

161—3.14 (216) Investigative subpoenas.

3.14(1) *Application of rule.* The provisions of rule 161—3.13(216) apply to subpoenas served prior to the issuance of the notice of hearing described in rule 161—4.1(216).

3.14(2) *Prior to notice of hearing.* The executive director, or designee, may issue subpoenas prior to the issuance of a notice of hearing. Neither the complainant, except when the commission is acting as the complainant, nor the respondent shall have the right to demand that a subpoena be issued.

3.14(3) *Initial information request.* Before a subpoena is sought to determine whether the agency should institute a contested case proceeding, the commission staff shall make a request in written form of the person having possession, custody, or control of the requested material or real evidence. The written request shall be either hand delivered by a member of the commission staff or sent by certified mail, return receipt requested. Where a person fails to provide requested information a subpoena may be issued. A subpoena may be issued not less than seven days after the written request has been delivered to the person having possession, custody, or control of the requested materials.

3.14(4) *Form of subpoena.* Every subpoena shall state the name of the commission and the purpose for which the subpoena is issued.

3.14(5) *To whom directed.* The subpoena shall be directed to a specific person, or the person's attorney, or an officer, partner, or managing agent of any person who is not a natural person. If the person having possession, custody, or control of the requested material is unknown, the subpoena may be directed to the "custodian of records" for the person who is known to have possession, custody, or control of the requested material or real evidence. The subpoena shall command the person to whom it is directed to produce designated books, papers, or other real evidence in the possession, custody, or control of that person at a specified time and place. Where a public hearing has been scheduled, the subpoena may command the person to whom it is directed to attend and give testimony.

3.14(6) *Method of service.* The subpoena shall be served either by personal service by an official authorized by law to serve subpoenas or by any member of the commission staff by delivery of a copy to the person named therein. Service which is accomplished in accord with the Iowa Rules of Civil Procedure governing personal service is sufficient for the purpose of service of subpoenas under these rules.

3.14(7) *Proof of service.* Where service is accomplished by personal service, proof of service will be by acknowledgment of receipt by the person served or by the affidavit of the person serving the subpoena. Failure to make proof of service shall not affect the validity of the service.

3.14(8) *Objections to subpoena.*

a. Any person who intends not to comply with all or part of a subpoena issued by the commission shall promptly petition the executive director to revoke or modify the subpoena. The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition. The executive director or designee may as soon as practicable make a final determination upon the petition. The commission shall then mail the determination of the petition by regular mail to the petitioner.

b. In general, the grounds for modification or revocation of a subpoena are:

- (1) The subpoena is not within the statutory authority of the commission;
- (2) The subpoena is not reasonably specific;
- (3) The subpoena is unduly burdensome;
- (4) The subpoena is not reasonably relevant to matters under investigation.

c. To ensure prompt processing of a petition to revoke or modify a subpoena such a petition should be captioned "Motion to Quash" or "Petition to Modify/Revoke Subpoena" or some substantially similar title. The case number assigned to the case should appear on the petition. The petition should be directed to the attention of the executive director of the commission.

3.14(9) *Failure to comply.* Where a person fails to comply with a subpoena, the executive director or designee may authorize the filing of a petition for enforcement in the district court.

3.14(10) *Open public records law.* The inclusion of a record as a confidential public record under Iowa Code chapter 22 does not in any way affect the authority of the commission to subpoena and compel the production of that record. Iowa Code chapter 22 does not govern or affect the access by the commission to public records through its subpoena power.

[**ARC 8745B**, IAB 5/5/10, effective 6/9/10]