

MINNESOTA RULES 2009

537

CHAPTER 1400

OFFICE OF ADMINISTRATIVE HEARINGS

APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

	GENERAL RULEMAKING PROVISIONS	1400.5700	NOTICE OF APPEARANCE.
1400.2000	SCOPE.	1400.5800	RIGHT TO COUNSEL.
1400.2010	DEFINITIONS.	1400.5900	CONSENT ORDER, SETTLEMENT, OR STIPULATION.
1400.2020	ASSIGNMENT AND DISQUALIFICATION OF JUDGE.	1400.5950	MEDIATION.
1400.2030	COUNTING TIME AND FILING DOCUMENTS.	1400.6000	DEFAULT.
1400.2040	PETITION FOR RULEMAKING.	1400.6100	TIME.
1400.2050	REQUEST FOR COMMENTS ON POSSIBLE RULE.	1400.6200	INTERVENTION IN PROCEEDINGS AS PARTY.
1400.2060	APPROVAL OF ADDITIONAL NOTICE PLAN.	1400.6350	CONSOLIDATION OF CASES.
1400.2070	STATEMENT OF NEED AND REASONABLENESS.	1400.6400	ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.
1400.2080	NOTICE OF PROPOSED RULE.	1400.6500	PREHEARING CONFERENCE.
1400.2085	NOTICE OF PROPOSED EXPEDITED RULE.	1400.6550	SETTLEMENT CONFERENCE.
1400.2090	ORDER ADOPTING RULE.	1400.6600	MOTIONS.
1400.2100	STANDARDS OF REVIEW.	1400.6700	DISCOVERY.
1400.2110	PROCEDURE TO ADOPT SUBSTANTIALLY DIFFERENT RULES.	1400.6800	REQUESTS FOR ADMISSION OF FACTS OR OPINIONS.
	RULEMAKING HEARINGS	1400.6900	DEPOSITIONS TO PRESERVE TESTIMONY.
1400.2200	APPLICABILITY.	1400.6950	EXCHANGE OF WITNESS LISTS AND EXHIBITS.
1400.2210	CONDUCT OF HEARING.	1400.7000	SUBPOENAS.
1400.2220	AGENCY PRESENTATION AT HEARING.	1400.7050	SANCTIONS IN DISCRIMINATION CASES.
1400.2230	WRITTEN COMMENTS AFTER HEARING AND CLOSE OF HEARING RECORD.	1400.7100	RIGHTS AND RESPONSIBILITIES OF PARTIES.
1400.2240	ADMINISTRATIVE LAW JUDGE'S REPORT.	1400.7150	RIGHTS AND RESPONSIBILITIES OF NONPARTIES.
	RULES ADOPTED WITHOUT A PUBLIC HEARING	1400.7200	WITNESSES.
1400.2300	REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.	1400.7300	RULES OF EVIDENCE.
1400.2310	DOCUMENTS TO BE FILED.	1400.7400	HEARING RECORD.
	EXEMPT RULES	1400.7500	CONTINUANCES.
1400.2400	REVIEW OF EXEMPT RULES.	1400.7600	CERTIFICATION OF MOTIONS TO AGENCY.
1400.2410	REVIEW OF EXPEDITED RULES ADOPTED WITHOUT A PUBLIC HEARING.	1400.7700	ADMINISTRATIVE LAW JUDGE'S CONDUCT.
	MEDIATION	1400.7800	CONDUCT OF HEARING.
1400.2450	MEDIATION.	1400.7900	PARTICIPATION BY AGENCY.
	RULEMAKING FORMS	1400.8000	DISRUPTION OF HEARING.
1400.2500	PETITION FOR RULEMAKING.	1400.8100	ADMINISTRATIVE LAW JUDGE'S REPORT.
1400.2510	RECOMMENDED REQUEST FOR COMMENTS ON POSSIBLE RULE.	1400.8200	AGENCY DECISION.
1400.2520	RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.	1400.8300	RECONSIDERATION OR REHEARING.
1400.2530	RECOMMENDED NOTICE OF HEARING.	1400.8400	EMERGENCY PROCEDURES NOT PREEMPTED.
1400.2540	RECOMMENDED DUAL NOTICE.		AWARDS OF EXPENSES AND ATTORNEYS FEES
1400.2550	RECOMMENDED CERTIFICATES.	1400.8401	EXPENSES AND ATTORNEY FEES.
1400.2560	RECOMMENDED ORDER ADOPTING RULES.		REVENUE RECAPTURE ACT HEARINGS
1400.2570	RECOMMENDED NOTICE OF INTENT TO ADOPT EXPEDITED RULE WITHOUT A PUBLIC HEARING.	1400.8505	SCOPE.
	CONTESTED CASE HEARINGS	1400.8510	DEFINITIONS.
1400.5010	SCOPE.	1400.8530	WAIVER.
1400.5100	DEFINITIONS.	1400.8540	ADMINISTRATIVE LAW JUDGE ASSIGNMENT.
1400.5275	DOCUMENTS FILED.	1400.8545	SERVICE AND FILING PROCEDURE.
1400.5300	REQUEST FOR ADMINISTRATIVE LAW JUDGE.	1400.8550	NOTICE OF HEARING.
1400.5400	ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE.	1400.8560	DEFAULT.
1400.5500	DUTIES OF ADMINISTRATIVE LAW JUDGE.	1400.8570	INTERVENTION AS PARTY.
1400.5550	SERVICE AND FILING PROCEDURE.	1400.8580	PREHEARING CONFERENCE.
1400.5600	NOTICE AND ORDER FOR HEARING.	1400.8590	PREHEARING MOTIONS.
		1400.8600	PREHEARING DISCOVERY.
		1400.8601	SUBPOENAS.
		1400.8602	CHANGES IN DATE, TIME, OR PLACE OF HEARING.

1400.0200 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

538

1400.8603	CONDUCT OF HEARING.	1400.8608	BURDEN OF PROOF.
1400.8604	RESPONSIBILITIES AND RIGHTS OF PARTIES.	1400.8609	HEARING RECORD.
1400.8605	RESPONSIBILITIES AND RIGHTS OF NONPARTIES.	1400.8610	ADMINISTRATIVE LAW JUDGE'S REPORT.
1400.8606	ADMINISTRATIVE LAW JUDGES.	1400.8611	DISRUPTION OF HEARING.
1400.8607	RULES OF EVIDENCE.	1400.8612	REHEARING.

1400.0200 [Repealed, 20 SR 2058]

1400.0250 [Repealed, 20 SR 2058]

1400.0300 [Repealed, 20 SR 2058]

1400.0400 [Repealed, 20 SR 2058]

1400.0500 [Repealed, 20 SR 2058]

1400.0600 [Repealed, 20 SR 2058]

1400.0700 [Repealed, 20 SR 2058]

1400.0800 [Repealed, 20 SR 2058]

1400.0850 [Repealed, 20 SR 2058]

1400.0900 [Repealed, 20 SR 2058]

1400.0950 [Repealed, 20 SR 2058]

1400.1000 [Repealed, 20 SR 2058]

1400.1100 [Repealed, 20 SR 2058]

1400.1200 [Repealed, 20 SR 2058]

1400.1300 [Repealed, 15 SR 1595]

1400.1500 [Repealed, 20 SR 2058]

GENERAL RULEMAKING PROVISIONS

1400.2000 SCOPE.

Parts 1400.2010 to 1400.2570 govern all proceedings by an agency for adopting any rule under Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1400.2000 to 1400.2570.

Subp. 2. **Agency.** "Agency" has the meaning given in Minnesota Statutes, section 14.02, subdivision 2.

Subp. 3. **Chief administrative law judge or chief judge.** "Chief administrative law judge" or "chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 4. **Judge.** "Judge" means the administrative law judge assigned by the chief administrative law judge to conduct a rule hearing or review a rule.

Subp. 5. [Repealed, 26 SR 391]

Subp. 6. **Multimember agency.** "Multimember agency" means an agency described in Minnesota Statutes, section 15.0597, subdivision 1, paragraph (a), clause (1), and the Capitol Area Architectural and Planning Board.

Subp. 7. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 8. **Revisor.** "Revisor" means the Revisor of Statutes.

Subp. 9. **Rule.** "Rule" has the meaning given in Minnesota Statutes, section 14.02, subdivision 4.

Subp. 10. **Substantially different.** "Substantially different" has the meaning given in Minnesota Statutes, section 14.05, subdivision 2, paragraph (b).

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2020 ASSIGNMENT AND DISQUALIFICATION OF JUDGE.

Subpart 1. **Assignment.** The chief judge must promptly assign a judge to a rule proceeding after the chief judge receives a request to schedule a rule hearing, or a filing from an agency under parts 1400.2060, 1400.2300, 1400.2400, 1400.2410, or 1400.2450. A request to schedule a rule hearing must include the documents listed in part 1400.2080, subpart 5.

Subp. 2. **Disqualification.** An assigned judge must withdraw from a rule proceeding at any time the judge decides that he or she is disqualified for any reason.

Subp. 3. **Disqualification by affidavit.** If an affected person files an affidavit of prejudice against a judge assigned to a rulemaking hearing, the chief judge must decide whether to disqualify the judge. The affidavit must be received by the chief judge at least five working days before the rulemaking hearing.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2030 COUNTING TIME AND FILING DOCUMENTS.

Subpart 1. **Counting time.** To count a time period, the day of filing, mailing, publication, or other action is not counted and the last day of the time period is counted. Saturdays, Sundays, and legal holidays are included in calendar day time periods and are not included in working day time periods. If a calendar day time period ends on a Saturday, Sunday, or legal holiday, the time period ends on the next day which is not a Saturday, Sunday, or legal holiday. A time period is in calendar days unless it is stated as "working days."

Subp. 2. **Paper size.** All documents must be submitted to the office on standard size 8-1/2 inch by 11 inch paper, except:

- A. handwritten comments from the public; and
- B. exhibits.

Subp. 3. **Facsimile transmission.** A person may file any document with the office using facsimile transmission. Filing a facsimile is equivalent to filing the original document, and is effective when the office receives it. A transmission commenced before 4:30 p.m. on the last day of filing is timely filed. The person filing the document must mail or deliver the original signed document to the office within five days.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2040 PETITION FOR RULEMAKING.

Subpart 1. **Content of petition.** A petition to an agency requesting rulemaking under Minnesota Statutes, section 14.09, must contain the following information:

- A. the name and address of the petitioner;
- B. the specific action (adoption, amendment, or repeal of an agency rule) requested by the petitioner; and
- C. the need for the requested action.

Part 1400.2500 contains a recommended format for the petition.

Subp. 2. **Filing of petition with agency.** The petition must be filed with the executive director or head of the agency in person or by United States mail.

1400.2040 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

540

Subp. 3. **Agency response to petition.** The agency must reply in writing to the petition within 60 days after receiving it. The reply must meet the requirements of Minnesota Statutes, section 14.09, and be signed by a person authorized to adopt a rule or, for multi-member agencies, by a member or officer.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2050 REQUEST FOR COMMENTS ON POSSIBLE RULE.

An agency must comply with Minnesota Statutes, section 14.101, before publishing a notice of intent to adopt rules or notice of hearing. Part 1400.2510 is a recommended form for the published request for comments.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2060 APPROVAL OF ADDITIONAL NOTICE PLAN.

Subpart 1. **Optional prior approval.** An agency may ask the office for approval of its plan for giving additional notice of its request for comments on possible rulemaking under Minnesota Statutes, section 14.101, or of its plan for giving additional notice of proposed rules under Minnesota Statutes, sections 14.131, 14.14, 14.22, and 14.23. If the agency requests approval of its additional notice plan, it must make the request and receive approval before it publishes the request for comments or the notice of proposed rules.

Subp. 2. **Filing.** An agency asking the office for approval of an additional notice plan must file with the office:

A. For additional notice plans under Minnesota Statutes, section 14.101:

- (1) a description of its proposed additional notice plan;
- (2) the agency's proposed request for comments on its possible rule; and
- (3) an explanation of why the agency believes that its additional notice plan complies with Minnesota Statutes, section 14.101.

B. For additional notice plans under Minnesota Statutes, sections 14.131, 14.14, 14.22, and 14.23:

- (1) a draft of the rules or a copy of the proposed rules certified as to form by the revisor;
- (2) a draft or final copy of the statement of need and reasonableness under part 1400.2070, containing the agency's proposed notice plan;
- (3) the agency's proposed notice of intent to adopt rules, notice of hearing, or dual notice under part 1400.2080; and
- (4) an explanation of why the agency believes that its additional notice plan complies with Minnesota Statutes, section 14.14, subdivision 1a, or 14.22.

Subp. 3. **Review.** If a proposed additional notice plan is filed with the office, a judge must review, and approve or disapprove it within five working days after the office receives it. The judge must approve the notice plan if the judge finds that the notice plan meets the requirements of the applicable statute.

Subp. 4. **Approval or disapproval.** An approved additional notice plan is the office's final determination that the additional notice plan is adequate if the agency implements the additional notice plan. If the additional notice plan is disapproved, the judge must explain why and tell the agency what changes are necessary for approval. The agency may resubmit the additional notice plan for review after changing it. The judge must review and approve or disapprove the revised additional notice plan within five working days after the office receives it.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2070 STATEMENT OF NEED AND REASONABLENESS.

Subpart 1. **General content.** The statement of need and reasonableness must summarize the evidence and argument that the agency is relying on to justify both the need for and the reasonableness of the proposed rules, and must state how the evidence rationally relates to the choice of action taken. The statement must explain the circumstances that created the need for the rulemaking and why the proposed rulemaking is a reasonable solution for meeting the need. The statement must be sufficiently specific so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the proposed rules. A general description of the statute being implemented or restating the proposed rule is not sufficient. The statement must include:

- A. citations to any economic, scientific, or other manuals or treatises the agency anticipates relying on;
- B. citations to any statutes or case law the agency anticipates relying on;
- C. if a hearing is scheduled, a list of any nonagency witnesses the agency anticipates asking to testify and a summary or description of their testimony;
- D. a citation to the agency's grant of statutory authority to adopt the rule and, if the grant of authority was made after January 1, 1996, the effective date of the agency's statutory authority to adopt the rule; and
- E. the date the statement is made available for public review.

The statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public. If an agency is amending existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

Subp. 2. **Specific requirements.** The statement must also contain the following:

- A. for rules to be adopted after a public hearing, the information required by Minnesota Statutes, section 14.131;
- B. for rules to be adopted without a public hearing, the information required by Minnesota Statutes, section 14.23;
- C. an explanation of what effort the agency made to obtain any information that it states could not be ascertained through reasonable effort; and
- D. information required by any other law or rule to be included in the statement, or which the agency is required by law or rule to consider in adopting a rule. Examples include: Minnesota Statutes, section 16A.1285, subdivision 5; 115.43, subdivision 1; 116.07, subdivision 6; or 144A.29, subdivision 4.

Subp. 3. **Timing.** The statement must be prepared on or before the signature date on the agency's notice of intent to adopt rules, notice of hearing, or dual notice. The agency must send a copy of the statement to the Legislative Reference Library when the notice is mailed.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2080 NOTICE OF PROPOSED RULE.

