

501—6.4(80B) Hearing procedure.

6.4(1) *Contested case proceeding.* Unless the parties to a contested case proceeding have by written stipulation representing an informed mutual consent waived the provisions of the Act relating to the proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Evidentiary hearings shall be held at the council's principal office, Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, except that a case may be assigned for hearing elsewhere when deemed necessary to afford a party an opportunity to appear at the hearing with as little inconvenience and expense as practicable. Parties shall have been notified of the date and place of the hearing at least 30 days prior thereto.

6.4(2) *Conduct of the proceedings.* A proceeding shall be conducted by a presiding officer who, among other things, shall:

1. Open the record and receive appearances;
2. Administer oaths and issue subpoenas;
3. Enter the notice of hearing into the record;
4. Receive testimony and exhibits presented by the parties;
5. In the officer's discretion, interrogate witnesses;
6. Rule on objections and motions;
7. Close the hearing;
8. Issue an order containing findings of fact and conclusions of law. This ruling shall be no later than 60 days after the conclusion of the hearing.

a. Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the council for at least five years from the date of the decision.

b. An opportunity shall be afforded to the parties to respond and argue on all issues involved and to be represented by counsel at their own expense. Unless otherwise directed by the presiding officer, evidence will be received in the following order:

1. Council designee.
2. Law enforcement officer.
3. Rebuttal by council designee.
4. Oral argument by parties (if necessary).

c. If the law enforcement officer is not represented by anyone qualified by these rules to make an appearance, the presiding officer shall explain to the law enforcement officer the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when a law enforcement officer has a representative qualified to appear. It should be the purpose of the presiding officer to assist any law enforcement officer who appears without a representative to the extent necessary to allow a fair presentation of evidence, testimony and arguments on the issues.

d. If the parties have mutually agreed to waive the provisions of the Act in regard to contested case proceedings, the hearing will be conducted in a less formal manner or in accordance with the terms of the waiver agreement.

e. If a party fails to appear in a contested case proceeding after proper service of notice, the presiding officer may, upon the officer's own motion or upon the motion of a party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

f. Contemptuous conduct by any person appearing at a hearing shall be grounds for that person's exclusion from the hearing by the presiding officer.

6.4(3) *Rules of evidence.* The agency's experience, technical competence, and specialized knowledge may be utilized in evaluating evidence.

6.4(4) *Oath.* All testimony presented before the presiding officer shall be given under oath which the presiding officer has authority to administer.

6.4(5) *Production of evidence and testimony.* The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

a. When the council initially presides at a hearing, or considers an appeal from or review of the administrative presiding officer's decision, the order becomes the final order of the council for purposes of judicial review or rehearing. When the presiding officer makes a ruling pursuant to a contested case proceeding, that ruling or order becomes the final order of the council for purposes of rehearing unless there is an appeal to or review on motion of the council within 20 days. In such an appeal or review the council has all the power which the council would initially have had in making the decision. However, the council will only consider those issues or selected issues presented before the presiding officer. The parties will be notified of those issues which will be considered by the council.

b. The council may, however, allow a complete de novo hearing of the contested case in its discretion.

c. Orders will be issued within 60 days of the conclusion of the hearing unless good cause exists for a further period of time, not to exceed a reasonable period. Parties shall be promptly notified of each order by personal service or certified mail, return receipt requested.

6.4(6) *Record.* The record in a contested case shall include:

1. All pleadings, motions, and rulings;
2. All evidence received or considered and all other submissions;
3. A statement of all matters officially noticed;
4. All questions and offers of proof, objections, and rulings thereon;
5. All proposed findings and exceptions;
6. The order of the presiding officer.

6.4(7) *Rehearing.* Any party may file application for rehearing from a final decision of the council within 20 days of the issuance of a final decision in a contested case. Application is deemed denied unless granted within 20 days of filing.