

**CHAPTER 1400**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**RULEMAKING HEARINGS AND CONTESTED CASE**  
**HEARINGS**

**ADMINISTRATIVE RULEMAKING HEARINGS**  
1400.0200 SCOPE.  
1400.0300 INITIATION OF HEARING.  
1400.0400 NOTICE OF HEARING.  
1400.0500 STATEMENT OF NEED AND REASONABLENESS.  
1400.0600 DOCUMENTS TO BE PREFILED.  
1400.0700 HEARING EXAMINER DISQUALIFICATION.  
1400.0800 CONDUCT OF HEARINGS.  
1400.0900 HEARING RECORD.  
1400.1000 HEARING EXAMINER'S REPORT.  
1400.1100 DETERMINING SUBSTANTIAL CHANGE.  
1400.1200 RULE ADOPTION.  
**CONTESTED CASE HEARINGS**  
1400.5100 DEFINITIONS.  
1400.5200 SCOPE.  
1400.5300 REQUEST FOR EXAMINER.  
1400.5400 ASSIGNMENT OF EXAMINER.  
1400.5500 DUTIES OF EXAMINER.  
1400.5600 NOTICE AND ORDER FOR HEARING.  
1400.5700 NOTICE OF APPEARANCE.  
1400.5800 RIGHT TO COUNSEL.  
1400.5900 CONSENT ORDER, SETTLEMENT, OR STIPULATION.  
1400.6000 DEFAULT.  
1400.6100 TIME.  
1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.

1400.6300 CONSOLIDATION OF CASES.  
1400.6400 HEARING EXAMINER DISQUALIFICATION.  
1400.6500 PREHEARING CONFERENCE.  
1400.6600 MOTIONS.  
1400.6700 DISCOVERY.  
1400.6800 REQUESTS FOR ADMISSION OF FACTS OR OPINIONS.  
1400.6900 DEPOSITIONS.  
1400.7000 SUBPOENAS.  
**THE HEARING**  
1400.7100 RIGHTS OF PARTIES.  
1400.7200 WITNESSES.  
1400.7300 RULES OF EVIDENCE.  
1400.7400 HEARING RECORD.  
1400.7500 CONTINUANCES.  
1400.7600 CERTIFICATION OF MOTIONS TO THE AGENCY.  
1400.7700 HEARING EXAMINER'S CONDUCT.  
1400.7800 CONDUCT OF HEARING.  
1400.7900 PARTICIPATION BY AGENCY.  
1400.8000 DISRUPTION OF HEARING.  
1400.8100 HEARING EXAMINER'S REPORT.  
1400.8200 AGENCY DECISION.  
1400.8300 REHEARING.  
1400.8400 EMERGENCY PROCEDURES NOT PREEMPTED.  
1400.8500 SEVERABILITY.

**ADMINISTRATIVE RULEMAKING HEARINGS**

**1400.0200 SCOPE.**

The procedures contained in parts 1400.0300 to 1400.1200 shall govern the conduct of all rule hearings held by an agency of state government as defined in Minnesota Statutes, section 14.02, subdivision 2, for the purpose of the adoption of any rule as that term is defined in Minnesota Statutes, section 14.02, subdivision 4.

**Statutory Authority:** *MS s 14.51*

**1400.0300 INITIATION OF HEARING.**

Subpart 1. **Filing documents.** Any agency desiring to initiate a rule hearing pursuant to Minnesota Statutes, sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.48 to 14.56 shall first file with the chief hearing examiner or his designee the following documents:

- A. A copy of the proposed rule or rules.
- B. An order for hearing that shall contain the following: a proposed time, date, and place for the hearing to be held; a statement that the notice of hearing shall be given to all persons who have registered with the agency for that purpose, and a statement that the notice of hearing shall be published in the State Register; and the signature of the person authorized to order a hearing. If a board is ordering the hearing, the person signing the order must be so authorized and a document of authority must be attached to the order for hearing.
- C. The notice of hearing proposed to be issued that shall contain the following:

# MINNESOTA RULES 1983

497

## RULEMAKING HEARINGS AND CONTESTED CASE 1400.0300

(1) A proposed time, date, and place for the hearing to be held.

(2) A statement that all interested or affected persons will have an opportunity to participate.

(3) A statement or a description of the subjects and issues involved. If the proposed rules themselves are not included with the notice of hearing, then the notice must clearly indicate the nature and extent of the proposed rules, and a statement shall be included announcing the availability and the means of obtaining upon request at least one free copy of the proposed rules.

(4) A citation to the agency's statutory authority to promulgate the proposed rules.

(5) A statement describing the manner in which interested persons may present their views and advising persons that the proposed rule may be modified as a result of the hearing process.

