

CHAPTER 11
CONTESTED CASE PROCEDURES

[Prior to 7/9/03, see 351—Ch 7]

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

351—11.1(17A,68B) Scope and applicability. This chapter applies to contested case proceedings conducted by the Iowa ethics and campaign disclosure board.

351—11.2(17A,68B) Definitions. Except where otherwise specifically defined by law:

“*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.

“*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 each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the board member designated to be the presiding officer or the administrative law judge assigned by the department of inspections and appeals division of administrative hearings. However, with regard to substantive or dispositive motions, “presiding officer” means all participating members of the board.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the Iowa ethics and campaign disclosure board did not preside.

351—11.3(17A,68B) Time requirements. Time shall be computed as provided in Iowa Code subsection 4.1(34). For good cause, the presiding officer may extend or shorten the time to take any action except as precluded by statute or by rule. 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.

351—11.4(17A,68B) Requests for contested case proceeding.

11.4(1) *Who may file request.* Any person claiming an entitlement to a contested case proceeding may 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 board action in question. Upon petition by any party in a matter that would be a contested case if there was a dispute over the existence of material facts, all of the provisions of this chapter, except those relating to presentation of evidence, shall be applicable even though there is no factual dispute in the particular case.

11.4(2) *Form of request.* The request for a contested case proceeding shall state the name and address of the requester, identify the specific board action that is disputed, and, when 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.

351—11.5(17A,68B) Notice of hearing.

11.5(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail, address service requested; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.5(2) *Contents.* 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 particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties including the name, address and telephone number of the person who will serve as the board's counsel during the proceeding;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer; and
- i. Notification of the time period in which a party may request, pursuant to subrule 11.8(3), that the presiding officer be an administrative law judge.

11.5(3) Time. The notice of hearing shall be served:

- a. Upon all parties at least 20 days before the scheduled hearing date if the alleged violation involves conduct other than the failure to timely file a statement, report, or document that is required to be filed pursuant to a law or rule under the board's jurisdiction.
- b. Upon all parties at least 10 days before the scheduled hearing date if the alleged violation involves the failure to timely file a statement, report, or document that is required to be filed pursuant to a law or rule under the board's jurisdiction.
- c. Upon all parties at least 10 days before the scheduled hearing date if the hearing is an appeal of a board decision concerning a civil penalty waiver request for a late-filed statement, report, or document that is required to be filed pursuant to a law or rule under the board's jurisdiction.
- d. Upon all parties at least 10 days before the scheduled hearing date if the hearing is an appeal of a decision of a regulatory agency to deny or grant conditional consent for an official or employee of the regulatory agency to sell or lease goods or services as provided in 351—subrule 6.11(6).
- e. Upon all parties at least 10 days before the scheduled hearing date if the hearing is an appeal of a decision by the office of the governor to deny or grant conditional consent for a member of the governor's office to sell or lease goods or services as provided in 351—subrule 6.12(4).

[ARC 7997B, IAB 7/29/09, effective 9/2/09]

351—11.6(17A,68B) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

351—11.7(17A,68B) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer shall determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

351—11.8(17A,68B) Disqualification; request for administrative law judge.

11.8(1) Withdrawal. 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 prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or 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 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 personally investigated the pending contested case. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. It does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are 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 board 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 section 17A.17;

e. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

f. 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;

g. 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

h. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

In a situation where a presiding officer or other person knows of information that 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 inappropriate.

11.8(2) *Motion for disqualification.* If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(4). 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 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 351—11.24(17A,68B) and seek a stay under rule 351—11.28(17A,68B).

11.8(3) *Request for administrative law judge.* A party may, within ten days of delivery of a notice of hearing under subrule 11.5(1), request that the presiding officer be an administrative law judge assigned by the department of inspections and appeals division of administrative hearings. This request shall be sent to the board's legal counsel who shall then notify the board. Except as otherwise provided by statute, the board shall grant such a request unless the board finds, and states the reasons for such finding, that any of the following conditions exist:

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

b. A qualified administrative law judge is unavailable to hear the case within a reasonable time;

c. The case 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 be dispositive in resolving the disputed factual issues;

e. Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal;

f. The request was not timely filed; or

g. The request is not consistent with a specified statute.

11.8(4) *Ruling on request.* The board shall issue a written ruling specifying the grounds for the decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least ten days prior to hearing if an administrative law judge will not be available.

11.8(5) *Appeals.* All rulings by an administrative law judge acting as presiding officer are subject to appeal to the board pursuant to rules 351—11.24(17A,68B) and 11.25(17A,68B). A party must seek intra-agency appeal in order to exhaust administrative remedies.

11.8(6) *Board review.* Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of, and shall comply with, the provisions of this chapter that apply to presiding officers.

351—11.9(17A,68B) Consolidation—severance.

11.9(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings when:

- 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.

