

CHAPTER 7 CONTESTED CASES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

11—7.1(8A,17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of administrative services or by the division of administrative hearings in the department of inspections and appeals on behalf of the department. Excepted from this chapter are matters covered by rule 11—60.2(8A), disciplinary actions; rule 11—61.1(8A), grievances; 11—subrule 61.2(6), appeal of disciplinary actions; rule 11—68.6(19B), discrimination complaints, including disability-related and sexual harassment complaints; matters covered by the grievance procedure in any collective bargaining agreement with state employees; matters within the exclusive jurisdiction of the workers' compensation commissioner; and matters related to any of the department's vendors that administer group benefits if the vendor has an established complaint or appeal procedure. Further, the provisions of 11—Chapter 52, job classification, are exempt from subrules 7.5(4) to 7.5(7) and rules 11—7.6(8A,17A) and 11—7.8(8A,17A). [ARC 4053C, IAB 10/10/18, effective 11/14/18]

11—7.2(8A,17A) Definitions. Except where otherwise specifically defined by law:

“Administrative law judge (ALJ)” means an employee of the administrative hearings division of the department of inspections and appeals who presides over contested cases and other proceedings.

“Contested case” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“Department” means the department of administrative services (DAS).

“Director” means the director of the department of administrative services or the director's designee.

“Division” means the division of administrative hearings of the department of inspections and appeals (DIA).

“Ex parte” means a communication, oral or written, to the presiding officer or other decision maker in a contested case without notice and an opportunity for all parties to participate.

“Filing” is defined in subrule 7.12(4) except where otherwise specifically defined by law.

“Issuance” means the date of mailing of a decision or order or date of delivery if service is by other means, unless another date is specified in the order.

“Party” means a party as defined in Iowa Code subsection 17A.2(8).

“Presiding officer” means the administrative law judge (ALJ) assigned to the contested case or, in the case of an appeal pursuant to rule 11—52.5(8A), the classification appeal committee appointed by the director.

“Proposed decision” means the presiding officer's recommended findings of fact, conclusions of law, and decision and order in contested cases where the department did not preside.

11—7.3(8A,17A) Time requirements.

7.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

7.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as provided otherwise by rule or law. 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.

11—7.4(8A,17A) Requests for a contested case hearing. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the department action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific department action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case

proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

11—7.5(8A,17A) Notice of hearing.

7.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Notices shall be served by first-class mail, unless otherwise required by statute or rule.

7.5(2) *Content.* Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2), the following information and any additional information required by statute or rule.

a. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel, where known;

b. Reference to the procedural rules governing conduct of the contested case proceeding;

c. Reference to the procedural rules governing informal settlement; and

d. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., an administrative law judge from the department of inspections and appeals, or the classification appeal committee).

7.5(3) *Transmission of contested cases.* In every proceeding filed by the department with the division, the department shall complete a transmittal form. The following information is required:

- a.* The name of the transmitting department;
- b.* The name, address and telephone number of the contact person in the transmitting department;
- c.* The name or title of the proceeding, which may include a file number;
- d.* Any department docket or reference number;
- e.* A citation to the jurisdictional authority of the department regarding the matter in controversy;
- f.* Any anticipated special features or requirements that may affect the hearing;
- g.* Whether the hearing should be held in person or by telephone or video conference call;
- h.* Any special legal or technical expertise needed to resolve the issues in the case;
- i.* The names and addresses of all parties and their attorneys or other representatives;
- j.* The date the request for a contested case hearing was received by the department;
- k.* A statement of the issues involved and a reference to statutes and rules involved;
- l.* Any mandatory time limits that apply to the processing of the case;
- m.* The earliest appropriate hearing date; and
- n.* Whether a petition or answer is required.

7.5(4) *Issuance of the hearing notice.* When a case is transmitted by the department to the division for hearing, the division shall issue the notice of hearing.

