

CHAPTER 6 DECERTIFICATION

PRACTICE AND PROCEDURE

[Ch 6 re Organization and Administration transferred to Ch 1, 4/10/85 IAC]
[Prior to 3/11/87, Law Enforcement Academy[550] Ch 6]

501—6.1(80B) Scope of rules. The rules contained in this chapter pertaining to practices and procedures are designed to implement the requirements of Iowa Code chapters 80B and 17A. These rules shall govern the practice, procedures, and conduct of contested case proceedings held in the revocation of a law enforcement officer's certification.

6.1(1) *Computation of time and filing of documents.* The computation of time and filing of documents shall be in compliance with Iowa Code section 4.1(22).

6.1(2) *Business hours.* The principal office of the Iowa Law Enforcement Academy Council shall be Camp Dodge, Iowa. Business hours shall be between the hours of 8:00 a.m. and 4:30 p.m. each weekday except Saturdays, Sundays, and legal holidays as prescribed in the Code, for the purpose of receiving protests, pleadings, petitions, motions, requests for public information, copies of official documents, or for the opportunity to inspect public records.

All documents or papers required to be filed with the council by these rules shall be filed with the director or designee at the Iowa Law Enforcement Academy, Camp Dodge, Iowa.

All documents or papers required to be filed with the council shall be delivered to the council's (principal) office within time limits as prescribed by law or by rules or orders of the council. No papers shall be considered filed until actually received by the director or designee.

In all cases where the time for filing of a protest or an appeal or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

6.1(3) *Form and style of paper.* All pleadings, briefs, and motions or other documents filed with the council shall be typewritten, shall have a proper caption and a signature and copies as herein provided or as specified in some other rule. The proper caption shall be placed in full upon the first paper filed.

The signature of the petitioner, party, or other authorized representative, shall be subscribed in writing to the original of all pleadings, petitions, briefs or motions and shall be an individual and not a firm name. The name and mailing address of the party or representative actually signing shall be typed or printed immediately beneath the written signature. The signature shall constitute a certification that the signer has read the written document; that to the best of the signer's knowledge, information and belief every statement contained in the document is true and no statement is misleading; and that it is not interposed for delay.

Every pleading, brief or motion shall bear a proof of service upon the opposing party as provided by the Iowa rules of civil procedure. Except as otherwise provided in these rules or ordered by the council, an original and three copies of every pleading, brief, motion or petition shall be filed. This shall not be construed to apply to exhibits, documents or papers offered as evidence.

501—6.2(80B,80D) Grounds for revocation.

6.2(1) *Mandatory revocation.* The council shall revoke a law enforcement officer's certification or a reserve peace officer's certification if:

- a. The law enforcement officer or reserve peace officer pleads guilty to or is convicted of a felony;
- b. The law enforcement officer or reserve peace officer manufactures, sells, or conspires to manufacture or sell an illegal drug;
- c. The law enforcement officer or reserve peace officer pleads guilty to or is convicted of domestic abuse or other offenses stemming from domestic abuse.

6.2(2) *Discretionary revocation.* The council, at its discretion, may revoke or suspend a law enforcement officer's or a reserve peace officer's certification under any of the following circumstances:

- a. The law enforcement officer or reserve peace officer has been discharged for "good cause" from employment as a law enforcement officer or from appointment as a reserve peace officer.

b. The law enforcement officer or reserve peace officer leaves, voluntarily quits, or the officer's position is eliminated when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged or the reserve peace officer being removed for "good cause."

c. The law enforcement officer or reserve peace officer:

(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the Iowa law enforcement academy council to take or withhold action.

(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency or any other public document required to be completed by the officer.

(3) Testifies falsely in any court of law or administrative hearing.

(4) Pleads guilty to or is found guilty of a crime, or an internal affairs investigation substantiates an act by the officer involving moral turpitude as defined in 501—subrule 2.1(5), including but not limited to:

1. Income tax evasion;
2. Perjury, or its subornation;
3. Theft;
4. Indecent exposure;
5. Sex crimes;
6. Conspiracy to commit a crime;
7. Defrauding the government;
8. Assault;
9. Stalking; and
10. Any offense in which a weapon was used in the commission of a crime.

(5) Uses or possesses an illegal substance other than in connection with official duties.

