

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 10A.801 as amended by 2017 Iowa Acts, House File 640, and section 724.21A as amended by 2017 Iowa Acts, House File 517, the Department of Inspections and Appeals hereby amends Chapter 11, "Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms," Iowa Administrative Code.

These amendments implement 2017 Iowa Acts, House File 517, section 27, which amends Iowa Code section 724.21A to provide for the award of attorney fees and court costs to certain prevailing parties in appeals involving permits to carry weapons and acquire firearms. The amendments require that the notice of hearing inform the parties of the potential award of attorney fees and court costs and provide a procedure for the administrative law judge to determine the amount of any attorney fee award.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3073C** on May 24, 2017. A comment was received from the Iowa State Sheriffs' and Deputies' Association, which requested that the Department amend the rule to award contested case costs in a similar manner to the one used for attorney fees and court costs. The Department determined that it lacked statutory authority to amend the rule to provide for the award of contested case costs because the statute provides only for the award of reasonable attorney fees and court costs. After evaluating its existing rules and practices in response to the concerns raised, however, the Department has modified Item 4, subrule 11.11(3), to remove the obligation of sheriffs to pay contested case costs and to provide that the Department will charge for its costs only for cases arising out of decisions of the Commissioner of Public Safety, as the Department does for all other state agencies. The amendments are otherwise identical to those published under Notice of Intended Action.

The Department does not believe that the amendments impose any additional financial hardship on any regulated entity, body, or individual, beyond the impact of the amended statute being implemented.

No waiver provision is included in these rules because the statute that the rules implement is mandatory and the rules govern the procedures to be used in contested case proceedings, which include other safeguards for the administrative law judge to ensure that the parties are provided a fair, impartial, and individualized hearing.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 10A.801 as amended by 2017 Iowa Acts, House File 640, and section 724.21A as amended by 2017 Iowa Acts, House File 517.

These amendments will become effective August 23, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 11.3(1) as follows:

**11.3(1)** The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the agency decision on appeal;
- d. Identification of the parties;
- e. Reference to the procedural rules governing the contested case proceeding;
- f. Identification of the administrative law judge, including the judge's ~~address and telephone number~~ contact information; and
- g. Notification that failure to appear and participate in the contested case proceeding may result in the entry of a default judgment;
- h. Notification that the applicant or permittee shall be required to pay the agency's reasonable attorney fees and court costs if the agency's decision is affirmed in the contested case proceeding or in subsequent judicial review of the proceeding, or if the applicant or permittee withdraws or dismisses the contested case proceeding or subsequent judicial review action; and

*i.* Notification that the agency shall be required to pay the applicant's or permittee's reasonable attorney fees and court costs if it is determined in the contested case proceeding or in subsequent judicial review of the proceeding that the applicant or permittee is eligible to be issued or to possess the permit that was denied, suspended, or revoked.

ITEM 2. Amend rule 481—11.9(17A) as follows:

**481—11.9(17A) Withdrawals and dismissals.** A request for withdrawal or dismissal of the appeal may be made with the division prior to the hearing. Either request must be in writing or secured on the record.

**11.9(1) Withdrawals.** An applicant or permittee who requested a contested case proceeding may request a withdrawal of the appeal. Upon receipt of a request for withdrawal of the appeal, the administrative law judge shall issue an order dismissing the appeal and closing the case addressing the award of attorney fees pursuant to rule 481—11.11(10A).

**11.9(2) Dismissals.** An agency may request a dismissal of the appeal by agreeing to grant the entire relief sought by the applicant or permittee. The administrative law judge shall review a request for dismissal to determine whether it grants all relief requested in the appeal. If the request grants all relief requested in the appeal, the administrative law judge shall issue an order dismissing the appeal, ordering the agency to grant the relief requested, determining that no attorney fees are to be awarded, and closing the case.

ITEM 3. Amend rule 481—11.10(17A) as follows:

**481—11.10(17A) Default.** If a party fails to appear after proper service of notice, the administrative law judge may enter a default order against the party or may proceed with the hearing and make a decision in the absence of the party. The default order or decision made in the absence of the party shall address the award of attorney fees pursuant to rule 481—11.11(10A).

ITEM 4. Rescind rule 481—11.11(10A) and adopt the following new rule in lieu thereof:

**481—11.11(10A) Attorney fees, court costs, and contested case costs.**

**11.11(1) Attorney fees.** In a decision rescinding or sustaining the agency's denial, suspension, or revocation of the permit or otherwise granting a request to withdraw or dismiss the appeal, the administrative law judge shall determine whether a party is entitled to an award of attorney fees consistent with paragraph 11.11(1)"a" or "b." If a party is entitled to an award, the decision shall inform the parties of the applicable procedure provided in paragraph 11.11(1)"c" for determining the amount of such an award unless the administrative law judge determines the amount of an award in the decision as provided for in paragraph 11.11(1)"f."