Subpart 1. **General content.** A notice of intent to adopt rules under Minnesota Statutes, section 14.22, must contain the information in subparts 2 and 3. A notice of hearing under Minnesota Statutes, section 14.14, must contain the information in subparts 2 and 4. A dual notice must contain the information in subparts 2, 3, and 4. Parts 1400.2520, 1400.2530, and 1400.2540 contain recommended forms for these notices.

Subp. 2. **Contents of all notices.** A notice of intent to adopt rules, notice of hearing, or dual notice must state:

- A. that the agency intends to adopt a rule and identify the parts of Minnesota Statutes, chapter 14, and this chapter that the agency must follow;

- B. a citation to the specific statutory authority for the rule;
- C. that the proposed rule is attached to the notice or if the text of the proposed rule is not attached, a description of the nature and effect of the rule and how to obtain a free copy from the agency;
- D. if applicable, that an entire rule is being repealed and a citation to the rule;
- E. that the statement of need and reasonableness is available to the public, that the statement contains a summary of the justification for the proposed rule, including who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule, and how to obtain a copy from the agency;
- F. that the proposed rule can be modified if the modifications are supported by the information and comments submitted and do not make the rule substantially different;
- G. that persons may request to be placed on the agency's mailing list to receive notice of future rule proceedings;
- H. any other information required by law or rule to be included in the notice; and
- I. the signature of the person authorized to give notice of intent to adopt rules, notice of hearing, or dual notice and the date the person signed the notice.

Subp. 3. **Additional contents for a notice of intent to adopt rules or dual notice.** A notice of intent to adopt rules without a public hearing or dual notice must state or include:

- A. that the public may comment in support of or in opposition to the rule or any part of it, and that comment is encouraged;
- B. the calendar date that the comment period ends, which must be at least 30 days after the date of publication;
- C. that each comment should identify the part of the rule addressed, any change proposed, and the reason for the suggested change;
- D. that if 25 or more persons submit a written request for hearing during the comment period, a public hearing must be held on the rule unless a sufficient number later withdraw their requests in writing;
- E. that any person requesting a hearing must include his or her name and address, must identify the portion of the rule to which the person objects or a statement that the person objects to the entire rule, and that a request that does not provide this information is invalid and will not count when determining whether a public hearing must be held;
- F. that any person requesting a hearing is encouraged to propose changes to the rule;
- G. how persons must submit their comments or requests for hearing, including an e-mail address if the agency will accept e-mail comments or requests for hearing;
- H. that if a public hearing is held the agency must proceed under Minnesota Statutes, sections 14.131 to 14.20;
- I. that if no hearing is required the agency must, after adopting the rule, submit the rule and supporting documents to the office for review for legality;
- J. that persons who wish to comment on the legality of the rule must do so during the 30-day comment period; and
- K. that persons may request to be notified of the date that the rule is submitted to the office for review and how to make that request.

Subp. 4. **Additional contents for a notice of hearing or dual notice.** A notice of hearing or dual notice must state:

- A. the time, date, and place of the hearing;
- B. that all interested persons will have an opportunity to participate;
- C. how interested persons may present their views at the hearing;

543 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES 1400.2085

D. the procedure in part 1400.2230 for submitting written materials after the hearing;

E. that persons can ask the judge questions about the procedure, and the name, address, and telephone number of the judge;

F. that any person can ask to be notified of the date on which the judge's report will become available and that the request can be made at the hearing or in writing to the judge;

G. that any person can ask to be notified of the date on which the agency adopts the rule and files it with the secretary of state, and that the request can be made at the hearing or in writing to the agency;

H. that lobbyists must register with the Campaign Finance and Public Disclosure Board, that questions should be referred to the board, and the board's address and telephone number; and

I. that a hearing is ordered.

Subp. 5. Scheduling of hearing, and approval of notice of hearing or dual notice.

The agency must request to schedule a rule hearing and obtain the judge's approval of any notice of hearing or dual notice prior to mailing it or publishing it in the State Register. The judge must also advise the agency as to when, where, and how many hearings should be held in order to allow for participation by all affected interests. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached, and a draft or final copy of the statement of need and reasonableness must be filed with a notice submitted for approval. The judge must review the proposed notice within five working days of receiving it and must either approve the notice or advise the agency how the notice must be revised.

Subp. 6. Timing. A notice of hearing or notice of intent to adopt rules must be mailed at least 33 days before the end of the comment period or the start of the hearing, and must be published in the State Register at least 30 days before the end of the comment period or the start of the hearing. A dual notice must be mailed at least 33 days before the end of the comment period and must be published in the State Register at least 30 days before the end of the comment period. If a hearing is required after using a dual notice, there must be at least ten days between the end of the comment period and the start of the hearing. Depositing a mailing in the state of Minnesota's central mail system for United States mail satisfies the mailing requirement of this subpart.

Subp. 7. Certificates of mailing and accuracy of mailing list. The agency must prepare a certificate of mailing the notice to the rulemaking mailing list and a certificate of accuracy of its rulemaking mailing list. Part 1400.2550 contains a recommended format for this document.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; L 1997 c 202 art 2 s 63; 26 SR 391*

1400.2085 NOTICE OF PROPOSED EXPEDITED RULE.

Subpart 1. General content. A notice of intent to adopt expedited rules under Minnesota Statutes, section 14.389, subdivisions 1 to 4, must contain the information in subpart 2. If an agency is accepting requests for a public hearing under Minnesota Statutes, section 14.389, subdivision 5, the notice must also contain the information in subpart 3. Part 1400.2570 contains recommended forms for these notices.

Subp. 2. Contents of expedited rule notices. All notices of intent to adopt expedited rules must state:

A. that the agency intends to adopt, amend, or repeal rules under the expedited process and identify the parts of this chapter and Minnesota Statutes, section 14.389;

B. a citation to the statutory authority for the rule and the statutory authority for the rule to be adopted under the expedited process;

C. that the proposed rule is attached to the notice or if the text of the proposed rule is not attached, a description of the nature and effect of the proposed rule and how to obtain a free copy from the agency;

D. if applicable, that an entire rule is being repealed and a citation to the rule;

E. that the public has 30 days to comment in support of or in opposition to the rule or any part of it, and that comment is encouraged;

F. how persons must submit their comments, including whether the agency will accept e-mail comments;

G. the calendar date that the comment period ends;

H. that each comment should identify the part of the rule addressed, any change proposed, and the reason for the suggested change;

I. if no hearing is held, that the agency must, after adopting the rule, submit the rule to the office for review for legality;

J. that persons who wish to comment on the legality of the rule must do so during the 30-day comment period;

K. that persons may request to be notified of the date that the rule is submitted to the office for review and how to make that request;

L. that the proposed rule may be modified if the modifications do not make the rule substantially different as defined under Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c);

M. that persons may request to be placed on the agency's mailing list to receive notice of future rule proceedings;

N. any other information required by law or rule to be included in the notice; and

O. the signature of the person authorized to give notice of intent to adopt rules.

Subp. 3. Additional notice contents when agency accepts requests for public hearing. If an agency publishes notice under Minnesota Statutes, section 14.389, subdivision 5, the notice must also state:

A. that if 100 or more persons submit a written request for hearing during the comment period, a public hearing must be held on the rules unless a sufficient number later withdraw their requests in writing;

B. that any person requesting a hearing must include that person's name and address, must identify the portion of the rule to which the person objects or a statement that the person objects to the entire rule, and that a request that does not provide this information is invalid and will not count when determining whether a public hearing must be held;

C. that any person requesting a hearing is encouraged to propose changes to the rule;

D. how persons must submit their request for hearing; and

E. that if a public hearing is held the agency must proceed under Minnesota Statutes, sections 14.131 to 14.20.

Subp. 4. Timing. All notices for expedited rules must be mailed at least 33 days before the end of the comment period, and must be published in the State Register at least 30 days before the end of the comment period. Depositing a mailing in the state of Minnesota's central mail system for United States mail satisfies the mailing requirement of this subpart.

Subp. 5. Certificates of mailing and accuracy of mailing list. The agency must prepare a certificate of mailing the notice to its rulemaking mailing list and a certificate of the accuracy of its mailing list.

Subp. 6. Procedure when public hearing is required. If a public hearing is required, the rule may be adopted by the agency only after complying with all of the requirements for rules adopted after a public hearing, Minnesota Statutes, sections 14.131 to 14.20. This

includes preparing a statement of need and reasonableness and publishing and mailing a notice of rule hearing under Minnesota Statutes, section 14.14, subdivision 1a. In addition to the notice requirements in Minnesota Statutes, section 14.14, subdivision 1a, the agency must also send the notice of rule hearing to those persons who requested a public hearing.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

1400.2090 ORDER ADOPTING RULE.

An agency order adopting a rule must contain the following:

A. if any changes were made to the proposed rule in the adopted rule, a description of the changes, and an explanation of the reasons for the changes and why they do not make the rule substantially different, or, if the procedures in part 1400.2110 were followed, a statement that the agency followed the procedures in part 1400.2110 before adopting the changes;

B. a statement that the agency has complied with all notice and procedural requirements. For multimember agencies, the order must state that proposal of the rule was authorized by the agency and provide either:

(1) a copy of the authorization; or

(2) the date of the agency meeting where the person was authorized to do so, and state that a quorum was present and authorized proposal of the rule;

C. for rules adopted without a public hearing, the number of persons who requested a hearing, and the number of persons who withdrew their request;

D. the number of persons who requested notice that the rule has been submitted to the office;

E. a statement that the rule is needed and reasonable;

F. a statement that the rule is adopted by the agency; and

G. the signature of the person authorized to adopt the rule or sign the order and the date the person signed the order. For multimember agencies, the order must state that the person is authorized by the agency to sign the order and provide either:

(1) a copy of the authorization; or

(2) the date of the agency meeting where the rule was adopted, and state that a quorum was present and the agency authorized the person to sign the order adopting the rule.

Part 1400.2560 is a recommended form for an order adopting rules.

Statutory Authority: *MS s 14.386; 14.388; 14.51*

History: *20 SR 2058*

1400.2100 STANDARDS OF REVIEW.

A rule must be disapproved by the judge or chief judge if the rule:

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);

B. is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule;

C. is substantially different than the proposed rule, and the agency did not follow the procedures of part 1400.2110;

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;

E. is unconstitutional or illegal;

1400.2100 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

546

F. improperly delegates the agency's powers to another agency, person, or group;

G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law; or

H. is subject to Minnesota Statutes, section 14.25, subdivision 2, and the notice that hearing requests have been withdrawn and written responses to it show that the withdrawal is not consistent with Minnesota Statutes, section 14.001, clauses (2), (4), and (5).

Statutory Authority: *MS s 14.386; 14.388; 14.51*

History: *20 SR 2058*

1400.2110 PROCEDURE TO ADOPT SUBSTANTIALLY DIFFERENT RULES.

Subpart 1. **Required procedure.** An agency may adopt a substantially different rule if it has complied with the procedures in this part.

Subp. 2. **Notice.** The agency must mail or deliver to each person or group that made a written or oral comment during the comment period or registered at the rule hearing, if the person's address is known to the agency:

A. a copy of the substantially different rule; and

B. a statement that tells the recipient that the chief judge found the rule to be substantially different, explains the agency's reasons for modifying the rule, tells the recipient that the agency must accept written comments for 15 days, and gives the date the comment period ends.

Subp. 3. **Filing.** After considering any comments received, the agency must submit the documents listed in subpart 2 and any written responses to the chief judge.

Subp. 4. **Review.** The chief judge must review the agency's filing to decide whether:

A. the agency has met the requirements of this part;

B. the substantially different modifications to the rule are based on comments or evidence in the record;

C. the substantially different rule complies with part 1400.2100; and

D. in light of the nature of the substantially different modification and the course of the rule proceeding, it would not be fair to affected persons to allow the agency to adopt the modification without initiating a new rule proceeding.

The chief judge must either approve or disapprove the substantially different rule within ten days after the office receives it, unless it is withdrawn by a person authorized to withdraw the rule.

Subp. 5. **Rule adoption.** The agency may adopt the substantially different rule five working days after it has received the chief judge's written approval.

Subp. 6. **Effect of disapproval.** If the chief judge decides that the substantially different modifications must be disapproved under subpart 4, the agency may not adopt them without initiating and completing a new rule proceeding.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

RULEMAKING HEARINGS**1400.2200 APPLICABILITY.**

Parts 1400.2200 to 1400.2240 apply to rule hearings and review of rules adopted by agencies under Minnesota Statutes, sections 14.131 to 14.20.

Statutory Authority: *MS s 14.386; 14.388; 14.51*

History: *20 SR 2058*

1400.2210 CONDUCT OF HEARING.

Subpart 1. **Registration of participants.** All persons who present evidence or ask questions must register with the judge before presenting evidence or asking questions at the hearing. Any person may register whether or not they speak at the hearing. Those who register must legibly print their names, addresses, telephone numbers, and the names of any individuals or associations that the persons represent at the hearing on a register provided by the judge. Persons may request on the register to be informed when the judge's report is available. Persons may also request on the register that the agency inform them when the agency adopts the rules and files them with the secretary of state.

Subp. 2. **Introduction by judge.** The judge must start the hearing and must explain the purpose of the hearing and the procedure to be followed. The judge must explain how written materials can be submitted after the hearing under part 1400.2230. The judge must also explain the requirements for registration of lobbyists under Minnesota Statutes, chapter 10A.

Subp. 3. **Agency presentation.** The agency representatives and witnesses must identify themselves for the record. The agency must then make its presentation under part 1400.2220. Presentation by the agency of evidence not summarized in the statement of need and reasonableness, other than bona fide rebuttal, constitutes grounds for the judge, upon proper motion by any interested person, to recess the hearing to allow all interested persons an opportunity to prepare evidence in opposition to the newly presented evidence. The hearing recess must not exceed 25 days.

Subp. 4. **Opportunity for questions.** Interested persons may ask questions of the agency representatives or witnesses and other interested persons who speak. Agency representatives may question interested persons who speak. The questions may relate to the purpose or intended operation of the proposed rules, a suggested modification, or may be conducted for other purposes if material to the evaluation or formulation of the proposed rules.

Subp. 5. **Opportunity to present statements and evidence.** Interested persons may present oral and written statements and evidence regarding the proposed rules.

Subp. 6. **Questioning by judge.** The judge may question the agency representatives and witnesses and other interested persons who speak.

Subp. 7. **Further agency evidence.** The agency may present any further evidence that it considers appropriate in response to statements made by interested persons. Interested persons may respond to this evidence.

Subp. 8. **Powers of judge.** Consistent with law, the judge is authorized to do all things necessary and proper to conduct the hearing and to promote justice, fairness, and economy. This includes but is not limited to: presiding at the hearing; administering oaths or affirmations when appropriate; hearing and ruling on objections and motions; questioning witnesses where necessary to make a complete record; ruling on the admissibility of evidence and striking from the record objectionable evidence; limiting repetitive or immaterial oral statements and questioning; and determining the order of making statements and questions.

