

CHAPTER 10  
RULES OF PROCEDURE AND PRACTICE  
BEFORE THE ADMINISTRATIVE HEARINGS DIVISION  
[Prior to 2/10/88, see Inspections and Appeals Department[481],Ch 4]

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**481—10.1(10A) Definitions.**

“*Administrative law judge (ALJ)*” means the person who presides over contested cases and other proceedings.

“*Agency*” means the agency as defined in Iowa Code subsection 17A.2(1) which has original subject matter jurisdiction in the contested case.

“*Appointing authority*” means the appointed or elected chief administrative head of a department, commission, board, independent agency, or statutory office or that person’s designee or in the case of gubernatorial appointees, the governor.

“*Board*” means a licensing board as defined in Iowa Code chapter 272C.

“*Department*” means the department of inspections and appeals (DIA).

“*Division*” means the division of administrative hearings in the department of inspections and appeals.

“*Ex parte*” means a communication, oral or written, to an ALJ or other decision maker in a contested case without notice and an opportunity for all parties to be heard.

“*Filing*” is defined in subrule 10.12(3) except where otherwise specifically defined by law.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means.

“*Party*” means a party as defined in Iowa Code subsection 17A.2(8).

“*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.

“*Proposed decision*” means the administrative law judge’s recommended findings of fact, conclusions of law, and decision and order in contested cases where the agency did not preside.

[ARC 3523C, IAB 12/20/17, effective 1/24/18; ARC 3524C, IAB 12/20/17, effective 1/24/18]

**481—10.2(10A,17A) Time requirements.** Time shall be computed as provided in Iowa Code subsection 4.1(34). For good cause, the administrative law judge may extend or shorten the time to take any action, except as provided otherwise by rule or law.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.22.

[ARC 3523C, IAB 12/20/17, effective 1/24/18; ARC 3524C, IAB 12/20/17, effective 1/24/18]

**481—10.3(10A) Requests for a contested case hearing.** Requests for a contested case hearing are made to the agency with subject matter jurisdiction. That agency shall determine whether to initiate a contested case proceeding.

This rule is intended to implement Iowa Code section 10A.801(7).

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.4(10A) Transmission of contested cases.**

**10.4(1)** In every proceeding filed with the division, the agency shall complete a transmittal form. The following information is required:

- a. The name of the transmitting agency;
- b. The name, address and telephone number of the contact person in the transmitting agency;
- c. The name or title of the proceeding, which may include a file number;

- d.* Any agency docket or reference number;
- e.* A citation to the jurisdictional authority of the agency regarding the matter in controversy;
- f.* Any anticipated special features or requirements which may affect the hearing;
- g.* Whether the hearing should be held in person or by telephone conference call;
- h.* Any special legal or technical expertise needed to resolve the issues in the case;
- i.* The names and addresses of all parties and their attorneys or other representatives;
- j.* The date the request for a contested case hearing was received by the agency;
- k.* A statement of the issues involved and a reference to statutes and rules involved;
- l.* Any mandatory time limits that apply to the processing of the case;
- m.* Earliest appropriate hearing date; and
- n.* Whether a petition or answer is required.

**10.4(2)** The agency and the department determine by agreement whether the agency or the department shall issue the notice of hearing.

*a.* If agreed by the agency and the department, the agency shall attach a notice of hearing to the transmittal form.

*b.* If the division by agreement issues the notice of hearing, the agency must provide the information required by Iowa Code section 17A.12(2) (except for the date, time and place of the hearing) for inclusion in the notice.

*c.* The agency, and not the division, shall prepare:

- (1) The citation to the jurisdictional authority of the agency regarding the matter in controversy;
- (2) A statement of the issues involved;
- (3) A reference to statutes and rules involved; and
- (4) The remaining information required by the transmittal form as stated in subrule 10.4(1).

**10.4(3)** The following documents shall be attached to the completed transmittal form when it is sent to the division:

- a.* A copy of the document showing the agency action in controversy; and
- b.* A copy of any document requesting a contested case hearing.

