CHAPTER 1400
OFFICE OF ADMINISTRATIVE HEARINGS
HEARINGS

ADMINISTRATIVE RULEMAKING HEARINGS

1400.0200 SCOPE.

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

Statutory Authority: *MS s 14.51*

1400.0250 FILING OF MATERIALS.

Subpart 1. **Size.** All materials submitted to the administrative law judge or chief administrative law judge in a rulemaking proceeding, except the draft of the proposed or adopted rules prepared by the revisor of statutes, handwritten comments from members of the public, and exhibits, must be on standard size 8–1/2–inch by 11–inch paper.

Subp. 2. **Facsimile transmission.** Any paper relating to hearings conducted by an administrative law judge under Minnesota Statutes, chapter 14, may be filed with or served on

the office by facsimile transmission. The person filing the document must forward the original signed document within five days. Filings or service shall be effective at the time that the facsimile transmission is received by the office. A transmission which is commenced prior to 4:30 p.m. shall be deemed to have been timely filed. The filing or service of a facsimile shall have the same force and effect as the filing or service of the original document.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276, 15 SR 1595*

1400.0300 INITIATION OF HEARING.

Subpart 1. **Assigning administrative law judge.** Any agency desiring to initiate a rule hearing pursuant to Minnesota Statutes, sections 14.14 to 14.20, shall first file with the chief administrative law judge or a designee a description of the subject matter of the upcoming rulemaking proceeding and a request for the assignment of an administrative law judge. Within ten days of receipt of the request, the chief administrative law judge shall assign an administrative law judge to preside over the proceeding.

Subp. 1a. **Filing documents.** Prior to giving notice of the hearing, the agency shall file with the chief administrative law judge, or the administrative law judge who will preside over the proceeding, the following documents:

A. A copy of the proposed rule or rules, with a certification of approval as to form by the revisor of statutes attached.

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

C. The notice of hearing proposed to be issued that shall contain the following:

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

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

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

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

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

(6) A statement advising interested persons that lobbyists must register with the state Ethical Practices Board, that questions should be directed to the board, and the board's current address and telephone number.

(7) A statement that written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, a statement that the 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, a statement that the comments received during the comment period shall be available for review at the office of administrative hearings, and a statement that the agency and interested persons may respond in writing within three business days after the submission period ends to any new information submitted, and a statement that any written material or responses submitted must be received at the office no later than 4:30 p.m. on the final day. No additional evidence may be submitted during the three–day period.

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

Notice: Any person may request notification of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on

the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may request notification of the date on which the rules were adopted and filed with the secretary of state. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the agency at any time prior to the filing of the rules with the secretary of state.

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

Notice is hereby given that a statement of need and reasonableness is now available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

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

(11) If the agency elects to comply with Minnesota Statutes, section 14.115, subdivision 4, by following paragraph (a) of the statute, a statement that the proposed rules will have an impact on small business and either a description of the probable quantitative and qualitative impact of the proposed rules upon small business or a reference to where additional information can be obtained.

(12) If required by Minnesota Statutes, section 14.11, subdivision 2, a statement that the proposed rules may have a direct and substantial adverse effect on agricultural land as defined in Minnesota Statutes, section 17.81, subdivisions 2 and 3.

(13) A statement that the rule hearing procedure is governed by Minnesota Statutes, sections 14.14 to 14.20 and by parts 1400.0200 to 1400.1200 and a statement that questions about procedure may be directed to the administrative law judge.

(14) A blank space for the addition of the name, office address, and telephone number of the administrative law judge who will be assigned to conduct the hearing.

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

E. A statement of need and reasonableness complying with part 1400.0500.

F. A statement by the agency indicating whether it intends to provide discretionary additional public notice of the proposed rules, authorized by Minnesota Statutes, section 14.14, subdivision 1a, and the extent of any such discretionary additional notice to be given.

G. If required by Minnesota Statutes, section 16A.128, subdivision 2a, a statement that the agency submitted a copy of the notice and the proposed rules to the chairs of the house appropriations committee and senate finance committee prior to publishing the notice of intent to adopt rules in the State Register.

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

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

1400.0400 NOTICE OF HEARING.

The notice of hearing shall be given pursuant to Minnesota Statutes, section 14.14, subdivision 1a. The agency shall include in the notice of hearing, as published, the name, office address, and telephone number of the administrative law judge assigned pursuant to part 1400.0300, subpart 1.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.0500 STATEMENT OF NEED AND REASONABLENESS.