(6) Fails to comply with the requirements of 501—Chapter 8 and 501—Chapter 10 relative to in-service training.

(7) Is decertified in any other state where the law enforcement officer or reserve peace officer may be certified.

d. The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency, including fees paid to the academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy if the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) A written agreement or contract of employment must be entered into by the officer and the employing agency contemporaneously with the date of employment. The agreement shall specifically provide for the reimbursement to the employing agency by the officer of the costs of training incurred by the employing agency, including fees paid to ILEA, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy. The agreement must:

1. Specify the amount of reimbursement that the officer agrees to pay;

2. Set forth the time period within which this reimbursement will be made, which shall be on a declining scale similar to the provisions of Iowa Code section 384.15(7);

3. Contain a statement that if reimbursement is not made in accordance with the agreement, the officer understands that the employing agency may at its option seek the officer's decertification as an Iowa law enforcement officer; and

4. Contain a provision to the effect that the agreement or contract of employment is for bona-fide employment of the officer and not for the purpose of achieving certification for the officer by way of "sponsorship" through the academy.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule; and

1. Have attached a copy of the agreement referred to in subparagraph (1) above;

2. Include an order of judgment from a small claims or civil court;

3. State that the officer has not made reimbursement to the employing agency as provided in the agreement, and clearly describe the nature of the default;

4. List an accounting of all payments made by the officer to the employing agency under the agreement, and specify the balance due;

5. State that written notice of the default or judgment has been given to the officer, that the officer has been provided opportunity to correct the default, and that there remains no reasonable alternative to decertification;

6. Specifically recommend that the Iowa law enforcement academy council commence proceedings to decertify the officer, and state that the employing agency will do all things necessary to cooperate in this effort; and

7. Set out the last-known address of the officer, the officer's telephone number, and the officer's last-known place of employment.

(3) The recommendation for decertification must be submitted to the academy not more than one year after the date of the officer's default, unless the Iowa law enforcement academy council, upon written application and for good cause shown, grants further time in which to submit the recommendation.

501—6.3(80B) Prehearing procedures.

6.3(1) Subpoenas. Prior to the commencement of a contested case, the council may exercise the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law.

6.3(2) Commencement of contested case proceedings. Contested case proceedings shall be commenced by the filing of a notice by the council or its designee requiring the affected law enforcement officer to appear and show cause why certification to be a law enforcement officer in the state of Iowa should not be revoked or suspended. Notice may be given in the same manner as the service of original notice or may be by certified mail, return receipt requested, which shall be sent no fewer than 30 days before the date set for the hearing. The petition shall include:

1. A statement of the time, place and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is held.
3. A reference to the particular sections of the statutes and rules involved.
4. A short and plain statement of the grounds for revocation or suspension and all other relevant facts.

Notice may also be sent in the manner aforementioned or by ordinary mail to any other interested party. After the delivery of the notice commencing the contested case proceedings, the presiding officer may allow further response of pleadings by the party as in the presiding officer's discretion is deemed necessary and appropriate.

6.3(3) Discovery. The rules of the Iowa supreme court applicable in civil proceedings with respect to depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and request for admission shall apply to discovery procedures in contested case proceedings.

All applications for the taking of discovery shall be submitted to the presiding officer who shall determine the frequency of use of these discovery methods as in the presiding officer's discretion is deemed necessary or appropriate to aid the parties in preparation of the contested case proceeding, narrowing issues or valid reasons. When the council relies on a witness in a contested case, whether or not associated with the council, who has made prior statements or reports with respect to the subject matter of the witness's testimony, it shall, on request, make such statements or reports available to a party for use on cross-examination. Identifiable council records that are relevant to disputed material facts involved in a contested case shall, upon request, promptly be made available to the party.

Evidence obtained in such discovery may be used in contested case proceedings if the evidence would otherwise be admissible in the contested case proceedings.

6.3(4) Prehearing conference. The council or its designee, acting as presiding officer, upon the presiding officer's own motion or upon the written request of one of the parties may, in the presiding

officer's discretion and upon written notice, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

- a. The possibility or desirability of waiving any provision of these rules relating to contested case proceedings by written stipulation representing an informed mutual consent.
- b. A necessity or desirability of setting a new date for hearing.
- c. The simplification of issues.
- d. The necessity or desirability of amending the pleadings for purposes of clarification, amplification or limitation.
- e. The possibility of agreeing to the admission of facts, documents or records not substantially controverted, to avoid unnecessary introduction of proof.
- f. The procedure at the hearing.
- g. Limiting the number of witnesses.
- h. The names and identification of witnesses and the facts each party will attempt to prove at the hearing.
- i. Other matters as may aid in, expedite or simplify the disposition of the proceeding.

