

871—26.7 (17A,96) Recusal.

26.7(1) A presiding officer shall withdraw from participation in the hearing or the making of any decision in a contested case if:

a. The presiding officer has a personal bias or prejudice concerning a party or a representative of a party;

b. The presiding officer has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying the case, or another pending factually related case or pending factually related controversy that may culminate in a contested case involving the same parties;

c. The presiding officer is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying the contested case, or a pending factually related contested case or controversy involving the same parties;

d. The presiding officer has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. The presiding officer has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. The presiding officer has a spouse or relative within the third degree of relationship that: is a party to the case, or an officer, director or trustee of a party; is a lawyer in the case; is known to have an interest that could be substantially affected by the outcome of the case; or is likely to be a material witness in the case; or

g. The presiding officer has any other legally sufficient cause to withdraw from participation in the hearing and decision making in that case.

26.7(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 26.10(7).

26.7(3) If the presiding officer knows of information which might reasonably be deemed a basis for recusal but decides recusal is unnecessary, the presiding officer shall submit the relevant information for the record along with a statement of the reasons for declining recusal.

26.7(4) If a party asserts disqualification of the presiding officer for any appropriate ground, the party shall file an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, as soon as the reason alleged in the affidavit becomes known to the party. If, during the course of a hearing, a party first becomes aware of evidence of bias or other ground for recusal, the party may move for recusal but must establish the grounds by the introduction of evidence into the record. If the presiding officer determines that recusal is appropriate, the presiding officer shall withdraw. If the presiding officer decides that recusal is not required, the presiding officer shall enter an order to that effect. This order may be the basis of the aggrieved party’s appeal from the decision in the case.