**10.4(4)** When a properly transmitted case is received, it is marked with the date of receipt by the division. An identifying number shall be assigned to each contested case upon receipt.

This rule is intended to implement Iowa Code section 10A.801(7).

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.5(17A) Notices of hearing.**

**10.5(1)** Responsibility for issuance of notice of hearing and the manner of service shall be resolved by agreement between the division and the transmitting agency.

**10.5(2)** Notices of hearing shall contain the information required by Iowa Code subsection 17A.12(2) and any additional information required by statute or rule. Notices shall be served by first-class mail, unless otherwise required by statute or rule, or agreed pursuant to subrule 10.5(1).

This rule is intended to implement Iowa Code sections 17A.12(1) and 17A.12(2).

**481—10.6(10A) Waiver of procedures.** Unless otherwise precluded, the parties in a contested case may waive any provision of this chapter pursuant to Iowa Code section 17A.10.

This rule is intended to implement Iowa Code section 10A.801(7).

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.7(10A,17A) Telephone proceedings.** A prehearing conference or a hearing may be held by telephone conference call pursuant to a notice of hearing or an order of the ALJ. The division shall determine the location of the parties and witnesses in telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, shall be considered when location is chosen.

**481—10.8(10A,17A) Scheduling.** Contested case hearings are scheduled according to the following criteria:

**10.8(1) Agency hearings.** The division shall promptly schedule hearings. The availability of an administrative law judge and any special circumstances shall be considered.

**10.8(2) Board hearings.** Boards are requested to consult with the division prior to scheduling hearings to determine the availability of an administrative law judge. The board shall determine the time and place of hearing.

**481—10.9(17A) Disqualification.**

**10.9(1)** An administrative law judge shall withdraw from contested cases for lack of impartiality or other legally sufficient cause including, but not limited to, cases where:

*a.* The ALJ has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the case;

*b.* The ALJ has prosecuted or advocated in connection with the case, the specific controversy underlying the 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.* A private party is a client or has been a client of the ALJ within the past two years;

*d.* The ALJ has a financial interest in the case or any other interest that could be substantially affected by the outcome of the case; or

*e.* The ALJ, the ALJ's spouse, or relative within the third degree of relationship:

(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 by the ALJ to have an interest that could be substantially affected by the outcome of the case; or

(4) Is to the ALJ's knowledge likely to be a material witness in the case.

**10.9(2)** If an ALJ does not withdraw, the ALJ shall disclose on the record any information relevant to the grounds listed in subrule 10.9(1).

**10.9(3)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 10.9(1), the party shall file an affidavit pursuant to Iowa Code subsection 17A.17(4). The affidavit must be filed with the division within 15 days of the date of the notice of hearing, or as soon as the reason alleged in the affidavit becomes known to the party, but in any case shall be filed prior to the hearing.

This rule is intended to implement Iowa Code section 17A.17.

**481—10.10(10A,17A) Consolidation—severance.**

**10.10(1) Consolidation.** The administrative law judge may, upon motion by any party or the ALJ's own motion, consolidate any or all matters at issue in two or more proceedings docketed under these rules where:

*a.* There exist common parties or common questions of fact or law;

*b.* Consolidation would expedite and simplify consideration of the issues; and

*c.* Consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

**10.10(2) Severance.** The administrative law judge may, upon motion by any party or upon the ALJ's own motion, for good cause shown, order any proceeding or portion thereof severed.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.22.

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.11(10A,17A) Pleadings.** Pleadings may be required by the notice of hearing or by order of the administrative law judge. If pleadings are required, they shall be filed as follows:

**10.11(1) Petition.** When an action of the agency is appealed and pleadings are required under this rule, the aggrieved party shall file the petition.

*a.* Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

*b.* The petition shall state in separately numbered paragraphs the following:

- (1) The relief demanded and the facts and law relied upon for relief;
- (2) The particular provisions of the statutes and rules involved;
- (3) On whose behalf the petition is filed; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

**10.11(2) Answer.** If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

- a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.
- b. The answer shall show on whose behalf it is filed and specifically admit, deny or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and may contain as many defenses as the pleader may claim.
- c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.
- d. Any allegation in the petition not denied in the answer is considered admitted. Any defense not raised which could have been raised on the basis of facts known when the answer was written may be waived unless manifest injustice would result.

