STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules Relating to Mediation of Disputes Involving Proposed Rules and Fees and Expenses in Contested Cases.	Report of the Administrative Law Judge OAH-87-001-MBG

The above-entitled matter came on for hearing before Administrative Law Judge Melvin B. Goldberg at 7:00 p.m. on Thursday, October 30, 1986 in Hearing Room 15, State Capitol Building, St. Paul, Minnesota and 9:00 a.m. on Friday, October 31, 1986 in Room 111, William Mitchell College of Law, St. Paul, Minnesota.

This report is a part of a rule hearing proceeding held pursuant to Minn. Stat. §§ 14.131-14.20 to determine whether the Office of Administrative Hearings has fulfilled all relevant, substantive and procedural requirements of law, whether the proposed rules are needed and reasonable, and whether or not the rules, if modified, are substantially different than those originally proposed.

Kathleen Mahoney, Special Assistant Attorney General, 2nd Floor, Ford Building, 117 University Ave., St. Paul, MN 55155, appeared on behalf of the Office of Administrative Hearings. Appearing and testifying on behalf and in support of the proposed rules was Dwane Harves, Chief Administrative Law Judge. The hearing continued until all interested groups or persons had had an opportunity to testify concerning the adoption of the proposed rules.

This Report must be available for review to all affected individuals, upon request, for at least five working days before the agency takes any further action on the rule(s). The Office of Administrative Hearings (OAH) may then adopt a final rule or modify or withdraw its proposed rule. If the OAH makes changes in the rule other than those recommended in this report, it must submit the rule with the complete hearing record to the Acting Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the OAH must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

Findings of Fact

Procedural Requirements

On September 15, 1986, the Office of Administrative Hearings mailed the Notice of Hearing to all persons and associations who had registered their names with the OAH for the purpose of receiving such notice.

On September 15, 1986, the OAH filed the following documents with the Adminstrative Law Judge

(a) Order for Hearing
(b) Notice of Hearing (as mailed)
(c) Rules as proposed
(d) Statement of Need and Reasonableness
(e) Statement of Need and Reasonableness, Exhibits A through A-3

(f) Certification of verification of mailing list of persons registered with the office
(g) Affidavit of Mailing to persons on agency list
(h) Affidavit of Additional Mailing to persons known to the agency to be interested

The documents were available for inspection at the OAH from the date of filing to the date of the hearing.

On September 29, 1986 a Notice of Hearing and a copy of the proposed rules were published at 11 State Register 13, 572.

The period for submission of written comment and statements remained open to Thursday, November 20, 1986. The Administrative Law Judge recieved responses to comments filed during the initial comment period for three working days until November 25, 1986. The record closed on Tuesday, November 25, 1986.

The date for submission of this report was extended by order of the Chief Administrative Law Judge to and including December 31, 1986.

Statutory Authority

The statutory authority to promulgate the proposed rules is found generally, at Minn. Stat. § 14.51 and specifically, at ch. 377 § 4 subd. 1, 1986 Minn. Laws 199.

Small Business Considerations

Pursuant to Minn. Stat. § 14.115 the Office of Administrative Hearing's Statement of Need and Reasonableness concerning the proposed rules sets forth an explanation describing how the proposed rules, in effect, impact on small business. The proposed rules should impact positively on small businesses by allowing them a process to recoup fees and expenses incurred in

contested case hearings under certain conditions, reduce expenses through mediation in Rulemaking and provide uniform procedures in proceedings brought by the Department of Human Rights. The OAH has complied with Minn. Stat. § 14.115, subd. 2.

Nature of the Proposed Rules

Minn. Stat. § 14.51 authorizes the Chief Administrative Law Judge to adopt rules to govern the procedural conduct of all hearings relating to both rule adoption in rulemaking cases and in contested cases.

On August 1, 1986 the provisions of Minnesota Laws 1986, Chapter 377 became effective. These provisions which have been referred to as the "Equal Access fo Justice Act" (EAJA), authorizes the awarding of "costs and attorneys' fees" [where eligible] by prevailing parties in civil actions and contested case proceedings involving the state." Cases which were pending or commenced on or after August 1, and were held within the Office of Administrative Hearings, fell within the scope of the EAJA, if the state agency for which a hearing was conducted had not yet issued a final order. This aspect of the proposed rules concerning the EAJA drew the most comments and was therefore, the major focus of the rulemaking hearing.

