

CHAPTER 2
GENERAL PRACTICE AND HEARING PROCEDURES

621—2.1(20) Hearing—time and place—administrative law judge. A member of the board or an administrative law judge shall fix the time and place for all hearings. Hearings may be conducted by the board, or by one or more of its members, or by an administrative law judge designated by the board. At their discretion the board or administrative law judge may order a prehearing conference.

621—2.2(20) Notice of hearing—contents. Written notice of a contested case hearing shall be delivered by the board to all parties by ordinary mail. The notice shall include:

- 2.2(1) A statement of the date, time, place and nature of the hearing.
- 2.2(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- 2.2(3) A reference to the particular sections of the statutes and rules involved.
- 2.2(4) A short and plain statement of the matters asserted.

621—2.3(20) Default.

2.3(1) If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

2.3(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 2.3(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision to the board on the merits is filed within the time provided by rule 621—9.2(20) or, in cases brought pursuant to Iowa Code section 19A.14, a petition for review by the board on the merits is filed within the time provided by rule 621—11.8(19A,20).

2.3(3) A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to and filed and served with the motion.

2.3(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

2.3(5) The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

621—2.4(20) Intervention and additional parties. Any interested person may request intervention in any proceeding before the public employment relations board. An application for intervention shall be in writing, except that applications made during a hearing may be made orally to the hearing officer, and shall contain a statement of the reasons for such intervention. When an application for intervention is filed regarding a petition for bargaining representative determination, 621—subrules 4.3(2), 4.4(4), 5.1(2), 5.5(2), and 5.5(3) shall apply.

Where necessary to achieve a more proper decision, the board or administrative law judge may, on its own motion or the motion of any party, order the bringing in of additional parties. When so ordered, the board shall serve upon such additional parties all relevant pleadings and allow such parties a reasonable time to respond thereto where appropriate.

[ARC 3278C, IAB 8/30/17, effective 8/10/17]

621—2.5(20) Continuance. Hearings or proceedings on any matter may be continued by order of the board or an administrative law judge, with the reasons therefor set out in said order, and notice thereof to all parties. Parties may, upon written application to the board prior to commencement of the hearing or other proceeding, or oral application to the administrative law judge during the hearing, but not ex parte, request a continuance. A continuance may be allowed for any cause not growing out of the fault or negligence of the applicant, which satisfies the board or administrative law judge that a proper decision or result will be more nearly obtained by granting a continuance. The continuance may also be granted if agreed to by all parties and approved by the board or administrative law judge.

621—2.6(20) Appearances and conduct of parties. Any party may appear and be heard on its own behalf, or by its designated representative. Designated representatives shall file a notice of appearance with the board for each case in which they appear for a party. Filing of pleadings on behalf of a party shall be equivalent to filing a notice of appearance. All persons appearing in proceedings before the board shall conform to the standard of ethical conduct required of attorneys before the courts of the state of Iowa. If any person refuses to conform to such standards, the board may decline to permit such person to appear in any proceeding.

621—2.7(20) Evidence—objections. Rules of evidence shall be those set forth in the Administrative Procedure Act. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

621—2.8(20) Order of procedure. The employer shall present its evidence first in unit determination hearings. The complainant shall present its evidence first and shall have the burden of proof in prohibited practice hearings. Intervenors shall follow the parties in whose behalf the intervention is made; if not made in support of a principal party, the administrative law judge shall designate at what stage such intervenors shall be heard. The order of other parties shall be determined by the administrative law judge. All parties shall be allowed cross-examination and an opportunity for rebuttal. At any stage of the hearing or after the close of the hearing but prior to decision, the board or administrative law judge may call for further evidence to be presented by the party or parties concerned.

621—2.9(20) Amendments. A petition, complaint or answer may be amended for good cause shown, but not ex parte, upon motion at any time prior to the decision. Allowance of such amendments, including those to conform to the proof, shall be within the discretion of the board or administrative law judge. The board or administrative law judge may impose terms, or grant a continuance with or without terms, as a condition of such allowance. Such motions prior to hearing shall be in writing filed with the board, and the moving party shall serve a copy thereof upon all parties by ordinary mail.

621—2.10(20) Briefs and arguments. At the discretion of the board or administrative law judge, oral arguments may be presented by the parties with such time limits as determined by the board or administrative law judge. Briefs may be filed in such order and within such time limits as set by the board or administrative law judge.

621—2.11(20) Sequestration of witnesses. Upon its own motion, or the motion of any party, the board or administrative law judge may order the sequestration of witnesses in any proceeding.

