

263—9.5(17A) Ex parte communication.

9.5(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following filing of a petition, there shall be no communication, directly or indirectly, between the board or committee members and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit committee members from communicating with each other. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to a committee member any ex parte communications they have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

9.5(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

9.5(5) Committee members in a pending contested case may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(6) The board's staff or other persons may be present in deliberations or otherwise advise the committee members without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 9.5(1).

9.5(7) Communications with the committee members involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with committee members when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(8) Disclosure of prohibited communications. A committee member who receives a prohibited ex parte communication during the pendency of a case must initially determine if the effect of the communication is so prejudicial that the committee member should be disqualified. If the committee member determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

9.5(9) Promptly after being assigned to serve as committee member, a committee member shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(10) The committee may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the committee.