

**37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND THE WATER RESOURCE BOARD**

**205. STANDARDS OF CONDUCT.**

**01. Participant Standards.** All persons participating in or attending a contested case proceeding before the agency must conduct themselves in an ethical, courteous, and respectful manner during all phases of the proceeding. The presiding officer may exclude a person from a proceeding who in manner or appearance is disruptive or disrespectful. Disruptive conduct or appearance that is serious in nature may be cause for dismissal of the disrupting party from the proceeding.

**02. Presiding Officer Standards.** Presiding officers must maintain neutrality, independence, and freedom from outside influence. The agency head shall establish a presiding officer code of conduct that, among other things, provides for independent and unbiased decision-making by presiding officers both as perceived and in fact. Failure of a presiding officer to comply with the code of conduct or applicable rules of procedure may result in corrective action.

**414. EX PARTE COMMUNICATIONS.**

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, upon commencement of formal proceedings under Rule 100 the following restrictions apply:

**01. Presiding Officer Communications.** ~~Thea~~ presiding officer ~~—serving in a contested case, the agency head, and any attorney allowed to provide counsel to the presiding officer~~ shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, agency staff, government official, or member of the general public, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ~~ex parte with a party concerning~~ strictly about procedural or scheduling matters (e.g., scheduling) with any party, agency staff, government official, or member of the general public, provided no substantive issue is discussed. ~~Communications with a presiding officer regarding non-substantive issues from members of the general public not associated with any party are not required to be reported by this rule. This rule does not prohibit the presiding officer from requesting and receiving agency staff reports or memoranda as provided in Rule 602, provided all requirements of Rule 602 are followed.~~

**02. Party Communications.** A party to a contested case ~~before the agency~~ shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case, except upon notice and opportunity for all parties to participate in the communication. Written communications from a party showing service upon all other parties are not ex parte communications.

**03. Prohibited Communications.**~~When a presiding officer becomes aware of a communication regarding any substantive issue from a party or representative of a party or a member of the general public during a contested case, If a prohibited communication occurs,~~ the presiding officer shall place a copy or written summary of the communication in the case file, for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record serve it upon all parties of record, and provide an opportunity for parties to respond. Repeated violations of this rule are cause for the presiding officer to dismiss an action or to dismiss a party from a contested case. ~~Written communications from a party showing service upon all other parties are not ex parte communications.~~

**415. PRESIDING OFFICER LEGAL COUNSEL.**

The presiding officer may be assisted by legal counsel provided by the Idaho Office of Attorney General. The role of such legal counsel is limited to providing legal assistance to the presiding officer in connection with the contested case. An attorney providing legal assistance to the presiding officer shall not consult with or represent any agency

employee or contractor in connection with the contested case, examine witnesses, present oral argument, or provide to the presiding officer any factual information that is not in the agency record created under section 67-5249, Idaho Code.

**4156. -- 509. (RESERVED)**

**551. VENUE, FACILITIES ~~AT OR~~ FOR HEARING, AND A.D.A. REQUIREMENTS.**

01. Venue. In general, in-person hearings should be held in the county where the subject matter of the contested case arises, unless the parties agree to hold the hearing in a different location. Hearings may be conducted in Department offices. The presiding officer has the discretion to select a venue for hearing that ensures a fair, efficient, and economical determination of the issues presented in the contested case.

02. Facilities and A.D.A. Requirements. All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the assistance request must be made.