7.5 INFORMAL DISPOSITIONS, SETTLEMENT AGREEMENTS, CONSENT ORDERS, AND DEFAULTS

The APA permits the informal disposition of contested cases by arbitration, stipulation, agreed settlement, consent order, or default.[1] Some statutes preclude default adjudications by prohibiting agency action without a hearing, even if the person affected by the proposed action does not appear at the hearing and could otherwise be held in default.[2] Under such statutes, a hearing is required even though the matter is uncontested or the adverse party defaults, and the proponent must normally establish a prima facie showing of its entitlement to relief.

7.5.1 Settlement Agreements and Consent Orders

Under the contested case rules, a stipulation, agreed settlement, or consent order may be made at any point in the proceeding.[3] Unless formal approval procedures are required, when a consent order or other agreement resolves all the issues in a case, further proceedings are canceled, the case is removed from the judge's docket, and the official record is returned to the agency with a cover letter from the judge. As a general rule, the judge does not review and approve any agreements made or issue a report and recommendation regarding them. The same procedure is followed when a party withdraws its appeal or the agency unilaterally agrees to take the action sought by the adverse party.

When a consent order or settlement agreement is made, the parties may file a copy with the judge and request that further proceedings be canceled and that the official record be returned to the agency. However, in most cases, the parties are not required to file copies of these documents with the judge. Settlement agreements and consent orders are generally not required to be included in the official record under the APA or the contested case rules.[4] Under the rules, the only stipulations, consent orders, and agreements that must be included in the official record are those made before the convening of a contested case hearing.[5] If the hearing is never convened, these documents are not required to be made part of the official record. Since a hearing is seldom convened if the case has been settled, the contested case rule has limited applicability to the filing of stipulations, consent orders, and settlement agreements. It applies only to the orders and agreements that do not fully resolve the issues in a case or to those that are subject to the judge's approval or a hearing requirement.

1 MINN. STAT. § 14.59 (2014). Informal settlement is encouraged by the courts. Mankato Aglime & Rock Co. v. City of Mankato, 434 N.W.2d 490, 494 (Minn. Ct. App. 1989).

2 MINN. STAT. §§ 121A.47, subd. 1 (proceeding to expel public school student), 144A.11, subd. 3 (suspension or revocation of nursing home licenses), 148.629, subd. 1 (revocation of dietitian or nutritionist license) (2014). If a party stipulates to the facts, a hearing is not required. *See In re* Mostrom, 390 N.W.2d 893, 895 (Minn. Ct. App. 1986).

3 MINN. R. 1400.5900 (2013). A party may stipulate that a violation of the statute occurred and agree to leave the penalty to the agency's discretion. If the party disagrees with the penalty imposed, an appeal is permissible. *See Mostrom*, 390 N.W.2d at 895-96.

4 *Cf.* MINN. STAT. § 14.60, subd. 2 (2014); MINN. R. 1400.7400, subp. 1 (2013).

5 *Cf.* MINN. R. 1400.7800 C. (2013)(stating that any stipulations, settlement agreements, or consent orders entered into by any of the parties before the hearing must be entered into the record).

Most settlement agreements are reduced to writing and executed by the parties. However, when agreements are reached just before or during the hearing, the parties sometimes state the terms of their agreement on the record. If a transcript of the hearing is not made, however, the parties' oral agreement should be written down and executed at a later date. This is a necessary safeguard because most contested case proceedings are recorded and the tapes are eventually erased. When erasure occurs, no record of the verbal agreement will exist unless a transcript has been prepared or the agreement has been put in writing.

In some cases, settlement agreements must be filed with the OAH for the judge's review and approval. Before the judge approves the agreement, a hearing may be required so that interested persons other than the parties to the agreement will have an opportunity to voice their objections to it. Under the rules implementing the Minnesota Human Rights Act, class actions cannot be dismissed or compromised without the judge's approval,[6] and class members have a right to a hearing on their objections. Settlement agreements that must be approved by the judge are not binding until approval is obtained, and it has been held that the approval of settlement agreements under the Human Rights Act must not be pro forma.[7]

The Minnesota APA and the contested case rules do not expressly require that settlement agreements be approved by all the parties to a case before they are adopted by an agency, and in the absence of a requirement for unanimity, the approval of all parties is usually held to be unnecessary.[8] The rights of a party objecting to a settlement agreement do not include the right to a hearing if the objection only raises questions of law and policy. When law and policy is involved, the objector is limited to presenting argument.[9] Whenever an agency accepts a settlement agreement that lacks unanimous consent, it must address the objections raised by the objecting party[10] and make any findings required by applicable laws.[11]

7.5.2 Defaults

In the absence of a specific statute to the contrary, any contested case may be disposed of by default. Under the contested case rules, a default occurs when a party fails

[6] MINN. R. 5000.1100, subp. 5 (2013). The judge may issue orders embodying the terms of settlement agreements in other discrimination cases. *Id*. 5000.0800, subp. 3 .