7.5(5) *Attachments.* The following documents shall be attached to the completed transmittal form when it is sent to the division:

- a.* A copy of the document showing the department action in controversy; and
- b.* A copy of any document requesting a contested case hearing.

7.5(6) *Receipt.* When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

7.5(7) *Scheduling.* The division shall promptly schedule hearings for the department. The availability of an administrative law judge and any special circumstances shall be considered.

11—7.6(8A,17A) Presiding officer.

7.6(1) An administrative law judge shall have the following technical expertise unless waived by the department.

- a.* A license to practice law in the state of Iowa;
- b.* Three years' experience as an administrative law judge; and
- c.* For a hearing related to procurement, knowledge of contract law.

7.6(2) Except as otherwise provided by law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the department. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

7.6(3) Unless otherwise provided by law, the director, or the director's designee, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

11—7.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter pursuant to Iowa Code section 17A.10. However, the department in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

11—7.8(8A,17A) Telephone/video proceedings. A prehearing conference or a hearing may be held by telephone or video conference call pursuant to a notice of hearing or an order of the presiding officer. The presiding officer shall determine the location of the parties and witnesses in telephone or video hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when the location is chosen.

11—7.9(8A,17A) Disqualification.

7.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case 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 case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case 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 contested case, the specific controversy underlying that contested case, or a pending factually related contested case 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 case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

7.9(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 probable cause to initiate a proceeding, or exposure to factual information while performing other department functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code subsection 17A.17(3) and subrules 7.9(3) and 7.23(3).

7.9(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.

7.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

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.

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. A party asserting disqualification may seek an interlocutory appeal under rule 11—7.25(8A,17A) and seek a stay under rule 11—7.29(8A,17A).

11—7.10(8A,17A) Consolidation—severance.

7.10(1) Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case 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; and
- c. Consolidation would not adversely affect the rights of parties to those proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

7.10(2) Severance. The presiding officer may, upon motion by any party or upon the presiding officer's own motion, for good cause shown, order any proceeding or portion thereof severed.

11—7.11(8A,17A) Pleadings.

7.11(1) Pleadings may be required by rule, by the notice of hearing or by order of the presiding officer.

7.11(2) Petition. When an action of the department is appealed and pleadings are required under subrule 7.11(1), the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

- (1) On whose behalf the petition is filed;
- (2) The particular provisions of the statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.11(3) Answer. If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

b. The answer shall show on whose behalf it is filed and specifically admit, deny or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and may contain as many defenses as the pleader may claim.

c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

d. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

7.11(4) Amendment. Any notice of hearing, petition or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

11—7.12(8A,17A) Service and filing of pleadings and other papers.

7.12(1) When service is required. Except where otherwise specifically authorized by law, every pleading, motion, document or other paper filed in the contested case proceeding and every paper relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

7.12(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 first-class mail is rebuttably presumed to be complete upon mailing, except where otherwise specifically provided by statute, rule or order.

7.12(3) Filing—when required.

a. After a matter has been assigned to the division, and until a proposed decision is issued, documents shall be filed with the division, rather than the originating agency. All papers filed after the notice is issued that are required to be served upon a party shall be filed simultaneously with the division.

b. After the notice of hearing, when a matter has not been assigned to the department of inspections and appeals for hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

7.12(4) Filing—when made.

a. Except where otherwise provided by law, a document is deemed filed at the time it is:

(1) Delivered to the division of administrative hearings pursuant to subrule 7.12(3), paragraph "a," or to the department of administrative services pursuant to subrule 7.12(3), paragraph "b," and date-stamped received;

(2) Delivered to an established courier service for immediate delivery;

(3) Mailed by first-class mail or by state interoffice mail so long as there is adequate proof of mailing;

or

(4) Sent by facsimile transmission (fax) as provided in subrule 7.12(4), paragraph "b."

b. All documents filed with the division or the department pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code subsection 17A.12(9)), may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax shall be the date the document is received by the division or the department. The receiving office will not provide a mailed file-stamped copy of documents filed by fax.