(6) A statement advising interested persons that lobbyists must register with the state Ethical Practices Board, which statement shall read as follows:

Minnesota Statutes, chapter 10A requires each lobbyist to register with the state Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes 1979 Supplement, section 10A.01, subdivision 11 as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) who spends more than \$250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

(7) A statement that written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, and a statement that the comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the hearing examiner at the hearing.

(8) A separate paragraph which shall read as follows:

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the attorney general by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the attorney general).

(9) A separate paragraph will read as follows:

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need

and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

(10) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public monies by local public bodies.

(11) A statement that the rule hearing procedure is governed by Minnesota Statutes, sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45 and 14.48 to 14.56 and by parts 1400.0200 to 1400.1200 and a statement that questions about procedure may be directed to the hearing examiner.

D. A statement by the agency of the number of persons expected to attend the hearing and the estimated length of time that will be necessary for the agency to present its evidence at the hearing.

Subp. 2. **Appointing examiners.** Within ten days of receipt of the aforementioned documents, the chief hearing examiner shall appoint a hearing examiner to preside at the hearing, and the hearing examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests and shall advise the agency as to whether or not the proposed notice of hearing is proper as required by Minnesota Statutes, section 14.50.

**Statutory Authority:** *MS s 14.51*

#### 1400.0400 NOTICE OF HEARING.

The notice of hearing shall be given pursuant to provisions of Minnesota Statutes, section 14.14, subdivision 1.

**Statutory Authority:** *MS s 14.51*

#### 1400.0500 STATEMENT OF NEED AND REASONABLENESS.

Subpart 1. **Contents.** Each agency desiring to adopt rules shall prepare a statement of need and reasonableness which shall be prefiled pursuant to part 1400.0600. The statement of need and reasonableness shall be a document containing, at the minimum, a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules, including citations to any statutes or case law to be relied upon, citations to any economic, scientific, or other manuals or treatises to be utilized at the hearing, and a list of any expert witnesses to be called to testify on behalf of the agency, together with a brief summary of the expert opinion to be elicited. The statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public. To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

Subp. 2. **Specificity.** The statement shall be prepared with sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the rule/rules as proposed. Presentation of evidence or testimony (other than bona fide rebuttal) not summarized in the statement of need and reasonableness may result in the hearing examiner, upon proper motion made at the hearing by any interested person, recessing the hearing to a future date in order to allow all interested persons an opportunity to prepare testimony or evidence in opposition to such newly presented evidence or testimony, which recessing shall be for a period not to exceed 25 calendar days, unless the 25th day is a Saturday, Sunday, or legal holiday, in which case, the next succeeding working day shall be the maximum date for the resumed hearing.

Subp. 3. **Verbatim agency presentation.** If the agency so desires, the statement of need and reasonableness may contain the verbatim affirmative presentation by the agency and, provided that copies are available for review at the hearing, may be introduced as an exhibit into the record as though read. In

# MINNESOTA RULES 1983

499

## RULEMAKING HEARINGS AND CONTESTED CASE 1400.0800

such instance, agency personnel or other persons thoroughly familiar with the rules and the agency's statement shall be available at the hearing for questioning by the hearing examiner and other interested persons or to briefly summarize all or a portion of the statement of need and reasonableness if requested by the hearing examiner.

**Statutory Authority:** *MS s 14.51*

### 1400.0600 DOCUMENTS TO BE PREFILED.

At least 25 days prior to the date and time of the hearing, the agency shall file with the hearing examiner assigned to the hearing copies of the following documents:

- A. the notice of hearing as mailed;
- B. the agency's certification that the mailing list required by Minnesota Statutes, section 14.14, subdivision 1, which was used for the hearing, was accurate and complete;
- C. an affidavit of mailing of the notice to all persons on the agency's list;
- D. an affidavit of additional notice if such discretionary notice was given pursuant to Minnesota Statutes, section 14.14, subdivision 1;
- E. the statement of need and reasonableness;
- F. the petition requesting a rule hearing, if one has been filed pursuant to Minnesota Statutes, section 14.09;
- G. all materials received following a notice made pursuant to Minnesota Statutes, section 14.10, together with a citation to said notice;
- H. the names of agency personnel who will represent the agency at the hearing together with the names of any other witness solicited by the agency to appear on its behalf;
- I. a copy of the State Register in which the notice and rules or rule amendments were published.

**Statutory Authority:** *MS s 14.51*

### 1400.0700 HEARING EXAMINER DISQUALIFICATION.

The hearing examiner shall withdraw from participation in a rulemaking proceeding to which he has been assigned if, at any time, he deems himself disqualified for any reason. Upon the filing in good faith by an affected person of an affidavit of prejudice against the hearing examiner, the chief hearing examiner shall determine the matter as a part of the record provided that the affidavit shall be filed no later than five days prior to the date set for hearing.

