14.3 THE AGENCY DECISION

The agency's final decision must be in writing.[1] The APA requires that it contain findings of fact and conclusions on all material issues.[2] Whether a particular fact is so material to the proceeding as to require a finding will likely be judged by whether a court could, without that finding, conduct a judicial review of the decision.[3] The agency should state with clarity and completeness the facts and conclusions essential to its decision so that the reviewing court can determine if the facts found justify the action taken by the agency.[4] For example, an agency's findings consisting of a reference to certain pages in the transcript would be insufficient.[5] There is no hard-and-fast APA or due process rule concerning how detailed and particular findings should be.[6] There is rather a "zone of propriety" between the extremes of mere conclusion and undue particularity.[7] Whether a particular set of findings are adequate will depend on whether they enable the court on review to ascertain the facts on which the agency made its decision.

The APA requires that the agency decision contain findings of fact and conclusions on all material issues[8] but does not require a memorandum, opinion, or other statement of the agency's rationale in reaching its decision, or that the reasons or basis for the order be otherwise specified.[9] Due process does not require that the decision be accompanied by a written memorandum discussing each of the objections parties may have raised during the proceeding.[10] Nor does due process require the agency to discuss the weight given any part

1 MINN. STAT. § 14.62, subd. 1 (2014).

2 *Id.*; Carter v. Olmsted Cnty. Hous. & Redev. Auth., 574 N.W.2d 725, 730 (Minn. Ct. App. 1998) (a decision not supported by proper findings is considered "prima facie arbitrary"). Even if the APA did not require such findings, it has been held that due process would require them. State *ex rel.* Harris v. Annuity & Pension Bd., 87 Wis. 2d 646, 660-61, 275 N.W.2d 668, 676 (1979).

3 *See* PEER v. Minn. Envt'l. Quality Council, 266 N.W.2d 858, 871-72 (Minn. 1978); Bryan v. Cmty. State Bank, 285 Minn. 226, 232, 172 N.W.2d 771, 775 (1969). Even in a situation where the APA does not require written findings, the Minnesota Court of Appeals has required them. *See* Reserve Mining Co. v. Minn. Pollution Control Agency, 364 N.W.2d 411, 414 (Minn. Ct. App. 1985) (holding agency decision to include disputed term in discharge permit proceeding to be arbitrary and capricious, because no written findings and reasons were prepared and agency had no opportunity to seek contested case status of the matter); *In re* Nw. Bell Tel. Co., 374 N.W.2d 758, 762-63 (Minn. Ct. App. 1985), *rev'd in part*, 386 N.W.2d 723 (Minn. 1986).

4 *Bryan*, 285 Minn. at 233, 172 N.W.2d at 775-76; Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492, 271 Minn. 445, 450, 136 N.W.2d 105, 108 (1965); *Carter*, 574 N.W.2d at 729.

5 *Morey*, 271 Minn. at 450, 136 N.W.2d at 108.

6 *Id*. In the case of a county decision on a plat application, the court of appeals observed that an entity need not necessarily prepare formal findings of fact, but it must, at a minimum, have reasons for its decision recorded or reduced to writing, and in more than just a conclusory fashion. Hurrle v. Cnty. of Sherburne, 594 N.W.2d 246, 249 (Minn. Ct. App. 1999).

7 *Morey*, 271 Minn. at 450, 136 N.W.2d at 108; State v. Tri-State Tel. & Tel. Co., 204 Minn. 516, 524, 284 N.W. 294, 301 (1939).

8 *See* MINN. STAT. § 14.62, subd. 1 (2014).

9 The Minnesota APA contrasts, in this respect, with the federal APA, which requires that all decisions include a statement of the "findings and conclusions, *and the reasons or basis therefor*, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. § 557(c)(3) (2012) (emphasis added).

10 *In re* Lecy, 304 N.W.2d 894, 899 (Minn. 1981).

of the evidence.[11] The agency is not required to discuss the mental processes by which it reached its conclusion.[12] If there are no formal findings of fact and conclusions, due process may, at least in some circumstances, require a statement of reasons for the determination and the evidence relied on.[13] This assures that the decision is based on the record.[14]

The APA specifies that if an agency does not modify or reject an ALJ's recommended decision within 90 days of the close of the record, then the ALJ's recommended decision becomes final.[15] The record closes upon the filing of exceptions to the ALJ report and the presentation of argument, or upon the expiration of the deadline for doing so.[16] Apart from the APA, the statutes relating to particular agencies may contain decision deadlines.[17]

The agency must serve a copy of the agency's decision and any order on each party and on the ALJ.[18] The agency order may include an award of costs against an unsuccessful

11 *See Tri-State Tel. & Tel. Co.*, 240 Minn. at 524, 284 N.W. at 301; *see also Lecy*, 304 N.W.2d at 899.