7.12(5) Proof of mailing. Adequate proof of mailing includes the following:

a. A legible United States Postal Service postmark on the envelope;

b. A certificate of service;

c. A notarized affidavit; or

d. 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 Department of Administrative Services, Hoover State Office Building, Third Floor, Des Moines, Iowa 50319, 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).

(SIGNATURE)

(DATE)

[ARC 4053C, IAB 10/10/18, effective 11/14/18]

11—7.13(8A,17A) Discovery.

7.13(1) Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by rules of the department or by a ruling by the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

7.13(2) Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the issues raised by the motion with the opposing party. Motions in regard to discovery shall be ruled on 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 7.13(1). The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

7.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

11—7.14(8A,17A) Subpoenas.

7.14(1) Issuance.

a. Pursuant to Iowa Code subsection 17A.13(1), a department subpoena shall be issued to a party on request unless subrule 7.14(1), paragraph “*d*,” applies. A request may be either oral or in writing. In the absence of good cause for permitting later action, a written request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address and telephone number of the requesting party.

b. Parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

c. When authorized by law, a presiding officer may issue a subpoena on the presiding officer’s own motion.

d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena is irrelevant, the presiding officer may refuse to issue the subpoena, or may require the requesting party to provide a statement of testimony expected to be elicited from the subpoenaed witness and a showing of relevancy. If the presiding officer refuses to issue a subpoena, the presiding officer shall provide, upon request, a written statement of the ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing regarding the refusal by filing a written request to the presiding officer.

7.14(2) Motion to quash or modify.

a. A subpoena may be quashed or modified upon motion for any lawful ground in accordance with Iowa Rule of Civil Procedure 1.1701.

b. A motion to quash or modify a subpoena shall be served on all parties of record.

c. The motion shall be set for argument promptly.

11—7.15(8A,17A) Motions.

7.15(1) No technical form is required for motions. Prehearing motions, however, must be written, state the grounds for relief and state the relief sought. Any motion for summary judgment shall be filed in compliance with the requirements of Iowa Rule of Civil Procedure 1.981.

7.15(2) Any party may file a written resistance or response to a motion within 15 days after the motion is served, unless the time period is extended or shortened by rules of the department or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

7.15(3) The presiding officer may schedule oral argument on any motion on the request of any party or on the presiding officer’s own motion.

7.15(4) Except for good cause, all motions pertaining to the hearing must be filed and served at least 10 days prior to the hearing date unless the time period is shortened or lengthened by rules of the department or by the presiding officer.

11—7.16(8A,17A) Prehearing conference.

7.16(1) Any party may request a prehearing conference. A request for prehearing conference or an order for prehearing conference on the presiding officer’s own motion shall be filed in writing and served on all parties of record not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

The presiding officer shall give notice of the prehearing conference to all parties. For good cause, the presiding officer may permit variances from this rule.

7.16(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses who the party reasonably anticipates will testify at the hearing. Witnesses not listed may be excluded from testifying.

b. A final list of exhibits that the party reasonably anticipates will be introduced at the hearing. Exhibits not listed, except rebuttal exhibits, may be excluded from admission into evidence.

7.16(3) In addition to the requirements of subrule 7.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law;

b. Enter into stipulations of fact;

c. Enter into stipulations on the admissibility of exhibits;

d. Identify matters that the parties intend to request be officially noticed;

e. Unless precluded by statute, enter into stipulations for waiver of the provisions of Iowa Code chapter 17A allowed by Iowa Code section 17A.10(2) or waiver of department rules; and

f. Consider any additional matters that will expedite the hearing.

7.16(4) A prehearing conference shall be conducted by telephone or video conference call unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists prior to a telephone or video prehearing conference call.

11—7.17(17A) Continuances. Unless otherwise provided, application for continuance shall be made to the presiding officer.

