fact or a proposal for decision is the commission required to rule on the proposed findings of fact in accordance with statute. If a party is permitted but not required to submit proposed findings or a proposal for decision, the commission is not required to rule on the party's proposed findings. (*Indiana Horse Racing Commission; 71 IAC 10-3-14; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1206; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-3-15 Final order and findings**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-27; IC 4-31-13

Sec. 15. (a) The administrative law judge shall issue a final order, including findings of fact under IC 4-21.5-3-27.

(b) If the commission exercises its discretion to concurrently act as the administrative law judge and ultimate authority for the agency, then this section does not apply. Otherwise, the issuance of an order shall be subject to the following:

(1) After an administrative law judge issues an order, the commission shall issue a final order:

- (A) affirming;
- (B) modifying; or
- (C) dissolving;

the administrative law judge's order. The commission may remand the matter, with or without instructions, to an administrative law judge for further proceedings.

(2) In the absence of an objection or notice under subdivision (3) or (4), the commission shall affirm the order.

(3) To preserve an objection to an order of an administrative law judge for judicial review, a party must not be in default under this article and must object to the order in a writing that:

- (A) identifies the basis of the objection with reasonable particularity; and
- (B) is filed with the ultimate authority responsible for reviewing the order within fifteen (15) days (or any longer period set by statute) after the order is served on the petitioner.

(4) Without an objection under subdivision (3), the commission or its designee may serve written notice of its intent to review any issue related to the order. The notice shall be served on all parties. The notice must identify the issues that the commission intends to review.

(5) A final order disposing of a proceeding or an order remanding an order to an administrative law judge for further proceedings shall be issued within sixty (60) days after the latter of:

- (A) the date that the order was issued;
- (B) the receipt of briefs; or
- (C) the close of oral argument;

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

(6) After remand of an order under this section to an administrative law judge, the judge's order is also subject to review under this section.

(*Indiana Horse Racing Commission; 71 IAC 10-3-15; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1206; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2111; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-3-16 Dismissal**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 16. On its own motion or a motion by a party, the administrative law judge may dismiss a proceeding, with or without prejudice, under conditions and for reasons that are just and reasonable, including:

- (1) failure to timely pay all required fees to the commission;
- (2) unnecessary duplication of proceedings;
- (3) withdrawal;

- (4) moot questions or obsolete petitions; and
- (5) lack of jurisdiction.

*(Indiana Horse Racing Commission; 71 IAC 10-3-16; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1207; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)*

#### **71 IAC 10-3-17 Orders**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-29; IC 4-31-13

Sec. 17. (a) The commission shall issue its final order under IC 4-21.5-3-29. A final order of the commission must be in writing and be signed by a majority of the members of the commission who voted in favor of the action taken by the commission. A final order must include findings of facts and conclusions of law, separately stated.

(b) The commission staff shall mail or deliver a copy of the order to each party or the party's representative.

(c) A final order of the commission takes effect on the date the order is issued, unless otherwise stated in the order.

(d) If the commission finds that an imminent peril to the public health, safety, or welfare requires an immediate final order in a proceeding, the commission shall recite that finding in the order in addition to reciting that the order is final from the date issued. An order issued under this subsection is final and appealable from the date issued and a motion for rehearing is not a prerequisite to appeal. *(Indiana Horse Racing Commission; 71 IAC 10-3-17; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1207; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)*

#### **71 IAC 10-3-18 Rehearing**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-31; IC 4-31-13

Sec. 18. (a) IC 4-21.5-3-31, pertaining to rehearing after commission action, is hereby incorporated by reference.

(b) An order granting a motion for rehearing vacates the preceding final order. The order granting a motion for rehearing may direct that the hearing be reopened or may incorporate a new final decision. Except as otherwise provided by these rules, if the commission renders a new decision, a motion for rehearing directed to the new decision is a prerequisite to appeal. *(Indiana Horse Racing Commission; 71 IAC 10-3-18; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1207; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)*

#### **71 IAC 10-3-19 Ex parte communications**

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-11; IC 4-31-13

Sec. 19. IC 4-21.5-3-11, pertaining to ex parte communications, is hereby incorporated by reference. *(Indiana Horse Racing Commission; 71 IAC 10-3-19; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1207; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)*

#### **71 IAC 10-3-20 Administrative penalties**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 20. (a) If the commission determines that a person regulated under the Act has violated the Act or a rule or order adopted under the Act in a manner that constitutes a ground for disciplinary action under the Act, the commission may assess an administrative penalty against that person as provided by this section.