Subp. 9. **Court reporters.** Minnesota Statutes, section 14.52, governs the use of court reporters.

Subp. 10. **Transcript.** A transcript of the hearing must be made if requested by the agency, the attorney general, the chief judge, or any interested person. If a transcript is requested by an interested person, that person must pay for the original and one copy. Otherwise, the agency must pay for the original and any copies it requires. Any interested person may purchase a copy of a transcript once the original has been ordered by another person. The cost of an original or copy of a transcript must be determined by the office's contract with court reporters. When a transcript has been prepared, the original must be filed with the office. When a transcript has been prepared after the judge's report is issued,

1400.2210 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

548

the original must be filed with the office and forwarded to the agency as soon as the office has completed its record keeping.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2220 AGENCY PRESENTATION AT HEARING.

Subpart 1. **Rulemaking documents.** The agency must place into the hearing record the following documents:

- A. the request for comments published in the State Register;
- B. the petition for rulemaking, if the rule was proposed in response to it;
- C. the proposed rule, including the revisor's approval;
- D. the statement of need and reasonableness;
- E. a copy of the transmittal letter or a certificate showing that the agency sent a copy of the statement of need and reasonableness to the Legislative Reference Library;
- F. the notice of hearing or dual notice as mailed and as published in the State Register;
- G. the certificate of mailing the notice of hearing and certificate of accuracy of its mailing list. Part 1400.2550 is a recommended certificate form;
- H. a certificate of additional notice if given or a copy of the transmittal letter;
- I. any written comments on the proposed rule received by the agency during the comment period;
- J. if the chief judge has authorized the agency to omit from the notice of hearing published in the State Register the text of any proposed rule, a copy of the document authorizing the omission; and
- K. any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting this rule. Examples include Minnesota Statutes, section 3.9223, subdivision 4 (council of Chicano/Latino people), 14.111 (farming operations), or 14.116 (notice to legislators).

Subp. 2. **Copies available.** The agency must have copies of the proposed rules and the statement of need and reasonableness available at the hearing.

Subp. 3. **Showing.** The agency must make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rules and must present any other evidence necessary to fulfill all substantive and procedural requirements of law or rule. The agency may choose to rely on the statement of need and reasonableness as its presentation and the statement may be introduced as an exhibit into the record as though read.

Subp. 4. **Agency representatives present.** Agency representatives or other persons thoroughly familiar with the proposed rules and the statement of need and reasonableness must be available at the hearing for questioning by the judge and other interested persons or to briefly summarize all or a portion of the statement if requested by the judge.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2230 WRITTEN COMMENTS AFTER HEARING AND CLOSE OF HEARING RECORD.

Subpart 1. **Written comments.** The judge must allow written comments to be submitted into the hearing record by the agency and all interested persons for five working days after the hearing ends, and may extend this time to no more than 20 days after the hearing ends. In its comment, the agency may state whether there are rule modifications that it intends to adopt. The office must receive the written comments no later than 4:30 p.m. on the last day for submission.

Subp. 2. **Written responses.** The office must allow the agency and all interested persons to review the submissions received under subpart 1 and must allow them a rebuttal period of five working days to respond in writing to any new information submitted. The office must receive the responses no later than 4:30 p.m. on the last day. In its response, the agency may state whether there are rule modifications that the agency intends to adopt. Additional evidence may not be submitted during this rebuttal period. The written responses are part of the hearing record.

Subp. 3. **Close of hearing record.** The hearing record closes on the last date for receipt of written responses filed under subpart 2.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.

Subpart 1. **Report.** The judge must prepare a report on the rule within 30 days after the hearing record closes, unless an extension is granted by the chief judge under Minnesota Statutes, section 14.15, subdivision 2.

Subp. 2. **Standard of review.** The judge or chief judge must review the hearing record and must disapprove the rule if the judge makes any of the findings in part 1400.2100, items A to G.

Subp. 3. **Approval.** If the judge approves the rule, the judge must promptly send the original report and the hearing record to the agency. The agency and the office must make copies of the report available to any interested person at reasonable cost. The agency may not adopt the rule for at least five working days after receiving the report, so that interested persons may examine it.

Subp. 4. **Disapproval; review by chief judge.** If the judge disapproves the rule, the judge must submit the report and the hearing record to the chief judge for review. The chief judge must review the rule and the judge's report and prepare a report within ten days. If the chief judge disapproves the rule, the chief judge must explain why and tell the agency what changes or actions are necessary for approval. The chief judge must promptly send the chief judge's report, the judge's report, and the hearing record to the agency. The agency must resubmit the rule to the chief judge for review after changing it. The agency may also request that the chief judge reconsider the disapproval. The chief judge must review and approve or disapprove the changed rule or a request for reconsideration within five working days after the office receives it.

Subp. 5. **New changes to rule.** If the agency wants to adopt the rule with changes other than those recommended by the judge or chief judge, the agency must submit to the chief judge:

- A. the rule initially proposed;
- B. the agency's proposed order adopting rules; and
- C. the rule, showing the agency's changes.

The chief judge may request that the agency also return the hearing record. The chief judge must review the agency's changes to decide if they make the rule substantially different than the proposed rule. The chief judge must make a written decision within ten days after the office receives the rule.

Subp. 6. **Disapproval of need and reasonableness.** If the chief judge disapproves the rule because the agency has not shown it to be needed and reasonable, and if the agency chooses not to follow the chief judge's recommended corrections, the agency must submit the rule to the Legislative Coordinating Commission and the house of representatives and senate policy committees with primary jurisdiction over state governmental operations, for review under Minnesota Statutes, section 14.15, subdivision 4.

Subp. 7. **Disapproval based on substantial difference.** If the chief judge disapproves the rule because it is substantially different than the proposed rule, the agency may end the

1400.2240 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

550

rule proceeding, may start a new rule proceeding to adopt the substantially different rule, or may proceed under part 1400.2110. The agency may adopt the portions of the rules which are not substantially different.

Subp. 8. **Withdrawal of rule.** The agency may withdraw a rule by submitting a notice of withdrawal to the chief judge signed by a person authorized to withdraw the rule. Withdrawing a rule is appropriate unless the withdrawal of a rule or a portion of the rule makes the remaining rules substantially different. The notice must explain the person's authority to withdraw the rule. The office must return the agency's filing promptly after receiving this notice.

Subp. 9. **Effect of disapproval.** Disapproval of a rule or part of a rule is binding on the agency to the extent specified in Minnesota Statutes, sections 14.15, subdivisions 3 and 4, and 14.16.

Subp. 10. **Rule adoption.** Once the judge or chief judge approves the rule or the review period for the Legislative Coordinating Commission and the house of representatives and senate policy committees with primary jurisdiction over state governmental operations has passed, the office must file three copies of the rule with the secretary of state. The agency may adopt the rule by executing an order adopting the rule. After the rule is adopted, the agency may publish a notice of rule adoption in the State Register.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

RULES ADOPTED WITHOUT A PUBLIC HEARING**1400.2300 REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.**

Subpart 1. **Applicability.** Parts 1400.2300 and 1400.2310 apply to review of rules adopted by agencies under Minnesota Statutes, sections 14.22 to 14.28.

Subp. 2. **Filing.** The agency must file with the office the documents listed in part 1400.2310.

Subp. 3. **Review.** A judge must review the agency's filing and either approve or disapprove it within 14 days after the office receives it, unless it is withdrawn. In reviewing the filing, the judge must decide whether the rule meets the standards of part 1400.2100.

Subp. 4. **Withdrawal of rule.** The agency may withdraw a rule from review by submitting a notice of withdrawal to the chief judge signed by a person authorized to withdraw the rule. Withdrawing a rule is appropriate unless the withdrawal of a rule or a portion of the rule makes the remaining rules substantially different. The notice must explain the person's authority to withdraw the rule. The office must return the agency's filing promptly after receiving this notice.

Subp. 5. **Approval.** If the rule is approved either on initial review or on resubmission, the agency may publish notice of adoption of the rule in the State Register. The office must file three copies of the rule with the secretary of state. The office must notify those persons who requested notification that the judge's decision is available. The office must also send a copy of the judge's decision to the Legislative Coordinating Commission, the revisor, and the attorney general. The office must send the agency a copy of its decision and promptly return the agency's filing.

Subp. 6. **Disapproval.** If the rule is disapproved, the judge must state in writing the reasons for the disapproval and recommend what changes or actions are necessary for approval. The written reasons for disapproval must then be submitted to the chief judge for review. The chief judge shall approve or disapprove the judge's determination within five working days and shall state the reasons in writing and shall advise the agency what changes are required for approval. The office must notify those persons who requested notification that the chief judge's report is available. The office also must send a copy of the chief judge's decision to the office of the governor, the Legislative Coordinating Commission,

the revisor, the attorney general, and the house of representatives and senate policy committees with primary jurisdiction over state governmental operations. Minnesota Statutes, section 14.26, subdivision 3, governs the effect of any disapproval. The chief judge shall then promptly send the rule record to the agency.

Subp. 7. **Disapproval based on substantial difference.** If the chief judge disapproves a rule because it is substantially different than the proposed rule, the agency may end the rule proceeding, may start a new rule proceeding to adopt the substantially different rule, or may proceed under part 1400.2110. The agency may adopt the portions of the rules which are not substantially different.

Subp. 8. **Resubmission.** The agency must resubmit the rule to the chief judge for review after changing it. The agency may also request that the chief judge reconsider the disapproval. When the agency resubmits the rule for review, it must file with the office:

- A. the rule as initially proposed;
- B. the rule with the agency's proposed changes; and
- C. the agency's amended order adopting rules. The order must include an explanation of the changes, why they solve the problems identified by the chief judge, and why they do not result in a substantially different rule.

The chief judge may request that the agency also return the rule record. The chief judge must review the resubmitted rule and decide whether it meets the standards of part 1400.2100 within five working days of receiving it. Minnesota Statutes, section 14.26, subdivision 3, governs the effect of any disapproval.

Subp. 8a. **New modifications to rule.** If the agency wants to adopt the rule with modifications other than those recommended by the judge or chief judge, the agency must submit to the chief judge the filings under subpart 8.

The chief judge may request that the agency also return the rule record. The chief judge must review the agency's modifications to decide if they make the rule substantially different than the proposed rule. The chief judge must make a written decision within five working days after the office receives the rule.

Subp. 9. **Disapproval of need and reasonableness.** If the chief judge disapproves the rule because the agency has not shown it to be needed and reasonable, and if the agency chooses not to follow the chief judge's recommended corrections, the agency must submit the rule to the Legislative Coordinating Commission, and to the house of representatives and senate policy committees with primary jurisdiction over state governmental operations for review under Minnesota Statutes, section 14.26, subdivision 3, paragraph (c).

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2310 DOCUMENTS TO BE FILED.

The agency must file the following documents with the office:

- A. the request for comments published in the State Register;
- B. the petition for rulemaking, if the rule was proposed in response to it;
- C. the proposed rule, including the revisor's approval;
- D. the statement of need and reasonableness;
- E. the notice of intent to adopt rules as mailed and as published in the State Register;
- F. if the chief judge authorized the agency to omit from the notice of intent to adopt rules published in the State Register the text of any proposed rule, a copy of the document authorizing the omission;
- G. the certificate of mailing the notice of intent to adopt rules and certificate of accuracy of its mailing list;

1400.2310 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

552

- H. a certificate of additional notice, if given, or a copy of the transmittal letter;
- I. a copy of the transmittal letter or certificate showing that the agency sent a copy of the statement of need and reasonableness to the Legislative Reference Library;
- J. all written comments and submissions on the proposed rule received during the comment period, requests for hearing, and withdrawals of requests for hearing received by the agency, except those that only requested copies of documents;
- K. if required by Minnesota Statutes, section 14.25, subdivision 2, the notice of withdrawal of hearing request, evidence that the notice of withdrawal was sent to all persons who requested a hearing, and any responsive comments received;
- L. a copy of the adopted rule, showing any modifications to the proposed rule and the revisor's approval of them;
- M. if the agency adopted a substantially different rule using the procedure in part 1400.2110, a copy of the notice that was sent to persons or groups who commented during the comment period and evidence that the notice was sent to those persons or groups;
- N. the order adopting the rule that complies with the requirements in part 1400.2090;
- O. the notice of submission of the rule to the office, if anyone requested this notice, and a copy of the transmittal letter or certificate showing that the agency sent out this notice; and
- P. any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting this rule. Examples include Minnesota Statutes, section 3.9223, subdivision 4 (council of Chicano/Latino people), 14.111 (farming operations), or 14.116 (notice to legislators).

Part 1400.2550 is a recommended certificate form. Part 1400.2560 is a recommended order adopting rules.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

EXEMPT RULES**1400.2400 REVIEW OF EXEMPT RULES.**

Subpart 1. **Applicability.** This part applies to review of rules adopted by agencies under Minnesota Statutes, sections 14.386 and 14.388.

Subp. 2. **Filing.** The agency must file with the office:

- A. the rule, including the revisor's approval; and
- B. a proposed order adopting the rule, which must include any explanation needed to support the legality of the rule, and:
 - (1) the citation to the rule's statutory exemption from the rulemaking procedures of Minnesota Statutes, chapter 14, and any argument needed to support the claim of exemption; or
 - (2) an explanation of why the rule meets the requirements of the good cause exemption under Minnesota Statutes, section 14.388; and
 - (3) any other information required by law or rule.

Subp. 3. **Review.** A judge must review the agency's filing and either approve or disapprove it within 14 days after the office receives it. In reviewing the filing, the judge must decide whether the rule meets the standards of part 1400.2100, items A and D to G, and whether the agency has established its exemption from rulemaking under Minnesota Statutes, section 14.386 or 14.388.

Subp. 4. **Approval.** If the rule is approved, the agency may publish it in the State Register. If the rule is approved either on initial review or on resubmission, the office must file three copies of the rule with the secretary of state. The office must also send a copy of the

judge's decision to the Legislative Coordinating Commission, the revisor, and the attorney general. The office must send the agency a copy of the judge's decision and promptly return the agency's filing.

Subp. 4a. **Disapproval.** If the rule is disapproved, the judge must tell the agency why and what changes are necessary for approval or why the rule is not exempt from rulemaking procedures. The agency must resubmit the rule to the judge for review after changing it. The judge must review and approve or disapprove the rule within five working days after receiving it. A rule does not take effect unless approved.

Subp. 5. **Review by chief judge.** An agency may ask the chief judge to review a rule that has been disapproved by a judge. The agency must make this request within five working days of receiving the judge's decision. The chief judge must review the agency's filing and, within 14 days of receiving it, either approve or disapprove it under the standards in subpart 3.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2410 REVIEW OF EXPEDITED RULES ADOPTED WITHOUT A PUBLIC HEARING.

Subpart 1. **Applicability.** This part applies to review of expedited rules adopted by agencies under Minnesota Statutes, section 14.389, where no public hearing is held.