**10.11(3) Amendment.** Any petition, notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed may be allowed at the discretion of the ALJ or board if applicable. The presiding ALJ or board may impose terms or grant a continuance without terms, as a condition of allowing late amendments.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.12(6) "a."

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

#### **481—10.12(17A) Service and filing of documents.**

**10.12(1) When service is required.** Except where otherwise specifically authorized by law, every pleading, motion, or other document filed in the contested case proceeding and every document relating to discovery in the proceeding shall be served upon each of the parties to the proceeding, including the originating agency. Except for the notice of the hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

**10.12(2) Methods of performing service.** Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering, mailing, or transmitting by facsimile (fax) or by electronic mail (email) a copy to the party or attorney at the party's or attorney's last-known mailing address, fax number, or email address. Service by first-class mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order. Service by fax or electronic mail is complete upon transmission unless the party making service learns that the attempted service did not reach the person to be served.

**10.12(3) Filing with the division.** After a matter has been assigned to the division, and until a proposed decision is issued, every pleading, motion, or other document shall be filed with the division, rather than the originating agency. All documents that are required to be served upon a party shall be filed simultaneously with the division.

a. Except where otherwise provided by law, a document is deemed filed with the division at the time it is:

- (1) Delivered to the division at the Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa, and date-stamped received;
- (2) Delivered to an established courier service for immediate delivery to the division;
- (3) Mailed to the division by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or
- (4) Transmitted by facsimile (fax) to (515)281-4477, by electronic mail (email) to [adminhearings@dia.iowa.gov](mailto:adminhearings@dia.iowa.gov), or by other electronic means approved by the division, as provided in subrule 10.12(3), paragraph "b."

b. All documents filed with the division pursuant to these rules, except a person's request or demand for a contested case proceeding (see Iowa Code subsection 17A.12(9)), may be filed by facsimile (fax), electronic mail (email), or other electronic means approved by the division. A document filed by fax, email, or other approved electronic means is presumed to be an accurate reproduction of the original. If a

document filed by fax, email, or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax, email, or other approved electronic means shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax, email, or other approved electronic means.

**10.12(4)** *Proof of mailing.* Adequate proof of mailing includes the following:

- a. A legible United States postal service postmark on the envelope;
- b. A certificate of service;
- c. A notarized affidavit; or
- d. A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed) or (state interoffice mail).

(date)

(signature)

[ARC 1993C, IAB 5/27/15, effective 7/1/15]

**481—10.13(17A) Discovery.**

**10.13(1)** Pursuant to Iowa Code section 17A.13, discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by rules of the agency or by a ruling by the ALJ, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

**10.13(2)** Any motion relating to discovery shall allege that the moving party has made a good faith attempt to resolve the issues raised by the motion with the opposing party. Motions in regard to discovery shall be ruled on by the ALJ. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 10.13(1). The ALJ may rule on the basis of the written motion and any response or may order argument on the motion.

This rule is intended to implement Iowa Code section 17A.13.

**481—10.14(10A,17A) Subpoenas.**

**10.14(1)** *Issuance.*

a. Pursuant to Iowa Code subsection 17A.13(1), the division shall issue an agency subpoena to a party on request unless otherwise excluded pursuant to this rule. A request for a subpoena shall be in writing. The request may be made in person or by mail, facsimile (fax), electronic mail (email), or other electronic means approved by the division. The request shall include the names of the parties, the case number, the name and address of the requested witness, and a description or list of any documents or other items requested. The request shall also note the nature of the proceeding at which the witness is requested to testify (e.g., deposition, telephone hearing, or in-person hearing), the date and time of the proceeding, whether the witness is requested to appear in person or by telephone, the location of the proceeding if it is being conducted in a location other than the Wallace State Office Building, and the method of recording any deposition. A request for a subpoena shall be received by the division at least seven calendar days before the scheduled hearing. The request shall include the name, address, email address, and telephone number of the requesting party.