Subpart 1. **Contents.** Each agency desiring to adopt rules shall prepare a statement of need and reasonableness which shall be prefiled pursuant to part 1400.0300, subpart 1a. The statement of need and reasonableness must contain a summary of all of the evidence and argument which is anticipated to be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules, including citations to any statutes or case law anticipated to be relied upon, citations to any economic, scientific, or other manuals or treatises anticipated to be utilized at the hearing or included in the record, and a list of any witnesses to be called by the agency to testify on its behalf, together with a summary of the testimony to be elicited from witnesses solicited to testify on behalf of the agency. The statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public.

The statement of need and reasonableness must also contain the following:

A. if applicable, a statement complying with:

(1) Minnesota Statutes, section 14.115;

(2) Minnesota Statutes, sections 14.11, subdivision 2, and 17.80 to 17.84;

(3) Minnesota Statutes, sections 115.43, subdivision 1, and 116.07, subdivision 6;

(4) Minnesota Statutes, section 144A.29, subdivision 4;

B. if required by Minnesota Statutes, section 16A.128, subdivisions 1 and 2a, the approval of the commissioner of finance and notice to the chairs of the house appropriations committee and the senate finance committee if the proposed rules establish or modify a fee charged; and

C. a statement complying with the requirements of any other law or rule prescribing in any manner the matters to be included in the statement of need and reasonableness or which the agency is required by law or rule to consider in the adoption of a rule.

To the extent that an agency is proposing amendments to existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

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

Subp. 3. **Verbatim agency presentation.** If the agency desires, the statement of need and reasonableness may contain the verbatim affirmative presentation by the agency, provided that copies are available for review at the hearing, and it may be introduced as an exhibit into the record as though read. In such instance, agency personnel or other persons thoroughly familiar with the proposed rules and the agency's statement shall be available at the hearing for questioning by the administrative law judge and other interested persons or to briefly summarize all or a portion of the statement of need and reasonableness if requested by the administrative law judge.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

1400.0600 DOCUMENTS TO BE PREFILED.

At least 25 days prior to the date and time of the hearing, the agency shall file with the administrative law judge assigned to the hearing copies of the following documents if not previously filed:

A. the notice of hearing as mailed;

B. the agency's certification that the mailing list required by Minnesota Statutes, section 14.14, subdivision 1a, which was used for the hearing, was accurate and complete;

C. an affidavit of mailing of the notice to all persons on the agency's list;

D. an affidavit of additional notice if such discretionary notice was given pursuant to Minnesota Statutes, section 14.14, subdivision 1a;

E. the petition requesting a rule hearing, if one has been filed pursuant to Minnesota Statutes, section 14.09;

F. all materials received following a notice made pursuant to Minnesota Statutes, section 14.10, together with a copy of the State Register containing the notice or a photocopy of the pages of the State Register on which the notice was published;

G. the names of agency personnel who will represent the agency at the hearing, together with the names of any other witness solicited by the agency to appear on its behalf;

H. a copy of the State Register in which the notice and proposed rules or rule amendments were published or a photocopy of the pages of the State Register on which the notice and proposed rules were published.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.0700 ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.

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

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.0800 CONDUCT OF HEARINGS.

Subpart 1. **Statutory proceedings.** All hearings held pursuant to Minnesota Statutes, sections 14.14 to 14.20, shall proceed substantially in the following manner.

Subp. 2. **Registration of participants.** All persons intending to present evidence or ask questions shall register with the administrative law judge prior to the presentation of evidence or questions by legibly printing their names, addresses, telephone numbers, and the names of any individuals or associations that the persons represent in connection with the hearing on a register to be provided by the administrative law judge. Persons may indicate to the administrative law judge in writing their desire to be informed of the date on which the administrative law judge's report will be available. Persons may indicate to the agency, in writing, if they want to be informed of the date on which the agency adopts the final rules, if it does so, and files the rules with the secretary of state.

Subp. 3. **Notice of procedure.** The administrative law judge shall convene the hearing at the proper time and shall explain to all persons present the purpose of the hearing and the procedure to be followed at the hearing. The administrative law judge shall notify all persons present that the record will remain open for five working days following the hearing, or for a longer period not to exceed 20 calendar days if ordered by the administrative law judge, for the receipt of written statements concerning the proposed rules and that these statements will be available for review at the administrative law judge's office. The administrative law judge must also notify all persons present that, within three business days after the close of the submission period, any person, including the agency, may respond in writing to any new information submitted, provided that additional evidence may not be submitted during the three–day period, and that such responses will be included in the rulemaking record.