On August 25, 1986, preliminary and basic procedural rules were adopted by the Office of Administrative Hearings to avoid controversies in procedures posed by the new law, 11 S.R. 334. At the time the preliminary rules were adopted, it was anticipated

that the OAH would, at a subsequent time, adopt by a formal rulemaking hearing, more comprehensive procedural rules through amendment to the earlier rules.

The proposed rules considered in this opinion create more specific definitions for the terms contained within the Act, establish a better criteria for application and eligibility for reimbursement, and set standards to be applied in determining standing and eligibility. The OAH also intends, by the adoption of the proposed rules, to bring the Minnesota rules into conformity with the previously adopted Federal Rules (governing the Federal EAJA) to lead to ease of application, as well as ease of understanding by those parties which might apply for reimbursement of fees and expenses under both the federal and state EAJA.

Another significant purpose of the proposed rules is to add parts which shall govern the conduct of mediation sessions for both rulemaking and contested cases other than those which come within the jurisdiction of the Bureau of Mediation Services. The reason for this addition is that because of the time and cost involved in the rulemaking process under the APA, such alternative methods of creating rules are necessary. The Minnesota Legislature has recognized this fact and authorized the Chief Administrative Law Judge to adopt rules for such a mediation process in rulemaking and contested cases. Minn Stat. § 14.51.

A final purpose of the proposed rules is the addition of a 1400.5600, Subpart 7, Department of Human Rights hearings to the Notice and Order for Hearing Rule under the existing contested case rules of the OAH. The purpose of the addition of this

subpart is to have the Administrative Law judge assigned to a Department of Human Rights case issue a Notice and Order for Hearing to adequately notify a charged party of any and all charges the agency is bringing against him/her as the charged party. The rule is procedural and is intended to assist the Administrative Law Judge in the issuance of a Notice and Order for Hearing. The Rule is in response to changes in the Minnesota Human Rights Act, codified at Minn. Stat. § 363.071, which now requires the Administrative Law Judge to issue the Notice and Order for Hearing pursuant to a 1984 amendment to Minn. Stat. § 363.071.

Discussion of the Proposed Rules

Section by Section Analysis

Part 1400.1500 - Mediation

The lanquage of part 1400.1500 is all new, as this is an entirely new part to be added to the existing rules of the Office of Administrative Hearings. This Rule fulfills a mandate from the Legislature requiring the Chief Administrative Law judge to adopt procedural rules governing the option of parties to participate in a voluntary mediation session relating to rulemaking disputes.

The Rule is necessary as a means to reduce time and costs involved in the rulemaking process and to offer alternative methods for resolving disputes between parties relating to proposed rules. The Rule, as set forth, does not attempt to define any terms or attempt to further establish any substantive requirements. Rather the Rules, as proposed, are procedural and

relate to the process whereby an agency may request the assignment of an Administrative Law Judge as a mediator in a negotiated Rulemaking process.

It is understood that the Rules do not intend that agencies must use Administrative Law Judges. In fact, agencies may elect to use any qualified sources of mediation, public or private, which might be available.

Comments were received regarding subp. 3 - NOTICE requirements from the Assistant Commissioner of Health, Daniel J. McInevney, Jr, acting in the capacity of Chair, Executive Branch Administrative Law Committee. Essentially Mr. McInevney argues that the "notice requirement" does not belong in a "Mediation" rule since mediation is a completely voluntary act on the part of the agency and participants and requiring mandatory notice also goes against the voluntary nature of a mediation session. OAH states that the NOTICE provision in subp. 3 is both needed and reasonable, because it provides uniformity and assurance that all interested parties would be adequately and properly notified as to the scheduling of a first and subsequent mediation session(s). To require agencies to notify interested parties and to publish notification in the State Register ensures that any and all interested parties concerned will be notified and not just those parties to the actual mediation. OAH's position is both necessary and reasonable to carry out the fundamental purposes of Minnesota's Administrative rulemaking process. While an identifiable subset of an industry might not need published notice, consumers do. The formal proceedings that follow mediation may have the appearance of openess but in fact, the

purpose of mediation is to work out problems in advance. The public should have a reasonable opportunity to observe and participate in mediation. Formal notice makes that possible.

