

CHAPTER 2
GENERAL PRACTICE AND HEARING PROCEDURES

621—2.1(20) Hearing—time and place—administrative law judge. A member of the board or an administrative law judge shall fix the time and place for all hearings. Hearings may be conducted by the board, or by one or more of its members, or by an administrative law judge designated by the board. At their discretion the board or administrative law judge may order a prehearing conference.

621—2.2(20) Notice of hearing—contents. Written notice of the hearing shall be delivered by the board to all parties by ordinary mail. The notice shall include:

- 2.2(1) A statement of the time, place and nature of hearing.
- 2.2(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- 2.2(3) A reference to the particular sections of the statutes and rules involved.
- 2.2(4) A short and plain statement of the matters asserted.

621—2.3(20) Failure to appear. If a party fails to appear after proper service of notice, the administrative law judge may, if no continuance is granted, proceed with the hearing and render a decision in the absence of the party.

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, the rules set forth in 4.3(2), 4.4(4) and 5.1(4) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered the board shall serve upon such additional parties all relevant pleadings, and allow such parties a reasonable time to respond thereto where appropriate.

621—2.5(20) Continuance. Hearings or proceedings on any matter may be continued by order of the board or an administrative law judge, with the reasons therefor set out in said order, and notice thereof to all parties. Parties may, upon written application to the board prior to commencement of the hearing or other proceeding, or oral application to the administrative law judge during the hearing, but not ex parte, request a continuance. A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the board or administrative law judge that a proper decision or result will be more nearly obtained by granting a continuance. The continuance may also be granted if agreed to by all parties and approved by the board or administrative law judge.

621—2.6(20) Appearances and conduct of parties. Any party may appear and be heard on its own behalf, or by its designated representative. Designated representatives shall file a notice of appearance with the board for each case in which they appear for a party. Filing of pleadings on behalf of a party shall be equivalent to filing a notice of appearance. All persons appearing in proceedings before the board shall conform to the standard of ethical conduct required of attorneys before the courts of the state of Iowa. If any person refuses to conform to such standards, the board may decline to permit such person to appear in any proceeding.

621—2.7(20) Evidence—objections. Rules of evidence shall be those set forth in the Administrative Procedure Act. Any objection with respect to the conduct of the hearing, including an objection to the

introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

621—2.8(20) Order of procedure. The employer shall present its evidence first in unit determination hearings. The complainant shall present its evidence first and shall have the burden of proof in prohibited practice hearings. Intervenors shall follow the parties in whose behalf the intervention is made; if not made in support of a principal party, the administrative law judge shall designate at what stage such intervenors shall be heard. The order of other parties shall be determined by the administrative law judge. All parties shall be allowed cross-examination and an opportunity for rebuttal. At any stage of the hearing or after the close of the hearing but prior to decision, the board or administrative law judge may call for further evidence to be presented by the party or parties concerned.

621—2.9(20) Amendments. A petition, complaint or answer may be amended for good cause shown, but not ex parte, upon motion at any time prior to the decision. Allowance of such amendments, including those to conform to the proof, shall be within the discretion of the board or administrative law judge. The board or administrative law judge may impose terms, or grant a continuance with or without terms, as a condition of such allowance. Such motions prior to hearing shall be in writing filed with the board, and the moving party shall serve a copy thereof upon all parties by ordinary mail.

621—2.10(20) Briefs and arguments. At the discretion of the board or administrative law judge, oral arguments may be presented by the parties with such time limits as determined by the board or administrative law judge. Briefs may be filed in such order and within such time limits as set by the board or administrative law judge.

621—2.11(20) Sequestration of witnesses. Upon its own motion, or the motion of any party, the board or administrative law judge may order the sequestration of witnesses in any proceeding.

621—2.12(20) Subpoenas.

2.12(1) Attendance of witnesses. The board, administrative law judge, or board appointed fact finder or arbitrator shall issue subpoenas to compel the attendance of witnesses and the production of relevant records upon written application of any party filed with the board prior to the hearing or oral motion at the hearing. The party requesting subpoenas shall serve the subpoenas, and notify the board in writing prior to hearing, or orally at the time of hearing, of the names and addresses of the witnesses or the person or party having possession of the requested documents. Where a subpoena has been served more than seven days prior to the hearing, a party may move to quash the subpoena not less than three days prior to the hearing. Subpoenas for production of records shall list with specificity the items sought for production and the name and address of the person or party having possession or control thereof. A motion to quash subpoenas may be filed with the board prior to hearing or with the hearing officer, fact finder or arbitrator at the time of hearing. The motion filed prior to hearing shall be in writing, and the moving party shall provide copies to all parties of record.

2.12(2) Witness fees. Witnesses shall receive from the subpoenaing party fees and expenses as are prescribed by statute for witnesses in civil actions before a district court. Witnesses may, however, waive such fees and expenses.

2.12(3) Service of subpoenas. Subpoenas shall be served as provided in Iowa Code section 622.63.

621—2.13(20) Form of documents. All documents, other than forms provided by the board, which relate to any proceeding before the board should be typewritten and bear the docket number of the pro-

ceeding to which it relates. Such documents may be single- or double-spaced at the option of the submitting party.

