

CHAPTER 25  
ELECTION ADMINISTRATION—ADMINISTRATIVE COMPLAINT PROCEDURE

**721—25.1(17A,39A,47) General provisions.**

**25.1(1) *Scope of jurisdiction.*** The administrative complaint procedure set forth in this chapter is established to comply with Title IV, Section 402, of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15512. The procedure is available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

**25.1(2) *Timely resolution.*** A final determination with respect to a complaint shall be issued within 90 days of the date the complaint is filed with the state commissioner of elections, unless the complainant consents to a longer period for making such determination. If a determination is not issued within this 90-day period and the complainant does not agree to allow a longer period for making the determination, the complaint shall be resolved within 60 days pursuant to the alternate dispute resolution procedure established in rule 721—25.34(17A).

**25.1(3) *Definitions.*** For purposes of this chapter, the following terms shall have the following meanings:

“*Complainant*” means the person who files a complaint under this chapter.

“*Federal election*” means a primary or general election at which a federal office appears on the ballot.

“*Party*” means the complainant, respondent, and any other person or persons allowed by the presiding officer to intervene in pending complaint proceedings.

“*Presiding officer*” means the state commissioner of elections or an alternate decision maker designated pursuant to rule 721—25.7(17A,39A,47).

“*Respondent*” means any state or local election official whose actions are asserted, in a complaint under this chapter, to be in violation of Title III.

“*State or local election official*” means the state commissioner of elections, any county commissioner of elections, or any person employed or appointed by either the state commissioner of elections or a county commissioner of elections whose responsibilities include or directly relate to the administration of any federal election.

“*Title III*” means Title III of the Help America Vote Act of 2002, Public Law 107-252, codified at 42 United States Code 15481-15485.

**721—25.2(17A,39A,47) Form of complaint.** This complaint procedure is limited to allegations of violations of Title III in a federal election. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local election official may file a complaint under this chapter. The complainant may either submit a complaint on a form provided by the state commissioner of elections or in any other form that complies with this rule. All complaints shall be in writing, signed and notarized, and be sworn under oath. The complaint must identify the complainant by name and mailing address and include a clear and concise description of the alleged violation that is sufficiently detailed to apprise both the respondent and the presiding officer of the nature of the alleged violation. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint.

**721—25.3(17A,39A,47) Filing, service, and initial review of complaint.**

**25.3(1) Filing.** The complaint shall be filed with the state commissioner of elections and shall be accompanied by adequate proof of service of the complaint, as required by subrule 25.3(2).

**25.3(2) Service.** Service of a complaint upon each respondent shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the respondent or the respondent's duly authorized legal representative.

**25.3(3) Initial review of complaint.**

*a.* The director of elections within the office of the state commissioner of elections shall examine each complaint to determine whether it falls within the jurisdiction of these rules and may reject it if:

- (1) It is not signed, notarized, or sworn under oath;
- (2) It does not identify the complainant or include an adequate mailing address;
- (3) It does not, on its face, allege a violation of Title III with regard to a federal election; or
- (4) More than 90 days have elapsed since the final certification of the results of the federal election at issue.

*b.* A determination as to jurisdiction shall be made within five business days of the date of filing of the complaint.

*c.* If the complaint is rejected, the director shall issue a written statement specifying the reasons for the rejection and provide copies of the statement to the complainant and all respondents by regular mail.

*d.* If the complaint is accepted, the complaint and any accompanying documentation shall be forwarded to the presiding officer for further action in accordance with these rules.

**721—25.4(17A,39A,47) Notice of proceedings.** Upon receipt of a complaint from the director of elections, the presiding officer shall establish a schedule under which the complainant and respondent(s), as well as any other interested persons, may file any written submissions or documentary evidence concerning the complaint and under which a hearing on the complaint will be conducted, if requested. The presiding officer shall serve notice of the proceeding upon the complainant and the respondent(s). The notice shall include:

1. A statement of the legal authority and jurisdiction under which the proceeding is being conducted;
2. A reference to the particular section or sections of Title III which are involved;
3. A reference to the procedural rules governing conduct of the proceeding;
4. A short and plain statement of the matters asserted in the complaint;
5. Identification of all parties or known representatives of parties;
6. The deadline for submission of an answer by the respondent(s) or written documentation by any interested persons;
7. The deadline by which either party may request an evidentiary hearing; and
8. Any other information deemed appropriate.

