

4.7 OVERVIEW OF A CONTESTED CASE PROCEEDING

Contested case proceedings are conducted for a variety of purposes in a variety of subject areas. There are certain unique features in the practice before each agency, some of which have their own procedural rules.¹ The rules of practice of individual agencies apply to the extent that they are not inconsistent with the rules of the OAH.² Agencies may, moreover, be governed by statutory procedural provisions.³ Since 2000 the APA has also authorized an agency to initiate an arbitration proceeding conducted by an ALJ, under Minnesota arbitration law, if all parties agree to the arbitration.⁴

The generally applicable OAH rules⁵ provide a basic framework for proceedings in contested cases that will apply in most cases. That basic framework is discussed briefly here by reference to six stages in the proceeding. Individual stages are dealt with more comprehensively in subsequent chapters.

4.7.1 Initiation of a Contested Case

The contested case proceeding must, as a general rule, be initiated by the agency making the final decision in the case. The OAH cannot initiate a contested case proceeding except for state personnel cases and Hennepin County personnel cases involving non-veterans.⁶ An interested person may request an agency to commence a contested case; however, there is no statutory procedure to compel the agency to honor the request. An agency can be compelled to initiate a contested case only by a writ of mandamus from the appropriate court directing it to do so.⁷

The contested case proceeding is commenced by the issuance of a notice of and order for hearing signed by the state agency head. Notices of and orders for hearing are discussed more fully in chapter 5. In general, the notice is required to state the time, date and place for the hearing, a citation to the agency's statutory authority to hold the hearing and to take the actions proposed, and a statement of the issues to be determined.⁸ The notice must also name the ALJ assigned to the case by the chief ALJ.⁹ After issuance of the notice of and order for hearing, the agency certifies the official record to the OAH, and thereafter all filings are made with the ALJ.¹⁰

¹ See, e.g., MINN. R. ch. 7829 (Minnesota Public Utilities Commission) (2013).

² MINN. STAT. § 14.51 (2014).

³ See, e.g., *id.* § 144A.105 ((suspension of admissions order against nursing homes by Commissioner of Health).

⁴ *Id.* § 14.57(b) ().

⁵ MINN. R. ch. 1400 (2013).

⁶ See MINN. STAT. §§ 43A.33, 383B.38 (2014). Under Minn. Stat. § 363A.29, , OAH initiates some discrimination cases after a referral from the Department of Human Rights.

⁷ See *id.* ch. 586; see also *Mankato Aglime & Rock Co., v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989) (discussing standing to compel a contested case).

⁸ MINN. R., 1400.5600 (2013); see also MINN. STAT. § 14.58 (2014).

⁹ MINN. R., 1400.5600, subp. 2B (2013).

¹⁰ MINN. STAT. § 14.58 (2014).

Generally, there is no time limit within which an agency must initiate a contested case proceeding¹¹ except as its actions might be limited under the doctrine of laches or estoppel¹² or principles of due process relating to the remoteness of the conduct alleged.¹³

4.7.2 Prehearing

During the prehearing stage of a contested case, any necessary discovery is conducted. Discovery procedures are discussed in chapter 8. Privileges and other limitations on discovery are discussed in chapter 9. Pretrial motions are often heard during the prehearing stage. Motion procedures and some of the common issues presented in motions are discussed in chapter 7. Prehearing conferences and mediation services are also discussed in chapter 7.

Minnesota Rules pt. 1400.6500 specifically authorizes the use of prehearing conferences in contested case proceedings. Prehearing conferences are designed to identify, eliminate, or resolve as many substantive and procedural issues as possible in order to expedite and shorten the contested case hearing. The rule states that the purpose of the prehearing conference is to obtain factual and evidentiary stipulations, to consider proposed witnesses, to identify and exchange documents, to establish discovery deadlines and hearing dates, and to explore settlement. Mediation services in contested case proceedings are available pursuant to Minnesota Rules pt. 1400.5950. Mediation is a voluntary process undertaken by the parties, with the assistance of a neutral mediator, in an attempt to resolve the dispute. In contested case proceedings, a request for mediation may be made by any party or the judge assigned to the case. If all the parties directly affected are willing to participate, the chief judge will issue an order for mediation setting forth the name of the mediator and the date by which mediation must be initiated. Mediation can substantially reduce the costs and time involved in formal legal proceedings.

4.7.3 Hearing

Hearings are similar to court trials without a jury but are not governed by the strict rules of evidence that apply to judicial litigation. The procedures and protocol of the hearing are discussed in chapter 11. In chapter 10, there is a discussion of the rules of evidence applicable in a contested case hearing. Chapter 12 presents a discussion of various equitable defenses, such as *res judicata* and collateral estoppel, that may impact on the issues to be tried at the hearing.

4.7.4 The Administrative Law Judge's Recommended Decision

After the hearing, the ALJ issues a decision or recommended decision and sends it to the agency for which the hearing is being conducted along with the record. The recommended decision, discussed in chapter 11, is usually in the form of findings of fact, conclusions, and a recommendation.

¹¹ *Levy v. United States*, 477 F.2d 916, 918 (6th Cir. 1973).

¹² *See* chapter 12.

¹³ *Fisher v. Indep. Sch. Dist. No. 622*, 357 N.W.2d 152, 156 (Minn. Ct. App. 1984).

4.7.5 Filing of Exceptions to the Administrative Law Judge's Recommended Decision and the Agency Decision

Parties may file exceptions to the ALJ's report with the agency. This procedure, which is akin to the filing of objections to the report of a referee under Minnesota Rules of Civil Procedure 53, is discussed in chapter 14.

The report of the ALJ is not, with several exceptions,¹⁴ binding on the agency. The agency must arrive at its own decision and may not simply adopt the recommended decision of the ALJ. The agency final decision-making process is discussed in chapter 14.

4.7.6 Judicial Review

The various means of judicial review of contested case decisions are discussed in chapter 15. The most common is appeal to the court of appeals under Minnesota Statutes sections 14.63 to 14.69 (1998). In a judicial review, the court may affirm the decision of the agency or remand the case for further proceedings.¹⁵ The court may also reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, conclusions or decision are in violation of constitutional provisions; or in excess of the statutory authority or jurisdiction of the agency; or made upon unlawful procedure; or affected by other error of law; or unsupported by substantial evidence in view of the entire record submitted; or arbitrary or capricious.¹⁶

¹⁴ See, e.g., MINN. STAT. § 363A.29, subd. 1. (2014) (Minnesota Human Rights Act).

¹⁵ *Id.*, § 14.69 ().

¹⁶ *Id.*