Subp. 2. **Filing.** The agency must file the following documents with the office:

- A. the proposed rule, including the revisor's approval;
- B. the notice of intent to adopt expedited rules as mailed and as published in the State Register;
- C. the certificate of mailing the notice of intent to adopt expedited rules and certificate of the accuracy of its mailing list;
- D. a certificate of additional notice, if given, or a copy of the transmittal letter;
- E. all written comments and submissions on the proposed rule;
- F. if required by Minnesota Statutes, section 14.25, subdivision 2, the notice of withdrawal of hearing request, evidence that the notice of withdrawal was sent to all persons who requested a hearing, and any responsive comments received;
- G. one copy of the adopted rule, showing any modifications to the proposed rule and the revisor's approval of them;
- H. if the agency adopts a substantially different rule using the procedure in part 1400.2110, a copy of the notice that was sent to persons or groups who commented during the comment period and evidence that the notice was sent to those persons or groups;
- I. the order adopting the rule that complies with the requirements in part 1400.2090;
- J. the notice of submission of the rule to the office, if anyone requested this notice, and a copy of the transmittal letter or certificate showing that the agency sent this notice; and
- K. any other document or evidence to show compliance with any other law or rule that the agency is required to follow in adopting this rule.

Subp. 3. **Review.** A judge must review the agency's filing and either approve or disapprove it within 14 days after the office receives it, unless it is withdrawn. In reviewing the filing, the judge must decide whether the rule meets the standards of part 1400.2100, items A and C to H.

Subp. 4. **Withdrawal of rule.** The agency may withdraw an expedited rule from review by submitting a notice of withdrawal signed by a person authorized to withdraw the rule unless the withdrawal of the rule or a portion of the rule makes the remaining rules

1400.2410 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

554

substantially different. The notice of withdrawal must explain the person's authority to withdraw the rule. The office must return the agency's filing promptly after receiving this request.

Subp. 5. **Approval.** If the expedited rule is approved, either on initial review or on resubmission, the agency may publish the notice of adoption in the State Register. If the final expedited rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. The agency must file one copy of the rule with the governor. The office must file three copies of the rule with the secretary of state. A rule does not take effect unless approved.

Subp. 6. **Disapproval.** If the rule is disapproved, the judge must state in writing the reasons for the disapproval and what changes or actions are necessary for approval. The agency must resubmit the rule to the judge for review after changing it. The judge must review and approve or disapprove the resubmitted rule within five working days after receiving it.

Subp. 7. **Administrative law judge's decision.** The office must notify those persons who requested notification that the judge's decision is available. The office must send a copy of the judge's decision to the Legislative Coordinating Commission, the revisor, and the attorney general. The office must also send the agency a copy of the judge's decision and promptly return the agency's filing.

Subp. 8. **Review by chief judge.** An agency may ask the chief judge to review an expedited rule that has been disapproved by a judge. The agency must make this request within five working days of receiving the judge's decision. The chief judge must review the agency's filing and, within 14 days of receiving it, either approve or disapprove it under the standards of subpart 3.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

MEDIATION**1400.2450 MEDIATION.**

Subpart 1. **Request.** An agency may ask the chief judge to assign a judge to be a neutral party assisting in mediating or negotiating a resolution to disputes relating to proposed rules. The chief judge must assign a judge and notify the agency of the assignment within ten days after receiving the agency's written request.

Subp. 2. **Scheduling and notice.** The assigned judge must contact the agency to establish a date, time, and place for the first mediation session and to assist the agency in giving notice of the mediation. The agency must give notice of the mediation by publishing a notice in the State Register at least 15 days before the session and by mailing the notice to all persons registered with the agency to receive rulemaking notices.

Subp. 3. **Conduct of judge.** The judge assigned must not communicate, either directly or indirectly, about any facts or issues in the mediation with any person not participating in the mediation unless authorized to do so by all persons involved in the mediation.

Subp. 4. **Procedures and guidelines.** Procedures and guidelines for the mediation sessions must be established at the first session by agreement of all participants.

Subp. 5. **Subsequent sessions.** If additional mediation sessions are needed, the date, time, and place must be determined by agreement of the participants or by the judge if the participants do not agree. The judge must give notice of future sessions orally to the participants present and by mail to any persons who have indicated a desire to participate but who are not present.

Subp. 6. **Termination.** The mediation terminates either when the agency decides to terminate it or when the agency and the participants sign an agreement resolving the disputed issues.

MINNESOTA RULES 2009

555 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES 1400.2510

Subp. 7. **Involvement of mediation judge in subsequent proceedings.** The mediation judge shall not be assigned to any subsequent rule hearing or review that involves the rule that was the subject of the mediation.

Subp. 8. **Compliance with other requirements.** The agency must comply with all requirements of law or rule in subsequently adopting a rule on which agreement was reached through mediation under this part.

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

RULEMAKING FORMS

1400.2500 PETITION FOR RULEMAKING.

PETITION FOR RULEMAKING TO THE MINNESOTA DEPARTMENT OF

Name: _____

Group Represented or Title: _____

Address: _____

I request that the agency named above (check one):

Adopt a new rule governing _____

Amend Minnesota Rules, part(s) _____

Repeal Minnesota Rules, part(s) _____

1. Explain the need or reason for the rulemaking you request. The agency will consider your reasons in making its decision, so your explanation must be detailed. You can use additional pages.

2. For a new rule, state the proposed new language of the rule. For rule amendments, repeat the text of the rule, striking through deletions and underlining new language. If you cannot provide new rule language, then write a detailed description of the rule that you are requesting. You can use additional pages.

You must file this petition with the executive director or head of the agency in person or by United States mail. The agency must reply in writing to your petition within 60 days after receiving it.

DATE: _____

Signature of Petitioner

Statutory Authority: *MS s 14.386; 14.388; 14.51*

History: *20 SR 2058*

1400.2510 RECOMMENDED REQUEST FOR COMMENTS ON POSSIBLE RULE.

Minnesota Department of _____

REQUEST FOR COMMENTS

Possible (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Subject of Rule. The _____ (name of department) requests comments on its possible (amendment to) (repeal of) rule governing _____. The department is considering (a rule) (rule amendments) (repealing its rule) that _____ (detailed description of subject matter of rule).

Persons Affected. The (amendment to) (repeal of) the rule would likely affect _____ (description of types of groups and individuals likely to be affected). (Optional): The department does (not) contemplate appointing an advisory committee to comment on the possible rule.

Statutory Authority. Minnesota Statutes, section _____ (section number), (authorizes) (requires) the department to adopt rules for _____ (brief description of statutory authority).

Public Comment. Interested persons or groups may submit comments or information on this possible rule in writing or orally until 4:30 p.m. on _____ (date). The department (insert either: (has) (has not yet) prepared a draft of the possible rule (amendment) (repeal) **OR** does not anticipate that a draft of the rule (amendment) (repeal) will be available before the publication of the proposed rule). Written or oral comments, questions (requests to receive a draft of the rule) (when it has been prepared), and requests for more information on this possible rule should be addressed to: _____ (name, address, telephone number, and e-mail address [optional] of staff person).

Comments submitted in response to this notice may not be included in the formal rulemaking record when a proceeding to adopt a rule is started.

Commissioner

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; 26 SR 391*

1400.2520 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

Minnesota Department of _____

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Introduction. The (department name) intends to adopt a rule without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2300 and 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You may submit written comments on the proposed rule and may also submit a written request that a hearing be held on the rule until _____ (date).

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to: _____ (name, agency, address, telephone number, and fax number [optional]). (You may submit e-mail comments, questions, or requests for a public hearing to: _____ (e-mail address)) [optional].

Subject of Rule and Statutory Authority. The proposed rule is about (subject of rule, and if applicable, that an entire rule is being repealed and a citation to the rule). The statutory authority to adopt this rule is (specific statutory citation). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.)

Comments. You have until ____ p.m. on _____, _____, to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed and the reason for the comment. You are encouraged to propose

MINNESOTA RULES 2009

any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by ____ p.m. on _____, _____. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rule may not be substantially different than this proposed rule unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule.

Other notices required by law or chosen to be inserted in this notice.

Adoption and Review of Rule. If no hearing is required, the agency may adopt the rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rule is submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rule, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated: _____
Name _____
Title _____

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; L 1998 c 154 art 1 s 107; 26 SR 391*

1400.2530 RECOMMENDED NOTICE OF HEARING.

Minnesota Department of _____

NOTICE OF HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Public Hearing. The (department name) intends to adopt a rule after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, Minnesota Statutes, sections 14.131 to 14.20. The agency will hold a public hearing on the above-entitled rule at (place), starting at (time hearing starts) on _____, _____, and continuing until the

hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. The hearing will be conducted by (name, address, telephone number, and fax number of judge). The rule hearing procedure is governed by Minnesota Statutes, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.2000 to 1400.2240. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

Subject of Rule, Statutory Authority, and Agency Contact Person. The proposed rule is about (subject of rule and, if applicable, that an entire rule is being repealed and a citation to the rule). The proposed rules are authorized by Minnesota Statutes, section (specific section number). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that: A free copy of the rule is available upon request from the agency contact person.) The agency contact person is: (name, address, telephone number, fax number [optional], and e-mail address [optional]).

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the agency offices and at the Office of Administrative Hearings. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule. The statement may be reviewed and copies obtained at the cost of reproduction from the agency.

Other notices required by law or chosen to be inserted in this notice.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rule. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day rebuttal period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Accommodation. If you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified as a result of the rule hearing process. Modifications must be supported by data and views presented during the rule hearing process, and the adopted rule may not be substantially different than this proposed rule unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate.

Adoption Procedure After Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rule. You may ask to be notified of the date when the judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of

MINNESOTA RULES 2009

559 **APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES 1400.2540**

the date on which the agency adopts the rule and files it with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings, and can make this request at the hearing or in writing to the agency contact person stated above.

Lobbyist Registration. Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: (address, telephone number).

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: _____

_____ Name

_____ Title

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; L 1997 c 202 art 2 s 63; L 1998 c 254 art 1 s 107; 26 SR 391*

1400.2540 RECOMMENDED DUAL NOTICE.

Minnesota Department of _____

DUAL NOTICE: NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED

Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Introduction. The (department name) intends to adopt a rule without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2300 and 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by _____, _____, a public hearing will be held at (location), starting at (time) on _____, _____. (The date must be at least ten days after the end of the comment period.) To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after (date comment period ends) and before (date of hearing).

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to: _____ (name, address, telephone number, and fax number [optional]). (You may submit e-mail comments, questions, or requests for a public hearing to: _____ (e-mail address)) [optional].

Subject of Rule and Statutory Authority. The proposed rule is about (subject of rule and, if applicable, that an entire rule is being repealed and a citation to the rule). The statutory authority to adopt the rule is (specific statutory citation). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.)

Comments. You have until _____ p.m. on _____, _____, to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by ____ p.m. on _____, _____. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Accommodation. If you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rule may not be substantially different than this proposed rule unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for _____, _____, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at (telephone number) after (date comment period ends) to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. An Administrative Law Judge is assigned to conduct the hearing. The judge can be reached at: (name, address, telephone number, and fax number).

Hearing Procedure. If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rule. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day rebuttal period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by Minnesota Rules, parts 1400.2000 to 1400.2240, and Minnesota Statutes, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

MINNESOTA RULES 2009

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule. The statement may be reviewed and copies obtained at the cost of reproduction from the agency.

Other notices required by law or chosen to be inserted in this notice.

Lobbyist Registration. Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at (address and telephone number).

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rule is submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rule, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure After the Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rule. You may ask to be notified of the date when the judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date on which the agency adopts the rule and it is filed with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: _____
Name
Title

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; L 1997 c 202 art 2 s 63; L 1998 c 254 art 1 s 107; 26 SR 391*

1400.2550 RECOMMENDED CERTIFICATES.

NOTE: This part contains the format of a certificate and language that: certifies the accuracy of the rulemaking mailing list, certifies the mailing of a notice or proposed rule, certifies the mailing of the statement of need and reasonableness to the Legislative Reference Library, certifies the mailing of a notice of submission of a rule adopted without a public hearing to the office, and certifies the mailing of the notice and the statement to legislators. When making certificates using this part, use only the language that applies. If two or more people performed the various actions, create a separate certificate for each person that includes only the actions done by each individual.

Proposed Rule Governing _____, Minnesota Rules _____ (citation to rule).

(Certificate of accuracy of the mailing list) I certify that the list of persons and associations who have requested under Minnesota Statutes, section 14.14, subdivision 1a, that their names be placed on the department of _____ rulemaking mailing list is accurate, complete, and current as of _____, ____.

MINNESOTA RULES 2009

1400.2550 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

562

(Certificate of mailing notice to rulemaking mailing list) I certify that on _____, _____, at least 33 days before the end of the comment period, at the City of _____, County of _____, State of Minnesota, I mailed the _____ (state what was mailed, for example: (1) Notice of Intent to Adopt Rules, Dual Notice, or Notice for Hearing, and (2) the proposed rule) by depositing a copy thereof in [the state of Minnesota's central mail system for] United States mail, with postage prepaid, to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a.

(Certificate of giving additional notice) I certify that on _____, _____, the following additional notice was given by the agency:

(Certificate of mailing the statement of need and reasonableness to the Legislative Reference Library - change the title on the upper right of document) I certify that on _____, _____, when the statement of need and reasonableness became available to the public, I mailed a copy of the statement to the Legislative Reference Library by depositing it in [the state of Minnesota's central mail system for] United States mail, with postage prepaid.

(Certificate of mailing notice of submission of rule adopted without a public hearing to the Office of Administrative Hearings - change the title on the upper right document) I certify that on _____, _____, when the adopted rule was submitted to the Office of Administrative Hearings, I mailed the notice of submission of the rule to the office by depositing it in [the state of Minnesota's central mail system for] United States mail, with postage prepaid, to all persons and groups who requested this notice.

(Certificate of mailing the notice and the statement of need and reasonableness to legislators) (An agency may submit a copy of the transmittal letter instead of this certificate.) I certify that on _____, _____, when the department mailed Notice of Intent to Adopt Rules under Minnesota Statutes, section 14.14 or 14.22, I mailed a copy of the Notice and the Statement of Need and Reasonableness to certain legislators by depositing it in [the state of Minnesota's central mail system for] United States mail, with postage prepaid. The mailing was done to comply with Minnesota Statutes, section 14.116. (List the legislators contacted, or attach copy of cover letter sent to legislators.)

Name
Title

Statutory Authority: *MS s 14.386; 14.388; 14.51; 15.474*

History: *20 SR 2058; L 1998 c 254 art 1 s 107; 26 SR 391*

1400.2560 RECOMMENDED ORDER ADOPTING RULES.

Minnesota Department of _____

ORDER ADOPTING RULE

Adoption of Rule Governing _____, Minnesota Rules _____

WHEREAS:

1. All notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law have been complied with. (For multi-member agencies, add the following: A copy of the authorization from the board to propose the rule is attached. **OR** Proposal of the rule was authorized by the board at its meeting on _____, _____, and a quorum was present.) (For rules adopted without a public hearing, if all notice and procedural requirements were not complied with, state what happened, what corrective action was taken (if any), and why the office should find it to be harmless under Minnesota Statutes, section 14.26, subdivision 3, paragraph (d).)

