

493—11.9(13B,17A) Contested case hearing.

11.9(1) Written request for contested case hearing. An attorney who is aggrieved by a reconsideration decision and who desires to contest the factual basis for the reconsideration decision shall request a contested case hearing within ten days of the date the reconsideration decision is mailed. The request for contested case hearing shall identify the factual issues in dispute and any other claimed error and shall state the manner in which the state public defender is alleged to have relied upon erroneous facts.

11.9(2) Procedures. The request for contested case hearing is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender. A contested case hearing shall be conducted pursuant to the procedures set forth in 481—Chapter 10.

11.9(3) A timely request for contested case hearing is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.9(4) Presiding officer. The state public defender or a person designated by the state public defender may preside over the contested case hearing and issue a final decision, or the state public defender may request that the hearing be conducted by an administrative law judge from the department of inspections, appeals, and licensing who shall issue a proposed decision subject to review by or appeal to the state public defender. If the notice of hearing does not identify an administrative law judge as the presiding officer, an attorney may file a written request that an administrative law judge serve as the presiding officer at hearing. Such request must be filed within 20 days after service of the notice of hearing by certified mail, return receipt requested, to the attorney's last-known address. The state public defender may deny the request only upon a finding that one or more of the following apply:

- a.* There is a compelling need to expedite issuance of a final decision.
- b.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- c.* Funds are unavailable to pay the costs of an administrative law judge and possible resulting interagency appeal.
- d.* The request was not timely made.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

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