11.9(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

351—11.10(17A,68B) Pleadings.

11.10(1) When required. Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

11.10(2) Statement of charges. The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the person is charged and shall be of sufficient detail to enable the efficient preparation of the respondent's defense. The statement of charges shall specify all statutes and rules that are alleged to have been violated and may also include additional information that the board deems appropriate to the proceeding. The statement of charges shall be consolidated with the notice of hearing described in rule 351—11.5(17A,68B).

11.10(3) Answer. A respondent is not required to file an answer in response to a statement of charges.

11.10(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 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.

351—11.11(17A,68B) Service and filing of pleadings and other papers.

11.11(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record simultaneously with their filing. The party filing a document is responsible for service on all parties.

11.11(2) Service. 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.

11.11(3) When filed. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the office of the Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or mailed with proof of mailing.

11.11(4) Proof of mailing. Proof of mailing includes either: a legible 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 that on (date of mailing), I mailed copies of (describe document) addressed to the (board office and address) 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)

351—11.12(17A,68B) Discovery.

11.12(1) Applicable procedure. Discovery procedures applicable in civil actions are applicable in contested cases. 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.

11.12(2) Motion for discovery. 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 11.12(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.12(3) *Use of evidence.* Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

351—11.13(17A,68B) Subpoenas.

11.13(1) *Issuance.*

a. A board subpoena shall be issued to a party upon written request. In the absence of good cause for permitting later action, a 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. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.13(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

351—11.14(17A,68B) Motions.

11.14(1) *Form.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.14(2) *Who may file.* 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 rules of the board or by the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

11.14(3) *Oral argument.* The presiding officer may schedule oral argument on any motion.

11.14(4) *Time.* Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten 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 rule of the board or by the presiding officer.

11.14(5) *Motions for summary judgment.* 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. Motions for summary judgment must be filed and served at least 15 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 contested case is subject to appeal and rehearing pursuant to rules 351—11.26(17A,68B) and 11.27(17A,68B).

351—11.15(17A,68B) Prehearing conference.

11.15(1) *Procedure.* Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven 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 written notice of the prehearing conference to all parties. For good cause the presiding officer may permit variances from this rule.

11.15(2) *Required subject matter.* Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits that the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

11.15(3) *Additional issues.* In addition to the requirements of subrule 11.15(2), the parties at a prehearing conference may:

- a. Enter into stipulations of law or fact;
- b. Enter into stipulations on the admissibility of exhibits;
- c. Identify matters that the parties intend to request be officially noticed;
- d. Enter into stipulations for waiver of any provision of law; and
- e. Consider any additional matters that will expedite the hearing.

11.15(4) *Telephone conference.* Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

351—11.16(17A,68B) Continuances. Unless otherwise provided, applications for continuances shall be made by the presiding officer.

11.16(1) *Form.* 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 unanticipated 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 when notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

11.16(2) *Considerations for granting continuance.* In determining whether to grant a continuance, the presiding officer shall consider:

- a. Prior continuances;
- b. The interest 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.

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

351—11.17(17A,68B) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing. Unless otherwise provided, a withdrawal shall be with prejudice.

351—11.18(17A,68B) Intervention.

11.18(1) *Motion.* A motion to intervene in a contested case 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. 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.

11.18(2) *When filed.* A motion 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 before the prehearing conference, if any, 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. An intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case unless the agreement, arrangement, or other matter previously raised in the case is inequitable or unjust. Requests by untimely intervenors for continuances that would delay the proceeding will ordinarily be denied.

11.18(3) *Grounds for intervention.* The intervenor shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The intervenor is likely to be aggrieved or adversely affected by a final order in the proceeding; and
- c. The interests of the intervenor are not adequately represented by existing parties.

11.18(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person permitted 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 proceedings.

351—11.19(17A,68B) Hearing procedures.

11.19(1) *Role of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

11.19(2) *Objections.* All objections shall be timely made and stated on the record.

11.19(3) *Representation.* Parties 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.

11.19(4) *Procedural rights.* Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument. Witnesses may be sequestered during the hearing.

11.19(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.

11.19(6) *Hearing process.* 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 proceedings;
- 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 in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

11.19(7) *Proposed order.* Within seven days after the closing of the hearing, either party may file a proposed order for the consideration of the presiding officer, who may adopt all or part of any proposed order. Copies of a proposed order shall be provided to the opposing party.

351—11.20(17A,68B) Evidence.

11.20(1) *Admissibility.* 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.

11.20(2) *Stipulation of facts.* Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.20(3) *Limitation of evidence.* 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 issues.

11.20(4) Exhibits. 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 normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.20(5) Objections. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection 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.

11.20(6) Offer of proof. 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.

351—11.21(17A,68B) Default.

11.21(1) Failure to appear. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.21(2) Motion for default. 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.