**721—25.5(17A,39A,47) Informal settlement.** The presiding officer, or a designated staff member, may attempt to informally settle a complaint proceeding before or after a notice of the proceeding is issued. If a staff member is designated to initiate settlement discussions, the designee shall have authority to negotiate on behalf of the presiding officer, but shall not have authority to bind the presiding officer to particular terms of settlement. If the presiding officer and respondent(s) agree to settlement of a pending complaint, a consent order shall be issued. By electing to sign a consent order, the respondent(s) waives all rights to a hearing and all attendant procedures. The consent order shall have the force and effect of a final order of the presiding officer and shall be served and published as provided in rule 721—25.28(17A).

**721—25.6(17A,39A,47) Answer.**

**25.6(1)** Within ten days of the date of service of notice of the proceedings, each respondent shall file an answer to the allegations contained therein and serve a copy of the answer upon all parties to the proceedings, pursuant to rule 721—25.16(17A,39A,47).

**25.6(2)** The answer shall contain the following information:

*a.* The full name, address and telephone number of the respondent and the respondent's counsel, if any; and

*b.* A specific statement admitting or denying each allegation in the complaint.

**25.6(3)** The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the proceeding, including explanations, remarks or statements of mitigating circumstances, and any relevant documentation.

**721—25.7(17A,39A,47) Presiding officer.**

**25.7(1)** In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections.

**25.7(2)** In complaint proceedings in which one of the respondents is the state commissioner of elections or a person or persons employed or appointed by the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to Iowa Code section 47.8, except the state commissioner of elections or the state commissioner's designee.

**25.7(3)** Any party to a complaint proceeding who wishes to request that the presiding officer be an administrative law judge employed by the department of inspections and appeals must file a written request within five days after service of a notice of proceedings which identifies the presiding officer as the state commissioner of elections or voter registration commission. The state commissioner of elections or voter registration commission may deny the request only upon a finding that one or more of the following apply:

*a.* The presiding officer under whose authority the proceeding is to take place is not a named party to the proceeding or a real party in interest to that proceeding.

*b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

*c.* The proceeding involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

*d.* The demeanor of the witnesses is likely to assist the presiding officer in resolving disputed factual issues.

*e.* The request was not timely filed.

*f.* The request is not consistent with a specified statute.

**25.7(4)** The originally designated presiding officer shall issue a written ruling specifying the grounds for the ruling within ten days after a request for an administrative law judge is filed. If the request is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision shall have a J.D. degree, unless waived by the originally designated presiding officer.

**25.7(5)** The state commissioner of elections or voter registration commission, when acting as presiding officer, may request that an administrative law judge perform certain functions as an aid to the presiding officer, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the state commissioner of elections or voter registration commission.

**25.7(6)** All rulings by an administrative law judge whether the judge is acting as presiding officer or assistant to the state commissioner or voter registration commission are subject to appeal to the originally designated presiding officer pursuant to rules 721—25.29(17A) and 25.30(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies.

**25.7(7)** Unless otherwise provided by law, the state commissioner or voter registration commission, when reviewing a proposed decision of an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**721—25.8(17A,39A,47) Proceedings based upon written submissions.**

**25.8(1)** In order to expedite resolution of complaint proceedings, complaints shall be evaluated and a decision rendered based upon written submissions unless the complainant or respondent requests a hearing on the record or the presiding officer determines that an evidentiary hearing will assist in resolution of outstanding factual disputes.

**25.8(2)** The presiding officer will not issue a decision upon the written submissions prior to the expiration of the time within which the complainant and respondent may request a hearing on the record unless both the complainant and respondent file a written waiver of the right to hearing under these rules.

**721—25.9(17A,39A,47) Written decisions, available remedies.**

**25.9(1) *Decision format.*** All final determinations resolving complaint proceedings shall be in writing and shall include findings of fact and conclusions of law as required by Iowa Code section 17A.16(1).

**25.9(2) *Violation found—remedies.*** If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that a violation of Title III has been established, the presiding officer shall issue an order providing for an appropriate remedy. The remedy so provided shall be designed to ensure compliance with the requirements of Title III and may include an order to any respondent directing the respondent to take specified action or prohibiting the respondent from taking specified action with respect to a past, immediately pending, or future election. The remedy shall not include an award of monetary damages or attorney's fees.

**25.9(3) *No violation found.*** If, based upon a preponderance of evidence provided through written submissions or at hearing, the presiding officer determines that no violation of Title III has been established, the presiding officer shall issue an order dismissing the complaint.

