

CHAPTER 11
PROCEDURE FOR CONTESTED CASES INVOLVING PERMITS
TO CARRY WEAPONS AND ACQUIRE FIREARMS

481—11.1(17A,724) Definitions.

“*Agency*” means the commissioner of public safety or the sheriff of the county in which the aggrieved party resides.

“*Applicant*” means a person who has applied for a permit to carry weapons or acquire firearms.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5).

“*Division*” means the division of administrative hearings of the Iowa department of inspections and appeals.

“*Party*” means each person or agency named or admitted as a party.

“*Permittee*” means a person who has received a permit to carry weapons or acquire firearms.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.2(724) Appeals. An applicant or permittee may appeal a decision by an agency to deny an application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms.

11.2(1) *Written appeal.* The appeal shall be in writing and should state the reasons for rebutting the denial, suspension, or revocation.

11.2(2) *Filing of appeal.* Within 30 days of the applicant’s or permittee’s receipt of the agency’s decision, the applicant or permittee shall file the appeal, a copy of the agency’s written decision, and a fee of \$10 with the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, 502 East 9th Street, Des Moines, Iowa 50319.

11.2(3) *Service on the agency.* The applicant or permittee shall serve a copy of the appeal on the agency at the time the appeal is filed with the division.

11.2(4) *Denial of appeal.* The division may deny any appeal that does not meet each of the requirements in subrules 11.2(1) to 11.2(3).

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.3(17A,724) Notice of hearing. The division shall prepare and serve the notice of hearing.

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

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

11.3(2) Service of the notice of hearing shall be accomplished by first-class mail.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17]

481—11.4(17A,724) Agency record.

11.4(1) Upon receipt of a copy of the notice of hearing, the agency shall file with the division:

- a. A copy of all documents used by the agency in reaching the decision; and
- b. A form identifying the name, address, and telephone number of the agency's contact person or attorney representative.

11.4(2) The agency shall provide to the applicant or permittee a copy of all documents used by the agency in reaching the decision.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.5(17A) Contested case hearing. The hearing shall be conducted pursuant to the standards established in Iowa Code chapter 17A for contested case hearings. The hearing shall be held by telephone conference call, unless a party to the proceeding requests an in-person hearing from the administrative law judge no later than five days before the hearing. All in-person hearings shall be held at the division's headquarters in Des Moines, Iowa. If the administrative law judge grants an in-person hearing, the administrative law judge may allow one party to appear by telephone.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.6(17A) Service and filing of documents.

11.6(1) *When service is required.* Every pleading, motion, or other document filed in the contested case proceeding shall be served on each of the parties to the proceeding, including the agency. Except for an application for rehearing as provided in rule 481—11.14(17A) and Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

11.6(2) *Methods of performing service.* Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering, mailing, or transmitting by facsimile (fax) or by electronic mail (e-mail) a copy to the party or attorney at the party's or attorney's last-known mailing address, fax number, or e-mail address. Service by first-class mail is complete upon mailing. Service by fax or electronic mail is complete upon transmission unless the party making service learns that the attempted service did not reach the person to be served.

11.6(3) *Filing with the division.* Every pleading, motion, or other document in the contested case proceeding shall be filed with the division. All documents that are required to be served upon a party shall be filed simultaneously with the division.

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

- (1) Delivered to the division at the Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa, and date-stamped received;
- (2) Delivered to an established courier service for immediate delivery to the division;
- (3) Mailed to the division by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or

(4) Transmitted by facsimile (fax) to (515)281-4477, by electronic mail (e-mail) to adminhearings@dia.iowa.gov, or by other electronic means approved by the division, as provided in subrule 11.6(3), paragraph "b."

b. All documents filed with the division pursuant to these rules, except a person's written appeal pursuant to rule 481—11.2(724), may be filed by facsimile (fax), electronic mail (e-mail), or other electronic means approved by the division. A document filed by fax, e-mail, or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by fax, e-mail, or other approved electronic means 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, e-mail, or other approved electronic means shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax, e-mail, or other approved electronic means.