MINNESOTA RULES 2009

2. (For rules adopted without a public hearing, state the following: The agency received [no] written comments and submissions on the rule. _____ persons requested a public hearing [, of which ___ were subsequently withdrawn.] Therefore, there are not 25 or more outstanding requests for a public hearing. The agency received ___ requests for notice of submission to the Office of Administrative Hearings.) OR (For rules adopted after a public hearing, state the following: The department adopts the Administrative Law Judge's Report dated _____, _____, and incorporates the Report into this order, except as described above.)

3. If any changes were made between the proposed rule and the adopted rule, explain each change, why the change is reasonable, and why the change does not make the rule substantially different. (This requirement does not apply to rules adopted after a public hearing if the judge's report approved the specific change.)

4. The rule is needed and reasonable.

5. (For multimember agencies, add the following: A copy of the authorization from the board to adopt the rule is attached. OR The rule was adopted by the board at its meeting on _____, _____, a quorum was present, and the undersigned was authorized to sign this order.)

IT IS ORDERED that the above-captioned rule is adopted.

DATE: _____
Name
Title

Statutory Authority: MS s 14.386; 14.388; 14.51

History: 20 SR 2058; L 1998 c 254 art 1 s 107

1400.2570 RECOMMENDED NOTICE OF INTENT TO ADOPT EXPEDITED RULE WITHOUT A PUBLIC HEARING.

Minnesota Department of _____

NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____ (topic), Minnesota Rules _____ (citation to rules).

Introduction. The _____ (agency name) intends to adopt rules under the expedited rulemaking process set forth in the rules of the Office of Administrative Hearings, part 1400.2410, and the Administrative Procedure Act, Minnesota Statutes, section 14.389. You may submit written comments on the proposed expedited rules until _____ (date).

Agency Contact Person. Comments or questions on the rule must be submitted to: _____ (name, agency, address, telephone number, and fax number [optional]). (You may submit e-mail comments, questions, or requests for a public hearing to: _____ (e-mail address)) [optional].

Subject of Expedited Rule and Statutory Authority. The proposed expedited rule is about _____ (subject of rule and, if applicable, that an entire rule is being repealed and a citation to the repealed rule). The statutory authority to adopt this rule is (citation to specific statutory authority). The statutory authority to adopt this rule under the expedited rulemaking process is _____ (citation to statutory authority to adopt rules under Minnesota Statutes, section 14.389). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that a free copy of the rule is available upon request from the agency contact person listed above.) The

MINNESOTA RULES 2009

1400.2570 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

564

proposed expedited rule may be viewed at: _____ (applicable Web site address) [optional].

Comments. You have until _____ (time) on _____ (date) to submit written comment in support of or in opposition to the proposed expedited rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed expedited rule addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

(If the agency is accepting requests for a public hearing, the following paragraph must be included.)

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by _____ (time) on _____ (date). Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule.

(If the agency is accepting requests for a public hearing, the following paragraph must be included.)

Withdrawal of Requests. If 100 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 100, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The agency may modify the proposed expedited rule if the modifications do not make the rule substantially different as defined in Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c), unless the procedure under part 1400.2110 has been followed. If the final rule is identical to the rule originally published in the State Register, the agency will publish a notice of adoption in the State Register. If the final rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. If the proposed expedited rule affects you in any way, you are encouraged to participate in the rulemaking process.

Other notices required by law or chosen to be inserted in this notice.

Adoption and Review of Expedited Rule. (If no hearing is required, the) or (The) agency may adopt the rules at the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated: _____

_____ Name

_____ Title

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

CONTESTED CASE HEARINGS

1400.5010 SCOPE.

The procedures in parts 1400.5010 to 1400.8400 govern all contested cases conducted by the office under Minnesota Statutes, chapter 14.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

1400.5100 DEFINITIONS.

Subpart 1. **Administrative law judge or judge.** "Administrative law judge" or "judge" means the person or persons assigned by the chief administrative law judge pursuant to Minnesota Statutes, section 14.50, to hear the contested case.

Subp. 2. **Agency.** "Agency" means the state or public agency for whom a contested case hearing is being conducted.

Subp. 3. **Chief judge.** "Chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 3a. **Filing.** "Filing" means transmission of a document to the Office of Administrative Hearings by mail, delivery, fax, or licensed overnight express mail service.

Subp. 4. [Repealed, 15 SR 1595]

Subp. 5. [Repealed, 15 SR 1595]

Subp. 6. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 7. **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. 8. **Person.** "Person" means any individual, business, nonprofit association or society, or governmental entity.

Subp. 9. **Service; serve.** "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail or a licensed overnight express mail service.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595; 26 SR 391*

1400.5200 [Repealed, 26 SR 391]

1400.5275 DOCUMENTS FILED.

Forms, documents, or written materials prepared specifically for and used or filed in contested proceedings before the office must be on standard size 8-1/2-inch by 11-inch paper.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.5300 REQUEST FOR ADMINISTRATIVE LAW JUDGE.

Before issuing a notice of and order for hearing, an agency must first file with the docket coordinator a request for assignment of an administrative law judge. The request must include a proposed time, date, and place for the hearing or prehearing conference.

1400.5300 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

566

In proposing a hearing location, the requesting agency must take into account the location of known parties, witnesses, and other participants so as to maximize convenience and minimize costs.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.5400 ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE.

Within ten days of the receipt of a request pursuant to part 1400.5300, the chief judge shall assign a judge to hear the case and set the time, date, and place for hearing or prehearing conference, taking into account the agency's request. The agency shall issue the notice of and order for hearing, unless the substantive law requires it to be issued otherwise.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.5500 DUTIES OF ADMINISTRATIVE LAW JUDGE.

Consistent with law, the judge 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 recommend action upon requests for subpoenas where appropriate and consistent with part 1400.7000;
- 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 as necessary to make a complete record;
- I. prepare findings of fact, conclusions, and recommendations or a final order where required by law;
- J. make preliminary, interlocutory, or other orders as deemed 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 or her 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. grant or deny a request to substitute initials or numbers for proper names in the hearing record or in findings of fact, conclusions, and recommendations or order;
- N. appoint an interpreter where necessary to provide a fair hearing;
- O. set a reasonable limit on the time allowed for testimony after considering the requests of the parties;
- P. change the location of the hearing based upon the request of a party where necessary to provide a fair hearing;
- Q. do all things necessary and proper to the performance of the foregoing; and
- R. in his or her discretion, perform such other duties as may be delegated by the agency ordering the hearing.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.5550 SERVICE AND FILING PROCEDURE.

Subpart 1. **Certificate of service.** A certificate of service must be made by the person making the service. A certificate of service must bear the name of the person certifying that service has been made, but need not be signed or notarized.

Subp. 2. **Service by mail.** Service by mail or licensed overnight express mail service is effective upon placing the item to be served in the mail or delivering it to the authorized agent of the express mail service. Postage must be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the state of Minnesota's central mail system for United States mail.

Subp. 3. **Personal service.** Personal service may be accomplished by either delivering the document to the person or by leaving the document at the person's home or place of business with someone of suitable age and discretion who resides in the same house or who is located at the same business address as the person to be served.

Subp. 4. **Service upon a confined person.** If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution.

Subp. 5. **Filing by facsimile and other means.** Any paper relating to hearings conducted by an administrative law judge under Minnesota Statutes, chapter 14, may be filed with the office by fax transmission. Filings are effective on the date that the office receives the fax transmission if the transmission is begun before 4:30 p.m. on that date. The filing of a fax has the same force and effect as the filing of the original document. Filings made by other means described in part 1400.5100, subpart 3a, are effective on the date the office receives the filing.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

1400.5600 NOTICE AND ORDER FOR HEARING.

Subpart 1. **Commencing a contested case.** A contested case is commenced, subsequent to the assignment of a judge, 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, shall be filed with the office and shall contain, among other things, the following:

A. The time, date, and place for the hearing or a prehearing conference, or a statement that the matter has been referred to the office and that a hearing or prehearing time, date, and place will be set by the judge;

B. Name, address, and telephone number of the judge;

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 allegedly violated or which control the outcome of the case;

E. Notification of the right of the parties to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law;

F. A citation to parts 1400.5100 to 1400.8400, to any applicable procedural rules of the agency, and to the contested case provisions of Minnesota Statutes, chapter 14, and notification of how copies may be obtained in print or online;

G. A brief description of the procedure to be followed at the hearing;

1400.5600 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

568

H. A statement advising the parties to bring to the hearing all documents, records, and witnesses they need to support their position;

I. A statement that subpoenas may be available to compel the attendance of witnesses or the production of documents, referring the parties to part 1400.7000 relating to subpoenas;

J. 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;

K. A statement advising the parties that a notice of appearance must be filed with the judge 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;

L. A statement advising existing parties that failure to appear at a prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the judge 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 that explains the possible results of the allegations being taken as true or the issues proved;

M. A statement advising the parties that state agencies are required by law to keep some data not public, that parties are required to advise the judge if not public data is offered into the record, and that if not public data is admitted into evidence it may become public unless a party objects and asks for relief under Minnesota Statutes, sections 14.60, subdivision 2;

N. A statement advising the parties and counsel that the office conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association;

O. Notification that the agency will, upon request, make an accommodation so that the hearing is accessible and will appoint a qualified interpreter if necessary; and

P. A statement advising the parties that if an interpreter is needed the judge must be promptly notified.

Subp. 3. **Service.** Unless otherwise provided by law, the notice of and order for hearing shall be served and filed 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 judge that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

Subp. 4. [Repealed, 26 SR 391]

Subp. 5. **Amendment.** At any time prior to the start of the evidentiary 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. Amendments sought after the start of the hearing must be approved by the judge.

Subp. 6. **Alternative documents and procedures.** With the prior written concurrence of the chief judge, 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.

Subp. 7. **Department of Human Rights hearings.** After receipt of a request for a hearing forwarded by the commissioner of the Department of Human Rights under Minnesota Statutes, section 363A.29, subdivision 2, and the assignment of a judge to the case, the judge shall prepare and issue a notice of and order for hearing. The notice shall incorporate the charge or charges filed by the charging party and shall state that an answer to

the charges must be served and filed by the respondent within 20 days after service of the notice.

Statutory Authority: *MS s 3.764; 14.06; 14.131; 14.51; 15.474; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 11 SR 1385; 15 SR 1595; 26 SR 391*

1400.5700 NOTICE OF APPEARANCE.

Each party intending to appear at a contested case hearing shall file with the judge and serve upon all other known parties a notice of appearance which shall advise the judge 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 and served within 20 days of the date of service of the notice of and order for hearing, except that, where the hearing or prehearing conference date is less than 20 days from the commencement of the contested case, the notice of appearance shall be filed as soon as possible. The failure to file and serve a notice may, in the discretion of the judge, 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. After an attorney has filed a notice of appearance, withdrawal is effective only if a notice of withdrawal is promptly served on all parties and filed with the judge. The notice of withdrawal must include the address and telephone number of the party. Withdrawal of counsel does not create any right to a continuance.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595; 26 SR 391*

1400.5800 RIGHT TO COUNSEL.

Parties may be represented by an attorney throughout the proceedings in a contested case, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. Persons appearing in contested case proceedings in a representative capacity must conform to the standards of professional conduct required of attorneys before the courts of Minnesota. If any representative fails to conform to these standards, the judge may exclude the person from the proceeding.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

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. Parties may enter into these agreements on their own or may utilize the mediation procedures in part 1400.5950 or the settlement conference procedures in part 1400.6550. The parties must promptly notify the judge in writing of a settlement so that the office file can be closed.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.5950 MEDIATION.

Subpart 1. Definition. "Mediation" is a voluntary process where parties to a dispute jointly explore and resolve all or a part of their differences with the assistance of a neutral person. The mediator's role is to assist the parties in resolving the dispute themselves. The mediator has no authority to impose a settlement.

Subp. 2. Office to provide. The office will provide mediation services to any state agency, court, or political subdivision in a contested case proceeding or other contested matter other than labor relation disputes which are within the jurisdiction of the Bureau of

1400.5950 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

570

Mediation Services. For purposes of this part only, "agency" means either a state agency, court, or political subdivision of the state.

Subp. 3. **Initiating mediation.** Mediation may be initiated in the following ways:

A. Prior to the initiation of a contested case proceeding, an agency may propose mediation by filing a written request for mediation services with the chief judge. A copy of the request shall be served upon all persons whom the agency would name as parties in the notice of and order for hearing.

B. Subsequent to the initiation of a contested case proceeding, the agency, a party to a contested case, or the judge assigned to the contested case may propose that the case be mediated by filing a request for mediation services with the chief judge. A copy of the request must be served upon the agency, the judge, and all parties.

C. Upon receipt of a request for mediation, the chief judge or designee shall contact, either orally or in writing, the agency and all parties to determine whether they are willing to participate in mediation. No matter shall be ordered for mediation if the agency or any party is opposed.

D. If the chief judge determines that no party or the agency is opposed to mediation, the chief judge shall appoint a mediator and issue an order for mediation, which shall set forth:

- (1) the name, address, and telephone number of the mediator; and
- (2) a date by which the mediator must initiate the mediation proceedings.

The order shall be served upon the agency, the parties, and the judge assigned to the contested case, if any.

E. The mediator must initiate the mediation proceedings by contacting the agency and each party no later than the date set forth in the order for mediation.

Subp. 4. **Confidentiality.** The mediator shall not communicate, either directly or indirectly, regarding any facts or issues in the mediation with any person not participating in the mediation unless authorized to do so by the parties to the mediation.

Subp. 5. **Termination.** The mediation process shall terminate when all parties are, or the agency is, unwilling to continue mediation; or a settlement agreement is signed setting forth the resolution of the disputed issues.

Upon termination, the mediator shall either forward the signed settlement agreement to the agency or the judge, if applicable, for appropriate action; or inform the agency or the judge, if applicable, that the mediation has been terminated without agreement.

Subp. 6. **Admissibility.** Any offers to compromise or evidence of conduct or statements made during mediation are not admissible.

Subp. 7. **Unsuccessful mediation.** The person appointed to mediate a dispute shall not be assigned to hear any portion of the case should mediation terminate unsuccessfully.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595*

1400.6000 DEFAULT.

The agency or the judge, where authorized, 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 without further evidence. A default occurs when a party fails to appear without the prior consent of

the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595*

1400.6100 TIME.

Subpart 1. **Computation.** In computing any period of time prescribed by parts 1400.5100 to 1400.8400 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 the party, or whenever 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 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.

Subpart 1. **Petition.** Any person not named in the notice of hearing who desires to intervene in a contested case as a party shall submit a timely written petition to intervene to the judge and shall serve the petition upon all existing parties and the agency. Timeliness will be determined by the judge 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; shall show how the petitioner may be directly affected by the outcome or that petitioner's participation is authorized by statute, rule, or court decision; 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 judge, and where good reason appears therefor, specify in the notice of and order for hearing or prehearing the final date upon which a petition for intervention may be submitted to the judge.