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

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

Subp. 6. **Copies of proposed rules.** The agency shall make available copies of the proposed rules at the hearing.

Subp. 7. **Exhibits.** The agency shall introduce as exhibits the documents required to be filed with the administrative law judge or the chief administrative law judge pursuant to parts 1400.0300, subpart 1a, items A, B, and E; and 1400.0600.

Subp. 8. **Showing.** The agency shall make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rules and shall present any other evidence it deems necessary to fulfill all relevant, substantive, and procedural statutory or regulatory requirements. Pursuant to part 1400.0500, subpart 3, the agency may rely on its statement of need and reasonableness for the affirmative presentation of facts required by this subpart, and it may also present oral evidence subject to part 1400.0500, subparts 1 and 2.

Subp. 9. **Opportunity for questions.** Interested persons shall be given an opportunity to address questions to the agency representatives or witnesses or to interested persons making oral statements. Agency representatives may question interested persons making oral statements. Such questioning may extend to an explanation of the purpose or intended operation of the proposed rules, or a suggested modification, or may be conducted for other purposes if material to the evaluation or formulation of the proposed rules.

Subp. 10. **Opportunity for presenting statements and evidence.** Interested persons shall be given an opportunity to present oral and written statements and evidence regarding the proposed rules.

Subp. 11. **Questioning by administrative law judge.** The administrative law judge may question all persons, including the agency representatives.

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

Subp. 13. **Powers of administrative law judge.** Consistent with law, the administrative law judge shall be authorized to do all things necessary and proper to the performance of the foregoing and to promote justice, fairness, and economy, including but not limited to the power to preside at the hearing, administer oaths or affirmations when deemed appropriate, hear and rule on objections and motions, question witnesses where deemed necessary to make a complete record, rule on the admissibility of evidence and strike from the record objectionable evidence, limit repetitive or immaterial oral statements and questioning, and determine the order of making statements and questions.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

1400.0850 RECEIPT OF WRITTEN MATERIALS.

The administrative law judge shall allow written materials to be submitted and recorded in the hearing record for a period of five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if he or she so orders. The written materials must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the last day for submission of written materials. The agency and all interested persons must be allowed to review the comments received during the comment period and must be allowed three business days after the submission period ends to respond in writing to any new information submitted. The responses must be received at the office no later than 4:30 p.m. on the third business day. During this three–day period, the agency may also indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three–day period. The written responses must be included in the rulemaking record.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

1400.0900 RULEMAKING RECORD.

The hearing record shall be closed upon the last date for receipt of written responses filed pursuant to Minnesota Statutes, section 14.15, subdivision 1.

The rulemaking record shall include:

A. all documents enumerated in parts 1400.0300, subpart 1a, and 1400.0600;

B. copies of all publications in the State Register pertaining to the rules;

C. all written petitions, requests, submissions, or comments received by the agency, the administrative law judge, or the chief administrative law judge pertaining to the substance and jurisdiction of the rulemaking proceeding;

D. the official transcript of the hearing if one was prepared, or the tape recording of the hearing if a transcript was not prepared;

E. the report of the administrative law judge;

F. the report of the chief administrative law judge, if any;

G. the rules in the form last submitted to the administrative law judge;

H. the agency's order adopting the rules;

I. the revisor of statutes certificate approving the form of the rules; and

J. a copy of the adopted rules as filed with the secretary of state.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

1400.0950 AVAILABILITY OF TRANSCRIPT; USE OF COURT REPORTERS.

A transcript of a rulemaking hearing will be made upon the request of the agency, the attorney general, the chief administrative law judge, or any interested person. If the transcript is prepared at the request of an interested person, that person shall pay for the cost of the preparation of the original and one copy. Otherwise, the agency shall pay for the cost of 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 for the preparation of a transcript or a copy of a transcript shall be determined by contract between the Office of Administrative Hearings and nongovernmental court reporters or persons providing transcription services. When a transcript has been prepared, the original shall be filed with the Office of Administrative Hearings and be forwarded to the agency with the official record upon the issuance of the administrative law judge's report. When a transcript has been ordered or prepared subsequent to the issuance of the administrative law judge's report, the original shall be filed with the Office of Administrative Hearings and forwarded to the agency as soon as the Office of Administrative Hearings has completed its recordkeeping requirements. The use of court reporters to keep the record of the hearing is governed by Minnesota Statutes, section 14.52.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.1000 REPORT OF ADMINISTRATIVE LAW JUDGE.