11.6(4) *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 Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, 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.

(date)

(signature)

This rule is intended to implement Iowa Code section 724.21A.

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 1993C, IAB 5/27/15, effective 7/1/15]

481—11.7(17A) Witness lists and exhibits. No later than five days before the hearing, a party shall serve on all parties and shall file with the division a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding. If a party fails to serve on all parties and file with the division a witness list or any exhibit five days before the hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing. [ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 1993C, IAB 5/27/15, effective 7/1/15]

481—11.8(17A) Evidence. The administrative law judge shall rule on the admissibility of evidence and may take official notice of facts in accordance with applicable requirements of law. Evidence in the proceeding shall be confined to the issues for which the parties received notice prior to the hearing. [ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

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

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

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

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17]

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

[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17]

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

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

a. If the administrative law judge rescinds the agency's denial, suspension, or revocation of the permit and determines the applicant or permittee is eligible to be issued or to possess the permit, the applicant or permittee shall be awarded any reasonable attorney fees. A dismissal of the appeal at the

request of the agency under subrule 11.9(2) is not a determination that the applicant or permittee is eligible to be issued or to possess the permit and does not entitle the applicant or permittee to an award of attorney fees. An applicant or permittee who is not represented by an attorney in the contested case proceeding is not entitled to an award of attorney fees.

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

c. Within 14 days of the date of a decision in which the administrative law judge determines that a party is entitled to an award of attorney fees, the party shall file a request for attorney fees and documentation supporting the request or a joint statement with the other party agreeing to the amount of reasonable attorney fees. Within 7 days of the filing of a request for attorney fees, the other party may file a resistance, including any relevant evidence, or a statement agreeing to the requested attorney fees. Upon request of either party or on the administrative law judge's own motion, a hearing may be scheduled on the issue of the attorney fee award.

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

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

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

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

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

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

This rule is intended to implement Iowa Code section 10A.801 as amended by 2017 Iowa Acts, House File 640, and section 724.21A as amended by 2017 Iowa Acts, House File 517.
[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11; ARC 3217C, IAB 7/19/17, effective 8/23/17]

481—11.12(724) Probable cause. Probable cause to deny an initial or renewal application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms means a reasonable ground exists for supposing that the basis for the denial, suspension or revocation is well-founded.
[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.13(724) Clear and convincing evidence. Clear and convincing evidence means there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence.
[ARC 9299B, IAB 12/29/10, effective 1/1/11; ARC 9400B, IAB 3/9/11, effective 4/13/11]

481—11.14(17A) Rehearing. An applicant, permittee, or agency aggrieved by an administrative law judge's final decision rescinding or sustaining the agency's denial, suspension, or revocation may request rehearing. A request for rehearing shall be made by filing an application for rehearing with the division within 20 days of the date of the administrative law judge's final decision and must state the specific grounds for the rehearing and the relief sought. If the only relief sought relates to the award of attorney fees, the application must include any argument and relevant evidence to be considered on rehearing. An application for rehearing shall be deemed to have been denied unless the administrative law judge grants the application within 20 days after its filing. A request for rehearing is not necessary to exhaust administrative remedies.

This rule is intended to implement Iowa Code section 724.21A as amended by 2017 Iowa Acts, House File 517, and section 17A.16.
[ARC 1993C, IAB 5/27/15, effective 7/1/15; ARC 3217C, IAB 7/19/17, effective 8/23/17]

These rules are intended to implement Iowa Code section 724.21A.

[Filed Emergency ARC 9299B, IAB 12/29/10, effective 1/1/11]

[Filed ARC 9400B (Notice ARC 9298B, IAB 12/29/10), IAB 3/9/11, effective 4/13/11]

[Filed ARC 1993C (Notice ARC 1934C, IAB 4/1/15), IAB 5/27/15, effective 7/1/15]

[Filed ARC 3217C (Notice ARC 3073C, IAB 5/24/17), IAB 7/19/17, effective 8/23/17]