621—2.12(20) Subpoenas.

2.12(1) Attendance of witnesses. The board, an administrative law judge, or an arbitrator selected pursuant to Iowa Code section 20.22 shall issue subpoenas to compel the attendance of witnesses and the production of relevant records upon written application of any party filed with the agency prior to the hearing. The application shall specify the names and addresses of the witnesses or the person or party having possession of the requested documents and shall list with specificity the records or other items

sought. The requested subpoenas may be provided electronically to a registered user of the electronic document management system. A motion to quash a subpoena may be filed, and when the subpoena has been served more than seven days prior to the hearing, the motion shall be filed not less than three days prior to the hearing.

2.12(2) *Witness fees.* Witnesses shall receive from the subpoenaing party fees and expenses as are prescribed by statute for witnesses in civil actions before a district court. Witnesses may, however, waive such fees and expenses.

2.12(3) *Service of subpoenas.* Subpoenas shall be served as provided in Iowa Code section 622.63. [ARC 8953B, IAB 7/28/10, effective 9/1/10; ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.13(20) Form of documents and treatment of confidential or protected information.

2.13(1) *Form.* All documents which relate to any proceeding before the agency should be typewritten and bear the docket number of the proceeding to which it relates. Such documents may be single- or double-spaced at the option of the submitting party.

2.13(2) *Confidential information.* When a party files any document which contains material or a reproduction, quotation, or extensive paraphrase of confidential information as defined by 621—subrule 1.6(10), it is the responsibility of the filer to ensure that confidential information is omitted or redacted, or to certify the confidential nature of the document in the manner provided by the electronic document management system. If a document is certified as confidential, omission or redaction of the confidential information contained in the document is not required. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

2.13(3) *Protected information.* When a party files any document which contains protected information as defined by 621—subrule 1.6(11), it is the responsibility of the filer to ensure that the protected information is omitted or redacted from the document before the document is filed unless the protected information is required by statute or rule to be included or is material to the proceeding. The agency will not review filings to determine whether appropriate omissions or redactions have been made.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.14(20) Captions. The following captions for documents other than forms provided by the board are suggested for use in practice before the board:

2.14(1) In prohibited practice proceedings:
Before the Public Employment Relations Board

XYZ, Complainant and J. Doe, Respondent	}	[name of document] Case No. <u>1234</u>
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2.14(2) In proceedings pursuant to a petition:
Before the Public Employment Relations Board

In the matter of XYZ, Public Employer and J. Doe, Petitioner	}	[name of document] Case No. <u>1234</u>
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621—2.15(20) Service of pleadings and other papers.

2.15(1) Service—upon whom made. Whenever under these rules nonelectronic service is required or permitted to be made upon a person or party, such service shall be as follows:

- a. Upon any city, or board, commission, council or agency thereof, by serving the mayor or city clerk.
- b. Upon any county, or office, board, commission or agency thereof, by serving the county auditor or the chairperson of the county board of supervisors.
- c. Upon any school district, school township, or school corporation, by serving the presiding officer or secretary of its governing body.
- d. Upon the state of Iowa, or board, commission, council, office or agency thereof, by serving the governor or the director of the department of administrative services.
- e. Upon the state judicial department, by serving the state court administrator.
- f. Upon any other governing body, by serving its presiding officer, clerk or secretary.
- g. Upon an employee organization, by serving the person designated by the employee organization to receive service pursuant to 621—subrule 8.2(2) or by service upon the president or secretary of the employee organization.
- h. Upon any other person, by serving that person or that person’s attorney of record.

2.15(2) Service—how made. Except as provided in rule 621—3.4(20) and subrule 2.12(3) and 621—subrule 4.2(2), whenever nonelectronic service of any document is permitted or required by these rules, the service shall be sufficient if made by ordinary mail. If the document served is an initial filing in a proceeding, the serving party shall also serve with the document an agency-approved information sheet regarding mandatory electronic filing.

2.15(3) Proof of service. Where personal service or service by certified or ordinary mail is permitted or required by these rules, the serving party shall file the return of personal service or certified mail return receipt with the agency. Where service by ordinary mail is permitted under these rules, the serving party shall include the following or a substantially similar certificate on the original document filed with the agency:

“I hereby certify that on _____ I sent a copy of the foregoing matter to
(date)

the following parties of record or their representatives at the addresses indicated, by depositing same in a United States mail receptacle with sufficient postage affixed.

