

Question: What is required for a governmental body to designate who its legal counsel is for purposes of a closed session?

Editor's Note: This is a monthly column prepared by the Iowa Public Information Board to update Iowans on the IPIB's activities and provide information on some of the issues routinely addressed by the board.



ANSWER: On December 17, 2015, the Iowa Public Information Board (IPIB) issued Advisory Opinion 2015-10 stating:

“Iowa Code section 21.5(1)(c) permits a governmental body to go into closed session to ‘discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent...’ The Iowa Court of Appeals has opined that for a governmental body to go into closed session for purposes of Iowa Code section 21.5(1)(c), that the attorney for the governmental body be present. By administrative rule, we have adopted the holding of that opinion and have stated that ‘present’ means either ‘in person or by electronic means.’

“The issue has been raised in two recent complaints concerning governmental bodies going into closed session and

it was not clear who the attorneys were for the governmental bodies. We are of the opinion that for purposes of going into closed session under Iowa Code section 21.5(1)(c), there needs to exist a prior public statement of the attorney-client relationship between the governmental body and the individual who is going to be its legal counsel. This statement can be an existing engagement letter, contract, resolution, or a designation made in the minutes of a prior meeting. If there has been no prior public statement, then the governmental body should announce before going into closed session that it is going to utilize the individual as its legal counsel on the issue that is going to be discussed in closed session. If the governmental body is going to utilize an individual as its attorney and the name of that in-

dividual has already been publicly stated, then no additional announcement or designation is required.”

The IPIB notes that this opinion applies solely to the application of Iowa Code chapter 21 and does not speak to the application of the Iowa Rules of Professional Conduct for attorneys or to any interpretations of those rules by the Iowa Supreme Court.

This Advisory Opinion, along with other opinions, rulings, FAQs, monthly columns, and training documents, are available on the IPIB website – www.ipib.iowa.gov. Questions for the IPIB can be posted on the website or by calling 515-725-1781.

IPIB Facts and Figures

During the month of December 2015, 55 contacts were made with the Iowa Public Information Board office.

| <u>TYPE</u> | <u>DEC. 2015</u> | <u>2015 TOTAL</u> |
|---------------------|------------------|-------------------|
| Formal complaints | 5 | 97 |
| Formal opinions | 0 | 8 |
| Declaratory orders | 0 | 3 |
| Informal complaints | 9 | 151 |
| Informal requests | 36 | 531 |
| Misc. | 5 | 21 |
| TOTAL: | 55 | 811 |

Who can contact the IPIB and how long does it take?

Any person can contact the IPIB for assistance by telephone (515-725-1781), by email (Margaret.Johnson@iowa.gov) or website (www.ipib.iowa.gov). In 2015, 811 identifiable people contacted the IPIB. Of these, 46% were private citizens, 40% were government officials or employees, and 14% were members of the media.

Also during 2015, 62% of the incoming matters were resolved the first day, 20% were resolved in one to five days, and 18% were resolved in six or more days.