

7—2506.23(17A) Ex parte communication.

2506.23(1) Improper communications. Except as specifically allowed by law, no party, representative of a party, or person with a direct or indirect interest in a case may communicate, directly or indirectly, with the presiding officer, or vice versa, regarding the case or a pending factually related case. These communications are allowed only if all parties have been notified of the intention to communicate and have an opportunity to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. However, the presiding officer may communicate with members of the agency and may seek the advice or help of persons regarding the matter. This can include persons with whom the presiding officer is prohibited from communicating in another case, as long as the presiding officer's communications with that person are not regarding that other case or a case factually related to it.

2506.23(2) Written, oral, or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

2506.23(3) These prohibitions start when the notice of hearing is issued and continue for as long as the case is pending.

2506.23(4) To avoid banned ex parte communications, notice is to be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications will be provided in compliance with rule 7—2506.12(17A) and may be supplemented by telephone, fax, email or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

2506.23(5) 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.

2506.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision and they comply with subrule 2506.23(1).

2506.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not need notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when possible and must notify other parties when seeking to continue hearings or other deadlines.

2506.23(8) Disclosure of banned communications. A presiding officer who receives a banned ex parte communication while a contested case is pending must first determine whether the communication is so prejudicial that the presiding officer should be disqualified. If so, the presiding officer will enter into the record, sealed by a protective order, a copy of any banned written communication, all written responses to the communication, a written summary of the substance of any banned oral or other communication, all responses made, and the identity of each person from whom the presiding officer received a banned ex parte communication. If the presiding officer determines that disqualification is not warranted, the presiding officer will enter these documents into the record and serve them upon all parties. Any party desiring to rebut the banned communication will be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

2506.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer must disclose to all parties material factual information received through ex parte communication before the assignment began. The presiding officer does not need to disclose this information if it has already been, or shortly will be, disclosed under Iowa Code section 17A.13(2) or through discovery or if it is contained in an investigative report or similar document that has been or shortly will be given to the parties.

2506.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication obligations by agency personnel will be reported to the chief executive of the agency or that person's designee for possible sanctions including censure, suspension, dismissal, or other disciplinary action.