Since the stipulations are encouraged, it is expected and anticipated that the parties proceeding to a hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or should not fairly be in dispute. Any action taken at the prehearing conference shall be recorded in an appropriate manner unless the parties enter upon a written stipulation as to such matters or agree to a statement thereof made on the record by the presiding officer.

When an order is issued at determination of a prehearing conference, a reasonable time shall be allowed to the parties to present objections on the ground that it does not fully or correctly embody the agreements at the conference. Thereafter, the terms of the order or modification thereof shall determine the subsequent course of the proceedings relative to matters it includes unless modified to prevent manifest injustice.

501—6.4(80B) Hearing procedure.

6.4(1) *Contested case proceeding.* Unless the parties to a contested case proceeding have by written stipulation representing an informed mutual consent waived the provisions of the Act relating to the proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Evidentiary hearings shall be held at the council's principal office, Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, except that a case may be assigned for hearing elsewhere when deemed necessary to afford a party an opportunity to appear at the hearing with as little inconvenience and expense as practicable. Parties shall have been notified of the date and place of the hearing at least 30 days prior thereto.

6.4(2) *Conduct of the proceedings.* A proceeding shall be conducted by a presiding officer who, among other things, shall:

1. Open the record and receive appearances;
2. Administer oaths and issue subpoenas;
3. Enter the notice of hearing into the record;
4. Receive testimony and exhibits presented by the parties;
5. In the officer's discretion, interrogate witnesses;
6. Rule on objections and motions;
7. Close the hearing;
8. Issue an order containing findings of fact and conclusions of law. This ruling shall be no later than 60 days after the conclusion of the hearing.

a. Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the council for at least five years from the date of the decision.

b. An opportunity shall be afforded to the parties to respond and argue on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

1. Council designee.
2. Law enforcement officer.
3. Rebuttal by council designee.
4. Oral argument by parties (if necessary).

c. If the law enforcement officer is not represented by anyone qualified by these rules to make an appearance, the presiding officer shall explain to the law enforcement officer the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when a law enforcement officer has a representative qualified to appear. It should be the purpose of the presiding officer to assist any law enforcement officer who appears without a representative to the extent necessary to allow a fair presentation of evidence, testimony and arguments on the issues.

d. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner or in accordance with the terms of the waiver agreement.

e. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the officer's own motion or upon the motion of a party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

f. Contemptuous conduct by any person appearing at a hearing shall be grounds for that person's exclusion from the hearing by the presiding officer.

6.4(3) Rules of evidence. The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating evidence.

6.4(4) Oath. All testimony presented before the presiding officer shall be given under oath which the presiding officer has authority to administer.

6.4(5) Production of evidence and testimony. The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

a. When the council initially presides at a hearing, or considers an appeal from or review of the administrative presiding officer's decision, the order becomes the final order of the council for purposes of judicial review or rehearing. When the presiding officer makes a ruling pursuant to a contested case proceeding, that ruling or order becomes the final order of the council for purposes of rehearing unless there is an appeal to or review on motion of the council within 20 days. In such an appeal or review the council has all the power which the council would initially have had in making the decision. However, the council will only consider those issues or selected issues presented before the presiding officer. The parties will be notified of those issues which will be considered by the council.

b. The council may, however, allow a complete de novo hearing of the contested case in its discretion.

c. Orders will be issued within 60 days of the conclusion of the hearing unless good cause exists for a further period of time, not to exceed a reasonable period. Parties shall be promptly notified of each order by personal service or certified mail, return receipt requested.

6.4(6) Record. The record in a contested case shall include:

1. All pleadings, motions, and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. The order of the presiding officer.

6.4(7) Rehearing. Any party may file application for rehearing from a final decision of the council within 20 days of the issuance of a final decision in a contested case. Application is deemed denied unless granted within 20 days of filing.

These rules are intended to implement Iowa Code section 80B.11 and Iowa Code chapter 80D as amended by 2007 Iowa Acts, Senate File 110.

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