Likewise subp. 4 requires that the Administrative Law Judge should establish a date, time, and place for subsequent mediation sessions in the event that parties to the mediation are unable to reach agreement as to a time for such subsequent sessions. This provision within the rule is both needed and reasonable as a measure to keep the mediation "alive" and to ensure it does not "fall apart" over such a procedural issue of scheduling.

Therefore, Rule 1400.1500 is found to be both needed and reasonable.

Part 1400.5600 Subp. 7 Department of Human Rights, - NOTICE AND ORDER FOR HEARING

This subpart is an entirely new addition to the Notice and Order for Hearing Rule under the existing Rules for contested cases. The Rule is in part a response to delays on behalf of the Minnesota Department of Human Rights in handling and filing discrimination complaints. To rectify this problem, the Legislature enacted what has now been codified as Minn. Stat. § 363.071 subd. (1)(a). The proposed Rule is procedural in nature to allow for the issuance of a Notice and Order for Hearing by an assigned Administrative Law Judge, rather than the Minnesota Department of Human Rights, to effectuate the law as enacted by the Legislature in Minn. Stat. § 363.071.

The rule, as proposed, is found to be both needed and reasonable.

Part 1400.8401 - EXPENSES AND ATTORNEY'S FEES

11. This part of the proposed Rules concerns the implementation of the provisions of the so-called "Equal Access to Justice Act" (EAJA), 377 § 4 subd. 1 1986 Minn. Laws. 199., approved by the Legislature March 19, 1986; effective August 1, 1986.

Subp. 2 Definitions

Throughout the period for reciept of Comments, the Administrative Law Judge received comments from several organizations and individuals including: William Sieben, Minnesota Trial Lawyers Association; Mr. Daniel J. McInevney, Jr., Assistant Commissioner of Health and Chair, Executive Branch Administrative Law Committee; Mr. David Ziegenhagen, Executive Director, Minnesota Board of Medical Examiners; Ms. Anne Duff, Attorney, Minnesota Association of Commerce and Industry; Mr. David Holmstrom, Chair, Council of Executive Directors, Health Related Licensing Boards; Mr. Charles I. Wikelius Assistant Attorney General and Kathleen L. Winters, Special Assistant Attorney General; Glenn M. Lewis, Jr., M.D., President, Minneapolis Psychiatric Institute; Ms. Marcy Wallace, Attorney, McNulty & Wallace; Mr. Joseph Westermeyer, M.D., President, Minnesota Psychiatric Society.

All of these comments were relevant and useful in shaping the thinking of the Administrative Law Judge. Some of the comments, while acknowledged, were contrary to the Administrative Law Judge's view, others were found to be in agreement. All of the comments were studied and given careful consideration.

Subp. 2(c) within the proposed Rules generated the most comment by outside opinion and indeed, may be the most controversial aspect of the proposed Rules.

The controversy surrounds the definition of the term "party." The proposed Rules apply to small businesses which qualify as "prevailing parties" under the EAJA in contested cases involving state agencies. Minn. Stat. 3.761, Subd. 6.

The major question that arose in the course of the hearing on these rules is whether a licensed, sole practitioner who successfully defends a license revocation proceeding can be a prevailing party within the meaning of the EAJA. It is clear that a small business that successfully defends a license revocation comes within the meaning of the act. But if the license is held in the name of an individual (which is the case for most professional licensees) and that individual practices his/her profession without having created a separate entity that the law would recognize as a legal "person," is that individual's license revocation within the meaning of the act?

The Equal Access to Justice Act indicates clearly that the legislature addressed the question the coverage of licensees. It expressly stated that the EAJA does not apply to a party prevailing in the "granting or renewing of a license" [Section 1, subd. 3]. It has also excluded from the definition of a "party" persons "providing services pursuant to <u>licensure</u> or reimbursement on a cost basis by the department of health or the department of human services when that person is named or admitted . . . in any matter which involves the licensing or reimbursement rates,

procedures or methodology applicable to those services" [Section 1, subd. 6(c)]. However, the legislation does not, on its face, defferentiate between natural and merely legal persons who hold licenses.

Summaries of legislative hearings and tapes of committee meetings were provided by Mr. Wikelius of the Attorney General's office for the purpose showing legislative intent in the adoption of the EAJA. Legislative history such as this is properly considered by the Administrative Law Judge in a rulemaking proceeding, the rules of the Legislative manual notwithstanding. In the Matter of the State Farm Mutual Automobile Insurances Co., 392 N.W.2d 558 (Minn. App. 1986).