(b) The commission delegates to the executive director the authority to prepare and issue preliminary reports pursuant to the Act. If, after examination of a possible violation and the facts relating to that possible violation, the executive director determines that a violation has occurred, the executive director shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, the amount to be assessed, and any other proposed sanction, including suspension, or revocation. Furthermore, when the judges have issued a ruling that a violation has occurred, the executive director

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may issue a preliminary report identifying the underlying ruling that serves as the basis for the preliminary report, the fact that an administrative penalty is to be imposed, the additional amount to be assessed, and any other proposed sanction including additional suspension or revocation. The amount of the penalty may not exceed five thousand dollars (\$5,000) for each violation. Each day or occurrence that a violation continues may be considered a separate violation. In determining the administrative penalty, the executive director shall consider the seriousness of the violation.

(c) Not later than the tenth day after the date on which the executive director issues the preliminary report, the executive director shall provide a copy of the report to the person charged with the violation, together with a statement of the right of the person to a hearing relating to the alleged violation and the amount of the penalty. If possible, the executive director shall hand deliver the preliminary report. If hand delivery is not possible, the executive director shall mail the preliminary report to the person's last known address, as found in the commission's files, by regular mail and by certified mail, return receipt requested.

(d) Not later than the twentieth day after the date on which the executive director delivers or sends the preliminary report, the person charged may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure to request a hearing or to remit the amount of the administrative penalty within the period prescribed by this subsection results in a waiver of a right to a hearing on the administrative penalty as well as any right to judicial review. If the person charged requests a hearing, the hearing shall be conducted in the same manner as other hearings conducted by the commission pursuant to this article.

(e) If it is determined after the hearing that the person has committed the alleged violation, the administrative law judge shall give written notice to the person of the findings established by the hearing and the amount of the penalty and shall enter an order requiring the person to pay the penalty. If a party desires to appeal this order, they shall do so pursuant to the provisions of section 15 of this rule.

(f) Not later than the fifteenth day after the date on which the above order is received from the administrative law judge, the person charged shall pay the administrative penalty in full or exercise the right to appeal. If a person exercises a right of appeal, the amount of the penalty is not required to be paid until the fifteenth day after the date on which all appeals have been exhausted and the commission's decision has been upheld. (*Indiana Horse Racing Commission; 71 IAC 10-3-20; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1208; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1507; errata filed Mar 23, 1995, 4:30 p.m.: 18 IR 2126; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*)

#### **71 IAC 10-3-21 Settlement procedures**

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 21. (a) In lieu of the preliminary reports and administrative penalties provided for in section 20 of this rule, the commission or the executive director may initiate a disciplinary action by issuing a written complaint containing the reasons and facts relied upon why the person regulated under the Act has violated the Act or a rule or order adopted under the Act.

(b) The person to whom the complaint is directed shall file a written answer within twenty (20) days after service of the complaint, and said answer shall contain an admission or denial of such factual allegation in the complaint and set forth any affirmative defenses.

(c) Within thirty (30) days after filing the answer:

(1) the person to whom the complaint is directed and the executive director shall meet informally to discuss the possibilities of settlement of the alleged violations in the complaint; and

(2) if either the person to whom the complaint is directed or the executive director determines that settlement is unlikely, the executive director may issue a preliminary report under section 20 of this rule.

(d) If the person to whom the complaint is directed and the executive director agree that further discussions are appropriate, then within sixty (60) days of the filing of the answer, a written settlement offer shall be submitted to the administrative law judge or the commission. The commission or the administrative law judge may require the parties to the settlement to make an oral or written presentation.