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

Subp. 2. **Substantial change.** If the administrative law judge's report contains findings that the rules as last proposed by the agency prior to the close of the record are substantially changed from those which were published in the State Register, or that the agency has failed to demonstrate the need or reasonableness of the rules, or has not fulfilled the relevant substantive and procedural requirements imposed on the agency by rule or law, he or she shall submit the report, together with the complete record of the proceedings, to the chief administrative law judge for review pursuant to Minnesota Statutes, sections 14.15 and 14.16.

Subp. 3. **Chief administrative law judge's review.** Upon receipt of a report from the administrative law judge, the chief administrative law judge shall complete his or her review

and submit a report, along with the complete record and the report of the administrative law judge, to the agency within ten calendar days.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.1100 SUBSTANTIAL CHANGE.

Subpart 1. **Substantial change prohibited.** An agency may not adopt a rule with a modification which the chief administrative law judge has determined, pursuant to part 1400.1100, subpart 2, would constitute a substantial change. However, an agency may terminate a rulemaking proceeding and commence a new rulemaking proceeding for the purpose of adopting a substantially different rule. Nothing in this subpart shall prevent the agency from proceeding with the adoption of portions of the rules which have not been found to be defective.

Subp. 2. **Determination of substantial change.** In determining whether a proposed final rule or rule as adopted is substantially different, the administrative law judge or the chief administrative law judge shall consider the extent to which it affects classes of persons who could not have reasonably been expected to comment on the proposed rules at the rulemaking hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the notice of hearing.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.1200 RULE ADOPTION.

Subpart 1. **Finding of no defect by administrative law judge.** If the administrative law judge finds, pursuant to part 1400.1000, that there are no defects in the proposed rules and proposed modifications, the agency shall, if it adopts the rules in accordance with the recommendations of the administrative law judge, obtain the approval of the revisor of statutes as to the form of the rules, file two copies of the rules as approved by the revisor of statutes with the secretary of state, and publish notice of adoption of the rules in the State Register.

Subp. 2. **Agency adoption of changes not recommended by administrative law judge.** If the agency proposes to adopt the rules with changes other than as recommended by the administrative law judge, the agency shall submit a copy of the rules as initially proposed, a copy of the agency's findings and order adopting rules, and a copy of the rules as proposed to be adopted, showing the changes, to the chief administrative law judge for a determination as to substantial change between the final proposed rules and the proposed rules published in the State Register, pursuant to Minnesota Statutes, sections 14.15, subdivision 3, and 14.16. The chief administrative law judge may require the agency to submit all or a portion of the rulemaking record if necessary for a proper determination regarding substantial change.

Subp. 3. **Finding of defect in proposed rules.** If the administrative law judge finds a defect in the proposed rules and the chief administrative law judge approves the finding of a defect by the administrative law judge, the chief administrative law judge must advise the agency of the actions that will correct the defect found. The agency shall either take the actions prescribed by the chief administrative law judge to correct any defects in the proposed rules or withdraw those portions of the rules, unless the defect found relates to the required showing of need and reasonableness of the proposed rules. With respect to defects found relating to the required showing of need and reasonableness of the proposed rules, the agency may alternatively proceed under Minnesota Statutes, section 14.15.

Subp. 4. **Revisor of statutes approval of changes in proposed rule.** No agency shall adopt in its findings and order adopting rules any change in a rule as initially published in the State Register, whether proposed by the agency or recommended by the administrative law judge or required by the chief administrative law judge without first obtaining from the revi-

sor of statutes an approval as to the form of the proposed change to the rule as initially published in the State Register.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.1300 [Repealed, 15 SR 1595]

1400.1500 MEDIATION.

Subpart 1. **Request.** A state agency may request the assignment of an administrative law judge to serve as a neutral party in the convening of a group of persons for the purpose of mediating or negotiating a resolution to disputes relating to proposed rules. The request shall be made in writing to the chief administrative law judge who shall, within ten calendar days following receipt of the request, notify the agency of the name, address, and telephone number of the administrative law judge assigned to the matter.

Subp. 2. **Scheduling.** Upon notification of the assignment, the administrative law judge shall contact the agency representative who made the initial request to establish a date, time, and place for the first mediation session and to provide assistance in ensuring compliance with all notice requirements of this part. The administrative law judge assigned 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 all persons involved in the mediation.

Subp. 3. **Notice.** Upon establishing the date, time, and place for the first mediation session, the agency shall give written notice of the session, by first class mail, to all persons who have registered with the agency for the purpose of receiving rulemaking notices. The same notice shall be published in the State Register at least 15 calendar days prior to the first mediation session.