Mr. Wikelius has set forth several reasons why he believes tht revocation proceedings for licensed professionals are not within the meaning of the EAJA. He argues that since license renewals are expressly excluded and since licenses are generally renewed annually, the net effect of an agency's refusal to renew or bringing a revocation proceeding would be the same. Therefore, he argues, the cases must both be excluded from the act's coverage.

The proceedings are not the same, nor may one be freely substituted for the other. In the license renewal process a licensee has the burden of showing compliance with routine educational, bookkeeping or other factors clearly within the individual's knowledge and ability to prove. In a revocation proceeding the agency must prove wrongdoing by the licensee. Such proceedings are generally brought after an agency investigation and evidentiary evaluation. The agency in a revocation proceeding

has the burden of proving wrongdoing as opposed to the licensee proving good conduct. A revocation proceeding is precisely the kind of situation where an agency could overreach and thus be liable under EAJA. Admittedly, these distinctions are not perfect. Licensees seeking renewal who must prove "good moral character" might have to defend an attack on that assertion by the licensing body. However, if the agency deliberately sought to avoid EAJA by raising a basis for license revocation in a renewal proceeding, such an action might be enjoined by the courts. For the purposes of this proceeding, there appears to be a clear distinction between license renewal and license revocation. The legislature's exclusion of the former from EAJA coverage cannot be presumed to be an exclusion of the latter.

The most troublesome argument raised by several parties in oral and written testimony concerns the limitations that must be put on the principle of including the licensed professional within the coverage of EAJA. On the one hand, there is the professional who has no employees and simply bills for his time (as was the situation of one of the witnesses at the October 30 hearing) who therefore meets any reasonable definition of an "unincorporated business." On the other hand, there is the licensed professional who must work for another person or entity (the dental assistant who must work under the supervision of a licensed dentist). The latter person is clearly not included within the meaning of the EAJA which is to apply only to an "unincorporated business, partnership, corporation, association, or organization having not more than 50 employees . . . ." and "whose annual revenues [do] not exceed $4,000,000." EAJA subd. 6.

The legislative history is not conclusive. There is a clear legislative intent to limit the applicability of the act to small businesses, and not provide coverage to all individuals who prevail in proceedings involving the state. The limitation was made primarily to limit the state's potential exposure. This is a reasonable limitation given the legislature's lack of experience with claims under EAJA. However, the applicability of the term "unincorporated business" to the professionally-licensed, sole practitioner was not directly addressed by the legislature (at least as evidenced by the materials submitted in this proceeding).

Attorney Marcy Wallace points out that when the legislators stated that the sole owners of unincorporated businesses could recover but individuals could not, they probably did not understand the legal fact that unincorporated businesses are not treated as persons under the law and therefore, the individual owner is the "party" named in a proceeding against a sole proprietorship. She suggests that Subp. 3.A.(1)(f) be amended and a new subpart (g) be added to indicate EAJA coverage for the person who appears individually because the business entity with which he is associated in not recognized as a legal entity and the proceeding relates to issues which are primarily business rather than personal.

Subpart 3.A.(1)(f) already excludes claims that are primarily personal in nature. Mr. Wikelius argues that the Wallace proposal could potentially exceed the intent of the legislature by permitting individuals to assert claims even if no unincorporated business, partnership, corporation, association or organization was named or admitted as a party. Such a possibility

is not evident from the language proposed. However, since the proposed amendment might exceed legislative intent it, and a professionally-licensed, sole practioner could come with a reasonable definition of an unincorporated business, it is not a necessary to amend the proposed rules.

The OAH takes the position that if an applicant for fees can establish that he/she is a "person" that meets the unincorporated business definition of Subd. 6 as well the rest of the act then he/she is a party entitled to compensation. That position is reasonable given the legislation. That equal protection arguments might be raised by employed licensees is a matter best left to the courts or the legislature. There are many arguments that can be advanced for distinguishing between the self-employed licensee and the employee-licensee. There may also be situations where a professional licensee cannot meet the definition of an unincorporated business. Those arguments are best made on an individual basis to an Administrative Law Judge or a court. To avoid excessive litigation the legislature may wish to clarify the EAJA. The OAH rules are the best that can be drafted under the existing legislation given the variety of factual circumstances that must be covered.