7.17(1) A written application for continuance shall:

a. Be made before the hearing;

b. State the specific reasons for the request; and

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

7.17(2) If the presiding officer waives the requirement for a written motion, an oral application for continuance may be made. A written application shall be submitted no later than five days after the oral request. The presiding officer may waive the requirement for a written application. No application for continuance will be made or granted ex parte without notice except in an emergency where notice is not feasible. The department may waive notice of requests for a case or a class of cases.

7.17(3) Except where otherwise provided, a continuance may be granted at the discretion of the presiding officer. The presiding officer may consider, in addition to the grounds stated in the motion:

a. Any prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. Existence of emergency;

e. Objection to the continuance;

f. Any applicable time requirements;

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

h. The timeliness of the request;

i. Any applicable state or federal statutes or regulations; and

j. Other relevant factors.

The presiding officer may require documentation of any ground for continuance.

11—7.18(8A,17A) Withdrawals. The party that requested an evidentiary hearing regarding department action may withdraw prior to the hearing only in accordance with department rules. Requests for withdrawal may be oral or written. If the request is oral, the presiding officer may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

11—7.19(8A,17A) Intervention.

7.19(1) Motion. A motion for leave to intervene shall be served on all parties and 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. A proposed answer or petition in intervention shall be attached to

the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

7.19(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 disposition of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if one is held, or at least 20 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. The intervenor shall be bound by any agreement, arrangement or other matter previously raised in the case. Requests by untimely intervenors for continuances that would delay the hearing will be denied.

7.19(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 will be aggrieved or adversely affected by a final order; and

c. The interests of the movant are not being adequately represented by existing parties; or that the movant is otherwise entitled to intervene.

7.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues to be raised or otherwise condition the intervenor's participation in the proceeding.

11—7.20(8A,17A) Hearing procedures.

7.20(1) The appointed presiding officer in a contested case proceeding shall preside at the hearing and may:

a. Rule on motions;

b. Require the parties to submit briefs;

c. Issue a proposed decision; and

d. Issue orders and rulings to ensure the orderly conduct of the proceedings.

7.20(2) All objections to procedures, admission of evidence or any other matter shall be timely made and stated on the record.

7.20(3) Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations or associations may be represented by any member, officer, director or duly authorized agent.

Any party may be represented by an attorney or another person authorized by law. The cost of representation is the responsibility of the party.

7.20(4) Parties in a contested case have the right to introduce evidence on points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal, and to submit briefs and engage in oral argument.

7.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly or disruptive.

7.20(6) Witnesses may be sequestered during the hearing.

7.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceeding;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning consistent with Iowa Code section 17A.14;

e. The presiding officer has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; and

f. When all parties and witnesses have been heard, parties shall be given the opportunity to present final arguments.

11—7.21(8A,17A) Evidence.

7.21(1) The presiding officer shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may take official notice of facts pursuant to Iowa Code subsection 17A.14(4).

7.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

7.21(3) Evidence shall be confined to the issues on which there has been fair notice prior to the hearing. The presiding officer may take testimony on a new issue if the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If there is objection, the presiding officer may refuse to hear the new issue and may make a decision on the original issue in the notice, or may grant a continuance to allow the parties adequate time to amend pleadings and prepare their cases on the additional issue.

7.21(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 should be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

7.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. The objecting party shall briefly state the grounds for the objection. 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.

7.21(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. If the evidence excluded consists of a document or exhibits, it shall be marked as part of an offer of proof and inserted in the record.

11—7.22(8A,17A) Default.

7.22(1) If a party fails to appear in a contested case 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 make a decision in the absence of the party.

7.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

7.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final department action unless, within 15 days (unless another period of time is specifically required by statute or rule) 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 11—7.27(8A,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 contested case 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 must be attached to the motion.

7.22(4) 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.

7.22(5) 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.

7.22(6) "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.

7.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 11—7.25(8A,17A).

