

721—25.7(17A,39A,47) Presiding officer.

25.7(1) In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections.

25.7(2) In complaint proceedings in which one of the respondents is the state commissioner of elections or a person or persons employed or appointed by the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to Iowa Code section 47.8, except the state commissioner of elections or the state commissioner's designee.

25.7(3) Any party to a complaint proceeding who wishes to request that the presiding officer be an administrative law judge employed by the department of inspections and appeals must file a written request within five days after service of a notice of proceedings which identifies the presiding officer as the state commissioner of elections or voter registration commission. The state commissioner of elections or voter registration commission may deny the request only upon a finding that one or more of the following apply:

a. The presiding officer under whose authority the proceeding is to take place is not a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The proceeding involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to assist the presiding officer in resolving disputed factual issues.

e. The request was not timely filed.

f. The request is not consistent with a specified statute.

25.7(4) The originally designated presiding officer shall issue a written ruling specifying the grounds for the ruling within ten days after a request for an administrative law judge is filed. If the request is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision shall have a J.D. degree, unless waived by the originally designated presiding officer.

25.7(5) The state commissioner of elections or voter registration commission, when acting as presiding officer, may request that an administrative law judge perform certain functions as an aid to the presiding officer, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the state commissioner of elections or voter registration commission.

25.7(6) All rulings by an administrative law judge whether the judge is acting as presiding officer or assistant to the state commissioner or voter registration commission are subject to appeal to the originally designated presiding officer pursuant to rules 721—25.29(17A) and 25.30(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies.

25.7(7) Unless otherwise provided by law, the state commissioner or voter registration commission, when reviewing a proposed decision of an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.