**Statutory Authority:** *MS s 14.51*

### 1400.0800 CONDUCT OF HEARINGS.

**Subpart 1. Statutory proceedings.** All hearings held pursuant to Minnesota Statutes, sections 14.05 to 14.36 shall proceed substantially in the following manner.

**Subp. 2. Registration of participants.** All persons intending to present evidence or ask questions shall register with the hearing examiner prior to the presentation of evidence or questions by writing their names, addresses, telephone numbers, and the names of any individuals or associations that the persons represent in connection with the hearing on a register to be provided by the hearing examiner. The register shall include a section in which persons may indicate their desire to be informed of the date on which the hearing examiner's report will be available and the date on which the agency submits the record to the attorney general.

Subp. 3. **Notice of purpose and record inclusion.** The hearing examiner shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing. The hearing examiner shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner, for the receipt of written statements concerning the proposed rule or rules.

Subp. 4. **Registration of lobbyists.** The hearing examiner shall advise the persons present of the requirements of Minnesota Statutes, chapter 10A concerning the registration of lobbyists.

Subp. 5. **Agency representatives.** The agency representatives and any others who will be presenting the agency position at the hearing shall identify themselves for the record.

Subp. 6. **Proposed rule copies.** The agency shall make available copies of the proposed rule at the hearing.

Subp. 7. **Exhibits.** The agency shall introduce its exhibits relevant to the proposed rule including written material received prior to the hearing.

Subp. 8. **Showing.** The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rule and shall present any other evidence it deems necessary to fulfill all relevant substantive and procedural statutory or regulatory requirements.

Subp. 9. **Opportunity for questions.** Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses.

Subp. 10. **Opportunity for presenting questions.** Interested persons shall be given an opportunity to be heard on the proposed rule and/or to present written evidence. All interested persons submitting oral statements are subject to questioning by representatives of the agency.

Subp. 11. **Questioning by examiner.** The hearing examiner may question all persons, including the agency representatives.

Subp. 12. **Further agency evidence.** The agency may present any further evidence that it deems appropriate in response to statements made by interested persons. Upon such presentation by the agency, interested persons may respond thereto.

Subp. 13. **Powers of examiner.** Consistent with law, the hearing examiner shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness, and economy, including but not limited to the power to preside at the hearing, administer oaths or affirmations when he deems it appropriate, hear and rule on objections and motions, question witnesses where he deems it necessary to make a complete record, and rule on the admissibility of evidence and strike from the record objectionable evidence.

**Statutory Authority:** *MS s 14.51*

#### 1400.0900 HEARING RECORD.

The record shall be closed upon the last date for receipt of written statements. The record in each hearing shall include all of the documents enumerated in part 1400.0600, all written comments or other evidence received prior to, during, or subsequent to the hearing but prior to the close of the record, and a tape recording of the hearing itself, unless a court reporter has taken the proceedings. In the event a transcript of the proceedings has been prepared, it shall be part of the record, and copies will be available to persons requesting them at a reasonable charge. The charge for transcripts shall be set by the chief hearing examiner, and all moneys received for transcripts shall be payable to the state treasury and shall be deposited in the Office of Administrative Hearings' account in the state treasury. The agency and any other persons so requesting

# MINNESOTA RULES 1983

501

## RULEMAKING HEARINGS AND CONTESTED CASE 1400.1200

of the hearing examiner shall be notified of the date of the completion of the transcript.

**Statutory Authority:** *MS s 14.51*

### 1400.1000 HEARING EXAMINER'S REPORT.

Subpart 1. **No substantial change.** Subsequent to the close of the record, the hearing examiner shall make his or her report pursuant to Minnesota Statutes, section 14.50. If the report contains findings that the rules as last proposed by the agency prior to the close of the record are needed and reasonable and are not substantially changed from those which were published in the State Register, and that the agency has fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, the hearing examiner shall file the original of said report, together with the complete record of the proceedings, with the agency. Both the agency, if authorized by statute, and the Office of Administrative Hearings shall make a copy of said report available to any interested person upon request at a reasonable charge.

Subp. 2. **Substantial change.** If the hearing examiner's report contains findings that the rules as last proposed by the agency prior to the close of the hearing are substantially changed from those which were published in the State Register, or that the agency has failed to demonstrate the need or reasonableness of the rules, or has not fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, he or she shall submit the report, together with the complete record of the proceedings, to the chief hearing examiner for review pursuant to Minnesota Statutes, section 14.15.