(Signed) _____”
(party or representative)

Unless excepted by 621—subrule 16.4(2), proof of service shall be filed electronically in accordance with 621—Chapter 16.

[ARC 1583C, IAB 8/20/14, effective 9/24/14; ARC 3278C, IAB 8/30/17, effective 8/10/17]

621—2.16(20) Consolidation. Upon application of any party or upon its own motion, the board or an administrative law judge may consolidate for hearing any cases which involve common questions of law or fact.

621—2.17(20) Prohibition against testimony of mediators, arbitrators and board employees. Except as authorized by Iowa Code section 20.31, a mediator, arbitrator, administrative law judge, member of the board or other officer or employee of the board shall not testify on behalf of any party to a prohibited practice, representation or impasse resolution proceeding, pending in any court or before the board, with respect to any information, facts, or other matter coming to that individual’s knowledge through a party or parties in an official capacity as a resolver of disputes.

[ARC 8953B, IAB 7/28/10, effective 9/1/10]

621—2.18(20) Delivery of decisions and orders. Decisions and orders of the board or administrative law judge shall be filed and served in accordance with 621—Chapter 16.

[ARC 1583C, IAB 8/20/14, effective 9/24/14]

621—2.19(20) Stays of agency action. Application for stays of agency actions must be filed with the board and served upon all interested parties pursuant to rule 621—2.15(20). The board may in its discretion and on such terms as it deems proper, grant or deny an application.

621—2.20(20) Ex parte communications.

2.20(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case or in proceedings on a petition for declaratory order in which there are two or more parties, shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. 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’s investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency 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 a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202.

2.20(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and with the filing of the petition in a declaratory order proceeding in which there are two or more parties, and continue for as long as the case is pending.

2.20(3) Communications with a presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties prior to seeking to continue hearings or other deadlines.

2.20(4) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case or proceedings on a petition for declaratory order in which there are two or more parties shall disclose to all parties and place on the record of the pending matter all such written communications, all written responses to the communication, and a memorandum stating the substance of all such oral and other communications received, all responses made and the identity of each person from whom the presiding officer received a prohibited ex parte communication. The presiding officer shall notify all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after the giving of notice that the matters have been placed on the record.

2.20(5) If the presiding officer determines that the effect of a prohibited ex parte communication is so prejudicial that it cannot be cured by the procedure specified in subrule 2.20(4), the presiding officer shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

2.20(6) Promptly after being assigned to serve as presiding officer, either individually, on a hearing panel or on an intra-agency appeal, a presiding officer shall disclose to all parties any material factual information received through ex parte communication prior to such assignment, unless the factual information has or soon will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

2.20(7) Sanctions for prohibited communications.

a. The agency and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law.

b. The presiding officer may render a proposed decision or, in the case of the board or a majority thereof, a final decision, imposing appropriate sanctions for violations of this rule including a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency.

c. Alleged violations of ex parte communication prohibitions by agency personnel shall be reported to the chairperson for the possible imposition of sanctions including censure, suspension, dismissal or other disciplinary action.

621—2.21(20) Transcripts of record. Oral proceedings in all hearings shall be recorded by a certified shorthand reporter or by mechanized means. The board does not furnish transcriptions, but oral proceedings shall be transcribed at the expense of any party requesting the transcription. Arguments on motions, oral arguments on appeal to the board, and arguments made in declaratory order and expedited negotiability dispute proceedings need not be recorded.

621—2.22(20) Dismissal. The board or an administrative law judge may dismiss cases for want of prosecution if, after receiving notice by certified mail, the parties do not show good cause why the case should be retained.

621—2.23(20) Informal disposition. The board may assign an administrative law judge to assist the parties in reaching a settlement of any dispute which is the subject of an adjudicatory proceeding. However, no party shall be required to participate in mediation or settle the dispute pursuant to this rule. An administrative law judge assisting the parties under this rule shall not serve as a presiding officer in any proceeding related to the dispute. Adjudicatory proceedings may be voluntarily dismissed without consent of the board except as provided in rule 621—3.6(20) and 621—subrule 4.1(3).

[ARC 1773C, IAB 12/10/14, effective 1/14/15]

621—2.24(20) Evidence of settlement negotiations. Evidence of proposed offers of settlement of a contested case or a proceeding that may culminate in a contested case shall be inadmissible at the hearing thereon.

[ARC 1773C, IAB 12/10/14, effective 1/14/15]

These rules are intended to implement Iowa Code chapter 20.

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