b. The division shall provide the subpoena to the requesting party by regular mail, fax, email, or other electronic means or allow for pickup during the department's regular business hours.

c. When authorized by law, an administrative law judge (ALJ) may issue a subpoena on the ALJ's own motion.

d. When there is reasonable ground to believe a subpoena is requested for the purpose of harassment, or that the subpoena requests irrelevant evidence or is untimely, the division may refuse to issue the subpoena. If the division refuses to issue a subpoena, the division shall provide a written statement of the

ground for refusal. A party to whom a refusal is issued may obtain a prompt hearing before an ALJ regarding the refusal by filing with the division and serving on all parties a written request for a hearing, including a statement of testimony, documents, or other items expected to be elicited from the subpoenaed witness and a showing of relevancy to the proceeding.

*e.* The issuance of a subpoena by the division does not constitute a ruling by the ALJ that the subpoenaed witness may testify at the hearing or that a subpoenaed document may be admitted into evidence. A party seeking to call a subpoenaed witness to testify or seeking to introduce a subpoenaed document at a hearing must comply with any applicable requirement in statute, administrative rule, or ALJ order regarding the submission of witness or exhibit lists and the disclosure of proposed exhibits to opposing parties.

**10.14(2) Form and contents.**

*a. Requirements.* Any subpoena issued after the commencement of a contested case or other proceeding conducted by the division shall be issued on a form approved by the division and must:

(1) State that the subpoena is issued by the administrative hearings division of the department of inspections and appeals;

(2) State the title of the proceeding and its case number;

(3) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody or control; or permit the inspection of premises; and

(4) Include a guidance document for subpoenaed persons that has been approved by the division and that shall include the text of subrules 10.14(4) and 10.14(5).

*b. Command to attend a deposition; notice of the recording method.* A subpoena commanding attendance at a deposition must state the method for recording the testimony.

*c. Combining or separating a command to produce or to permit inspection; specifying the form for electronically stored information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.

*d. Command to produce; included obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

**10.14(3) Service of subpoenas.**

*a.* The requesting party is responsible for arranging service of a subpoena prior to the hearing or deposition at which the testimony is commanded or the time at which the requested documents must be produced. The party is responsible for any cost associated with serving a subpoena and for the payment of witness fees and mileage expenses. If requested, pursuant to Iowa Code section 622.69, the witness fee is \$10 for a full day's attendance and is \$5 for attendance less than a full day, and mileage shall be paid for each mile actually traveled to participate in an in-person hearing or deposition at the rate established by the supreme court for witnesses in court proceedings, except that:

(1) No peace officer who receives a regular salary, or any other public official shall in any case receive fees as a witness for testifying in regard to any matter coming to the officer's or official's knowledge in the discharge of the officer's or official's official duties in a telephone hearing or an in-person hearing held in the county of the officer's or official's residence, except police officers who are called as witnesses when not on duty. An officer is on duty when paid by the officer's employing agency regardless whether the officer would regularly be on duty at the time of the hearing.

(2) A volunteer fire fighter, as defined in Iowa Code section 85.61, who is subpoenaed to appear as a witness in connection with a matter regarding an event or transaction which the fire fighter perceived or investigated in the course of duty as a volunteer fire fighter shall receive a fee only as provided for under Iowa Code section 622.71A.

*b.* Any person who is at least 18 years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person and, if the subpoena requires that person's attendance and, if demanded, tendering the fees for one day's attendance and traveling fees to and from the proceeding. If

the subpoena commands the production of documents, electronically stored information, or tangible things, then before it is served, a notice must be served on each party. For purposes of this rule, an employee of a state or local governmental agency is not a party merely because the agency is a party and may serve a subpoena unless the employee is also a named party in the proceeding or otherwise ineligible to serve a subpoena.

c. Permissible place of service. A subpoena may be served any place within the state of Iowa.

d. Proof of service. Proving service, when necessary, requires filing with the division a statement showing the date and manner of service and the names of persons served. The server must certify the statement in accordance with Iowa Code section 622.1.