7.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

7.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

7.22(10) 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 11—7.29(8A,17A).

11—7.23(8A,17A) Ex parte communication.

7.23(1) Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives and the presiding officer shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The presiding officer may communicate with persons who are not parties as provided in subrule 7.23(2).

7.23(2) However, the presiding officer may communicate with members of the department and may have the aid and advice of persons other than those with a personal interest in, or those prosecuting or advocating in the case under consideration or a factually related case involving the same parties. Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

7.23(3) Any party or presiding officer who receives prohibited communication shall submit the written communication or a summary of the oral communication for inclusion in the record. Copies shall be sent to all parties. There shall be opportunity to respond.

7.23(4) Prohibited communications may result in sanctions as provided in department rule. In addition, the department, through the presiding officer, may censure the person or may prohibit further appearance before the department.

11—7.24(8A,17A) Recording costs. The department shall provide a copy of the tape-recorded hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of preparing the tape or transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

11—7.25(8A,17A) Interlocutory appeals. Upon written request of a party or on its own motion, the director or the director's designee may review an interlocutory order of the presiding officer. In determining whether to do so, the director shall weigh the extent to which the granting of the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the department at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

11—7.26(8A,17A) Decisions.

7.26(1) *Final decision of department.* When the department presides over the reception of evidence at the hearing, its decision is a final decision.

7.26(2) *Proposed decision.* When the department does not preside at the reception of evidence, the presiding officer shall make a proposed decision.

A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

7.26(3) Contents of decision. The proposed or final decision or order shall:

- a. Be in writing or stated in the record.
- b. Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.
- c. Include conclusions of law stated separately from findings of fact and supported by cited authority or a reasoned opinion.
- d. Be based on the record of the contested case. The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6). This record shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

7.26(4) Proposed decision becomes final. The proposed decision of the presiding officer becomes the final decision of the department without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 11—7.27(8A,17A).

7.26(5) Reports. The department shall send to the division a copy of any request for review of a proposed decision issued by a presiding officer from the department of inspections and appeals. The department shall notify the division of the results of the review, the final decision and any judicial decision issued.

11—7.27(8A,17A) Appeals and review.

7.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the director within 14 days after issuance of the proposed decision.

7.27(2) Review. The director may initiate review of a proposed decision on the director's own motion at any time within 21 days following the issuance of such a decision.

7.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. 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 appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought; and
- e. The grounds for relief.

7.27(4) 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 nonappealing party, within 14 days of service of the notice of appeal. The director may remand a case to the presiding officer for further hearing. The director or director's designee may preside at the taking of additional evidence.

7.27(5) Scheduling. The department shall issue a schedule for consideration of the appeal.

7.27(6) Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 14 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 director or director's designee may resolve the appeal on the briefs or provide an opportunity for oral argument. The director or director's designee may shorten or extend the briefing period as appropriate.

11—7.28(8A,17A) Applications for rehearing.

7.28(1) By whom filed. Any party to a contested case proceeding may file an application for rehearing from a final order.

7.28(2) Content 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 department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 7.27(4), the applicant requests an opportunity to submit additional evidence.

7.28(3) *Time of filing.* The application shall be filed with the department within 20 days after issuance of the final decision.

7.28(4) *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 department shall serve copies on all parties.

7.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

11—7.29(8A,17A) Stays of department actions.

7.29(1) *When available.*

a. Any party to a contested case proceeding may petition the department for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the department. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The director or director's designee may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

7.29(2) *When granted.* In determining whether to grant a stay, the director, director's designee, or presiding officer shall consider factors listed in Iowa Code section 17A.19(5) "c."

7.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department's representative or any other party.

11—7.30(8A,17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, 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.

11—7.31(8A,17A) Emergency adjudicative proceedings.

7.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

7.31(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the department;
- (3) Certified mail to the last address on file with the department;
- (4) First-class mail to the last address on file with the department; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

7.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

7.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapters 8A and 17A.

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