Subp. 4. **Subsequent sessions.** If additional mediation sessions are necessary, they shall be convened at a date, time, and place agreeable to all persons participating. If agreement on the date, time, and place of future sessions cannot be reached by the participants, it shall be established by the administrative law judge. Notice of any future sessions shall be given orally to the participants present and in writing to any persons who have indicated a desire to participate but who were not present at the time the decision was made that future sessions would be appropriate. Any written notice shall be given by the agency by first class mail.

Subp. 5. **Establishment of procedures and guidelines.** Procedures and guidelines for the mediation sessions must be established at the first mediation session through agreement of all participants.

Subp. 6. **Termination.** The mediation process shall terminate when the agency announces its unwillingness to continue mediation or when the agency and the participants sign an agreement setting forth the resolution of the disputed issues.

Subp. 7. **Involvement of mediator in subsequent proceedings.** The administrative law judge assigned as a mediator shall not be assigned to any subsequent rulemaking hearing involving the rule which has been the subject of the mediation process.

Subp. 8. **Compliance with other requirements.** The fact that an agreement has been reached through the mediation process shall not relieve the agency from any requirements imposed on it by law or rule in the subsequent adoption of the rule.

Statutory Authority: *MS s 3.764; 14.06; 14.51*

History: *11 SR 1385*

CONTESTED CASE HEARINGS

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. 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, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 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, postage prepaid and addressed to the party at his or her last known address. An affidavit of service shall be made by the person making the service. Service by mail or licensed overnight express mail service is complete upon placing the item to be served in the mail or delivering it to the authorized agent of the express mail service. Personal service may be accomplished by either delivering a document to the person or by leaving a 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 of the person to be served.

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.

Postage shall 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 Central Mailing Section, Publications Division, Department of Administration, addressed as above.

Any paper relating to hearings conducted by an administrative law judge under Minnesota Statutes, chapter 14, may be filed with or served on the office by facsimile transmission. The person filing the document shall forward the original signed document within five days. Filings or service shall be effective at the time that the facsimile transmission is received by the office. A transmission which is commenced prior to 4:30 p.m. shall be deemed to have been timely filed. The filing or service of a facsimile shall have the same force and effect as the filing or service of the original document.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

1400.5200 SCOPE; CONVERSION OF CONTESTED CASE.

The procedures in parts 1400.5100 to 1400.8400 shall govern all contested cases required to be conducted by the office under Minnesota Statutes, chapter 14. The procedures in parts 1400.8510 to 1400.8612 shall govern all cases conducted pursuant to the Revenue Recapture Act, Minnesota Statutes, sections 270A.01 to 270A.12, and shall also be utilized in those cases where the parties agree to use them.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

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 subd 4 cl (8)*

History: *9 SR 2276*

1400.5300 REQUEST FOR ADMINISTRATIVE LAW JUDGE.

Any agency desiring to order a contested case hearing shall first file with the chief judge or designee a request for assignment of a judge together with the notice of and order for hear-

ing proposed to be issued which shall include, unless the agency requests the judge to set a hearing at a later date, a proposed time, date, and place for the hearing.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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. Unless the chief judge or designee has already agreed with the agency, the judge shall advise the agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected persons. In cases where the hearing is to be set at a later time, the judge shall advise the agency on the location and time for the hearing when appropriate. In offering this advice, the judge shall consider the location of known parties, witnesses, and other participants so as to maximize convenience and minimize costs. After reaching agreement with the chief judge or designee, or upon receiving advice from the judge, 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; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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 where deemed 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. do all things necessary and proper to the performance of the foregoing;

N. in his or her discretion, perform such other duties as may be delegated by the agency ordering the hearing; and

O. grant or deny a request to substitute the use of initials for proper names in the hearing record or in findings of fact, conclusions, and recommendations or order.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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 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;

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

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 the hearing may result in the allegations of the notice of and order for hearing being taken as true, or the issues set out being deemed proved, and a statement which explains the possible results of the allegations being taken as true or the issues proved; and

M. A statement advising the parties 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.

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

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

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

Subp. 6. **Alternative documents and procedures.** With the prior written concurrence of the chief 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 363.071, subdivision 1a, 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; 116C.66; 363.06 subd 4 cl (8)*

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

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 date is less than 20 days from the commencement of the contested case, the notice of appearance shall not be necessary. The failure to file 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.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

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.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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 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; 363.06 subd 4 cl (8)*

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; 363.06 subd 4 cl (8)*

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 subd 4 cl (8)*

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 intervenor and shall state the judge's reasons. An intervenor 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

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; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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 subd 4 cl (8)*

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.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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 identify and exchange documentary evidence intended to be introduced at the hearing, to determine deadlines for the completion of any discovery, 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. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

Subp. 2. **Procedure.** Upon the request of any party or upon his or her own motion, the judge may, in his or her discretion, hold a prehearing conference prior to each contested case hearing. 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; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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.