**10.14(4)** *Protecting a person subject to a subpoena.*

a. *Avoiding undue burden or expense; sanctions.* A party or attorney responsible for serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The administrative law judge must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable attorney's fees, on a party or attorney who fails to comply.

b. *Command to produce materials or permit inspection.*

(1) Appearance not required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition or hearing.

(2) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

1. At any time, on notice to the commanded person, the serving party may move for an order compelling production or inspection.

2. These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

c. *Attendance.* Any party shall be permitted to attend at the same time and place and for the same purposes specified in the subpoena. No prior notice of intent to attend is required.

d. *Quashing or modifying a subpoena.*

(1) When required. On timely motion, the administrative law judge must quash or modify a subpoena that:

1. Fails to allow a reasonable time to comply;

2. Requires a person who is neither a party nor a party's officer to travel more than 50 miles from where that person resides, is employed, or regularly transacts business in person, except that a person may be ordered to attend a hearing anywhere within the state in which the person is served with a subpoena;

3. Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

4. Subjects a person to undue burden.

(2) When permitted. To protect a person subject to or affected by a subpoena, the administrative law judge may, on motion, quash or modify the subpoena if it requires:

1. Disclosing a trade secret or other confidential research, development, or commercial information;

2. Disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

3. A person who is neither a party nor a party's officer to incur substantial expense to travel more than 50 miles to attend a hearing.

(3) Specifying conditions as an alternative. In the circumstances described in subparagraph 10.14(4)"d"(2), the administrative law judge, instead of quashing or modifying a subpoena, may order appearance or production under specified conditions if the serving party:

1. Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

2. Ensures that the subpoenaed person will be reasonably compensated.

(4) A motion to quash or modify a subpoena shall be filed with the division and served on all parties of record pursuant to rule 481—10.12(17A), except that a motion filed by or on behalf of a person who is neither a party nor a party's officer may be filed with the division and served only on the agency with a request for the division to provide a copy of the motion to all non-agency parties. The division may require a person requesting the division to provide the motion to a non-agency party to provide an additional paper copy of the motion and any attached exhibits for the division to provide to the non-agency party.

(5) The motion may be set for argument at the discretion of the administrative law judge. The administrative law judge may limit the participation of a person who is not a party, or the representative of such a person, to the extent necessary to protect any confidential information related to the proceeding.

**10.14(5) Duties in responding to a subpoena.**

*a. Producing documents or electronically stored information.* These procedures apply to producing documents or electronically stored information:

(1) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) Form for producing electronically stored information not specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) Electronically stored information produced in only one form. The person responding need not produce the same electronically stored information in more than one form.

(4) Inaccessible electronically stored information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Iowa Rule of Civil Procedure 1.504(1)(b). The administrative law judge may specify conditions for the discovery.

*b. Claiming privilege or protection.*

(1) Information withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

1. Expressly make the claim; and
2. Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(2) Information produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

This rule is intended to implement Iowa Code sections 10A.104(6) and 17A.13.

[ARC 9616B, IAB 7/13/11, effective 8/17/11; ARC 2404C, IAB 2/17/16, effective 3/23/16]

**481—10.15(10A,17A) Motions.**

**10.15(1)** No technical form is required for motions. Prehearing motions, however, must be written, state the grounds for relief and state the relief sought. Any motion for summary judgment shall be filed in compliance with the requirements of Iowa Rules of Civil Procedure.

**10.15(2)** Any party may file a written resistance or response to a motion within 14 days after the motion is served, unless the time period is extended or shortened by rules of the agency or the administrative law judge. The ALJ may consider a failure to respond within the required time period in ruling on a motion.



**10.15(3)** The administrative law judge may schedule oral argument on any motion on the request of any party or the ALJ's own motion.

**10.15(4)** Except for good cause, all motions pertaining to the hearing must be filed and served at least ten days prior to the hearing date unless the time period is shortened or lengthened by rules of the agency or the administrative law judge.

