

TERRY E. BRANSTAD
GOVERNOR

RODNEY A. ROBERTS, DIRECTOR

KIM REYNOLDS
LT. GOVERNOR

GUIDANCE FOR SUBPOENAED PERSONS IN A CONTESTED CASE PROCEEDING

The attached subpoena issued by the Administrative Hearings Division of the Iowa Department of Inspections and Appeals commands you to appear at a hearing or deposition and/or to produce certain documents or other items for the proceeding. This is an important legal document and you are encouraged to closely review the subpoena and the information below to ensure that you comply with your obligations and protect your rights under Iowa law. If you have questions, you may contact the Division by phone at (515) 281-6468 or by email at adminhearings@dia.iowa.gov. The Division cannot provide legal advice and you may wish to consult an attorney if you have questions about your rights and obligations. This subpoena is issued pursuant to section 17A.13 of the Iowa Code and section 481-10.14 of the Iowa Administrative Code. Rules 10.14(4) and (5) are reproduced below and provide greater detail about the rights and obligations of a subpoenaed person:

Rule 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 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:

GUIDANCE FOR SUBPOENAED PERSONS – PAGE 2

1. Disclosing a trade secret or other confidential research, development, or commercial information; or
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.
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 rule 10.14(4)(d)(2), the administrative law judge may, instead of quashing or modifying a subpoena, 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 10.12, 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 ALJ. The ALJ 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 rule 1.504(1)(b) of the Iowa Rules of Civil Procedure. 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.