Subp. 2. **Objection.** Any party may object to the petition for intervention by filing a written notice of objection with the judge within seven days of service of the petition if there is sufficient time before the hearing. 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. If there is insufficient time before the hearing for a written objection, the objection may be made orally at the hearing.

Subp. 2a. **Hearing on petition.** Where necessary to develop a full record on the question of intervention, the judge shall conduct a hearing on the petition to determine specific standards that will apply to each category of intervenor, and to define the scope of intervention.

Subp. 3. **Order.** The judge shall allow intervention upon a proper showing pursuant to subpart 1 unless the judge finds that the petitioner's interest is adequately represented by one or more parties participating in the case. An order allowing intervention shall specify the extent of participation permitted the petitioner and shall state the judge's reasons. A petitioner may be allowed to:

- A. file a written brief without acquiring the status of a party;
- B. intervene as a party with all the rights of a party; or

1400.6200 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

572

C. intervene as a party with all the rights of a party but limited to specific issues and to the means necessary to present and develop those issues.

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 judge 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 that person's 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 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.6300 [Repealed, 9 SR 2276]

1400.6350 CONSOLIDATION OF CASES.

Subpart 1. **Standards for consolidation.** Whenever two or more 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, that consolidating the cases for hearing would save time and costs, and that consolidation would not prejudice any party, the cases may be consolidated for hearing under this part.

Subp. 2. **Agency consolidation.** Subject to a motion for severance as provided in subpart 7, prior to referring cases to the office for hearing an agency may consolidate two or more cases for hearing.

Subp. 3. **Service of petition.** A party requesting consolidation shall serve a petition for consolidation on all parties to the cases to be consolidated, on the agency if the agency is not a party, and shall file the original with the judge assigned to the cases, together with a proof of service showing service as required herein. Any party objecting to the petition shall serve and file their objections within ten calendar days following service of the petition for consolidation.

Subp. 4. **Determination of petition.** When more than one judge is assigned to the cases which are the subject of the petition for consolidation, the petition will be determined by the judge assigned to the first case submitted to the office.

Subp. 5. **Order.** Upon determining whether cases should be consolidated, the judge shall serve a written order on all parties and the agency, if the agency is not a party. The order shall contain, among other things, a description of the cases for consolidation, the reasons for the decision, and notification of a consolidated prehearing conference if one is being scheduled.

Subp. 6. **Stipulations.** Nothing contained in this part shall be deemed to prohibit parties from stipulating and agreeing to a consolidation which shall be granted upon submission of a written stipulation, signed by all parties, to the judge. A judge may consolidate two or more cases presently pending before that judge on the judge's own motion, applying the standards in subpart 1.

Subp. 7. **Petition for severance.** Following receipt of a notice of or order for consolidation, any party may petition for severance by serving it on all other parties and the agency, if the agency is not a party, and filing it with the judge at least seven business days prior to the first scheduled hearing date. If the judge finds that the consolidation will prejudice the petitioner, the judge shall order the severance or other relief which will prevent the prejudice from occurring.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.6400 ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.

The judge shall withdraw from participation in a contested case at any time if he or she deems himself or herself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief judge 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. A judge must be removed upon an affirmative showing of prejudice or bias. A judge may not be removed merely because of rulings on prior cases.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

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 obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to consider how the hearing will be recorded and whether a transcript will be prepared, to consider whether an interpreter or other accommodation is needed, to identify and exchange documentary evidence intended to be introduced at the hearing, to determine deadlines for the completion of any discovery, to consider a reasonable limit on the time allowed for presenting evidence, to establish hearing dates and locations if not previously set, to determine whether the issues in the case are susceptible to mediation, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing.

Subp. 2. **Procedure.** Upon the request of any party or upon his or her own motion, the judge may, in his or her discretion, hold a prehearing conference prior to each contested case hearing. A prehearing conference may be held by telephone. The judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the judge. 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 judge.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.6550 SETTLEMENT CONFERENCE.

Subpart 1. **Purpose.** A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing as in part 1400.6500, subpart 1.

Subp. 2. **Scheduling.** Upon the request of any party or the judge, the chief judge shall assign the case to another judge for the purpose of conducting a settlement conference. Unless both parties and the judge agree, a unilateral request for a settlement conference will not constitute good cause for a continuance. The conference shall be conducted at a time and place agreeable to all parties and the judge. It shall be conducted by telephone if any party would be required to travel more than 50 miles to attend, unless that party agrees to travel to the location set for the conference. If a telephone conference is scheduled, the parties must be available by telephone at the time of the conference. Where mediation between the parties has previously occurred, a settlement conference will not be ordered unless all parties agree.

Subp. 3. **Procedures at conference.** All parties shall attend or be represented at a settlement conference. Parties or their representatives attending a settlement conference shall be prepared to participate in meaningful settlement discussions.

1400.6550 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

574

Subp. 4. **Preconference discussions.** The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

Subp. 5. **Information provided.** At the settlement conference, the parties shall be prepared to provide the information and to discuss all matters required by part 1400.6500, subpart 1.

Subp. 6. **Orders.** If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts or other issues, the judge presiding over the settlement conference shall issue an order confirming and approving, if necessary, those matters agreed upon. The order is binding on the judge who is assigned to hear the case.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.6600 MOTIONS.

Any application to the judge 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 parts 1400.5100 to 1400.8400 shall be served on all parties, the agency, if it is not a party, and the judge. The written motion shall advise other parties that should they wish to contest the motion they must file a written response with the judge and serve copies on all parties, within ten working days after it is received. No memorandum of law submitted in connection with a motion may exceed 25 pages, except with the permission of the judge. If any party desires a hearing on the motion, they shall make a request for a hearing at the time of the submission of their motion or response. A response shall set forth the nonmoving party's objections. A hearing on a motion will be ordered by the judge only if it is determined that a hearing is necessary to the development of a full and complete record on which a proper decision can be made. Motions may be heard by telephone. 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 parts 1400.5100 to 1400.8400 are silent, the judge shall apply the Rules of Civil Procedure for the District Court for Minnesota to the extent that it is determined appropriate in order to promote a fair and expeditious proceeding.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.6700 DISCOVERY.

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

A. The names and addresses of all witnesses that a party intends to call at the hearing, along with a brief summary of each witness' testimony. 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.

C. All written exhibits to be introduced at the hearing. The exhibits need not be produced until one week before the hearing unless otherwise ordered.

D. Any party unreasonably failing upon demand to make the disclosure required by this subpart may, in the discretion of the judge, be foreclosed from presenting any evidence at the hearing through witnesses or exhibits not disclosed or through witnesses whose statements are not disclosed.

Subp. 2. **Discovery of other information.** Any means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota is allowed. If the party

from whom discovery is sought objects to the discovery, the party seeking the discovery may bring a motion before the judge to obtain an order compelling discovery. In the motion proceeding, the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant the discovery. In ruling on a discovery motion, the judge shall recognize all privileges recognized at law.

Subp. 3. **Noncompliance.** Upon the failure of a party to reasonably comply with an order of the judge made pursuant to subpart 2, the judge 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 that party from introducing designated matters in evidence.

Subp. 4. **Protective orders.** The judge may issue a protective order as justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense due to a discovery request. When a party is asked to reveal material considered to be proprietary information or trade secrets, or not public data, that party may bring the matter to the attention of the judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

Subp. 5. **Filing.** Copies of a party's request for discovery as well as the responses to those requests and copies of discovery depositions shall not be filed with the office unless otherwise ordered by the judge or unless they are filed in support of any motion or unless they are introduced as evidence in the hearing.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595; 26 SR 391*

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 within ten days will result in the subject matter of the request being deemed admitted unless it can be shown that there was a justifiable excuse for failing to respond.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.6900 DEPOSITIONS TO PRESERVE TESTIMONY.

Upon the request of any party, the judge may order that the testimony of any witness be taken by deposition to preserve that witness' 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 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.6950 EXCHANGE OF WITNESS LISTS AND EXHIBITS.

Subpart 1. **Order.** Prior to the hearing the judge may, upon a party's request or at the judge's own motion, order the parties by a date certain to:

A. exchange a list of all witnesses to be called at the hearing. The list must include the witness' occupation and address; and

B. exchange all written exhibits to be offered at the hearing.

Subp. 2. **Objection to foundation.** Any party objecting to the foundation for any written exhibit received under subpart 1 must notify both the offering party and the judge in writing at least two working days before the hearing or the foundation objection is waived.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

1400.7000 SUBPOENAS.

Subpart 1. **Written request.** Requests for subpoenas for the attendance of witnesses or the production of documents, either at a hearing or for the purpose of discovery, shall be made in writing to the judge, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena.

Subp. 2. **Service.** A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts 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 is not required to make proof of service by filing the subpoena with the judge. However, a filing with an affidavit of service will be required with the motion of a party seeking an order imposing sanctions for failure to comply with any subpoena issued under parts 1400.5100 to 1400.8400.

Subp. 3. **Objection to subpoena.** Any person served with a subpoena who has an objection to it may file an objection with the judge. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The judge shall cancel or modify the subpoena if it is unreasonable or oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance when compared with the value of the testimony or evidence sought for the presentation of a party's case, and whether or not there are alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.7050 SANCTIONS IN DISCRIMINATION CASES.

Subpart 1. **Precomplaint procedure.** If, at any time prior to the issuance of a complaint in any matter pending before the Minnesota Department of Human Rights, the charging party or the respondent believes that the other is intentionally and frivolously delaying any precomplaint proceedings, it may petition the chief judge for an order imposing sanctions. For the purpose of this subpart, a respondent is any person against whom a charge has been filed. The sanctions and the procedures are as follows:

A. A party requesting the imposition of sanctions shall file a petition with the chief judge which shall include proof that a copy of the petition has been served on the other party.

B. A petition for the imposition of sanctions shall state, with specificity, the acts of the other party which are alleged to be intentional and frivolous delay; the sanctions requested; whether an oral hearing is requested; and shall include sworn affidavits of persons having first-hand knowledge of the alleged acts.

C. The party against whom sanctions are sought shall have ten working days following receipt of the petition to file an objection to the petition. The objection shall respond to each alleged act of delay with specificity; shall include sworn affidavits of persons having first-hand knowledge of the alleged acts; and shall state whether an oral hearing is requested. Objections are timely filed only if received by the office at or before 4:30 p.m. of the tenth working day. The objection shall include proof that it was served on the other party.

D. Upon receipt of a petition and objection under this part, the chief judge shall either determine the matter or assign it to a judge for determination. If either party has requested an oral hearing, it shall be conducted no earlier than ten calendar days following the receipt of a notice of the hearing.

E. Intentional and frivolous delay occurs when a party deliberately delays proceedings for immaterial, meritless, trivial, or unjustifiable reasons. In determining whether intentional and frivolous delay has occurred, the judge shall also give consideration to the number of issues and amount of damages in controversy, any pattern of similar acts by the party, and effects of the delay.

F. If it is determined that intentional and frivolous delay has occurred, the judge shall enter an order requiring the offending party to cease and desist from the act; compelling cooperation in all phases of the proceedings; or imposing any other sanctions, other than fines, deemed necessary to compel expeditious cooperation and completion of the investigation.

G. In the event the investigation results in a finding of probable cause and issuance of a complaint, the determination of intentional and frivolous delay and compliance with any orders issued under item F shall be taken into consideration in awarding damages and attorney's fees, where applicable.

Subp. 2. **Procedure during proceedings.** If during the pendency of a contested case before the office either the charging party or the respondent believe that the other is intentionally and frivolously delaying the proceedings, they may bring a motion before the judge by following the procedures in part 1400.6600. If the judge determines, using the criteria in subpart 1, item E, that intentional and frivolous delay has occurred, the judge shall issue an order containing any of the following:

- A. that the party shall cease and desist from the acts;
- B. compelling cooperation during further pendency of the case;
- C. dismissing any or all charges or defenses to charges, whichever may be appropriate;
- D. foreclosing the testimony of specified witnesses or the presentation of evidence on specified issues;
- E. that the delay will be taken into consideration in awarding damages or attorney's fees; or
- F. any sanctions available in civil cases in the district courts of Minnesota.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: 9 SR 2276

1400.7100 RIGHTS AND RESPONSIBILITIES OF PARTIES.

Subpart 1. **Generally.** All parties shall have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses.

Subp. 2. **Necessary preparation.** A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. In cases where the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the judge or as agreed upon at a prehearing conference. Parties shall have enough copies of exhibits

1400.7100 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

578

so that they can provide a copy to each other party at the time the exhibit is introduced, unless that other party has already obtained a copy through discovery.

Subp. 3. **Responding to orders.** If the judge orders that parties do an act or not do an act, the parties shall comply with the order. If a party objects to an order, the objection shall be stated in advance of the order as part of the record. If the party had no advance knowledge that the order was to be issued, any objection shall be made as part of the record as soon as the party becomes aware of the order.

Subp. 4. **Copies.** The judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, subpoena request, or other document to the judge shall simultaneously send a copy to all other parties.

Subp. 5. **Representation by attorney.** A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

Subp. 6. **Communication with judge.** No party or attorney may communicate with the judge on the merits of the case unless all parties have the opportunity to participate.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595; 26 SR 391*

1400.7150 RIGHTS AND RESPONSIBILITIES OF NONPARTIES.

Subpart 1. **Offering evidence.** With the approval of the judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the judge.

Subp. 2. **Questioning witnesses.** The judge may allow nonparties to question witnesses if deemed necessary for the development of a full and complete record.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.7200 WITNESSES.

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

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.7300 RULES OF EVIDENCE.

Subpart 1. **Admissible evidence.** The judge 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 judge shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall 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, 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 judge or upon agreement of the parties. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, under the circumstances, it would be unfair to admit the copy in lieu of the original.

Subp. 4. **Official notice of facts.** The judge 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. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence. In employee disciplinary actions, the agency or political subdivision initiating the disciplinary action shall have the burden of proof.

Subp. 6. **Examination of adverse party.** A party may call an adverse party or a 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 that party by leading questions and contradict and impeach that party on material matters in all respects as if that party had been called by the adverse party. The adverse party may be examined by that party's counsel upon the subject matter of that party's 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 the testimony.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.7400 HEARING RECORD.

Subpart 1. **Content.** The judge shall maintain the official record in each contested case until the issuance of the judge's final report, at which time the record, except for the audiomagnetic recordings of the hearing, shall be sent to the agency. The audiomagnetic recordings shall be retained by the office for five years from the date that the record is returned to the agency. Unless an agency requests a longer retention period for a specific case, the recordings may be erased or otherwise destroyed at the end of the five-year period.

The record in a contested case shall contain all pleadings, motions, and orders; evidence offered or considered; offers of proof, objections, and rulings thereon; the judge'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 judge. The agency or party requesting a transcript is responsible for the cost. The parties may agree to divide the cost. When the chief administrative law judge requests a transcript the agency is responsible for the cost.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595; 26 SR 391*

1400.7500 CONTINUANCES.

Requests for a continuance of a hearing shall be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing shall be made in writing to the judge and shall be served upon all parties of record and the agency if it is not a party. In determining whether good cause exists, 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 business days of the hearing shall be denied unless the reason for the request could not have been earlier ascertained.