Subp. 3. **Chief hearing examiner's review.** Upon receipt of a report from the hearing examiner, the chief hearing examiner shall complete his review and submit his report, along with the complete record and the report of the hearing examiner, to the agency within ten calendar days.

**Statutory Authority:** *MS s 14.51*

### 1400.1100 DETERMINING SUBSTANTIAL CHANGE.

In determining whether the proposed final rule is substantially different, the hearing examiner shall consider the degree to which it affects classes of persons not represented at the previous hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different from that contained in the notice of hearing.

**Statutory Authority:** *MS s 14.51*

### 1400.1200 RULE ADOPTION.

Subpart 1. **After report from examiner.** Upon receipt of a report directly from the hearing examiner, the agency shall, if it adopts the rules in accordance with the recommendations of the hearing examiner, submit the complete hearing record and a copy of the proposed rules to the attorney general for a review as to form and legality, pursuant to Minnesota Statutes, sections 14.14, subdivision 3, 14.16 and 14.17. If the agency proposes to adopt the rules with changes other than as recommended by the hearing examiner, it shall, prior to submitting them to the attorney general, submit the complete hearing record and a copy of the rules as proposed to be adopted, showing the changes, to the chief hearing examiner for a determination as to substantial change between the final proposed rules and the proposed rules published in the State Register, pursuant to Minnesota Statutes, sections 14.14, subdivision 3, 14.16 and 14.17.

Subp. 2. **After report from chief hearing examiner.** Upon receipt of a report from the chief hearing examiner, the agency shall, prior to submitting the proposed rules and the complete hearing record to the attorney general, either

take the actions prescribed by the chief hearing examiner to correct any defects in the proposed rules, or proceed under the provisions of Minnesota Statutes, section 14.15.

**Statutory Authority:** *MS s 14.51*

### CONTESTED CASE HEARINGS

#### 1400.5100 DEFINITIONS.

Subpart 1. **Hearing examiner.** "Hearing examiner" means the person or persons assigned by the chief hearing examiner pursuant to Minnesota Statutes, section 14.50 to hear the contested case.

Subp. 2. **Party.** "Party" means each person named as a party by the agency in the notice of and order for hearing, or persons granted permission to intervene pursuant to part 1400.6200. The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.

Subp. 3. **Person.** "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 4. **Service; serve.** "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid and addressed to the party at his last known address. An affidavit of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Minnesota may also serve by depositing the item to be served with Central Mailing Section, Publications Division, Department of Administration.

**Statutory Authority:** *MS s 14.51*

#### 1400.5200 SCOPE.

The procedures contained in parts 1400.5100 to 1400.8500 shall govern all contested cases required to be conducted by the Office of Administrative Hearings.

**Statutory Authority:** *MS s 14.51*

#### 1400.5300 REQUEST FOR EXAMINER.

Any agency desiring to order a contested case hearing shall first file with the chief hearing examiner a request for assignment of a hearing examiner together with the notice of and order for hearing proposed to be issued which shall include a proposed time, date, and place for the hearing.

**Statutory Authority:** *MS s 14.51*

#### 1400.5400 ASSIGNMENT OF EXAMINER.

Within ten days of the receipt of a request pursuant to part 1400.5300, the chief hearing examiner shall assign a hearing examiner to hear the case, and the hearing examiner shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons.

**Statutory Authority:** *MS s 14.51*

#### 1400.5500 DUTIES OF EXAMINER.

Consistent with law, the hearing examiner shall perform the following duties:

- A. grant or deny a demand for a more definite statement of charges;
- B. grant or deny requests for discovery including the taking of depositions;
- C. receive and act upon requests for subpoenas where appropriate;

# MINNESOTA RULES 1983

503

## RULEMAKING HEARINGS AND CONTESTED CASE 1400.5600

- D. hear and rule on motions;
- E. preside at the contested case hearing;
- F. administer oaths and affirmations;
- G. grant or deny continuances;
- H. examine witnesses where he deems it necessary to make a complete record;
- I. prepare findings of fact, conclusions, and recommendations;
- J. make preliminary, interlocutory, or other orders as he deems appropriate;
- K. recommend a summary disposition of the case or any part thereof where there is no genuine issue as to any material fact or recommend dismissal where the case or any part thereof has become moot or for other reasons;
- L. permit testimony, upon the request of a party or upon his own motion to be prefiled in whole or in part where the prefiling will expedite the conduct and disposition of the case without imposing an undue burden on any party;
- M. do all things necessary and proper to the performance of the foregoing; and
- N. in his discretion, perform such other duties as may be delegated to him by the agency ordering the hearing.