621—2.14(20) Captions. The following captions for documents other than forms provided by the board are suggested for use in practice before the board:

2.14(1) In prohibited practice proceedings:
Before the Public Employment Relations Board

XYZ, Complainant and J. Doe, Respondent	}	[name of document] Case No. <u>1234</u>
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2.14(2) In proceedings pursuant to a petition:
Before the Public Employment Relations Board

In the matter of XYZ, Public Employer and J. Doe, Petitioner	}	[name of document] Case No. <u>1234</u>
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621—2.15(20) Service of pleadings and other papers.

2.15(1) Service—upon whom made. Whenever under these rules service is required to be made upon a party, such service shall be as follows:

- a. Upon any city, or board, commission, council or agency thereof, by serving the mayor or city clerk.
- b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor or the chairperson of the county board of supervisors.
- c. Upon any school district, school township, or school corporation by serving the presiding officer or secretary of its governing body.
- d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of personnel.
- e. Upon the state judicial department by serving the state court administrator.
- f. Upon any other governing body by serving its presiding officer, clerk or secretary.
- g. Upon an employee organization by serving the person designated by the employee organization to receive service pursuant to 8.2(2), or, by service upon the president or secretary of the employee organization.
- h. Upon any other person by serving that person or that person’s attorney of record.

2.15(2) Service—how made. Except as provided in rules 3.4(20) and 5.7(20) and subrules 2.12(3) and 4.2(2), whenever these rules require service upon any person or party the service shall be sufficient if made by ordinary mail.

2.15(3) Proof of service. Where service is by restricted certified mail or personal service, the serving party shall forward the return receipt or return of service to the board for filing. Where service by ordinary mail is permitted under these rules, the serving party shall include the following certificate on the original document filed with the board:

“I hereby certify that on _____ I sent a copy of the foregoing matter to
(date)
the following parties of record or their representatives at the addresses indicated, by depositing same in a United States mail receptacle with sufficient postage affixed.
(Signed) _____”
(party or representative)

621—2.16(20) Consolidation. Upon application of any party or upon its own motion, the board or an administrative law judge may consolidate for hearing any cases which involve common questions of law or fact.

621—2.17(20) Prohibition against testimony of mediators, fact finders, arbitrators and board employees. A mediator, fact finder, arbitrator, labor relations examiner, administrative law judge, member of the board or other officer or employee of the board shall not testify on behalf of any party to a prohibited practice, representation or impasse resolution proceeding, pending in any court or before the board, with respect to any information, facts, or other matter coming to that individual’s knowledge through a party or parties in an official capacity as a resolver of disputes.

621—2.18(20) Delivery of decisions and orders. Decisions and orders of the board or administrative law judge shall be delivered to the parties by ordinary mail.

621—2.19(20) Stays of agency action. Application for stays of agency actions must be filed with the board and served upon all interested parties pursuant to rule 2.15(20). The board may in its discretion and on such terms as it deems proper, grant or deny an application.

621—2.20(20) Ex parte communications.

2.20(1) Communications prohibited. Unless required for the disposition of ex parte matters specifically authorized by statute, an individual assigned to render a proposed or final decision or to make findings of fact or conclusions of law in a contested case, or a declaratory ruling in which there are two or more parties, shall not communicate directly or indirectly with any person or party, nor shall such person or party communicate directly or indirectly with such an individual concerning any issues of fact or law pending in that case, unless each party or its representative is given prior written notice of the communication. Such notice shall contain a summary of the communication, if oral, or a copy of the communication if written, and the time, place and means of such communication.

2.20(2) Disclosure of prohibited communications. Any communication between a party and an individual assigned to render a proposed or final decision, or to make findings of fact or conclusions of law in a contested case, or a declaratory ruling where there are two or more parties, which is made under circumstances and procedures which do not substantially comply with those set forth in subrule 2.20(1) is a prohibited communication. The recipient of a prohibited communication is required to submit the communication if written, or a summary of the communication if oral, for inclusion in the record of the case proceeding. After such submission, all parties shall have the right, upon written demand, to respond to such communication.

2.20(3) Penalty for prohibited communications.

a. The penalty for making a prohibited communication may be censure, suspension, or revocation of the privilege to practice before the board in the case of a party or their representative; and censure, suspension, or dismissal in the case of agency personnel.

b. The censure, suspension or revocation of a person's right to practice before the board due to an alleged violation of the prohibition against ex parte communications shall constitute a contested case as that term is defined in Iowa Code section 17A.2 and no person shall be censured or the right to practice before the board be suspended or revoked without notice and an opportunity to be heard as provided in Iowa Code chapter 17A, "The Iowa Administrative Procedure Act."

621—2.21(20) Transcripts of record. Testimony in all hearings before the board shall be taken by a certified shorthand reporter or, unless a party objects, by other mechanized means. The board does not furnish copies of transcriptions, but recorded proceedings shall be transcribed at the expense of any party requesting the transcription. Arguments on motions, oral arguments on appeal to the board, and arguments made in declaratory ruling and expedited negotiability dispute proceedings, need not be recorded.

621—2.22(20) Dismissal. The board or an administrative law judge may dismiss cases for want of prosecution if, after receiving notice by certified mail, the parties do not show good cause why the case should be retained.

These rules are intended to implement Iowa Code chapter 20.

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