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 subd 4 cl (8)*

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. 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. 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; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

1400.6700 DISCOVERY.

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

A. The names and addresses of all witnesses that a party intends to call at the hearing, 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. 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 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.** When a party is asked to reveal material considered to be proprietary information or trade secrets, that party shall 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; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

History: *9 SR 2276*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

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 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, or other document to the judge shall simultaneously send a copy to all other parties; provided, however, that this requirement shall not apply to requests for subpoenas.

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.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

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. If a transcription is made, the chief

judge shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge. The charge shall be set by the chief judge, subject to the approval of the commissioner of finance, and all money received for transcripts shall be payable to the state treasurer and shall be deposited in the Office of Administrative Hearings' account in the state treasury. In cases where the transcript is prepared by nongovernmental sources, the charge to the parties and the agency shall be the same as the source charges the office.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 116C.66; 363.06 subd 4 cl (8)*

History: *9 SR 2276; 15 SR 1595*

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 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; 363.06 subd 4 cl (8)*

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 subd 4 cl (8)*

History: *9 SR 2276*

1400.7700 ADMINISTRATIVE LAW JUDGE'S CONDUCT.

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.

Statutory Authority: *MS s 14.06; 14.131; 14.51; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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, briefly stating the facts as alleged in the notice and order for hearing which give rise to the hearing, including, where applicable, the amount of any monetary claim made by any party.

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

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

(3) The rules of evidence 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 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.

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; 363.06 subd 4 cl (8)*

History: *9 SR 2276*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

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 subd 4 cl (8)*

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

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; 363.06 subd 4 cl (8)*

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*

1400.8401 EXPENSES AND ATTORNEY FEES.

Subpart 1. **Authorization.** Pursuant to Minnesota Statutes, sections 3.761 to 3.765, expenses and attorney's fees may be awarded to a prevailing party, other than the state, in a contested case in which the position of the state is represented by counsel, but excluding a contested case conducted for the purpose of establishing or fixing a rate or for granting or renewing a license. Expenses and fees shall be awarded following compliance with this part if the

prevailing party other than the state shows that the position of the state was not substantially justified, unless special circumstances make an award unjust.

Subp. 2. **Definitions.** For the purpose of this part, the following terms have the meanings given them in this subpart:

A. "Expenses" means the costs incurred by the party in the litigation, as defined in Minnesota Statutes, section 3.761, subdivision 4.

B. "Fees" means the reasonable attorney fees or other fees defined in Minnesota Statutes, section 3.761, subdivision 5.

C. "Party" means a person named or admitted as a party in a contested case initiated under the provisions of Minnesota Statutes, chapter 14 and as defined in Minnesota Statutes, section 3.761, subdivision 6, paragraphs (a), (b), and (c).

D. "State" means the state of Minnesota or any agency or official of the state of Minnesota acting in an official capacity.

E. "Substantially justified" is the statutory standard by which an administrative law judge determines whether a prevailing party is entitled to expenses or fees, and is as defined in Minnesota Statutes, section 3.761, subdivision 8.

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

A. that the party is a prevailing party and is eligible to receive an award under this part. The applicant must show that it meets all conditions of eligibility set out in Minnesota Statutes, sections 3.761 to 3.764 and this part.

(1) In determining who is an eligible party, the judge shall consider the provisions of subpart 2, item C, and the following:

(a) The annual revenues shall mean the party's annual gross revenue.

(b) The annual revenue and the number of employees of the applicant and all of its affiliates shall be aggregated. Any person directly or indirectly controlling, controlled by, or under common control with the applicant shall be considered an affiliate of the applicant for purposes of this part. In addition, the judge may determine that financial relationships of the applicant other than those described in this part constitute special circumstances that would make an award unjust.

(c) The number of employees of an applicant includes all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(d) An applicant who participates in a contested case on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

(e) An applicant who appears pro se in a proceeding is ineligible for an award of attorney fees. However, eligibility for other expenses is not affected by pro se representation.

(f) An applicant who appears individually as a partner, officer, shareholder, member, or owner of an entity eligible under the provisions of Minnesota Statutes, section 3.761, subdivision 6, paragraph (a), clauses (1) and (2) may only assert a claim to the extent the entity which they own or control can assert such claim and may not assert a claim if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(2) In determining whether an applicant is a prevailing party, the following standards shall be applied:

(a) In order to be eligible for an award, the applicant need not have succeeded on every issue raised but must have at least been successful on the central issue or received substantially the relief requested.