**Statutory Authority:** *MS s 14.51*

### 1400.5600 NOTICE AND ORDER FOR HEARING.

Subpart 1. **Commencing a contested case.** A contested case is commenced, subsequent to the assignment of a hearing examiner, by the service of a notice of and order for hearing by the agency.

Subp. 2. **Contents of notice and order.** Unless otherwise provided by law, a notice of and order for hearing, which shall be a single document, shall be served upon all parties and shall contain, among other things, the following:

- A. the time, date, and place for the hearing;
- B. name, address, and telephone number of the hearing examiner;
- C. a citation to the agency's statutory authority to hold the hearing and to take the action proposed;
- D. a statement of the allegations or issues to be determined together with a citation to the relevant statutes or rules;
- E. notification of the right of the parties to be represented by legal counsel, by a person of their choice, or by themselves if not otherwise prohibited as the unauthorized practice of law;
- F. a citation to parts 1400.5100 to 1400.8500, to any applicable procedural rules of the agency, and to the contested case provisions of Minnesota Statutes, chapter 14;
- G. a statement advising the parties of the name of the agency official or member of the attorney general's staff to be contacted to discuss informal disposition pursuant to part 1400.5900 or discovery pursuant to parts 1400.6700 and 1400.6800;
- H. a statement advising the parties that a notice of appearance must be filed with the hearing examiner within 20 days of the date of service of the notice of and order for hearing if a party intends to appear at the hearing unless the hearing date is less than 20 days from the issuance of the notice of and order for hearing; and
- I. a statement advising existing parties that failure to appear at the hearing may result in the allegations of the notice of and order for hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved.



Subp. 3. **Service.** Unless otherwise provided by law, the notice of and order for hearing shall be served not less than 30 days prior to the hearing. Provided, however, that a shorter time may be allowed, where it can be shown to the chief hearing examiner that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

Subp. 4. **Publication.** Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the notice of and order for hearing shall be published as required by law or as ordered by the agency, and copies of the notice of and order for hearing may be mailed by the agency to persons known to have a direct interest.

Subp. 5. **Amendment.** At any time prior to the close of the hearing, the agency may file and serve an amended notice of and order for hearing, provided that, should the amended notice and order raise new issues or allegations, the parties shall have a reasonable time to prepare to meet the new issues or allegations if requested.

Subp. 6. **Alternative documents and procedures.** With the prior written concurrence of the chief hearing examiner, an agency may substitute other documents and procedures for the notice of and order for hearing provided that the documents and procedures inform actual and potential parties of the information contained in subpart 2.

**Statutory Authority:** *MS s 14.51*

#### 1400.5700 NOTICE OF APPEARANCE.

Each party intending to appear at a contested case hearing shall file with the hearing examiner and serve upon all other known parties a notice of appearance which shall advise the hearing examiner of the party's intent to appear and shall indicate the title of the case, the agency ordering the hearing, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The notice of appearance shall be filed with the hearing examiner within 20 days of the date of service of the notice of and order for hearing, except that, where the hearing date is less than 20 days from the commencement of the contested case, the notice of appearance shall not be necessary. The failure to file a notice may, in the discretion of the hearing examiner, result in a continuance of the hearing if the party failing to file appears at the hearing. A notice of appearance form shall be included with the notice of and order for hearing for use by the party served.

**Statutory Authority:** *MS s 14.51*

#### 1400.5800 RIGHT TO COUNSEL.

Any party may be represented by legal counsel throughout the proceedings in a contested case before an agency, by a person of his choice, or by himself if not otherwise prohibited as the unauthorized practice of law.

**Statutory Authority:** *MS s 14.51*

#### 1400.5900 CONSENT ORDER, SETTLEMENT, OR STIPULATION.

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

**Statutory Authority:** *MS s 14.51*

#### 1400.6000 DEFAULT.

The agency may dispose of a contested case adverse to a party which defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing or other pleading may be taken as true or deemed proved

# MINNESOTA RULES 1983

505

## RULEMAKING HEARINGS AND CONTESTED CASE 1400.6200

without further evidence. A default occurs when a party fails to appear at a hearing or fails to comply with any interlocutory orders of the hearing examiner.

**Statutory Authority:** *MS s 14.51*

### 1400.6100 TIME.

**Subpart 1. Computation.** In computing any period of time prescribed by these rules or the procedural rules of any agency, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday.

**Subp. 2. Extra time: service by mail.** Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him, or whenever such service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period. In the event an agency chooses to utilize the Central Mailing Section, Publications Division, Department of Administration, four days shall be added to the prescribed period.