Subp. 3.A.(2)(b) provides that a party who has been penalized, fined or enjoined in a court or contested case proceeding may not recover under the EAJA. The Minnesota Association of Commerce and Industry has argued that the rule be either eliminated or modified so as to provide that a party may be considered to have prevailed if the contested case hearing terminates by consent decree, by settlement out-of-court or a

voluntary cessation of an unlawful practice by the agency. Assistant Attorney General Charles I Wikelius argued in opposition to that position. He noted that while the principle advanced by MACI may be appropriate in some circumstances, the proposed language would be overly broad and beyond the intent of the legislature. It would include situations in which a party other than the state who signs a consent decree in which he agrees to pay a fine or discontinue an illegal activity to nevertheless be considered a prevailing party for purposes of recovering attorneys fees. The provisions of 1400.8401, Subp. 3.A.(2)(a) indicate that a party "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 [emphasis added]." The language of this provision will allow the Administrative Law Judge sufficient leeway in consent decree situations to provide attorneys fees to a party who demonstrates that the agency has entered into the decree because of a voluntary cessation of an unlawful practice or a similar factual circumstance. Adopting the MACI proposal or eliminating the language of Subp. 3.A.(2)(b) would create a rule that could exceed the intent of the legislature. The language of Subp. 3.A.(2)(b) when read in conjunction with Subp. 3.A.(2)(a) and the enabling statute is both necessary and reasonable as proposed.

In an additional matter related to the term "party," it is the position of the Minnesota Department of Human Rights that the Department of Human Rights should be exempted from the provisions of the EAJA. Comments received from Mr. Donald A. Gimberling, Acting Deputy Commissioner of the Department, reflect this

position that the "types of contested cases contemplated by the EAJA are not the types of contested cases which arise from ch. 363 Minnesota Human Rights Act. It is Mr. Gimberling's position and therefore the Department's, that 1) the types of contested cases arising from ch. 363 are not like other contested cases; 2) that the language in the EAJA suggests that these contested cases are different, and; 3) that a strong public policy argument exists against accepting and acting on applications for fees and expenses in discrimination cases.

The Administrative Law Judge does not agree with this argument. It is not apparent from any objective reading of the EAJA or on its face that the Legislature intended to exempt the Department of Human Rights from the scope of the EAJA. Therefore, the merits of the Department's arguments are not supported by the legislation. Finally, the merits of the arguments, to the extent they exist, are better addressed by the Legislature than an Administrative Law Judge or the OAH who are charged to carry out the rulemaking pursuant to § 4 subp.1 of the EAJA.

With the above changes included, the Administrative Law Judge finds the proposed Rule to be both needed and reasonable.

Subp. 3. Application

The proposed Rules offer two changes from the previously adopted temporary rules: 1) they amend the filing for costs and fees of application from 30 to 40 days as a measure of uniformity into the Federal EAJA, and 2) they set the filing time (of 40

days) beyond the time for filing of an appeal from final determination by an agency (which is 30 days). This rule is judged to be both needed and reasonable.

Most of the standards and criteria set forth in the proposed Rules in subp. 3 conform to those standards and criteria within the Rules adopted by the federal Government for implementation of it's own EAJA. Particularly important to note, however, is that in subp. 3 A(1)(b) of the proposed Rules for the Minnesota EAJA, for purposes of numbers of employees and financial size of an applicant's affiliates, such numbers shall be treated as aggregated to conform to the Federal Rules. Such aggregation as to employees will include part-time employees as well. The Rule as proposed is judged to be both needed and reasonable.

The proposed Rule in subp. 3A(1)(e) prohibits pro se applicants from recovery. This is judged to be both needed and reasonable since actually hiring an attorney and incurring expenses beyond the applicant's own time spent should be prerequisite to eligibility for recovery under the Act.

Subp. 3A(2) sets forth the criteria for determining whether an applicant is a prevailing party. Since federal caselaw supports the definition that a prevailing party is one who "need not succeed on every issue raised, but must have at least been 'successful on the central issue,'" Hanrahan v. Hampton, 446 U.S. 754, 757 (1980) the proposed definition of prevailing party in 3A(2)(a) is sound. The proposed Rules state that no presumption arises that the agency was not substantially justified in its action merely because it loses in a contested cast proceeding. The Administrative Law Judge agrees with this Rule. Therefore,

all three criteria in 3A(2), i.e., (a) (b) (c) are judged as needed and reasonable criteria, as proposed, to determine whether an applicant is in fact a prevailing party.