**721—25.10(17A,39A,47) Hearings.**

**25.10(1)** If a hearing is desired by the complainant, a request for a hearing on the record shall be included within the complaint or made by submitting a written request for hearing no later than ten days following service of the answer by the respondent.

**25.10(2)** If a hearing is desired by the respondent, a request for a hearing on the record shall be included within the answer.

**25.10(3)** Hearings shall be conducted pursuant to rules 721—25.23(17A) through 25.26(17A).

**25.10(4)** Notice of the time and place of hearing will be provided to each party by the presiding officer. When possible, a written notice will be served upon each party a minimum of seven days prior to the time of hearing. If the circumstances underlying the complaint necessitate expedited resolution prior to a pending election, the period of notice may be shortened and notice may be provided by facsimile, telephone, or E-mail.

**721—25.11(17A,39A,47) Time requirements.**

**25.11(1)** Time shall be computed as provided in Iowa Code subsection 4.1(34).

**25.11(2)** For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

**721—25.12(17A,39A,47) Waiver of procedures.** Unless otherwise precluded by law, the parties in a complaint proceeding may waive any provision of this chapter. However, the presiding officer in the presiding officer's discretion may refuse to give effect to such a waiver when the presiding officer deems the waiver to be inconsistent with the public interest.

**721—25.13(17A,39A,47) Telephone and electronic proceedings.** The presiding officer may, on the presiding officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the proceeding, will be considered when location is chosen. Objections, if any, shall be filed with the presiding officer and served on all parties at least three business days in advance of hearing.

**721—25.14(17A,39A,47) Disqualification.**

**25.14(1)** A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a complaint proceeding if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated, in connection with that proceeding, the specific controversy underlying that proceeding, another pending factually related complaint proceeding, or a pending factually related controversy that may culminate in a complaint proceeding involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that complaint proceeding, the specific controversy underlying that complaint proceeding, or a pending factually related complaint proceeding or controversy involving the same parties;
- d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e.* Has a personal financial interest in the outcome of the proceeding or any other significant personal interest that could be substantially affected by the outcome of the proceeding;
- f.* Has a spouse or relative within the third degree of relationship that (1) is a party to the proceeding, or an officer, director or trustee of a party; (2) is a lawyer in the proceeding; (3) is known to have an interest that could be substantially affected by the outcome of the proceeding; or (4) is likely to be a material witness in the proceeding; or
- g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that proceeding.

**25.14(2)** The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is jurisdiction to initiate a proceeding, or exposure to factual information while performing other functions, including fact gathering for purposes other than investigation of the matter which culminates in a complaint proceeding. Factual information relevant to the merits of a complaint proceeding received by a person who later serves as presiding officer in that proceeding shall be disclosed if required by Iowa Code section 17A.17(3) and rule 721—25.26(17A).

**25.14(3)** In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**25.14(4)** If a party asserts disqualification on any appropriate ground, including those listed in sub-rule 25.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

**25.14(5)** If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

**25.14(6)** If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

#### **721—25.15(17A,39A,47) Consolidation—severance.**

**25.15(1) Consolidation.** The presiding officer may consolidate any or all matters at issue in two or more complaint proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

**25.15(2) Severance.** The presiding officer may, for good cause shown, order any complaint proceedings or portions thereof severed.

#### **721—25.16(17A,39A,47) Service and filing of pleadings and other papers.**

**25.16(1) When service required.** Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a complaint proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding simultaneously with their filing. Except for an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. Once a presiding officer has been assigned to a proceeding, copies of all motions or other written submissions shall also be served on the presiding officer.

**25.16(2) Service—how made.** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person’s last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**25.16(3) Filing—when required.** After the notice of hearing, all pleadings, motions, documents or other papers in a complaint proceeding shall be filed with the presiding officer. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the presiding officer.

**25.16(4) Filing—when made.** Except where otherwise provided by law, a document is deemed filed at the time it is received by the state commissioner of elections or the assigned presiding officer. If a document required to be filed within a prescribed period or on or before a particular date is received after such period or date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing.

**25.16(5) Proof of mailing.** Proof of mailing includes either a legible, nonmetered United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert name of presiding officer) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)\_\_\_\_\_ (Signature)\_\_\_\_\_

**25.16(6) Electronic service.** The presiding officer may by order permit service or filing of particular documents by facsimile, E-mail or similar electronic means unless precluded by a provision of law. In the absence of such an order, facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

### **721—25.17(17A) Discovery.**

**25.17(1)** Discovery procedures applicable in civil actions are applicable in complaint proceedings. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure. Discovery may be limited if the circumstances underlying the complaint necessitate expedited resolution of the allegations prior to a pending election.