**Statutory Authority:** *MS s 14.51*

### 1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.

**Subpart 1. Petition.** Any person desiring to intervene in a contested case as a party shall submit a timely petition to intervene to the hearing examiner and shall serve the petition upon all existing parties and the agency. Timeliness will be determined by the hearing examiner in each case based on circumstances at the time of filing. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory right to intervene if one should exist. The agency may, with the consent of the chief hearing examiner, and where good reason appears therefor, specify in the notice of and order for hearing (if one is used) the final date upon which a petition for intervention may be submitted to the hearing examiner.

**Subp. 2. Objection.** Any party may object to the petition for intervention by filing a notice of objection with the hearing examiner within seven days of service of the petition. The notice shall state the party's reasons for objection and shall be served upon all parties, the person petitioning to intervene and the agency.

**Subp. 3. Order.** The hearing examiner shall allow intervention upon a proper showing pursuant to subpart 1 unless the hearing examiner finds that the petitioner's interest is adequately represented by one or more parties participating in the case.

**Subp. 4. By agency in a neutral capacity.** Where the agency participates in the hearing in a neutral or quasi-judicial capacity, the agency staff, or a portion of the agency staff, may petition to intervene under the rule.

**Subp. 5. Participation by public.** The hearing examiner may, in the absence of a petition to intervene, nevertheless hear the testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance, or allow a person to question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

**Statutory Authority:** *MS s 14.51*

**1400.6300 CONSOLIDATION OF CASES.**

Subpart 1. **Standards for determination.** Whenever, before hearing on any contested case, the chief hearing examiner, either on his own motion or on the motion of the hearing examiner assigned to the case, or upon petition by any party, determines that separate contested cases present substantially the same issues of fact and law; that a holding in one case would affect the rights of parties in another case; and the consolidation would not substantially prejudice any party, the chief hearing examiner may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this subpart, the parties may stipulate and agree to such consolidation.

Subp. 2. **Order for consolidation.** Following an order for consolidation, the hearing examiner shall forthwith serve on all parties a copy of the order for consolidation. The order shall contain, among other things, a description of the cases for consolidation, the reasons for consolidation, and notification of a consolidated prehearing conference if one has been requested.

Subp. 3. **Petition for severance.** Any party may object to consolidation by filing with the hearing examiner, and serving upon all parties and the agency, at least seven days prior to the hearing in the case, a petition for severance from consolidation, setting forth petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition. If the hearing examiner finds that consolidation would prejudice petitioner, he may order such severance or other relief as he deems necessary.

**Statutory Authority:** *MS s 14.51*

**1400.6400 HEARING EXAMINER DISQUALIFICATION.**

The hearing examiner shall withdraw from participation in a contested case at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief hearing examiner shall determine the matter as a part of the record provided the affidavit shall be filed no later than five days prior to the date set for hearing.

**Statutory Authority:** *MS s 14.51*

**1400.6500 PREHEARING CONFERENCE.**

Subpart 1. **Purpose.** The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to consider the proposed witnesses for each party, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

Subp. 2. **Procedure.** Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested case hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the hearing examiner.

**Statutory Authority:** *MS s 14.51*

# MINNESOTA RULES 1983

507

RULEMAKING HEARINGS AND CONTESTED CASE 1400.6700

## 1400.6600 MOTIONS.

Any application to the hearing examiner for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Motions provided for in these rules require a written notice, to all parties and to the agency, to be served five days prior to the submission of the motion to the hearing examiner, except where impractical. The hearing examiner may, at his discretion, require a hearing before an order on the motion will be issued. All orders on such motions, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the agency if it is not a party. In ruling on motions where these rules are silent, the hearing examiner shall apply the Rules of Civil Procedure for the District Court for the state of Minnesota to the extent that he or she determines that it is appropriate to do so in order to promote a fair and expeditious proceeding.

**Statutory Authority:** *MS s 14.51*

## 1400.6700 DISCOVERY.

**Subpart 1. Witnesses; statement by parties or witnesses.** Each party shall, within ten days of a demand by another party, disclose the following:

A. The names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known.

B. Any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements. Any party unreasonably failing upon demand to make the disclosure required by this subpart may, in the discretion of the hearing examiner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

**Subp. 2. Discovery of other information.** Upon the motion of a party, the hearing examiner may order discovery of any other relevant material or information, provided that privileged work product (e.g. that of attorneys, investigators, etc.) shall not be discoverable. The hearing examiner shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the hearing examiner, any means of discovery available pursuant to the Rules of Civil Procedure for the District Court of the state of Minnesota may be allowed provided that such request can be shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and the issues or amounts in controversy are significant enough to warrant extensive discovery.