(e) If the person to whom the complaint was directed and the executive director fail to agree to a written settlement within sixty (60) days of filing the answer, or if the commission votes to reject the settlement, the executive director may issue a preliminary report under section 20 of this rule. The executive director may issue a preliminary report prior to the expiration of the sixty (60) day period mentioned in this section. (*Indiana Horse Racing Commission; 71 IAC 10-3-21; emergency rule filed Mar 25, 1997, 10:00*)

a.m.: 20 IR 2165; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)

**Rule 4. Exclusion (Repealed)**

*(Repealed by Indiana Horse Racing Commission; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2151)*

**Rule 5. Appearance by Attorneys or Representatives**

*NOTE: Agency cited as Rule 4, which was renumbered by the Publisher as Rule 5.*

**71 IAC 10-5-1 Eligibility to appear and scope of practice**

Authority: IC 4-31-3-9; IC 4-31-6-9

Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 1. (a) No person shall be eligible to practice before the commission unless the person has appeared in accordance with this title. An individual may appear on his or her own behalf, a partnership may be represented by a partner, and a party may be represented by a representative in accordance with IC 4-21.5-3-15.

(b) Practice before the commission shall include all matters before the commission, including, but not limited to, applications, licensing, and all other matters pertinent to the hearing or review, including, but not limited to, the preparation of pleadings and motions, settlement offers, subpoenas, depositions, oral arguments, presentation of the case, and other documents or material presented to the commission.

(c) Only individual attorneys may file appearances. Any attorney who has not filed an appearance may not address the hearing or review officer or sign pleadings or offers of settlement.

(d) All attorneys who appear in a representative capacity on behalf of a licensee, permit holder, subject of exclusion (under IC 4-31-13-1 and 71 IAC 2-10-1), or other person must file written notice of appearance setting forth the following:

(1) The name, address, and telephone number of the attorney.

(2) The name and address of the licensee, permit holder, subject of exclusion, or other person represented.

(3) An affirmative statement indicating that the attorney is licensed in Indiana and setting forth the attorney's number.

A representative of a licensee, permit holder, a subject of exclusion, or other person who is not an attorney must set forth the information requested in subdivisions (1) and (2).

(e) A member in good standing of the bar of the highest court of any state or of any United States District Court may, upon motion, be permitted to argue or conduct a hearing in whole or in part upon any condition the commission may impose.

(f) The commission may require an attorney or representative appearing before it to disclose the identity of the person the attorney or representative represents and to present proof that the attorney or representative is authorized to act on the client's behalf.

(g) An attorney may only withdraw his or her appearance upon written notice to the hearing officer. *(Indiana Horse Racing Commission; 71 IAC 10-5-1; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA) NOTE: Agency cited as 71 IAC 10-4-1, which was renumbered by the Publisher as 71 IAC 10-5-1.*

**71 IAC 10-5-2 Suspension and revocation of ability to practice before commission**

Authority: IC 4-31-3-9; IC 4-31-6-9

Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 2. (a) An attorney's ability to practice before the commission shall be automatically suspended without a hearing if the attorney's professional license is suspended or revoked.

(b) An attorney practicing before the commission may have his or her ability to appear suspended or revoked if, after a hearing, the commission finds the following:

(1) The attorney made a materially false or misleading statement in the attorney's written notice of appearance.

(2) The attorney willfully failed to exercise due diligence in the preparation or presentation of any motion, documents, or other matter related to the case filed with or presented to the review officer, hearing officer, or commission, or knowingly misrepresented a material fact to the review officer, hearing officer, or commission.



- (3) The attorney willfully violated or aided and abetted another in the violation of any provision of the Act or this title.
  - (4) The attorney:
    - (A) does not possess the requisite qualifications or expertise to represent others before the commission;
    - (B) lacks character and integrity; or
    - (C) has engaged in unethical or improper conduct.
  - (5) For any other action or reason that the commission deems necessary to warrant suspension or revocation of an attorney's ability to practice before the commission.
- (c) The commission may refer an attorney to the appropriate disciplinary commission or agency if the attorney engaged in any action listed in subsection (b). (*Indiana Horse Racing Commission; 71 IAC 10-5-2; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*) NOTE: Agency cited as 71 IAC 10-4-2, which was renumbered by the Publisher as 71 IAC 10-5-2.

**71 IAC 10-5-3 Reinstatement**

Authority: IC 4-31-3-9; IC 4-31-6-9  
Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 3. (a) An attorney whose ability to appear is suspended or revoked under section 2(a) of this rule shall automatically be reinstated to practice before the review officer, hearing officer, or commission at the time the attorney's professional license is reinstated.