**481—10.16(10A,17A) Prehearing conference.**

**10.16(1)** *Set by division.* The division may commence a contested case proceeding by issuing a notice of hearing that sets a prehearing conference to provide parties an opportunity to be heard on the selection of a date and time for the hearing on the merits and any other matters set forth in the notice or raised by the parties.

**10.16(2)** *Requested by party.* Any party may request a prehearing conference by filing and serving a written motion at least ten days prior to the date of the hearing. The motion must state any matters that the party seeks to address at the prehearing conference. If the administrative law judge grants the motion, the administrative law judge shall issue an order providing notice of the date and time of the prehearing conference to all parties.

**10.16(3)** *Ordered by administrative law judge.* The administrative law judge may order a prehearing conference if the administrative law judge determines on the administrative law judge's own motion that a prehearing conference should be held.

**10.16(4)** *Default.* If a party fails to appear or participate in a prehearing conference after proper service of notice, the administrative law judge may enter a default decision or proceed with the prehearing conference in the absence of the party.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.12.

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.17(10A) Continuances.** Unless otherwise provided, application for continuance shall be made to the ALJ or to the division if an ALJ has not been assigned.

**10.17(1)** A written application for continuance shall:

- a. Be made before the hearing;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or their representative.

**10.17(2)** If the ALJ waives the requirement for a written motion, an oral application for continuance may be made. A written application shall be submitted no later than five days after the oral request. The ALJ may waive this requirement. No application for continuance will be made or granted ex parte without notice except in an emergency where notice is not feasible. The agency may waive notice of requests for a case or a class of cases.

**10.17(3)** Except where otherwise provided, a continuance may be granted at the discretion of the ALJ. The administrative law judge shall consider, in addition to the grounds stated in the motion:

- a. Any prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. Existence of emergency;
- e. Objection to the continuance;
- f. Any applicable state or federal statutes or regulations;
- g. The existence of a conflict in the schedules of counsel or parties or witnesses; and
- h. The timeliness of the request.

The ALJ may require documentation of any ground for continuance.

This rule is intended to implement Iowa Code section 10A.801(7).

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.18(10A,17A) Withdrawals.** The party which requested an evidentiary hearing regarding agency action may withdraw prior to the hearing only in accordance with agency rules. Requests for withdrawal

may be oral or written. If oral, the ALJ may require the party to submit a written request after the oral request. Unless otherwise provided, a withdrawal shall be with prejudice.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.22.

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

#### **481—10.19(10A,17A) Intervention.**

**10.19(1) Motion.** A motion for leave to intervene shall be served on all parties and shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within ten days of service of the motion to intervene unless the time period is extended or shortened by the ALJ.

**10.19(2) When filed.** Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the disposition of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if one is held, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreement, arrangement or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the hearing will be denied.

**10.19(3) Grounds for intervention.** The movant shall demonstrate that:

- a. Intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties;
- b. The movant will be aggrieved or adversely affected by a final order; and
- c. The interests of the movant are not being adequately represented by existing parties; or that it is otherwise entitled to intervene.

**10.19(4) Effect of intervention.** If appropriate, the ALJ may order consolidation of petitions and briefs and limit the number of representatives allowed to participate in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues to be raised or otherwise condition the intervenor's participation in the proceeding.

This rule is intended to implement Iowa Code sections 10A.801(7) and 17A.22.

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

#### **481—10.20(17A) Hearing procedures.**

**10.20(1)** When an ALJ has been appointed as the presiding officer in a contested case, the ALJ may:

- a. Rule on motions;
- b. Preside at the hearing;
- c. Require the parties to submit briefs;
- d. Issue a proposed decision; and
- e. Issue orders and rulings to ensure the orderly conduct of the proceedings.

**10.20(2)** All objections to procedures, admission of evidence or any other matter shall be timely made and stated on the record.

**10.20(3)** Parties in a contested case have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations or associations may be represented by any member, officer, director or duly authorized agent. Any party may be represented by an attorney or as otherwise authorized by law.