**25.17(2)** Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 25.17(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**25.17(3)** Evidence obtained in discovery may be used in the complaint proceeding if that evidence would otherwise be admissible in that proceeding.

### **721—25.18(17A) Issuance of subpoenas in a complaint proceeding.**

**25.18(1)** Subpoenas issued in a complaint proceeding may compel the attendance of witnesses at depositions or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or may be issued separately. Subpoenas shall be issued by the presiding officer upon written request. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

*a.* The nature of the issues in the proceeding reasonably justifies the issuance of the requested subpoena;

*b.* Adequate safeguards have been established to prevent unauthorized disclosure;

*c.* An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

*d.* An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

**25.18(2)** A request for a subpoena shall include the following information, as applicable:

- a.* The name, address and telephone number of the person requesting the subpoena;
- b.* The name and address of the person to whom the subpoena shall be directed;
- c.* The date, time, and location at which the person shall be commanded to attend and give testimony;
- d.* Whether the testimony is requested in connection with a deposition or hearing;
- e.* A description of the books, papers, records or other real evidence requested;
- f.* The date, time, and location for production or inspection and copying;
- g.* In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 25.18(1) have been satisfied.

**25.18(3)** Each subpoena shall contain, as applicable:

- a.* The caption of the proceeding;
- b.* The name, address and telephone number of the person who requested the subpoena;
- c.* The name and address of the person to whom the subpoena is directed;
- d.* The date, time, and location at which the person is commanded to appear;
- e.* Whether the testimony is commanded in connection with a deposition or hearing;
- f.* A description of the books, papers, records or other real evidence the person is commanded to produce;
- g.* The date, time, and location for production or inspection and copying;
- h.* The time within which a motion to quash or modify the subpoena must be filed;
- i.* The signature, address and telephone number of the executive secretary or designee;
- j.* The date of issuance;
- k.* A return of service.

**25.18(4)** The presiding officer or designee shall mail copies of all subpoenas to the parties to the complaint proceeding. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

**25.18(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the complaint proceeding who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the presiding officer a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

**25.18(6)** Upon receipt of a timely motion to quash or modify a subpoena, the presiding officer may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the presiding officer may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the presiding officer or administrative law judge may schedule oral argument or hearing by telephone or in person.

**25.18(7)** A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the presiding officer in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 721—25.29(17A) and 25.30(17A), provided that all of the time frames are reduced by one-half.

**25.18(8)** If the person contesting the subpoena is not a party to the proceeding, the presiding officer's decision is final for purposes of judicial review. If the person contesting the subpoena is a party to the proceeding, the presiding officer's decision is not final for purposes of judicial review until there is a final decision in the complaint proceeding.



**721—25.19(17A) Motions.**

**25.19(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

**25.19(2)** Any party may file a written response to a motion within ten days after the motion is served unless the time period is extended or shortened by ruling of the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

**25.19(3)** The presiding officer may schedule oral argument on any motion. If the presiding officer requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 721—25.29(17A).

**25.19(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by an order of the presiding officer.

**25.19(5)** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

**25.19(6)** Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a complaint proceeding is subject to rehearing pursuant to rule 721—25.31(17A) and appeal pursuant to rule 721—25.30(17A).

**721—25.20(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**25.20(1)** A written application for a continuance shall:

*a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of emergencies;

*b.* State the specific reasons for the request; and

*c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

**25.20(2)** In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance, and may consider:

*a.* Prior continuances;

*b.* The interests of all parties;

*c.* The likelihood of informal settlement;

*d.* The existence of an emergency;

*e.* Any objection;

*f.* Any applicable time requirements;

*g.* The existence of a conflict in the schedules of counsel, parties, or witnesses;

*h.* The timeliness of the request; and

*i.* Other relevant factors.

**721—25.21(17A) Withdrawals.** A complainant may withdraw a complaint prior to the hearing upon written notice filed with the presiding officer and served on all parties. Unless otherwise ordered by the presiding officer, a withdrawal shall be with prejudice.