[7] State v. St. Joseph's Hosp., 366 N.W.2d 403, 407 (Minn. Ct. App. 1985).

[8] Mobil Oil Corp. v. FPC, 417 U.S. 283, 312-14 (1974); Pa. Gas & Water Co. v. FPC, 463 F.2d 1242, 1250-51 (D.C. Cir. 1972); City of Lexington v. FPC, 295 F.2d 109, 120-22 (4th Cir. 1961); *cf.* Textile Workers Union v. NLRB, 294 F.2d 738, 739 (D.C. Cir. 1961). Some courts have held that an intervenor may continue to litigate a claim after the party who originated the action is dismissed. U.S. Steel Corp. v. EPA, 614 F.2d 843, 845 (3d Cir. 1979). However, a party who has no standing as an aggrieved person or as the real party in interest may not continue an action other parties have settled. *See* Minn. Educ. Ass'n v. Indep. Sch. Dist. No. 404, 287 N.W.2d 666, 668-70 (Minn. 1980).

[9] *See* Citizens for Allegan County v. FPC 414 F.2d 1125, 1128-29 (D.C. Cir. 1969).

[10] *See id*. at 1129; Textile Workers Union v. NLRB, 294 F.2d 738, 741 (D.C. Cir. 1961).

[11] Mobil Oil Corp. v. FPC, 417 U.S. 283, 313-14 (1974). However, where consent decrees are involved, it has been held that findings of fact and conclusions of law are not required. Ford Motor Co. v. FTC, 547 F.2d 954, 956 (6th Cir. 1976).

to appear at the hearing or fails to comply with any interlocutory order of the ALJ.[12] On default, the allegations of or the issues set out in the notice of and order for hearing or other pleading may be taken as true or deemed proved without further evidence. When a default occurs, the judge issues a recommended decision to the agency following the same procedures that are followed in a contested matter.

The power to default a party for its failure to comply with an interlocutory order of the judge is in addition to the sanctions that may be imposed for a party's refusal to comply with discovery orders. Under the contested case rules, the judge may foreclose a party from presenting evidence through witnesses whose statements or identities are not disclosed, may deem unanswered requests for admissions admitted, and may deem facts established or prohibit the introduction of evidence on specific issues when a party fails to comply with discovery order.[13] In addition, the judge may exercise the powers delegated by the procedural rules of specific agencies. For example, when a party is required to file an answer to an agency complaint and fails to do so, the allegations of the complaint are deemed admitted under one rule.[14]

It has been recognized that the power to order a party to perform an act in a quasi-judicial proceeding ordinarily implies an equal right to enforce the order with the imposition of sanctions.[15] It has also been held that the decision to impose sanctions rests within the reasonable discretion of the ALJ.[16] However, a party should not be defaulted for its failure to comply with an order unless it contains a date by which compliance is required and a warning of the potential sanctions for noncompliance.[17] Moreover, the imposition of sanctions should be used sparingly when a party is not represented by counsel and misunderstands its obligations.[18]

The power to default a party for its failure to comply with an ALJ's order is substantially equivalent to the district court's power to dismiss an action for noncompliance with its orders under rule 41.02.[19] Like dismissal, the defaulting of a party for noncompliance with an order is a drastic form of relief and is inconsistent with the primary objective of the law to dispose of cases on the merits.[20] Consequently, the contested case rule should be exercised only in exceptional cases and should be applied consistently with the approved application of the civil rule.[21]

12 MINN. R. 1400.6000 (2013).

13 MINN. R. 1400.6700, subp. 1, 3, 1400.6800 (2013); *see also* Caucus Distribs. Inc. v. Comm'r of Commerce, 422 N.W.2d 264, 268-69 (Minn. Ct. App. 1988) (upholding sanctions imposed for the failure to comply with discovery order).

14 MINN. R. 5000.1200 (discrimination complaint) 2013.

15 Hoenig v. Mason & Hanger, Inc., 162 N.W.2d 188, 193 (Iowa 1968).

16 *See* First Nat'l Bank v. Dep't of Commerce, 310 Minn. 127, 135, 245 N.W.2d 861, 866 (1976) (refusal to permit testimony by undisclosed witness).

17 Jadwin v. City of Dayton, 379 N.W.2d 194, 196-97 (Minn. Ct. App. 1985).

18 *Cf.* Helwig v. Olson, 376 N.W.2d 763, 766 (Minn. Ct. App. 1985).

19 MINN. R. CIV. P. 41.02.

20 *Jadwin*, 379 N.W.2d at 196. .

21 *See, e.g.,* Zuleski v. Pipella, 309 Minn. 585, 586-87, 245 N.W.2d 586, 586-87 (1976).