

## 5.1 REASONABLE NOTICE REQUIRED

The Administrative Procedure Act (APA) specifically requires reasonable notice to be given to all parties before a contested case hearing.<sup>1</sup> In addition, constitutional due process requires that a party be afforded notice of the claims to be litigated, as well as an opportunity to present evidence on the issues to be determined.<sup>2</sup> A party is entitled to notice that will provide a reasonable opportunity to prepare for the hearing.<sup>3</sup> The governing due process standard is whether the notice was reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and an opportunity to present their objections.<sup>4</sup> A failure to advise a party of statutorily mandated rights may be a denial of due process.<sup>5</sup> However, the notice need not always repeat the statutory rights verbatim.<sup>6</sup> Individual state agency statutes or rules may set out notice requirements beyond those prescribed by the APA.<sup>7</sup>

It is the duty of the assigned Administrative Law Judge (ALJ) to "conduct only hearings for which proper notice has been given."<sup>8</sup> The failure of an agency to follow the statutory notice requirements may render the agency's action void.<sup>9</sup> Although the APA prescribes that certain information be included in the notice of the contested case given the parties, it requires no particular form for the notice. However, the rules of the Office of Administrative Hearings (OAH) require that the notice take the form of a notice of and order for hearing.<sup>10</sup> The OAH website contains recommended forms for initiating an APA hearing as well as forms for non-APA political subdivision administrative hearings.<sup>11</sup>

<sup>1</sup> MINN. STAT. § 14.58 (2014).

<sup>2</sup> *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 12 (1978); *Glen Paul Court Neighborhood Ass'n v. Paster*, 437 N.W.2d 52, 56 (Minn. 1989) (holding that administrative convenience does not outweigh right of property owners to statutorily mandated notice in zoning case); *State v. Duluth M. & I R. Ry.*, 246 Minn. 383, 400, 75 N.W.2d 398, 410 (1956); *In re Holasek*, 436 N.W.2d 483, 487 (Minn. Ct. App. 1989); *see also* BERNARD SCHWARTZ, *ADMINISTRATIVE LAW* § 6.4 (3d ed. 1991).

<sup>3</sup> *Anderson v. Moberg Rodlund Sheet Metal Co.*, 316 N.W.2d 286, 288 (Minn. 1982); *Le Clair v. Comm'r of Pub. Safety*, 416 N.W.2d 209, 211-12 (Minn. Ct. App. 1987).

<sup>4</sup> *Turner v. Comm'r of Revenue*, 840 N.W.2d 205, 209-10 (Minn. 2013); *In re Emmanuel Nursing Home*, 411 N.W.2d 511, 516-17 (Minn. Ct. App. 1987).

<sup>5</sup> *Cent. Care Ctr. v. Wynia*, 448 N.W.2d 880, 882-83 (Minn. Ct. App. 1989).

<sup>6</sup> *In re Discharge of Peterson*, 472 N.W.2d 687, 690 (Minn. Ct. App. 1991).

<sup>7</sup> *See, e.g.*, MINN. STAT. § 46.24, subd. 1 (2014) (permitting a minimum notice period of ten days for a hearing on a cease and desist order served on a state bank).

<sup>8</sup> *Id.* § 14.50(2).

<sup>9</sup> *Furniture Capital Truck Lines v. Mich. Pub. Serv. Comm'n*, 340 Mich. 173, 180, 65 N.W.2d 303, 308 (1954); *State ex rel. Canam Metals, Ltd. v. Dep't of Commerce*, 196 Minn. 222, 226, 264 N.W. 789, 791 (1936).

<sup>10</sup> MINN. R. 1400.5600 (2013).

<sup>11</sup> [www.mn.gov/oah](http://www.mn.gov/oah)