(b) An applicant which has been penalized, fined, or enjoined by a final decision is not eligible for an award.

(c) No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

B. an itemization of the amount of fees and expenses sought. This shall include full documentation of fees and expenses, including the cost of any study, engineering report, test,

or project. The documentation shall include 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 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.

C. a statement that explains with specificity how or why the position of the state agency was not substantially justified. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

D. if the claim for attorney's fees exceeds $100 per hour, a statement of facts showing that the excess award qualifies under Minnesota Statutes, section 3.761, subdivision 5, paragraph (c); and

E. 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 either a supporting affidavit or affidavits or request for further proceedings under subpart 6; 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 sign the 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 1400.8510 to 1400.8612.

Subp. 6. **Applications when appeal is filed.** In the event that an appeal from all or any part of the final agency decision in the contested case which gives rise to the application for expenses and attorney's fees has been taken to the appropriate court, the application for fees and expenses shall be made to the court as provided by Minnesota Statutes, section 3.764, subdivisions 1 and 3.

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 3.761, 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; 116C.66*

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

1400.8402 [Repealed, 15 SR 1595]

1400.8500 [Repealed, 9 SR 2276]

REVENUE RECAPTURE ACT HEARINGS

1400.8510 DEFINITIONS.

Subpart 1. **Agency, claimant agency.** "Agency" or "claimant agency" means the state or public agency asserting a claim to a tax refund.

Subp. 2. **Debtor.** "Debtor" means a natural person whose tax refund is the subject of a claim by the claimant agency.

Subp. 3. **Party.** "Party" means the claimant agency, the debtor, and any other persons granted permission to intervene pursuant to part 1400.8570.

Subp. 4. **Service, serve.** "Service" or "serve" may be accomplished by either delivering a document to an individual in person, or by leaving a document at his or her home with some person of suitable age and discretion who resides in the same house, or by mailing the document to the person by first class United States mail.

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.

Postage shall 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 Central Mailing Section, Publications Division, Department of Administration, addressed as above.

Any paper relating to hearings conducted by an administrative law judge under Minnesota Statutes, chapter 14, may be filed with or served on the office by facsimile transmission. A transmission which is commenced prior to 4:30 p.m. shall be deemed to have been timely filed. The person filing the document shall forward the original signed document within five

days. Filings or service shall be effective at the time that the facsimile transmission is received by the office. The filing or service of a facsimile shall have the same force and effect as the filing or service of the original document.

Statutory Authority: *MS s 14.51; 116C.66*

History: *9 SR 2276; 15 SR 1595*

1400.8520 SCOPE.

These rules govern hearings between state agencies and taxpayers based on the Revenue Recapture Act, Laws of Minnesota 1980, chapter 607, article XII, codified as Minnesota Statutes 1980, sections 270A.01 to 270A.12. In addition, these rules may be used for any other hearings conducted by the state Office of Administrative Hearings if all parties to a particular hearing agree to use them. In the event that these rules are used for a proceeding other than one arising under the Revenue Recapture Act, the parties shall agree upon appropriate substitutions for terms in the rules which are peculiar to the Revenue Recapture Act (example: claimant agency, debtor, etc.).

Statutory Authority: *MS s 14.51*

History: *9 SR 2276*

1400.8530 WAIVER.

Upon request of all parties, the administrative law judge shall waive or modify any of these rules, provided that such waiver or modification does not conflict with any provision of Minnesota Statutes 1980, sections 14.48 to 14.70 or 270A.01 to 270A.12.

Statutory Authority: *MS s 14.51*

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

1400.8540 ADMINISTRATIVE LAW JUDGE ASSIGNMENT.

Subpart 1. **Request for assignment.** Any agency desiring to order a hearing shall first contact the chief administrative law judge or designee and request the assignment of an administrative law judge. The request shall include a proposed date, time, and place for the hearing. 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. Unless the chief administrative law judge or designee has already agreed with the agency, the administrative law judge shall advise the agency as to the location, date, and time for the hearing. In offering such advice, the administrative law judge shall consider the location of known parties, witnesses, and other participants so as to maximize convenience and minimize cost. After reaching agreement with the chief administrative law judge or designee or upon receiving advice from the administrative law judge, the agency shall issue the notice of hearing.