"Good cause" shall include: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleadings requiring postponement; and agreement for a continuance by all parties provided that it is shown that more time is clearly necessary

1400.7500 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

580

to complete authorized discovery or other mandatory preparation for the case and the parties and the judge have agreed to a new hearing date, or, the parties are engaged in serious settlement negotiations or have agreed to a settlement of the case which has been or will likely be approved by the final decision maker.

"Good cause" shall not include: intentional delay; unavailability of counsel or other representative due to engagement in another judicial or administrative proceeding unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received subsequent to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney or representative to properly utilize the statutory notice period to prepare for the hearing.

During a hearing, if it appears in the interest of justice that further testimony should be received and sufficient time does not remain to conclude the testimony, the judge shall either order the additional testimony be taken by deposition or continue the hearing to a future date and oral notice on the record shall be sufficient.

A continuance shall not be granted when to do so would prevent the case from being concluded within any statutory deadline.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595*

1400.7600 CERTIFICATION OF MOTIONS TO AGENCY.

No motions shall be made directly to or be decided by the agency subsequent to the assignment of a judge and prior to the completion and filing of the judge's report unless the motion is certified to the agency by the judge. No motions will be certified in cases where the judge's report is binding on the agency. Uncertified motions shall be made to and decided by the judge and considered by the agency in its consideration of the record as a whole subsequent to the filing of the judge's report. Any party may request that a pending motion or a motion decided adversely to that party by the judge before or during the course of the hearing, other than rulings on the admissibility of evidence or interpretations of parts 1400.5100 to 1400.8400, be certified by the judge to the agency. In deciding what motions should be certified, the judge 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; or

F. whether the issues are solely within the expertise of the agency.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.7700 ADMINISTRATIVE LAW JUDGE'S CONDUCT.

Subpart 1. **Communication with parties.** The judge 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. When these rules authorize communications contrary to this part, the communications shall be limited to only those matters permitted by these rules. The judge may respond to questions relating solely to procedures for the hearing without violating this part.

Subp. 2. **Ex parte communication.** Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided;

A. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication; and

B. the judge makes provisions promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

Subp. 3. **Other communication.** The administrative law judge may:

A. obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives prior notice to the parties of the person to be consulted and an opportunity to object. If the advice is obtained, the judge shall notify the parties of the substance of the advice and afford the parties a reasonable opportunity to respond;

B. consult with other judges and with office personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities;

C. if the parties consent, confer separately with the parties and/or their representatives in an effort to mediate or settle matters pending before the judge, subject to part 1400.5950, subpart 7; and

D. initiate or consider any ex parte communication when expressly authorized by law to do so.

Subp. 4. **Code of conduct.** Administrative law judges are subject to the provisions of the Code of Judicial Conduct.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

1400.7800 CONDUCT OF HEARING.

In the absence of a specific provision mandating or permitting a closed hearing, all contested case hearings are open to the public. Unless the judge determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

A. The judge shall open the hearing by reading the title of the case, asking the parties or counsel to note their appearances, and explaining the hearing procedure to unrepresented parties.

B. After opening the hearing, the judge shall, unless all parties are represented by counsel or are otherwise familiar with the procedures, 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.

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

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

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

D. The party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

E. After any opening statements, the party with the burden of proof shall begin the presentation of evidence unless the parties have agreed otherwise or the administrative law judge determines that requiring another party to proceed first would be more expeditious

1400.7800 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

582

and would not jeopardize the rights of any other party. It shall be followed by the other parties in a sequence determined by the judge.

F. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing. At the request of a party whose witness is being cross-examined, the judge shall make rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

G. Any party may be a witness or may present other persons as witnesses at the hearing. All evidentiary testimony presented to prove or disprove a fact at issue shall be under oath or affirmation.

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

I. After final argument, the hearing shall be closed unless a continuance has been ordered under part 1400.7500. 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.

J. 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 judge have agreed should be received into the record, whichever occurs latest.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 15.474; 363.06; 363A.28*

History: *9 SR 2276; 26 SR 391*

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 designee may engage in examination of witnesses as the judge deems appropriate.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.8000 DISRUPTION OF HEARING.

Subpart 1. **Cameras.** Television, newsreel, motion picture, still, or other cameras, and mechanical recording devices may be operated in the hearing room during the course of the hearing after permission is obtained from the judge and then only pursuant to any conditions the judge may impose to avoid disruption of the hearing.

Subp. 2. **Other conduct.** Pursuant to and in accordance with 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 interference, disruption, or threat, the judge shall read this subpart to those persons causing such interference or disruption and thereafter proceed as deemed appropriate, which may include ordering the disruptive person to leave or be removed from the hearing.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.8100 ADMINISTRATIVE LAW JUDGE'S REPORT.

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

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

Subp. 3. **Completion and distribution.** Following the close of the record, the judge shall make a report pursuant to Minnesota Statutes, section 14.50, and, upon completion, a copy of the 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 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.8200 AGENCY DECISION.

Following receipt of the judge'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 office by first class mail.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06; 363A.28*

History: *9 SR 2276*

1400.8300 RECONSIDERATION OR REHEARING.

Once a judge has issued a report, unless that report is binding on the agency, the judge loses jurisdiction to amend the report except for clerical or mathematical errors. Unless the report is a final order, binding on the agency, petitions for reconsideration or rehearing must be filed with the agency.

Where the judge's decision is binding on the agency, a petition for reconsideration or rehearing shall be filed with the judge. The petition must be filed within a reasonable time but not after an appeal is taken nor more than one year after the decision was issued. Pursuant to Minnesota Statutes, section 14.64, a petition for reconsideration must be filed within ten days after the decision in order to toll the time for appeal to the Court of Appeals. A 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 judge 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.

In ruling on a motion for reconsideration or rehearing in cases where the judge's decision is binding on the agency, the judge shall grant reconsideration or rehearing if it appears that to deny it would be inconsistent with substantial justice and any one of the following has occurred:

- A. irregularity in the proceedings whereby the moving party was deprived of a fair hearing;
- B. accident or surprise that could not have been prevented by ordinary prudence;
- C. material evidence newly discovered that with reasonable diligence could not have been found and produced at hearing;
- D. fraud upon the hearing process;
- E. mistake, inadvertence, or excusable neglect; or

1400.8300 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

584

F. the decision is not justified by the evidence, or is contrary to law; but unless it be so expressly stated in the order granting rehearing, it shall not be presumed, on appeal, to have been made on the ground that the decision was not justified by the evidence.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 216E.16; 363.06; 363A.28*

History: *9 SR 2276; 15 SR 1595*

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*

AWARDS OF EXPENSES AND ATTORNEYS FEES**1400.8401 EXPENSES AND ATTORNEY FEES.**

Subpart. 1. [Repealed, 26 SR 391]

Subp. 2. [Repealed, 26 SR 391]

Subp. 3. **Application.** A party seeking an award of expenses and attorney's fees shall submit to the judge an application that shows:

A. an itemization of the amount of fees and expenses sought. This shall include full documentation of fees and expenses, including an affidavit from each attorney, agent, or expert witness representing or appearing on behalf of the applicant stating the actual time expended and the rate at which fees have been computed and describing the specific services performed.

The affidavit shall itemize in detail the services performed by the date, number of hours per date, and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients for similar services during the relevant time periods.

The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided;

B. a statement that explains with specificity how or why the position of the state agency was not substantially justified;

C. if the claim for attorney's fees exceeds \$125 per hour, a statement of facts showing that the excess award qualifies under Minnesota Statutes, section 15.471, subdivision 5, paragraph (c); and

D. a proof of service showing that the state agency and all other parties have been served, either personally or by first class mail, with a copy of the application.

The application must be signed and sworn to by the party and the attorney or other agent or representative submitting the application on behalf of the party, showing the addresses and phone numbers of all persons signing the application.

Subp. 4. **Response or objection to application.** The state agency or any other party may respond or object to all or any part of the application for expenses and fees. A response or objection must be sworn to and filed with the judge within 14 days following the service of the application and must show:

A. the name, address, and phone number of the party and the person submitting the response or objection on behalf of the party;

B. in detail any objections to the award requested and identify the facts relied on to support the objection. If the response or objection is based on any alleged facts not already reflected in the record of the proceeding, the response or objection shall include

MINNESOTA RULES 2009

585 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES 1400.8401

either a supporting affidavit or affidavits or request for further proceedings under subpart 5b; and

C. a proof of service showing that all other parties have been served, either personally or by first class mail, with a copy of the response or objection.

Subp. 5. [Repealed, 11 SR 1385]

Subp. 5a. **Settlement.** A prevailing party and the agency may agree on a proposed settlement of an award before final action on the application. If a settlement occurs, a stipulation for settlement shall be filed with the judge together with a proposed order which shall be prepared for the judge's signature. Upon receipt of a stipulation for settlement and proposed order, the judge shall issue an order, serve all parties and the chief administrative law judge with a copy, and send the original to the agency for inclusion with the record of the contested case which gave rise to the application.

Subp. 5b. **Extensions of time and further proceedings.**

A. The judge may, on motion and for good cause shown, grant extensions of time, other than for filing an application for fees and expenses, after final disposition in the contested case.

B. Ordinarily, the determination of an award will be made on the basis of the written record of the underlying contested case and the filings required or permitted by this part. However, on the judge's own motion or on the motion of any party to the underlying contested case, further filings or other action can be required or permitted, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Any further action shall be allowed only when necessary for a full and fair resolution of the issues arising from the application and shall take place on the first date available on the judge's calendar which is also agreeable to all parties. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action are necessary to resolve the issues.

C. In the event that an evidentiary hearing is required or permitted by the judge, the hearing and any related filings or other action required or permitted shall be conducted under parts 1400.8505 to 1400.8612.

Subp. 6. [Repealed, 26 SR 391]

Subp. 7. **Decision of the administrative law judge.** Within 30 days following the close of the record in the proceeding for the award of expenses and attorney's fees, the administrative law judge shall issue a written order which shall also contain findings and conclusions on each of the following which are relevant to the decision:

- A. the applicant's status as a prevailing party;
- B. the applicant's qualification as a party under Minnesota Statutes, section 15.471, subdivision 6;
- C. whether the agency's position as a party to the proceeding was substantially justified;
- D. whether special circumstances make an award unjust;
- E. whether the applicant during the course of the proceeding engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and
- F. the amounts, if any, awarded for fees and other expenses, explaining any difference between the amount requested and the amount awarded.

The order shall be served on all parties and the state agency. The original order and the rest of the record of the proceedings shall be filed with the state agency at the time the order is served.

Statutory Authority: *MS s 3.764; 14.06; 14.51; 15.474; 116C.66; 216E.16*

History: *11 SR 334; 11 SR 1385; 15 SR 1595; 26 SR 391*

1400.8402 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

586

1400.8402 [Repealed, 15 SR 1595]

1400.8500 [Repealed, 9 SR 2276]

REVENUE RECAPTURE ACT HEARINGS**1400.8505 SCOPE.**

Parts 1400.8505 to 1400.8612 govern hearings based on the Revenue Recapture Act, Minnesota Statutes, sections 114C.23; 115.076; 116.072, subdivision 6; 144.991; and 270A.01 to 270A.12; and for other hearings as directed by statute. In addition, parts 1400.8505 to 1400.8612 may be used for any other hearings conducted by the state Office of Administrative Hearings if all parties to a particular hearing and the administrative law judge agree to use them.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

1400.8510 DEFINITIONS.

Subpart 1. **Agency.** "Agency" means the public agency for whom the hearing is conducted.

Subp. 2. [Repealed, 26 SR 391]

Subp. 3. **Party.** "Party" means each person named as a party by the agency in the notice of hearing or any other persons granted permission to intervene pursuant to part 1400.8570. "Party" includes the agency except when the agency participates in the hearing in a neutral or quasi-judicial capacity only.

Subp. 3a. **Person.** "Person" means any individual, business, nonprofit association or society, or governmental entity.

Subp. 4. **Service; serve.** "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail or a licensed express mail service.

Statutory Authority: *MS s 14.51; 15.474; 116C.66; 216E.16*

History: *9 SR 2276; 15 SR 1595; 26 SR 391*

1400.8520 [Repealed, 26 SR 391]

1400.8530 WAIVER.

Upon request of all parties, the administrative law judge shall waive or modify any of the procedures in parts 1400.8505 to 1400.8612, provided that the waiver or modification does not conflict with any provision of Minnesota Statutes, sections 14.48 to 14.69, or statutes conferring jurisdiction on the Office of Administrative Hearings.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8540 ADMINISTRATIVE LAW JUDGE ASSIGNMENT.

Subpart 1. **Request for assignment.** Any agency may order a Revenue Recapture Act hearing by filing with the docket coordinator a request for assignment of an administrative law judge. The request must include a proposed date, time, and place for the hearing or prehearing conference.

In proposing a hearing location, the requesting agency must take into account the location of known parties, witnesses, and other participants so as to maximize convenience and minimize costs.

If requested by the chief administrative law judge or designee, the agency shall file a copy of the notice of hearing proposed to be issued.

Subp. 2. **Assignment.** Within ten days of the receipt of a request, the chief administrative law judge or designee shall assign an administrative law judge to hear the case and

set the time, date, and place for hearing or prehearing conference, taking into account the agency's request.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 17 SR 1279; 26 SR 391*

1400.8545 SERVICE AND FILING PROCEDURE.

Subpart 1. **Certificate of service.** A certificate of service must be made by the person making the service. A certificate of service must bear the name of the person certifying that service has been made, but need not be signed or notarized.

Subp. 2. **Service by mail.** Service by mail or licensed overnight express mail service is effective upon placing the item to be served in the mail or delivering it to the authorized agent of the express mail service. Postage must be prepaid. Mail to a person other than a state agency shall be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the state of Minnesota's central mail system for United States mail.

Subp. 3. **Personal service.** Personal service may be accomplished by either delivering the document to the person or by leaving the document at the person's home or place of business with someone of suitable age and discretion who resides in the same house or who is located at the same business address as the person to be served.

Subp. 4. **Service upon a confined person.** If a person is confined to a federal or state institution, a copy of the document must also be served upon the chief executive officer of the institution.

Subp. 5. **Filing by facsimile and other means.** Any paper relating to hearings conducted by an administrative law judge under these rules may be filed with the office by fax transmission. Filings are effective on the date that the office receives the fax transmission if the transmission is begun before 4:30 p.m. on that date. The filing of a fax has the same force and effect as the filing of the original document. Filings made by other means are effective on the date the office receives the filing.

