

(4) any staff memorandum submitted to an individual who is involved in the decision making process of the contested case by an official or employee of the agency who is not authorized to participate in the decision making process;

(5) each question;

(6) each offer of proof;

(7) each objection and the ruling on the objection;

(8) each finding of fact or conclusion of law proposed by:

(i) a party; or

(ii) [a hearing] THE PRESIDING officer;

(9) each exception to a finding or conclusion proposed by a [hearing] PRESIDING officer; and

(10) each intermediate proposed and final ruling by or for the agency, including each report or opinion issued in connection with the ruling.

[10-213.] 10-219. EX PARTE COMMUNICATIONS.

(a) (1) Except as provided in paragraph (2) of this subsection, [an individual who is not authorized to participate in the decision making process of a contested case may not communicate ex parte with an individual who is involved in the process with regard to any issue of law or fact in the contested case] A PRESIDING OFFICER MAY NOT COMMUNICATE EX PARTE DIRECTLY OR INDIRECTLY REGARDING THE MERITS OF ANY ISSUE IN THE CASE, WHILE THE CASE IS PENDING, WITH:

(I) ANY PARTY TO THE CASE OR THE PARTY'S REPRESENTATIVE OR ATTORNEY; OR

(II) ANY PERSON WHO PRESIDED AT A PREVIOUS STAGE OF THE CASE.

(2) AN [individual who is involved in the decision making process] AGENCY HEAD, BOARD, OR COMMISSION PRESIDING OVER A CONTESTED CASE may communicate with members of an advisory staff of [the agency], or any counsel [for] FOR, the agency, BOARD, OR COMMISSION who otherwise does not participate in the contested case.

(B) IF, BEFORE HEARING A CONTESTED CASE, A PERSON RECEIVES AN EX PARTE COMMUNICATION OF A TYPE THAT WOULD VIOLATE SUBSECTION (A) OF THIS SECTION IF RECEIVED WHILE CONDUCTING A HEARING, THE PERSON, PROMPTLY AFTER COMMENCING THE HEARING, SHALL DISCLOSE THE COMMUNICATION IN THE MANNER PRESCRIBED IN SUBSECTION (C) OF THIS SECTION.

DRAFTER'S NOTE: Subsection (b) is derived from § 4-213(d) of the Model APA.