(b) An attorney whose ability to appear is suspended or revoked under section 2 of this rule may be reinstated by the commission upon a showing of good cause. An applicant for reinstatement shall be afforded a hearing before the commission upon application. The commission may require that the applicant for reinstatement pay the reasonable costs of the proceeding.

(c) If the commission referred an attorney to a disciplinary commission or agency under section 2 of this rule, the attorney shall not be reinstated to practice before the commission before any disciplinary action initiated as a result of the referral has been completed. (*Indiana Horse Racing Commission; 71 IAC 10-5-3; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*) NOTE: Agency cited as 71 IAC 10-4-3, which was renumbered by the Publisher as 71 IAC 10-5-3.

**71 IAC 10-5-4 Effect of representation; service**

Authority: IC 4-31-3-9; IC 4-31-6-9  
Affected: IC 4-21.5-3-1; IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 4. (a) A person represented before the commission by an attorney or representative under this rule shall be bound by the acts or omissions of the attorney or representative to the same extent as if the person had acted or failed to act personally.

(b) In any appearance by an attorney or representative at any hearing or meeting of the commission, the client is deemed to have waived all privileges with respect to any information in the possession of the attorney or representative, or any testimony by the attorney or representative except for privileges afforded by the constitution or laws of Indiana, the rules of the Indiana supreme court, or the constitution or laws of the United States, where applicable.

(c) Service shall be made in accordance with IC 4-21.5-3-1. (*Indiana Horse Racing Commission; 71 IAC 10-5-4; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*) NOTE: Agency cited as 71 IAC 10-4-4, which was renumbered by the Publisher as 71 IAC 10-5-4.

**71 IAC 10-5-5 Obligations of truthfulness and due diligence**

Authority: IC 4-31-3-9; IC 4-31-6-9  
Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 5. (a) Attorneys or representatives appearing before the review officer, hearing officer, or commission shall not be

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intentionally untruthful, nor withhold any information that the review officer, hearing officer, or commission is entitled to receive, nor interfere with any lawful effort by the commission to obtain such information.

(b) Attorneys or representatives shall exercise due diligence in preparing or assisting in the preparation of documents for submission to the review officer, hearing officer, or commission.

(c) An attorney or representative appearing under this rule has a continuing responsibility on behalf of the attorney's or representative's client to monitor the accuracy and completeness of information submitted to the commission in any matters pertaining to the attorney's or representative's appearance on behalf of the client. To the extent not in conflict with the attorney-client privilege, whenever, during the pendency of an action or matter, an attorney of record becomes aware that information furnished to the commission is no longer accurate and complete in any material respect, the attorney shall promptly supplement or correct the information. (*Indiana Horse Racing Commission; 71 IAC 10-5-5; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*) NOTE: Agency cited as 71 IAC 10-4-5, which was renumbered by the Publisher as 71 IAC 10-5-5.

**71 IAC 10-5-6 Knowledge of client's omission**

Authority: IC 4-31-3-9; IC 4-31-6-9

Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 6. (a) An attorney or representative who knows that a client has not complied with the Act or this title, or that a client has made a material error in or a material omission in any information or testimony presented to the review officer, hearing officer, or commission, shall promptly advise his or her client of the fact of the noncompliance, error, or omission.

(b) To the extent not in conflict with the attorney-client privilege, the attorney shall advise the hearing officer, review officer, or commission of the noncompliance, error, or omission. (*Indiana Horse Racing Commission; 71 IAC 10-5-6; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*) NOTE: Agency cited as 71 IAC 10-4-6, which was renumbered by the Publisher as 71 IAC 10-5-6.

**71 IAC 10-5-7 Certification of documents**

Authority: IC 4-31-3-9; IC 4-31-6-9

Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 7. (a) Every pleading, motion, subpoena, settlement offer, brief, stipulation of fact, or other document prepared or filed on behalf of a client must be signed by the attorney or representative, and the signature shall constitute a certification that the document was prepared in conformity with the requirements of the Act and this title.

(b) An attorney or representative may not verify any document required to be verified by the petitioner. (*Indiana Horse Racing Commission; 71 IAC 10-5-7; emergency rule filed Mar 20, 2007, 1:43 p.m.: 20070404-IR-071070198ERA, eff Mar 16, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA*) NOTE: Agency cited as 71 IAC 10-4-7, which was renumbered by the Publisher as 71 IAC 10-5-7.

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