Statutory Authority: *MS s 14.51; 15.474*

History: *26 SR 391*

1400.8550 NOTICE OF HEARING.

The agency shall issue the notice of hearing. The notice of hearing shall be served at least 20 days before the hearing. The notice of hearing shall be served upon all parties. The notice shall be worded in clear, nontechnical language and shall contain, at a minimum, the following:

- A. the time, date, and place for the hearing or prehearing conference;
- B. the name, address, and telephone number of the administrative law judge;
- C. a statement of the allegations or issues to be determined at the hearing, together with a citation to any relevant statutes and rules. Each alleged violation of statute or rule shall be noted;
- D. a citation to the statutory authority to hold the hearing and to take the action proposed;
- E. a citation to these rules, and notification of how copies may be obtained in print or online;
- F. a brief description of the procedure to be followed at the hearing;
- G. the name, address, and telephone number of the agency representative to be contacted to discuss informal disposition of the dispute, along with an explanation of the types of informal disposition that the agency might consider;
- H. notification that a party need not be represented by an attorney but may choose to be represented by an attorney or by any other person;

1400.8550 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

588

I. notification that the agency will, upon request, make an accommodation so that the hearing location is accessible and will appoint a qualified interpreter if necessary;

J. a statement advising the parties to bring to the hearing all documents, records, and witnesses they need to present their position; in addition, a statement that subpoenas may be available to compel the attendance of witnesses or the production of documents and a reference to part 1400.8601 relating to subpoenas;

K. a statement advising parties that failure to appear at the hearing or prehearing conference will result in the allegations of the notice being taken as true, and a statement which explains the possible results if the allegations are taken as true; and

L. a statement advising the parties that state agencies are required by law to keep some data not public, that parties are required to advise the judge if not public data is offered into the record, and that if not public data is admitted into evidence it may become public unless a party objects and asks for relief under Minnesota Statutes, section 14.60, subdivision 2.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 17 SR 1279; 26 SR 391*

1400.8560 DEFAULT.

A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing. If the agency appears at a hearing but the party against whom the agency intends to take action does not, the allegations in the notice of hearing shall be taken as true and deemed proved without further evidence. If the party against whom the agency intends to take action appears at a hearing, but the agency fails to appear, the administrative law judge shall recommend that the hearing be dismissed with prejudice. If neither the agency nor any other party appear at a hearing, the administrative law judge shall recommend that the case be dismissed with prejudice.

Statutory Authority: *MS s 14.51; 15.474; 116C.66; 216E.16*

History: *9 SR 2276; L 1984 c 640 s 32; 15 SR 1595; 26 SR 391*

1400.8570 INTERVENTION AS PARTY.

Subpart 1. **Petition.** Any person not named in the notice of hearing who desires to participate as a party shall submit a written petition to intervene to the administrative law judge and shall serve a copy of the petition upon all existing parties and the agency. The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceeding; 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.

Subp. 2. **Objection.** Any party may object to the petition for intervention by filing a written notice of objection with the administrative law judge within seven days of service of the petition if there is sufficient time before the hearing. The notice shall state the party's reasons for objection, and a copy shall be served upon all parties, the person petitioning to intervene, and the agency. If there is insufficient time before the hearing for such written objection, the objection may be made orally at the hearing.

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

Statutory Authority: *MS s 14.51*

History: *9 SR 2276; L 1984 c 640 s 32*

1400.8580 PREHEARING CONFERENCE.

The administrative law judge shall hold a prehearing conference prior to the hearing upon request of any party or if the judge determines that a prehearing conference is necessary.

The purpose of the prehearing conference is to simplify the issues to be determined at the hearing; to consider amendment of the agency's notice if necessary; to obtain agreements about uncontested facts or admissibility of testimony or exhibits; to determine the identity and number of proposed witnesses for each party; to consider such other matters that may be necessary or advisable; to set the time, date, and place for hearing if not previously set; to identify and exchange documentary evidence; to consider whether an interpreter or other accommodation is needed; and, if possible, to reach a settlement without the necessity for further hearing.

A prehearing conference shall be an informal proceeding conducted expeditiously by the administrative law judge. It may be conducted by telephone. Agreements on the simplification of issues, uncontested facts, admissibility of evidence, or other matters shall be either entered on the record at the hearing or included in a written order by the administrative law judge.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8590 PREHEARING MOTIONS.

A party desiring the administrative law judge to issue an order before the hearing or during a continuance in the hearing (other than a request for a continuance or a subpoena) shall make a request to the administrative law judge in writing. The request shall state, in detail, the need for the order and what is being requested. A copy of the request shall be served upon all parties. A party who opposes the granting of a motion should notify the administrative law judge as soon as possible. The administrative law judge shall notify all parties of the order orally or in writing.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 17 SR 1279; 26 SR 391*

1400.8600 PREHEARING DISCOVERY.

A party may demand that any other party disclose the names and addresses of all witnesses that the other party intends to have testify at the hearing. The demand shall be in writing and shall be directed to the party or the party's attorney. Responses to the demand shall be served within ten days of receipt of the demand. Any witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Any party that unreasonably fails to make a requested disclosure shall not be allowed to call the witness at hearing.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; 26 SR 391*

1400.8601 SUBPOENAS.

Subpart 1. **Requests.** A party may obtain a subpoena to compel the attendance of a witness or the production of documents by submitting a written request to the administrative law judge. The request shall indicate the name and address of the person upon whom the subpoena will be served; a brief statement of the potential relevance of the testimony or documents sought; and, if the subpoena request is for the production of documents, the requested documents should be identified with specificity.

Subp. 2. **Service.** Subpoenas shall be served personally in the manner provided in part 1400.8545. They shall not be served by mail. The witness fees applicable in the district courts pursuant to Minnesota Statutes, section 357.22, shall apply and shall be paid to the potential witness at the time of service.

Subp. 3. **Objection to a subpoena.** Any person served with a subpoena may file an objection to the subpoena with the administrative law judge. The objection shall be filed promptly, and in any event at or before the time specified in the subpoena for compliance. The administrative law judge shall cancel or modify a subpoena that is unreasonable or

1400.8601 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

590

oppressive, taking into account the issues or amounts in controversy, the costs or other burdens of compliance compared to the value of the testimony or evidence to a party's case, and any alternative methods of obtaining the desired testimony or evidence. Modification may include requiring the party requesting the subpoena to pay reasonable costs of producing documents, books, papers, or other tangible things.

Statutory Authority: *MS s 14.51; 15.474; 116C.66; 216E.16*

History: *9 SR 2276; L 1984 c 640 s 32; 15 SR 1595; 26 SR 391*

1400.8602 CHANGES IN DATE, TIME, OR PLACE OF HEARING.

Subpart 1. **Requests.** Any party who desires to change the date, time, or place from that announced in the notice of hearing shall contact the other known parties, or their representatives, and seek agreement regarding a new time, date, or place. If the parties can agree, and if the administrative law judge's schedule allows, the administrative law judge shall approve the change.

Subp. 2. **Notice.** If time permits, the agency shall send a written notice to all parties and the administrative law judge setting forth the new time, date, or place.

Subp. 3. **Continuances during a hearing.** If it appears in the interest of justice that further evidence should be received, the administrative law judge shall continue the hearing to a future date. Oral notice on the record shall be sufficient notice of the additional date.

Statutory Authority: *MS s 14.51*

History: *9 SR 2276; L 1984 c 640 s 32*

1400.8603 CONDUCT OF HEARING.

The hearing shall be conducted substantially in the following manner:

A. The administrative law judge shall open the hearing by reading the title of the case, asking the parties or counsel to note their appearances, and explaining the hearing procedure to unrepresented parties.

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 shall begin the presentation of evidence unless ordered otherwise. It shall be followed by the other parties in a sequence determined by the administrative law judge.

D. Testimony may be given in narrative fashion by witnesses rather than by question-and-answer format.

E. Cross-examination of witnesses shall be conducted in a sequence and in a manner determined by the administrative law judge to expedite the hearing while ensuring a fair hearing. At the request of the party whose witness is being cross-examined, the administrative law judge shall make such rulings as are necessary to prevent argumentative, repetitive, or irrelevant questioning and to expedite the cross-examination to the extent consistent with the disclosure of all relevant testimony and information.

F. Any party may be a witness or may present other persons as witnesses at the hearing. All oral testimony at the hearing shall be under oath or affirmation.

G. A party may question an adverse party or any witness identified with an adverse party by leading questions and contradict and impeach that witness on material matters.

H. When all parties and witnesses have been heard, the hearing shall be closed unless a continuance has been ordered under part 1400.8602.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8604 RESPONSIBILITIES AND RIGHTS OF PARTIES.

Subpart 1. **Necessary preparation.** A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. Parties shall have enough copies of exhibits so that they can provide a copy to each other party at the time the exhibit is introduced, unless that other party has already obtained a copy through discovery.

Subp. 2. **Responding to orders.** If the administrative law judge orders that parties do an act, or not do an act, the parties shall comply with the order. If a party objects to an order, such objection shall be stated in advance of the order as part of the record.

Subp. 3. **Copies.** The administrative law judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document to the administrative law judge shall simultaneously send a copy to all other parties, provided, however, that this requirement shall not apply to requests for subpoenas, unless the subpoena requests documents or other discovery.

Subp. 4. **Representation by counsel.** A party need not be represented by an attorney but may choose to be represented by an attorney or by any other person. If a party has notified other parties that he/she will be represented by an attorney, all communications shall be directed to that attorney.

Statutory Authority: *MS s 14.51; 15.474; 116C.66; 216E.16*

History: *9 SR 2276; L 1984 c 640 s 32; 15 SR 1595; 26 SR 391*

1400.8605 RESPONSIBILITIES AND RIGHTS OF NONPARTIES.

Subpart 1. **Offering evidence.** Any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the proceeding.

Subp. 2. **Questioning witnesses.** Generally, nonparties shall not be allowed to question witnesses, provided, however, that the administrative law judge may allow such questioning as is necessary for the development of a full and complete record.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8606 ADMINISTRATIVE LAW JUDGES.

Subpart 1. **Impartiality.** An administrative law judge shall be impartial, objective, and even-handed. If at any time the administrative law judge is unable to conduct any proceeding in an impartial manner, the administrative law judge shall withdraw. Upon the filing in good faith by a party of an affidavit of prejudice, the chief judge 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. A judge must be removed upon an affirmative showing of prejudice or bias. A judge may not be removed merely because of rulings on prior cases.

Subp. 2. **Communications.** The administrative law judge shall not communicate directly or indirectly with any person or party concerning any issue of fact or law relevant to a pending case except upon notice to all parties and opportunity for them to participate, except that:

A. ex parte communication for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized;

B. a judge may consult with other judges and with office personnel in carrying out the judge's adjudicative responsibilities; and

C. communication expressly authorized by law is permitted.

1400.8606 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

592

Subp. 3. **Duties.** Consistent with law and these rules, the administrative law judge shall perform the following duties:

- A. receive, and recommend action to the chief administrative law judge upon receipt of, requests for subpoenas;
- B. hear and rule on motions;
- C. preside at the hearing;
- D. administer oaths and affirmations;
- E. grant or deny continuances;
- F. examine witnesses as necessary to make a complete record;
- G. prepare findings of fact, conclusions, and recommendations;
- H. make preliminary, interlocutory, or other orders as necessary to assure a fair hearing;
- I. recommend a summary disposition of the case or a portion of it where there is no genuine issue as to any material fact or recommend dismissal where the case or a portion of it has become moot or for other reasons; and
- J. do all things necessary and proper to the performance of the foregoing.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8607 RULES OF EVIDENCE.

Subpart 1. **Admissibility.** The administrative law judge shall admit all evidence that logically tends to prove or disprove an important fact, 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 administrative law judge shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

Subp. 2. **Submitting.** Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of the claimant 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 may be introduced in the form of copies or excerpts or may be incorporated by reference into the record. Copies of a document shall be received to the same extent as the original document unless a genuine question is raised as to the accuracy or authenticity of the copy or, in the circumstances, it would be unfair to admit the copy in lieu of the original.

Subp. 4. **Administrative notice of facts.** The administrative law judge 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.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8608 BURDEN OF PROOF.

The party with the burden of proof shall have the burden of supporting its proposed action by a preponderance of the evidence. If another party asserts any affirmative defenses, that party shall have the burden of proving the defense by a preponderance of the evidence.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; 26 SR 391*

1400.8609 HEARING RECORD.

Subpart 1. **Maintaining.** The administrative law judge shall maintain the official record in each case until the issuance of the report, at which time the record, except for the audiomagnetic recordings thereof, shall be sent to the agency. The audiomagnetic recordings shall be retained by the office for five years from the date that the record is returned to the agency. Unless an agency requests a longer retention period for a specific case, the recordings may be erased or otherwise destroyed at the end of the five-year period.

Subp. 2. **Content.** The record shall contain:

- A. the notice of hearing and all motions and orders which have been reduced to writing;
- B. evidence received or considered;
- C. an audiomagnetic recording of the hearing;
- D. the administrative law judge's report;
- E. all memoranda or data submitted by any party in connection with the case; and
- F. the transcript of the hearing, if one was prepared.

Subp. 3. **Closing hearing record.** The hearing record of the contested case proceeding shall be closed upon the completion of the testimony, or receipt of the final written memorandum or transcript, if any, or late-filed exhibits which the parties and the administrative law judge have agreed should be received into the record, whichever occurs latest.

Subp. 4. **Transcript.** The audiomagnetic recording of the hearing shall be transcribed if requested by a party or if ordered by the chief administrative law judge. The party requesting a transcript is responsible for the cost. The parties may agree to divide the cost. When the chief administrative law judge requests a transcript, the agency is responsible for the cost.

Statutory Authority: *MS s 14.51; 15.474; 116C.66; 216E.16*

History: *9 SR 2276; L 1984 c 640 s 32; 15 SR 1595; 17 SR 1279; 26 SR 391*

1400.8610 ADMINISTRATIVE LAW JUDGE'S REPORT.

Following the close of the hearing record, the administrative law judge shall make a report pursuant to Minnesota Statutes, section 14.50, and, upon completion, a copy of the report shall be served upon all parties.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8611 DISRUPTION OF HEARING.

Subpart 1. **Cameras.** Television, newsreel, motion picture, still or other cameras may be operated in the hearing room during the course of the hearing unless the administrative law judge determines that such operation is disrupting the hearing.

Subp. 2. **Recordings.** The official audiomagnetic recording of the hearing shall be made by the administrative law judge. Any party may also record all or part of the proceedings. Nonparties may record all or part of the proceedings unless the administrative law judge determines that such recording is disrupting the hearing. In the event of failure of the official recording equipment, the administrative law judge may direct any person or party to provide the administrative law judge with its original recording or a copy of any recording of the proceeding upon payment of the cost of the recording medium.

Subp. 3. **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 administrative law judge shall read this rule to

1400.8611 APA PROCEEDINGS; EXPENSES AND ATTORNEY FEES

594

those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8612 REHEARING.

Any 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 administrative law judge shall permit service of the notice of and order for rehearing less than 20 days prior to rehearing if the parties agree to such earlier service. The rehearing shall be conducted in the same manner prescribed for a hearing.

Statutory Authority: *MS s 14.51; 15.474*

History: *9 SR 2276; L 1984 c 640 s 32; 26 SR 391*

1400.8613 [Repealed, 15 SR 1595]