12 *Tri-State Tel. & Tel. Co.*, 204 Minn. at 524, 284 N.W. at 301; *see also Lecy*, 304 N.W.2d at 899.

13 *See* PBGC v. LTV Corp., 496 U.S. 633, 655-56 (1990) (finding determination by the agency was lawfully made by informal adjudication, governed by federal APA in 5 U.S.C. § 555(e), which does not require findings or reasons to support decision, because courts cannot require an agency to use procedures greater than those required by statute or by due process); Wolff v. McDonnell, 418 U.S. 539, 564 (1974) (finding minimum due process requirements for justifying deprivation of prisoner's good time and placement in solitary confinement include a written statement of evidence and reasons, though formal findings are unnecessary); Morrissey v. Brewer, 408 U.S. 471, 487 (1972) (finding minimum due process requirements for parole revocation include written statement about evidence relied on and reasons for revocation, although no formal findings are necessary); Goldberg v. Kelly, 397 U.S. 254, 271 (1970) (finding minimum due process requirements for termination of AFDC payments, although not necessitating formal findings, include statement of reasons and evidence relied on).

Some commentators have questioned, however, whether "findings" requirements are constitutionally required at all and have suggested that due process requires them only in special circumstances. Clearly, courts do not make findings in all cases. *See* 1 RICHARD J. PIERCE, ADMINISTRATIVE LAW TREATISE § 8.5 (5th ed. 2010). *But see* Cole v. Metro. Council HRA, 686 N.W.2d 334, 338 (Minn. Ct. App. 2004) (noting that, under federal regulations, a recipient of assistance is entitled to a written decision that briefly states the reasons for the determination; although the findings were somewhat vague, they were sufficient to permit meaningful appellate review).

14 *See Goldberg*, 397 U.S. at 271.

15 MINN. STAT. § 14.62, subd. 2a (2014).

16 *Id.* § 14.61, subd. 2.

17 *See, e.g.*, *id.* §§ 216B.16, subd. 2 (public utilities commission - gas and electric); 237.075, subd. 2 (public utilities commission - telephone) (2014); *see also* Henry v. Minn. Pub. Utils. Comm'n, 392 N.W.2d 209, 213-14 (Minn. 1986) (finding 10-month time limit on telephone rate decisions of the Minnesota Public Utilities Commission is a limit upon the time within which rates may be suspended and not a temporal limit on the commission's jurisdiction that would operate to divest the commission of jurisdiction over the proceeding upon the expiration of 10 months); *In re* Eigenheer, 453 N.W.2d 349, 354-55 (Minn. Ct. App. 1990) (finding Commissioner's order issued after statutory 60 days from hearing was not void where statute is directive and not mandatory).

18 MINN. STAT. § 14.62, subd. 1 (2014). In fact, if an agency order is served upon a party's attorney, but not the party herself, the order has not been "issued" for purposes of starting the appeal period. *In re* Findings of Abuse of D.F.C. v. Comm'r. of Health, 693 N.W.2d 451, 454-55 (Minn. Ct. App. 2005) (acknowledging that under normal district court rules, service on the attorney is sufficient; but noting that some human services statutes require service on both the party *and* the attorney and finding it inconsistent to interpret the service required for the commissioner's order differently); *see also* Reynolds v. Dep't of

contested case litigant in favor of the agency if authorized by statute.[19] Under a statute authorizing an agency to require a licensee to pay "all costs" of the proceeding, disbursements may be taxed against the licensee; attorney fees and investigation costs of the attorney general's office may not, however, be taxed.[20] Costs recoverable by a successful contested case litigant against the agency are provided by statute.[21] They may include filing fees, subpoena fees, mileage, transcript costs, court reporter fees, expert witness fees, photocopying fees, printing costs, postage, delivery costs, and service of process fees.[22]

Human Servs., 737 N.W.2d 367 (Minn. Ct. App. 2007) (applying rules of civil procedure to informal adjudicative decision, allowing additional three days to the statutory appeal time for persons served by the agency by mail).

19 *See, e.g.*, MINN. STAT. §§ 150A.08, subd. 3a (costs in dental license actions), 237.075, subd. 10 (costs in PUC proceeding) (2014); *In re* Wang, 441 N.W.2d 488, 495-96 (Minn. 1989). *See generally In re* Nw. Bell Tel. Co., 374 N.W.2d 758, 761-62 (Minn. Ct. App. 1985) (analyzing whether costs claimed by intervenor were or were not allowed by applicable public utility statute).

20 *Wang*, 441 N.W.2d at 495-96.

21 MINN. STAT. § 15.471, subd. 4 (2014).

22 *Id.*; *Wang*, 441 N.W.2d at 497.