**Subp. 3. Noncompliance.** Upon the failure of a party to reasonably comply with an order of the hearing examiner made pursuant to subpart 2, the hearing examiner may make a further order as follows:

A. an order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order;

B. an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

**Subp. 4. Protective orders.** When a party is asked to reveal material which he considered to be proprietary information or trade secrets, he shall bring the matter to the attention of the hearing examiner, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

**Statutory Authority:** *MS s 14.51*

**1400.6800 REQUESTS FOR ADMISSION OF FACTS OR OPINIONS.**

A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing, and it shall be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.

**Statutory Authority:** *MS s 14.51*

**1400.6900 DEPOSITIONS.**

Upon the request of any party, the hearing examiner may order that the testimony of any witness be taken by deposition to preserve his testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

**Statutory Authority:** *MS s 14.51*

**1400.7000 SUBPOENAS.**

Subpart 1. **Written request.** Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing examiner and shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought and shall identify any documents sought with specificity, and shall name all persons to be subpoenaed.

Subp. 2. **Service.** A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Court of the state of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena shall make proof of service by filing the subpoena with the hearing examiner, together with his affidavit of service.

Subp. 3. **Motion to quash.** Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the hearing examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

**Statutory Authority:** *MS s 14.51*

**THE HEARING****1400.7100 RIGHTS OF PARTIES.**

All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

**Statutory Authority:** *MS s 14.51*

**1400.7200 WITNESSES.**

Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion, the hearing examiner may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

**Statutory Authority:** *MS s 14.51*

# MINNESOTA RULES 1983

509

RULEMAKING HEARINGS AND CONTESTED CASE 1400.7400

## 1400.7300 RULES OF EVIDENCE.

Subpart 1. **Admissible evidence.** The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.

Subp. 2. **Evidence part of record.** All evidence to be considered in the case, including all records and documents in the possession of the agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

Subp. 3. **Documents.** Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner or upon agreement of the parties.

Subp. 4. **Official notice of facts.** The hearing examiner may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

Subp. 5. **Burden of proof.** The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.

Subp. 6. **Examination of adverse party.** A party may call an adverse party or his managing agent, or employees or an officer, director, managing agent, or employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

**Statutory Authority:** *MS s 14.51*

## 1400.7400 HEARING RECORD.

Subpart 1. **Content.** The hearing examiner shall maintain the official record in each contested case until the issuance of his final report, at which time the record shall be sent to the agency.

The record in a contested case shall contain all pleadings, motions, and orders; evidence received or considered; offers of proof, objections, and rulings thereon; the hearing examiner's findings of fact, conclusions, and recommendations; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing, if one was prepared.

Subp. 2. **Transcript.** The verbatim record shall be transcribed if requested by the agency, a party, or in the discretion of the chief hearing examiner. If a transcription is made, the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript from him to pay a reasonable charge therefor. The charge shall be set by the chief hearing examiner, and all moneys received for transcripts shall be payable to the state treasurer and shall be deposited in the state Office of Administrative Hearings' account in the state treasury.

**Statutory Authority:** *MS s 14.51*

**1400.7500 CONTINUANCES.**

A request for continuance shall be made in writing to the hearing examiner and shall be served upon all parties of record and the agency if it is not a party. A request for continuance filed not less than five days prior to the hearing may, in the discretion of the hearing examiner, be granted upon a showing of good cause. Due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five days of the hearing shall be denied unless good cause exists and the reason for the request could not have been earlier ascertained.

During a hearing, if it appears in the interest of justice that further testimony should be received, the hearing examiner, in his discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

**Statutory Authority:** *MS s 14.51*

**1400.7600 CERTIFICATION OF MOTIONS TO THE AGENCY.**

No motions shall be made directly to or be decided by the agency subsequent to the assignment of a hearing examiner and prior to the completion and filing of the hearing examiner's report unless the motion is certified to the agency by the hearing examiner. Uncertified motions shall be made to the hearing examiner and considered by the agency in its consideration of the record as a whole subsequent to the filing of the hearing examiner's report. Any party may request that a pending motion or a motion decided adversely to that party by the hearing examiner before or during the course of the hearing be certified by the hearing examiner to the agency. In deciding what motions should be certified, the examiner shall consider the following:

- A. whether the motion involves a controlling question of law as to which there is substantial ground for a difference of opinion; or
- B. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing; or
- C. whether or not the delay between the ruling and the motion to certify would adversely affect the prevailing party; or
- D. whether to wait until after the hearing would render the matter moot and impossible for the agency to reverse or for a reversal to have any meaning; or
- E. whether it is necessary to promote the development of the full record and avoid remanding.

**Statutory Authority:** *MS s 14.51*

**1400.7700 HEARING EXAMINER'S CONDUCT.**

The hearing examiner shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party including the agency concerning any pending case, except upon notice and opportunity for all parties to participate.