11.21(3) Procedure. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 14 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 351—11.26(17A,68B). A motion to vacate must state all facts relied upon by the moving party that establish 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.

11.21(4) Time. 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.

11.21(5) Motion to vacate. 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. If a request to do so is filed in a response, 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.

11.21(6) Good cause. "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.

11.21(7) Appeal. 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 351—11.24(17A,68B).

11.21(8) Hearing reopened. 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.

11.21(9) Relief granted. 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.

11.21(10) *Timing of stay.* 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.

351—11.22(17A,68B) Ex parte communication.

11.22(1) *Prohibited communications.* Following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between any party or representative of any party in connection with any issue of fact or law in a case and any person assigned to render a proposed or final decision or make findings of fact or conclusions of law 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 persons assigned to render a proposed or final decision in a contested case or to make findings of fact or conclusions of law in such a case from seeking the advice or help of persons other than those with personal interest in, or those engaged in personally investigating as defined in subrule 11.8(1), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as that advice or help does not violate Iowa Code subsection 17A.12(8).

11.22(2) *Disclosure of prohibited communications.* Any person who receives a communication prohibited by subrule 11.22(1) shall disclose that communication to all parties. A copy of any prohibited written communication or a summary of any prohibited oral communication shall be submitted for inclusion in the record. Any party desiring to rebut the prohibited ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal within ten days after notice of the communication. If the effect of an ex parte communication is so prejudicial that it cannot be cured by disclosure and rebuttal, a presiding officer who receives the communication shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

11.22(3) *Sanctions.* The board and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law. The presiding officer or the board may impose appropriate sanctions for violations of this rule. Possible sanctions include a decision against the offending party; censure, suspension, or revocation of the privilege to practice before the board; and censure, suspension, dismissal, or other disciplinary action against board personnel.

11.22(4) *Affidavit.* A party to a contested case proceeding may file a timely and sufficient affidavit alleging a violation of any provision of this rule. The board shall determine the matter as part of the record in the case. When the board makes such a determination with respect to a board member or board employee, that determination shall be subject to de novo judicial review in any subsequent review proceeding of the case.

351—11.23(17A,68B) Recording costs. Upon request, the board shall provide a copy of the whole 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. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

351—11.24(17A,68B) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board 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.

351—11.25(17A,68B) Final decision. The board shall automatically conduct a review of all proposed decisions that are issued by a presiding officer. The proposed decision becomes the final decision of the board without further proceedings unless there is a proper application for rehearing under rule 351—11.27(17A,68B).

351—11.26(17A,68B) Board review.

11.26(1) *Statement of exceptions.* Within 14 days after issuance of a proposed decision, any party may serve a statement of exceptions taken with the proposed decision, if any, together with a brief and argument, if any, by delivery of the original and five copies of each document to the board's legal counsel, and shall also serve copies to the opposing party. This time requirement may be extended by stipulation of the parties and approval by the presiding officer.

11.26(2) *Request for oral argument.* At the time designated for filing briefs and arguments, either party may request oral argument. The board may complete its review on the briefs or may grant an opportunity for oral argument. If a request for oral argument is granted or such is required by the board on its own motion, the board's legal counsel shall notify all parties of the date, time, and place. The chairperson or the chairperson's designee shall preside at the oral argument and determine the procedural order of the proceedings.

11.26(3) *Record on review.* The record on review shall be the entire record made before the hearing panel or presiding officer.

11.26(4) *Additional evidence.* A written request to present additional evidence must be filed within 14 days of issuance of the proposed decision. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

11.26(5) *Final decision.* The board's decision on review of a proposed decision is a final decision.

351—11.27(17A,68B) Application for rehearing.

11.27(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

11.27(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. The application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.26(4), the applicant requests an opportunity to submit additional evidence.

11.27(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

11.27(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 board shall serve copies on all parties.

11.27(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

351—11.28(17A,68B) Stay of agency actions.

11.28(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding pending review by the board. The petition for a stay shall be filed with the statement of exceptions and shall state the reasons justifying a stay. The board may rule on the stay or authorize the presiding officer to do so.

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

11.28(2) *When granted.* In determining whether to grant a stay, the presiding officer or board, as appropriate, shall consider whether substantial questions exist as to the propriety of the order for which a stay is requested, whether the party will suffer substantial and irreparable injury without the stay, and whether the interests of the public and other persons will be adversely affected by such a stay.

11.28(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

351—11.29(17A,68B) 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 shall 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.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code sections 68B.32A and 68B.32C.

[Filed 7/29/94, Notice 5/25/94—published 8/17/94, effective 9/21/94]

[Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]

[Filed 4/18/02, Notice 1/9/02—published 5/15/02, effective 6/19/02]

[Filed 6/19/03, Notice 5/14/03—published 7/9/03, effective 8/13/03]

[Filed ARC 7997B (Notice ARC 7804B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]