**10.20(4)** Parties in a contested case have the right to introduce evidence on points at issue, to cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, to present evidence in rebuttal and to submit briefs.

**10.20(5)** The ALJ shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly or disruptive.

**10.20(6)** Witnesses may be sequestered during the hearing.

**10.20(7)** The ALJ shall conduct the hearing in the following manner:

- a. The ALJ shall give an opening statement briefly describing the nature of the proceeding;
- b. The parties shall be given an opportunity to present opening statements;

- c. Parties shall present their cases in the sequence determined by the ALJ;
- d. Each witness shall be sworn or affirmed by the ALJ or the court reporter, and be subject to examination. The ALJ may limit questioning consistent with Iowa Code section 17A.14;
- e. The ALJ has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material; and
- f. When all parties and witnesses have been heard, parties shall be given the opportunity to present final arguments.

This rule is intended to implement Iowa Code sections 17A.11 to 17A.14.

#### **481—10.21(17A) Evidence.**

**10.21(1)** The ALJ shall rule on admissibility of evidence in accordance with Iowa Code section 17A.14 and may take official notice of facts pursuant to Iowa Code subsection 17A.14(4).

**10.21(2)** Stipulation of facts is encouraged. The ALJ may make a decision based on stipulated facts.

**10.21(3)** Evidence shall be confined to the issues on which there has been fair notice prior to the hearing. The ALJ may take testimony on a new issue if the parties waive the right to notice and no other objection is made. If there is objection, the ALJ may refuse to hear the new issue and may make a decision on the original issue in the notice, or may grant a continuance to allow the parties adequate time to amend pleadings and prepare their cases on the additional issue.

**10.21(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**10.21(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. The party objecting shall briefly state the grounds for the objection. The objection, the ruling on the objection and the reasons for the ruling shall be noted in the record. The ALJ may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**10.21(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony. If the evidence excluded consists of a document or exhibits, it shall be marked as part of an offer of proof and inserted in the record.

This rule is intended to implement Iowa Code sections 17A.11 to 17A.14.

#### **481—10.22(17A) Default.**

**10.22(1)** If a party fails to appear in a contested case proceeding after proper service of notice, the ALJ may, if no adjournment is granted, proceed with the hearing and make a decision in the absence of the party.

**10.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested an evidentiary hearing to contest adverse agency action which has already occurred, but has failed to file a required pleading or has failed to appear after proper service.

**10.22(3)** Where authorized by law, an ALJ may issue a default order.

#### **481—10.23(17A) Ex parte communication.**

**10.23(1)** Ex parte communication is prohibited as provided in Iowa Code section 17A.17. Parties or their representatives and ALJs shall not communicate directly or indirectly in connection with any issue of fact or law in a contested case except upon notice and an opportunity for all parties to participate. The ALJ may communicate with persons who are not parties as provided in subrule 10.23(2).

**10.23(2)** However, the ALJ may communicate with members of the agency and may have the aid and advice of persons other than those with a personal interest in, or those prosecuting or advocating in the case under consideration or a factually related case involving the same parties.

**10.23(3)** Any party or ALJ who receives prohibited communication shall submit the written communication or a summary of the oral communication for inclusion in the record. Copies shall be sent to all parties. There shall be opportunity to respond.

**10.23(4)** Prohibited communications may result in sanctions as provided in agency rule. In addition, the department, through the ALJ, may censure the person or may prohibit further appearance before the department.

This rule is intended to implement Iowa Code sections 17A.14 and 17A.17.

**481—10.24(10A,17A) Decisions.**

**10.24(1)** *Proposed decisions.* The ALJ shall issue a proposed decision which includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case.

The record in a contested case shall include all materials specified in Iowa Code subsection 17A.12(6). This shall include any request for a contested case hearing and other relevant procedural documents regardless of their form.

A ruling dismissing all of a party's claims or a voluntary dismissal is a proposed decision under Iowa Code section 17A.15.

**10.24(2)** *Review of proposed decisions.* Request for review of a proposed decision shall be made to the agency in which the contested case originated in the manner and within the time specified by that agency's rules. In contested cases in which the director of the department of inspections and appeals has final decision-making authority, request for review shall be made as provided in rule 481—9.3(10A,17A).