Subp. 3B delineates the proposed Rule requirements for accounting of fees and expenses sought by an applicant. No comments were received as to any of these proposed Rules.

The intent of these amendments as stated in the Office of Administrative Hearing's Statement of Need and Reasonableness "is to require sufficient documentation for all requested fees and expenses to limit further proceedings or hearings. Requiring applicants to put sufficient time and effort into the preparation of an application will result in judicial economy . . . ."

The Administrative Law Judge agrees with all of the proposed amended Rules and judges each, in subp. 3B, to be needed and reasonable. Likewise, the proposed Rule in 3C is judged as needed and reasonable by requiring the applicant to clearly state its case as to why it argues that the agency was not substantially justified.

Subp. 4. Response or Objection to Application

Subp. 4 as proposed conforms to the federal Rules. In the previously adopted Rules, an agency was required to give a general statement of response or objection to an application. The proposed amended Rules require a more specific response. The purpose of such a specific response is to avoid the need for oral argument and to enable the Administrative Law Judge to ascertain pertinent issues in the case.

Thus, both the applicant and the agency are required under the proposed amended Rules to submit a detailed response justifying and supporting their respective positions in the matter.

For these reasons, the proposed Rule is judged to be needed and reasonable.

Subp. 5a. Settlement

16. It is appropriate that the proposed Rules should make provision for settlement by the prevailing party and agency before final action on the application, provided that the Administrative Law Judge assigned to the case follows proper procedure and issues an order stating the award. Appropriately, also, is the inclusion of the provision within the proposed Rule that, 1) the Administrative Law Judge has no discretion to approve or disapprove of the settlement and, 2) to require the Chief Administrative Law Judge to make an annual report of all settlements to the Legislature. Such an annual report is particularly necessary in light of the legislature's expressed concern regarding the cost of implementing the EAJA.

Accordingly, the Rule regarding settlements is judged to be both needed and reasonable.

Subp. 5b. Extensions of Time and Further Proceedings

17. This is an entirely new subpart. This subpart is propsed as a measure to maintain more uniformity with the Federal Rules. The subpart delineates procedures for granting extensions of time and continuances. Such extensions must be brought to the

Administrative Law Judge by the parties in the form of motions, and parties seeking such extensions must do so based on a standard of "good cause."

The proposed Rule is judged as needed and reasonable to inject some flexibility into the application procedure and to account for unforseen circumstances which may arise. It is furthermore judged as both needed and reasonable to allow an Administrative Law Judge the discretion to require any and all further filings or actions necessary to gain a full and fi ar resolution of all issues arising from the application in the proceeding. The purpose of allowing such discretion is to ensure a fair and impartial hearing.

Subp. 7. Decision of the Administrative Law Judge

There is a specific purpose for enumerating the items to be contained in any Administrative Law Judge decision under the EAJA. That purpose is based on a premise that when the parties know the elements which must be proved, they prepare their cases accordingly, and the proceeding may occur more economically. The six elements are also found in federal law, Rules of the U.S. Environmental Protection Agency at 40 C.F.R. § 17.26 (1985).

For these reasons, all items A-F are judged to be both needed and reasonable.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Office of Administrative Hearings (OAH) gave proper notice of the hearing in this matter.

2. That the OAH has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, and all other procedural requirements of law or rule.

3. That the OAH has documented its statutory authority to adopt the proposed Rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.04, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).

4. That the OAH has demonstrated the need for and reasonableness of the proposed Rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).

5. That the additions and amendments to the proposed Rules which were suggested by the OAH, after publication of the proposed Rules in the State Register, do not result in Rules which are substantially different from the prposed Rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, Minn. Rule 1400.1000, Subp. 1 and 1400.1100.

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the OAH from further modification of the Rules based upon an examination of the public comments, provided

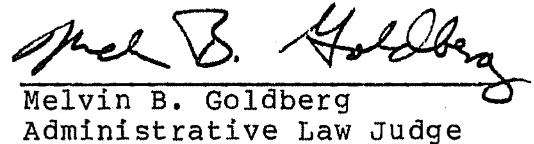
that no substantial change is made from the proposed rules as originally published, and provided that the Rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 31 day of December, 1986.



Melvin B. Goldberg
Administrative Law Judge