

14.1 EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT AND ARGUMENT TO THE AGENCY BEFORE FINAL DECISION

The Administrative Procedure Act (APA) provides that all parties adversely affected by a report of an administrative law judge (ALJ) may “file exceptions and present argument to a majority of the officials who are to render the decision.”¹ The agency cannot make its final decision until the ALJ's report has been made available to the parties for ten days and an opportunity to file exceptions and to present argument has been afforded the parties.² An agency's failure to respond to a request for an opportunity to file exceptions and present argument may violate due process.³ Individual agencies' procedural rules and statutes may contain additional procedures and requirements for filing exceptions and presenting argument.⁴

The APA does not specify that oral argument to the decision makers is required. Since courts, particularly appellate courts, often decide cases without oral argument, it must be assumed that no oral argument is constitutionally required. Either written or oral argument satisfies due process.⁵ The contested case rules of individual agencies may provide for oral argument,⁶ or the agency may exercise its discretion to allow oral argument in particular cases. Failure by agency staff to file exceptions to the recommended decision of the ALJ does not prevent the agency from issuing findings different than those contained in the recommended decision.⁷ A party's failure to object to an ALJ's discovery ruling in exceptions does not preclude that party from raising the discovery issue on judicial review.⁸

¹ MINN. STAT. § 14.61, subd. 1 (2014). Commissioners may delegate authority to file and present argument as a party adversely affected to other officers in the agency. *Id.* § 15.06, subd. 6.

² *Id.* § 14.61, subd. 1.

³ *In re Haugen*, 278 N.W.2d 75, 79-80 (Minn. 1979).

⁴ *See, e.g., In re Labor Law Violation of Chafoulias Mgmt. Co.*, 572 N.W.2d 326, 332 (Minn. Ct. App. 1997) (finding Commissioner's failure to promulgate procedural rules for filing exceptions did not violate due process where Commissioner rejected relator's exceptions on substantive, not procedural, grounds); MINN. R. 7829.2700 (2013) (governing public utilities commission procedure following ALJ reports).

⁵ *R.R. & Warehouse Comm'n v. Chi. & Nw. Ry.*, 256 Minn. 227, 235, 98 N.W.2d 60, 66 (1959) (dictum). *See generally* 2 RICHARD J. PIERCE, ADMINISTRATIVE LAW TREATISE § 9.5 (5th ed. 2014). *But see In re Minn. Pub. Utils. Comm'n*, 417 N.W.2d 274, 283 (Minn. Ct. App. 1987); *In re Determining the Natural Ordinary High Water Level of Lake Pulaski*, 384 N.W.2d 510, 515 (Minn. Ct. App. 1986).

⁶ *See, e.g., Minn. R. 7829.2700, subp. 3* (2013) (granting parties opportunity for oral argument before the public utilities commission following ALJ's report).

⁷ *In re Hutchinson*, 440 N.W.2d 171, 175 (Minn. Ct. App. 1989).

⁸ *Surf & Sand Nursing Home v. Dep't of Human Servs.*, 422 N.W.2d 513, 519-20 (Minn. Ct. App. 1989).