**10.24(3)** *Final decisions.* If there is no appeal from or review of the proposed decision, the ALJ's proposed decision becomes the final decision of the agency.

**10.24(4)** *Agency reports.* The agency shall send a copy of any request for review of a proposed decision to the division. The agency shall notify the division of the results of the review, the final decision and any judicial decision issued.

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.25(10A,17A) DIA appeals.** Rescinded ARC 3523C, IAB 12/20/17, effective 1/24/18.

**481—10.26(10A,17A,272C) Board hearings.** In scheduling hearings, boards should consult with the division to determine the availability of an ALJ. The board shall determine the time and place of hearing. At the request of the board, an ALJ shall assist in the conduct of a contested case.

**10.26(1)** The ALJ may rule on preliminary matters, including motions, and conduct prehearing conferences referred by the board.

**10.26(2)** The ALJ may conduct the hearing for the board, and may, when delegated by the board, perform duties including, but not limited to, the following:

- a. Open the record and receive appearances;
- b. Administer oaths and issue subpoenas;
- c. Enter the notice of hearing into the record;
- d. Enter the statement of charges into the record;
- e. Receive testimony and exhibits presented by the parties;
- f. Rule on objections and motions;
- g. Close the hearing; and
- h. Prepare findings of fact, conclusions of law and decision and order.

This rule is intended to implement Iowa Code sections 10A.202, 17A.11 and 272C.6.

**481—10.27(10A) Transportation hearing fees.** Rescinded ARC 3523C, IAB 12/20/17, effective 1/24/18.

**481—10.28(10A) Recording costs.** The division may provide a copy of the audio recording of the hearing or a printed transcript of the hearing when a record of the hearing is requested. The cost of providing the recording or preparing the transcript shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters shall bear the cost, unless otherwise provided by law.

[ARC 3523C, IAB 12/20/17, effective 1/24/18]

**481—10.29(10A) Code of administrative judicial conduct.** Rescinded ARC 3524C, IAB 12/20/17, effective 1/24/18. See 481—Chapter 15.

These rules are intended to implement Iowa Code sections 10A.104, 10A.202, 17A.10 to 17A.17, 17A.19, 17A.22, 272C.1 and 272C.6.

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]

[Filed 2/6/87, Notice 10/8/86—published 2/25/87, effective 4/1/87]

[Filed without Notice 3/26/87—published 4/22/87, effective 5/27/87]

[Filed 1/22/88, Notice 12/16/87—published 2/10/88, effective 3/16/88]

[Filed 4/26/90, Notice 1/24/90—published 5/16/90, effective 6/20/90]<sup>1</sup>

[Filed emergency 8/1/90—published 8/22/90, effective 8/1/90]

[Filed emergency 9/27/96—published 10/23/96, effective 9/27/96]

[Filed emergency 2/6/98—published 2/25/98, effective 2/6/98]

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 7/1/99]

[Filed 12/6/01, Notice 10/31/01—published 12/26/01, effective 1/30/02]

[Filed ARC 9616B (Notice ARC 9514B, IAB 5/18/11), IAB 7/13/11, effective 8/17/11]

[Filed ARC 1993C (Notice ARC 1934C, IAB 4/1/15), IAB 5/27/15, effective 7/1/15]

[Filed ARC 2404C (Notice ARC 2321C, IAB 12/23/15), IAB 2/17/16, effective 3/23/16]

[Filed ARC 3523C (Notice ARC 3407C, IAB 10/25/17), IAB 12/20/17, effective 1/24/18]

[Filed ARC 3524C (Notice ARC 3408C, IAB 10/25/17), IAB 12/20/17, effective 1/24/18]

<sup>1</sup> Effective date of first unnumbered paragraph of Ch 10, Scope and applicability, delayed 70 days by the Administrative Rules Review Committee at its 6/13/90 meeting; this paragraph rescinded IAB 8/22/90, effective 8/1/90.