**721—25.22(17A) Intervention.**

**25.22(1) Motion.** A motion for leave to intervene in a complaint proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. Any party may file a response within seven days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

**25.22(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed at least ten days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. An intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the proceeding unless binding the intervenor would be inequitable or unjust. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

**25.22(3) Grounds for intervention.** The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

**25.22(4) Effect of intervention.** A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

**721—25.23(17A) Hearing procedures.** The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths, to admit or exclude testimony or other evidence and to rule on all motions and objections. The presiding officer may request that an administrative law judge assist in performing any of these functions.

**25.23(1) Examination of witnesses.** All witnesses shall be sworn or affirmed by the presiding officer or the court reporter, if a court reporter is provided by one of the parties, and shall be subject to cross-examination. The presiding officer and the administrative law judge have the right to examine a witness at any stage of the witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

**25.23(2) Public hearing.** The hearing shall be open to the public.

**25.23(3) Record of proceedings.** Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the state commissioner of elections for at least five years from the date of decision.

**25.23(4) Order of proceedings.** Before testimony is presented, the record shall show the identity of the presiding officer, the identity of the administrative law judge, if any, the identity of the parties and their representatives, and the fact that all testimony is being recorded.

*a.* The presiding officer or designated person may read a summary of the complaint and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

*b.* The complainant shall make a brief opening statement, which may include a summary of allegations within the complaint and the witnesses and documents to support such charges.

*c.* Each respondent shall be offered an opportunity to make an opening statement, including the names of any witnesses the respondent desires to call in defense. A respondent may elect to defer making the opening statement until just prior to the presentation of evidence by the respondent.

- d. Evidence on behalf of the complainant shall be presented.
- e. Evidence on behalf of the respondent(s) shall be presented.
- f. Rebuttal evidence on behalf of the complainant, if any, shall be presented.
- g. Rebuttal evidence on behalf of the respondent(s), if any, shall be presented.
- h. Closing arguments first on behalf of the complainant, then on behalf of the respondent(s), and then rebuttal, if any, on behalf of the complainant shall be made.

The order of proceedings may be tailored to the nature of the complaint proceeding.

**25.23(5) *Decorum.*** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

**25.23(6) *Sequestering witnesses.*** The presiding officer, on the presiding officer's own motion or upon the request of a party, may sequester witnesses.

#### **721—25.24(17A) Evidence.**

**25.24(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**25.24(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**25.24(3)** Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**25.24(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties and the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**25.24(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**25.24(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**25.24(7)** Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

**721—25.25(17A) Default.**

**25.25(1)** If a party fails to appear or participate in a complaint proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**25.25(2)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a complaint proceeding become final action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 721—25.30(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the complaint proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**25.25(3)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**25.25(4)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**25.25(5)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**25.25(6)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

**25.25(7)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 721—25.32(17A).

**721—25.26(17A) Ex parte communication.**

**25.26(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such proceeding in connection with any issue of fact or law in the proceeding except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with those engaged in personally investigating as defined in subrule 25.14(2), or advocating in either the proceeding under consideration or a pending factually related proceeding involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**25.26(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a complaint proceeding and continue for as long as the proceeding is pending.

**25.26(3)** Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

**25.26(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 721—25.4(17A,39A,47) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**25.26(5)** Persons who jointly act as presiding officers in a pending complaint proceeding may communicate with each other without notice or opportunity for parties to participate.

**25.26(6)** The director of elections or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the director or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and comply with subrule 25.26(1).

**25.26(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 721—25.20(17A).

**25.26(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a complaint proceeding must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**25.26(9)** Promptly after being assigned to serve as presiding officer at any stage in a complaint proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**25.26(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, or censure.

**721—25.27(17A) Recording costs.** Upon request, the presiding officer shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

**721—25.28(17A) Final decisions, publication and party notification.**

**25.28(1) Final decision.** When the state commissioner of elections or the voter registration commission presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the presiding officer shall be filed with the state commissioner of elections. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to all parties of record.

**25.28(2) Publication of decisions.** Final decisions in all complaint proceedings, including consent agreements and consent orders, are public records which shall be indexed and made available for public inspection by the office of the state commissioner of elections as required by Iowa Code section 17A.3(1)“e.” In addition, all final decisions shall be published by posting on the Internet Web site maintained by the office of the state commissioner of elections.

