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Evidence review and refresher for administrative law proceedings

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EVIDENCE REVIEW and REFRESHER for ADMINISTRATIVE LAW PROCEEDINGS

February 11, 2020

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**EVIDENCE REVIEW and REFRESHER for
ADMINISTRATIVE LAW PROCEEDINGS**



Agenda

- 1:00 P.M. Registration & Coffee
1:15 P.M. Program Begins
2:45 P.M. Refreshment Break
4:30 P.M. Program adjourns

Faculty

Hon. J. Clare Deitchman

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February 11, 2020

WWW.ICLEF.ORG

J. Clare Deitchman

ALJ, Indiana State Department of Health

Clare Deitchman was appointed as an Administrative Law Judge for the Indiana State Department of Health in December 2012 and commenced conducting informal hearings in January 2013. Clare has also been a contract Administrative Law Judge for the State Department of Administration since June 2018.

Clare has worked as a corporate counsel, as a civil litigator, and as a not-for-profit attorney representing the best interests of children in Marion County Superior and Circuit Court Cases for seven (7) years. In January 2012, Clare opened her own solo general practice with a focus on family and business law. Clare has assisted the Marion County courts as a temporary or pro tem judge on an as needed basis during her career.

EDUCATION

Clare Deitchman commenced her legal career in 2002 after completing her Doctor of Jurisprudence at Indiana University School of Law – Indianapolis, Indiana. Clare also has a Masters of Business Administration degree from Butler University in Indianapolis, Indiana (1990), and a Bachelor of Fine Arts degree from Indiana University, Bloomington, Indiana (1983).

BAR ADMISSIONS

- Indiana – 2002
- United States District Court – Northern District of Indiana - 2002

Sandra L. Jensen

ALJ, Indiana Natural Resources Commission

Sandra L. Jensen has been an attorney licensed in Indiana since 1990, when she earned her J.D. from IU School of Law-Indianapolis. Jensen's legal career began as a Deputy Prosecuting Attorney in Marion County Indiana from 1990 to 1992 and in Clay County Indiana from 1992 to 1995. After a short time in private practice, Jensen served as a supervising attorney for the Indiana Civil Rights Commission until approximately 2000. Since that time she has devoted her career to environmental and natural resources law.

Jensen served as the Director of Criminal Investigations for the Indiana Department of Environmental Management for four years where she supervised the office's activities and actively participated in investigations. In this position she attended the Environmental Protection Agency's Advanced Environmental Crimes Investigation Training at the Federal Law Enforcement Training Center in Glynco, Georgia. In 2014, Jensen was promoted to serve as the Chief Administrative Law Judge for the Indiana Natural Resources Commission where she had previously served as an administrative law judge for ten years. For the Natural Resources Commission Jensen presides over cases involving diverse subjects including coal mining and reclamation, oil and gas production, forestry matters, floodway issues, and topics associated with Indiana's public freshwater lakes. Jensen is a registered mediator and serves as the Chair of the Indiana Shared Neutrals Program. She is a member of the Indiana State Bar Association and the Indiana Chapter of the National Association of Administrative Law Judiciary, for which she previously served as President.

Lorraine L. Seyfried

ALJ, Indiana Utility Regulatory Commission



Lorraine Seyfried is the Chief Administrative Law Judge for the Indiana Utility Regulatory Commission. She leads the Commission's staff of Administrative Law Judges who, along with the Commissioners, preside over docketed proceedings. She assists in the management of the Commission's hearing docket by making initial recommendations for case assignments and procedure, overseeing the hearing process, and providing advice in the preparation and review of Commission decisions. She earned a Bachelor of Arts Degree from Purdue University and a juris doctor degree from Southern Illinois University School of Law.

