

191—3.5(17A,507B) Commencement of hearing; service; delivery; notice of hearing; answer.**3.5(1) Service and delivery of the notice of hearing.**

a. Commencement of hearing. Delivery of the notice of hearing referred to in this rule constitutes commencement of the contested case proceeding.

b. Delivery of the notice of hearing. Delivery shall be accomplished by personal service as provided in the Iowa Rules of Civil Procedure or by certified mail, return receipt requested, at least 15 days before the hearing date unless the parties agree to a shorter time period, or unless otherwise provided by statute. Proof of delivery by mail is the same as proof of mailing specified in subrule 3.12(5).

c. Consent to service upon the commissioner. For persons who have consented in writing to have the commissioner accept service of process on their behalf, delivery of the notice of hearing referred to in this rule is accomplished at the time the notice of hearing is signed by the commissioner, unless otherwise provided by law.

3.5(2) Notice of hearing. The notice of hearing shall be prepared in the form of an order and contain the following information in the notice of hearing or accompanying charging document:

- 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. If the division or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application, a more definite and detailed statement shall be furnished;
- e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the division and of parties' counsel where known;
- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing settlement;
- h.* Identification of the presiding officer and address, if known. If not known, a general description of the type of person who will serve as presiding officer;
- i.* Notification of the time period in which a party may request, under rule 191—3.6(17A), that the presiding officer be an administrative law judge;
- j.* Notification that failure to file an answer within 20 days of service may result in default pursuant to rule 191—3.22(17A); and
- k.* Reference to the procedural rules governing discovery.

3.5(3) Answer. An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement of the matters asserted or charging document when appropriate.

a. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing or accompanying charging document. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

c. Any allegation in the notice of hearing or accompanying charging document not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

d. The answer shall be filed with the division pursuant to rule 191—3.12(17A).

3.5(4) Amendments. Any notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to a notice of hearing or charging document after a responsive pleading has been filed and amendments 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.

3.5(5) Timing of hearing. The hearing in a contested case proceeding shall be held within 90 days after the commencement of the contested case unless a continuance is granted by the presiding officer.