*a.* If the administrative law judge rescinds the agency's denial, suspension, or revocation of the permit and determines the applicant or permittee is eligible to be issued or to possess the permit, the applicant or permittee shall be awarded any reasonable attorney fees. A dismissal of the appeal at the request of the agency under subrule 11.9(2) is not a determination that the applicant or permittee is eligible to be issued or to possess the permit and does not entitle the applicant or permittee to an award of attorney fees. An applicant or permittee who is not represented by an attorney in the contested case proceeding is not entitled to an award of attorney fees.

*b.* If the administrative law judge affirms the agency's denial, suspension, or revocation of the permit or grants the applicant's or permittee's request to withdraw or dismiss the appeal, the agency shall be awarded any reasonable attorney fees. Such an award to the agency shall be made to the political subdivision of the state representing the sheriff or to the state department representing the commissioner as applicable. An agency is not entitled to an award of attorney fees if the agency requests dismissal of the appeal under subrule 11.9(2) or if the agency is not represented by an attorney in the contested case proceeding.

*c.* Within 14 days of the date of a decision in which the administrative law judge determines that a party is entitled to an award of attorney fees, the party shall file a request for attorney fees and documentation supporting the request or a joint statement with the other party agreeing to the amount

of reasonable attorney fees. Within 7 days of the filing of a request for attorney fees, the other party may file a resistance, including any relevant evidence, or a statement agreeing to the requested attorney fees. Upon request of either party or on the administrative law judge's own motion, a hearing may be scheduled on the issue of the attorney fee award.

*d.* If the party fails to file a request for attorney fees or a joint statement within 14 days, the administrative law judge shall issue an order determining that no attorney fees are awarded in the case. If the parties agree to the amount of reasonable attorney fees to be awarded, the administrative law judge shall issue an order awarding attorney fees consistent with the agreement. In all other cases, the administrative law judge shall issue a written order determining the reasonable attorney fees in the case.

*e.* The administrative law judge's decision is not final for purposes of rehearing under rule 481—11.14(17A) or judicial review under Iowa Code chapter 17A until the administrative law judge has issued a written decision determining the amount of any attorney fees to be awarded under this subrule or determining that no attorney fees are to be awarded.

*f.* If an application for rehearing under rule 481—11.14(17A) is denied, no additional attorney fees shall be awarded to either party. If an application for rehearing is granted, all the provisions of this subrule apply to the rehearing proceedings unless the only relief sought on rehearing relates to the attorney fee award. If the only relief sought relates to the attorney fee award, the order granting the application for rehearing shall provide that a party opposing the requested relief may file a resistance, including any relevant evidence, within 7 days of the date of the order and shall schedule a hearing or provide that a hearing may be scheduled upon the request of either party. In such a case, the administrative law judge shall issue a single final decision regarding the attorney fee award.

*g.* Any attorney fees awarded under this subrule shall be paid to the awarded party within 30 days of the issuance of an order determining the amount of attorney fees awarded unless an interested party seeks rehearing under rule 481—11.14(17A) or judicial review under Iowa Code chapter 17A or the parties agree to an alternative payment schedule. If a party seeks rehearing under rule 481—11.14(17A), the attorney fees shall be paid within 30 days of the denial of the application for rehearing or of any final decision awarding attorney fees after the grant of an application for rehearing. If a party seeks judicial review under Iowa Code chapter 17A, the attorney fee award shall be stayed pending resolution of the judicial review action. A party awarded attorney fees is responsible for taking any necessary action to enforce the award if payment is not made.

**11.11(2) Court costs and attorney fees on judicial review.** Any request for the award of court costs or for attorney fees incurred after the entry of an order determining reasonable attorney fees may only be made to the court in a judicial review action under Iowa Code chapter 17A, unless a party requests rehearing under rule 481—11.14(17A), in which case reasonable attorney fees may be awarded by the administrative law judge related to the request for rehearing consistent with paragraph 11.11(1) "f."

**11.11(3) Contested case costs.** Costs of the division in conducting a contested case proceeding arising out of a decision of the commissioner of public safety shall be charged to the department of public safety pursuant to Iowa Code section 10A.801(9).

This rule is intended to implement Iowa Code section 10A.801 as amended by 2017 Iowa Acts, House File 640, and section 724.21A as amended by 2017 Iowa Acts, House File 517.

ITEM 5. Amend rule 481—11.14(17A) as follows:

**481—11.14(17A) Rehearing.** An applicant, permittee, or agency aggrieved by an administrative law judge's final decision rescinding or sustaining the agency's denial, suspension, or revocation may request rehearing. A request for rehearing shall be made by filing an application for rehearing with the division within 20 days of the date of the administrative law judge's final decision and must state the specific grounds for the rehearing and the relief sought. If the only relief sought relates to the award of attorney fees, the application must include any argument and relevant evidence to be considered on rehearing. An application for rehearing shall be deemed to have been denied unless the administrative law judge

grants the application within 20 days after its filing. A request for rehearing is not necessary to exhaust administrative remedies.

This rule is intended to implement Iowa Code ~~sections~~ section 724.21A as amended by 2017 Iowa Acts, House File 517, and section 17A.16.

[Filed 6/28/17, effective 8/23/17]

[Published 7/19/17]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/19/17.