**Statutory Authority:** *MS s 14.51*

**1400.7800 CONDUCT OF HEARING.**

Unless the hearing examiner determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

- A. After opening the hearing, the hearing examiner shall, unless all parties are represented by counsel, state the procedural rules for the hearing including the following:

(1) All parties may present evidence and argument with respect to the issues and cross-examine witnesses. At the request of the party or the

# MINNESOTA RULES 1983

511

## RULEMAKING HEARINGS AND CONTESTED CASE 1400.8000

attorney for the party whose witness is being cross-examined, the hearing examiner may make such rulings as are necessary to prevent repetitive or irrelevant questioning and to expedite the cross-examination, to the extent consistent with disclosure of all relevant testimony and information.

(2) All parties have a right to be represented by an attorney at the hearing.

(3) The rules of evidence, as set forth in part 1400.7300, subpart 1.

B. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

C. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the hearing examiner.

D. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing examiner.

E. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner.

F. When all parties and witnesses have been heard, opportunity shall be offered to present final argument, in a sequence determined by the hearing examiner. Such final argument may, in the discretion of the hearing examiner, be in the form of written memoranda or oral argument, or both. Final argument need not be recorded, in the discretion of the hearing examiner. Written memoranda may, in the discretion of the hearing examiner, be submitted simultaneously or sequentially and within such time periods as the hearing examiner may prescribe.

G. After final argument, the hearing shall be closed or continued at the discretion of the hearing examiner. If continued, it shall be either: continued to a certain time and day, announced at the time of the hearing and made a part of the record; or continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

H. The record of the contested case proceeding shall be closed upon receipt of the final written memorandum, transcript, if any, or late filed exhibits which the parties and the hearing examiner have agreed should be received into the record, whichever occurs latest.

**Statutory Authority:** *MS s 14.51*

### 1400.7900 PARTICIPATION BY AGENCY.

An agency which is a party to a contested case may only participate in the hearing by the giving of testimony and through its designated representative or counsel. Where the agency is not a party and participates in the hearing in a neutral or quasi-judicial capacity, the agency head or a member of the governing body of the agency or his delegate may engage in such examination of witnesses as the hearing examiner deems appropriate.

**Statutory Authority:** *MS s 14.51*

### 1400.8000 DISRUPTION OF HEARING.

Subpart 1. **Cameras.** No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the Office of Administrative Hearings or at its discretion, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the hearing examiner prior to the opening of the hearing and then subject to such conditions as the hearing examiner may impose to avoid disruption of the hearing.

Subp. 2. **Other conduct.** Pursuant to and in accordance with the provisions of Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No



person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing examiner shall read this subpart to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

**Statutory Authority:** *MS s 14.51*

#### **1400.8100 HEARING EXAMINER'S REPORT.**

Subpart 1. **Based on the record.** No factual information or evidence which is not a part of the record shall be considered by the hearing examiner or the agency in the determination of a contested case.

Subp. 2. **Administrative notice.** The hearing examiner and agency may take administrative notice of general, technical, or scientific facts within their specialized knowledge in conformance with the requirements of Minnesota Statutes, section 14.60.

Subp. 3. **Completion and distribution.** Following the close of the record, the hearing examiner shall make his report pursuant to Minnesota Statutes, sections 14.15 and 14.50 and, upon completion, a copy of said report shall be served upon all parties by personal service, by first class mail or by depositing it with the Central Mailing Section, Publications Division, Department of Administration.

**Statutory Authority:** *MS s 14.51*

#### **1400.8200 AGENCY DECISION.**

Following receipt of the hearing examiner's report, the agency shall proceed to make its final decision in accordance with Minnesota Statutes, sections 14.61 and 14.62 and shall serve a copy of its final order upon the hearing examiner by first class mail.

**Statutory Authority:** *MS s 14.51*

#### **1400.8300 REHEARING.**

An agency notice of and order for rehearing shall be served on all parties in the same manner prescribed for the notice of and order for hearing provided that the hearing examiner may permit service of the notice and order for rehearing less than 30 days prior to rehearing. The rehearing shall be conducted in the same manner prescribed for a hearing.

**Statutory Authority:** *MS s 14.51*

#### **1400.8400 EMERGENCY PROCEDURES NOT PREEMPTED.**

Nothing contained in these rules is intended to preempt, repeal, or be in conflict with any rule or statute which provides for acts by the agency in an emergency or procedure for conduct by the agency in such a situation.

**Statutory Authority:** *MS s 14.51*

#### **1400.8500 SEVERABILITY.**

If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared to be severable.

**Statutory Authority:** *MS s 14.51*