**721—25.29(17A) Interlocutory appeals.** Upon written request of a party or on the presiding officer's own motion, the presiding officer may review a preliminary order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the presiding officer shall weigh the extent to which the presiding officer's granting of the interlocutory appeal would expedite final resolution of the proceeding and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within seven days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

**721—25.30(17A) Appeals and review.**

**25.30(1) Proposed decision.** Decisions issued by an administrative law judge are proposed decisions. All complaint proceeding decisions must be issued by the state commissioner of elections or voter registration commission, as appropriate. A proposed decision issued by an administrative law judge becomes a final decision if not timely appealed by any party or reviewed by the state commissioner of elections or voter registration commission, as appropriate.

**25.30(2) Appeal by party.** Any adversely affected party may appeal a proposed decision to the state commissioner of elections or voter registration commission within 15 days after issuance of the proposed decision.

**25.30(3) Review.** The state commissioner of elections or voter registration commission may initiate review of a proposed decision at any time within 15 days following the issuance of such a decision.

**25.30(4) Notice of appeal.** An appeal of a proposed decision is initiated by the filing of a timely notice of appeal with the state commissioner of elections or voter registration commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order which is being appealed;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

**25.30(5) Requests to present additional evidence.** A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within seven days of service of the notice of appeal. The state commissioner of elections or voter registration commission may remand a proceeding to the administrative law judge for further hearing or may preside at the taking of additional evidence.

**25.30(6) Scheduling.** The state commissioner of elections or voter registration commission shall issue a schedule for consideration of the appeal.

**25.30(7) Briefs and arguments.** Unless otherwise ordered, within ten days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within ten days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state commissioner of elections or voter registration commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The state commissioner of elections or voter registration commission may shorten or extend the briefing period, as appropriate.

**25.30(8) Record.** The record on appeal or review shall be the entire record made before the administrative law judge.

**721—25.31(17A) Applications for rehearing.**

**25.31(1)** *By whom filed.* Any party to a complaint proceeding may file an application for rehearing from a final order.

**25.31(2)** *Contents of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the final decision on the existing record and whether, on the basis of the grounds enumerated in subrule 25.31(3), the applicant requests an opportunity to submit additional evidence.

**25.31(3)** *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

**25.31(4)** *Time of filing.* The application shall be filed with the state commissioner of elections within 20 days after issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the state commissioner of elections.

**25.31(5)** *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the state commissioner of elections shall serve copies of the application on all parties.

**25.31(6)** *Disposition.* An application for rehearing shall be deemed denied unless the presiding officer grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the state commissioner of elections.

**25.31(7)** *Proceedings.* If the presiding officer grants an application for rehearing, the presiding officer may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the presiding officer may issue a ruling without oral argument or hearing. The presiding officer may, on the request of a party or on the presiding officer's own motion, order or permit the parties to provide written argument on one or more designated issues. The presiding officer may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

**721—25.32(17A) Stays of orders.**

**25.32(1)** *When available.* Any party to a complaint proceeding may petition the presiding officer for a stay or other temporary remedy, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**25.32(2)** *When granted.* In determining whether to grant a stay, the presiding officer shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

**721—25.33(17A) No factual dispute complaint proceedings.** If the parties agree that no dispute of material fact exists, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**721—25.34(17A) Alternate dispute resolution.** If, as required by subrule 25.1(2), a final determination is not issued within 90 days of the date of the filing of a complaint and the complainant does not agree to allow a longer period for making the determination, the complaint shall be transferred to a board of arbitration, which shall resolve the complaint within 60 days from the date of transfer.

**25.34(1)** The board of arbitration shall be composed of the following three members: one member designated by the complainant, one member designated by the state commissioner of elections, and a third member jointly agreed to by the first two members.

**25.34(2)** The board of arbitration shall have access to the record compiled in proceedings prior to the transfer, including the tape or transcript of any hearing, but may not conduct any further hearing or receive additional testimony, evidence, or other submissions. The board of arbitration shall determine the appropriate resolution of the complaint by a majority vote and shall issue a written decision as required by rule 721—25.9(17A,39A,47). The board's decision shall be considered the final decision upon the complaint for purposes of publication, rehearing and judicial review.

**721—25.35(17A) Judicial review.** Judicial review of the final decision may be sought in accordance with the terms of Iowa Code chapter 17A.

**25.35(1)** Consistent with Iowa Code section 17A.19(3) if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the final decision. The final decision is issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

**25.35(2)** If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in rule 721—25.31(17A).

These rules are intended to implement 42 U.S.C. 15512(a)(1).

[Filed 10/24/03, Notice 6/11/03—published 11/12/03, effective 12/17/03]