

351—11.8(17A,68B) Disqualification; request for administrative law judge.

11.8(1) *Withdrawal.* A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally prosecuted or advocated, in connection with that case, the specific controversy underlying that case, or another pending factually related contested case, or pending factually related controversy that may culminate in a contested case involving the same parties;
- c.* Is subject to the authority, direction or discretion of any person who has personally prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d.* Has personally investigated the pending contested case. The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. It does not include either direction and supervision of assigned investigators or unsolicited receipt of oral information or documents which are 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 board 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;
- e.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- f.* 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;
- g.* Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- h.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

In a situation where a presiding officer or other person knows of information that might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is inappropriate.

11.8(2) *Motion for disqualification.* If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.8(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(4). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If during the course of the hearing a party becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record. If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 351—11.24(17A,68B) and seek a stay under rule 351—11.28(17A,68B).

11.8(3) *Request for administrative law judge.* A party may, within ten days of delivery of a notice of hearing under subrule 11.5(1), request that the presiding officer be an administrative law judge assigned by the department of inspections and appeals division of administrative hearings. This request shall be sent to the board’s legal counsel who shall then notify the board. Except as otherwise provided by statute, the board shall grant such a request unless the board finds, and states the reasons for such finding, that any of the following conditions exist:

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

- b. A qualified administrative law judge is unavailable to hear the case within a reasonable time;
- c. The case 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 be dispositive in resolving the disputed factual issues;
- e. Funds are unavailable to pay the costs of an administrative law judge and an intra-agency appeal;
- f. The request was not timely filed; or
- g. The request is not consistent with a specified statute.

11.8(4) *Ruling on request.* The board shall issue a written ruling specifying the grounds for the decision within ten days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least ten days prior to hearing if an administrative law judge will not be available.

11.8(5) *Appeals.* All rulings by an administrative law judge acting as presiding officer are subject to appeal to the board pursuant to rules 351—11.24(17A,68B) and 11.25(17A,68B). A party must seek intra-agency appeal in order to exhaust administrative remedies.

11.8(6) *Board review.* Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of, and shall comply with, the provisions of this chapter that apply to presiding officers.