Evidence Refresher

1. Basics

- a. Purpose of evidence rules – ROE 102 (fairness, eliminate unjustifiable expense and delay, ascertain truth, and secure a just determination)

- b. Foundation - evidence must generally be:

- i. Authentic (it is what it is claimed to be)
- ii. Relevant (tending to make a material fact more, or less, true)

- c. Applicable Rules

- i. AOPA – Ind. Code § 4-21.5-3-26
- ii. Indiana Rules of Evidence

1. Testimonial

- a. authentic – ROE 602
- b. relevant – ROE 400s, 500s, 600s, 700s, and 800s

2. Tangible

a. authentic – ROE 901 and 902

b. relevant – ROE 400s, 500s, 800s, and 1001s

iii. Agency rules

d. Subpoenas

i. AOPA – Ind. Code §§ 4-21.5-3-22 and 4-21.5-6

ii. Indiana Rules of Civil Procedure – Rule 45

iii. Agency rules

2. Judicial and Administrative Notice

a. Types of things subject to judicial notice – ROE 201

b. Types of things subject to administrative notice – facts and laws

c. Mandatory or permissive

d. Requirements to take notice

3. Offers to Prove

- a. Requirements for verbal and tangible evidence
- b. Consequences if not made
- c. Practical considerations – e.g., clearly identifying in the record the beginning and ending of the excluded evidence

4. Expert v. Lay Testimony - ROE 700s

- a. Facts
- b. Opinions
- c. Skilled witnesses

5. Common Objections and Things to Think about

- a. Objections
 - i. Hearsay – ROE 800s, AOPA, and agency rules
 - ii. Irrelevant
 - iii. Leading

- iv. Calls for a legal conclusion
- v. Non-responsive (followed by motion to strike)
- vi. Assumes facts not in evidence or calls for speculation
- vii. Compound questions
- viii. Asked and answered
- ix. Argumentative

b. Things to think about

- i. Role of Counsel (articulate objection) v. Role of Judge (rule on objection)
- ii. Use of preliminary questions to assist counsel in properly formulating objections
- iii. For what purpose is the evidence being offered (e.g., substantive evidence, impeachment, demonstrative)
- iv. Rulings on relevancy and sufficiency of foundation are matters within agency discretion and will be reversed only for an abuse of discretion

- v. When objection is to relevancy – objection is essentially challenging the weight the evidence should be given rather than its admissibility
- vi. Direct-examination v. cross-examination (e.g., leading questions are ok on cross-examination, but not on direct-examination)
- vii. Who may offer evidence (party v. non-party)



Evidence Review & Refresher

For Administrative Law Proceedings



Purpose

- **Rule of Evidence 102**
 - **Administration of fair proceeding**
 - **Elimination of unjustifiable expense and delay**
 - **Ascertaining truth**
 - **Securing just determination**
- **Ind. Code §§ 4-21.5-3-25 & 26**



Foundation for Admissibility

Authentic


- Rules of Evidence 901 & 902
- Ind. Code § 4-21.5-3-26


Relevant

- Rule of Evidence 401
- Ind. Code § 4-21.5-3-26



Applicable Requirements

- **Indiana Rules of Evidence**
 - **AOPA – Ind. Code §§ 4-21.5-3-25, 26, & 28(e)**
 - **Other Statutes (AOPA exempt agencies)**
 - **Agency Rules**
- 



Subpoenas

- **AOPA – Ind. Code § 4-21.5-3-22,
§ 4-21.5-6-2**
- **Rule 45 of the Indiana Rules of Trial Procedure**
- **Agency Rules**



Judicial & Administrative/Official Notice

- **Rule of Evidence 201**
- **Ind. Code § 4-21.5-3-26(f)&(g)**
- **Facts & Laws**



Offers to Prove

- **Rule of Evidence 103**
- **Ind. Code § 4-21.5-3-25(e)**
- **Testimonial v Tangible Evidence**
- **Practical Considerations**



Expert, Skilled, and Lay Testimony

- **Facts**
- **Opinions**



Common Objections

- **Hearsay**
- **Relevancy**
- **Calls for a Legal Conclusion**
- **Others**