Statutory Authority: *MS s 14.51*

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

1400.8550 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;

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. If the debt arises from more than one event or transaction, each event or transaction 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;

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 which 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;

I. 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; and

J. a statement advising parties that failure to appear at the hearing 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.

Statutory Authority: *MS s 14.51*

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

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 claimant agency appears at a hearing but the debtor does not, the allegations in the notice of hearing shall be taken as true and deemed proved without further evidence. If the debtor appears at a hearing, but the claimant agency fails to appear, the administrative law judge shall recommend that the hearing be dismissed with prejudice. If neither the claimant party nor the debtor appear at a hearing, the administrative law judge shall recommend that the case be dismissed with prejudice.

Statutory Authority: *MS s 14.51; 116C.66*

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

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.

Upon the request of any party or upon his/her own motion, the administrative law judge shall hold a prehearing conference prior to the hearing, if the amount in controversy in any case exceeds $1,000.

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 in regard to 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; 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. 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 be made the subject of a written order by the administrative law judge.

Statutory Authority: *MS s 14.51*

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

1400.8590 PREHEARING MOTIONS.

If a party desires 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), he/she 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 known parties. A party who is opposed to the granting of a motion, should notify the administrative law judge as soon as possible. Orders on motions may be either oral or written but the administrative law judge shall notify all parties of record of the order.

Statutory Authority: *MS s 14.51*

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

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 his/her 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 unreasonably failing, upon demand, to make such disclosure shall be foreclosed from presenting any evidence at the hearing through an undisclosed witness.

Statutory Authority: *MS s 14.51*

History: *9 SR 2276*

1400.8601 SUBPOENAS.

Subpart 1. **Requests.** A party desiring to compel the attendance of a witness or the production of documents shall file with the administrative law judge a written request for a subpoena. 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 documents sought should be identified with specificity.

Subp. 2. **Service.** Subpoenas shall be served personally in the manner provided in part 1400.8510, subpart 4, item A. 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 who has an objection to it may file an objection 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 the subpoena if he/she finds that 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 14.51; 116C.66*

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

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, stating the amount claimed by the claimant agency, and briefly stating the facts as alleged in the notice of hearing which give rise to the claim.

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 claimant agency shall have the burden of proof and shall begin the presentation of evidence. 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 him/her 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*

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

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.

Subp. 4. **Representation by counsel.** A party need not be represented by an attorney. He/she may represent himself/herself, or may be represented by an attorney or any other person of his/her choice. 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; 116C.66*

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

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 if he/she deems it necessary for the development of a full and complete record.

Statutory Authority: *MS s 14.51*

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

1400.8606 ADMINISTRATIVE LAW JUDGES.

Subpart 1. **Impartiality.** An administrative law judge assigned to a case shall be free of any personal, political, or economic association that would impair his/her ability to function in a fair and objective manner. Should an administrative law judge believe that he/she cannot comply with this rule, he/she shall withdraw from the case.

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. When these rules authorize communications contrary to this prohibition, such communications shall be limited to only those matters permitted by these rules.

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 where deemed necessary to make a complete record;

G. prepare findings of fact, conclusions, and recommendations;

H. make preliminary, interlocutory, or other orders as deemed necessary to assure a fair hearing;

I. 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; and

J. do all things necessary and proper to the performance of the foregoing.

Statutory Authority: *MS s 14.51*

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

1400.8607 RULES OF EVIDENCE.

Subpart 1. **Admissibility.** The administrative law judge shall admit all evidence which 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*

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

1400.8608 BURDEN OF PROOF.

The claimant agency shall have the burden of proving the amount and existence of the debt and its right to collect the debt by a preponderance of the evidence. If the debtor asserts any affirmative defenses, the debtor shall have the burden of proving the existence of any such defense by a preponderance of the evidence.

Statutory Authority: *MS s 14.51*

History: *9 SR 2276*

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 record.** The 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. If a transcription is made, the chief administrative law judge shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge therefor. The charge shall be set by the chief administrative law judge and all moneys received for transcripts shall be payable to the state treasurer and shall be deposited in the state Office of Administrative Hearings' account in the state treasury.

Statutory Authority: *MS s 14.51; 116C.66*

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

1400.8610 ADMINISTRATIVE LAW JUDGE'S REPORT.

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

Statutory Authority: *MS s 14.51*

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

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 recording equipment, the administrative law judge may direct any person or party to provide the administrative law judge with the original 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 those persons causing such interference or disruption and thereafter proceed as is deemed appropriate.

Statutory Authority: *MS s 14.51*

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

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 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*

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

1400.8613 [Repealed, 15 SR 1595]