Chapter 4. Introduction to Contested Cases and the Office of Administrative Hearings

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4.1 Definition of Contested Case

Minnesota's Administrative Procedure Act (APA) defines a contested case as "a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."[1] This definition includes a wide variety of matters, best illustrated by a few examples. Contested cases are used to set electric and gas rates, determine whether a securities broker should have a license revoked, decide the route of a power line, judge the validity of fines assessed against care facilities, grant or deny variances from environmental protection rules, set utility rates, determine the propriety of occupational safety and health citations and fines, decide whether to issue a certificate of need for a new power plant, hear alleged violations of Minnesota's human rights law, determine the necessity for environmental impact statements, decide if a physician should be disciplined for violating a rule or a statute, consider whether a new bank or savings and loan association should be chartered, decide whether to revoke or suspend a real estate agent's license, consider the revocation of day care or foster care licenses, determine whether reparations should be awarded to crime victims, and to determine a number of other matters involving challenges to proposed government action.

In the simplest terms, the purpose of a contested case is to provide a hearing to an individual or group of individuals who have been directly impacted in some way by proposed governmental action. Since the purpose of a contested case is to determine the rights of specific persons or entities, contested cases tend to take on the characteristics of judicial proceedings in terms of procedure and formality. In contrast, rulemaking proceedings, which establish standards or rules of conduct applicable to society generally, are more loosely and informally structured and are similar to legislative hearings on proposed bills.

As the definition emphasizes, contested case hearings are appropriate when the rights of specific parties are involved. Administrative action that affects a large number of people is more commonly accomplished through a rulemaking proceeding. However, an agency may choose, in the course of a contested case proceeding, to establish a standard or principle of general application.[2]

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[1] Minn. Stat. § 14.02, subd. 3 (2022).

[2] *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *see also Bunge Corp. v. Comm. of Revenue*, 305 N.W.2d 779, 785 (Minn. 1981); § 16.6.

4.2 Right to a Hearing Arising from Statute or Rule

The APA does not, in and of itself, create a substantive right to a contested case hearing.[3] Many substantive statutes under which state agencies operate specifically create the right to a contested case hearing under the APA.[4] The right to a contested case hearing may also be created by a state agency rule.[5] Where a right to a hearing is created by statute or rule but without specific reference to chapter 14, the statute or rule is usually interpreted to require a contested case pursuant to the APA.[6] The right to a hearing may also be implied, even though it is not specifically stated in an agency's statute. The Minnesota Supreme Court has held that a right to a contested case hearing was implied by an examination of the purpose of an environmental act.[7] The court noted that chapter 14 hearings were granted in other sections of the act and that there was a strong public demand for a review of the environmental questions involved.[8]

Even where a statute or rule specifically creates a right to a contested case hearing, there may be limitations on that right. For example, the Minnesota Supreme Court has held that where a statute only required a contested case hearing when a "significant issue" was unresolved and the petitioner failed to contest the issue or request a contested case hearing, no contested case hearing was required.[9] Likewise, the Minnesota Court of Appeals determined that challengers to a permit issued by the Minnesota Pollution Control Agency were not entitled to a contested case hearing where they failed to raise material fact issues that would aid the agency in its decision.[10] The court held that the burden of demonstrating the existence

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[3] *In re People's Coop. Power Ass'n*, 447 N.W.2d 11, 13 (Minn. Ct. App. 1989) (stating that the APA does not itself provide a right to a contested case hearing but establishes procedures to be followed when another statute provides the right); *Mankato Aglime & Rock Co., v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989) (stating that the APA itself does not provide a right to a contested case hearing); *Voettiner v. Comm'r of Educ.*, 376 N.W.2d 444, 448 (Minn. Ct. App. 1985) (stating that certain sections of the APA relating to procedure to be followed in contested case hearings do not themselves provide a right to a contested case hearing).

[4] *See In the Matter of Hibbing Taconite Mine and Stockpile Progression and Williams Creek Project Specific Wetland Mitigation*, OAH 11-2004-31655, 2014 WL 7337953, at *7-8 (OAH Dec. 15, 2014) (finding right to contested case under Mineland Reclamation Act, Minn. Stat. § 93.50, in that the statute referenced appeal rights under chapter 14).

[5] *See In re N. States Power Co.*, 676 N.W.2d 326, 336 (Minn. Ct. App. 2004).

[6] *Minn. Pub. Interest Research Group v. Minn. Envtl. Quality Council*, 306 Minn. 370, 380-81, 237 N.W.2d 375, 381-82 (1975) (concluding that a contested case hearing is implied by purpose of statute requiring environmental impact statement); *cf. N. States Power*, 676 N.W.2d at 332-35 (stating that utilities-regulation statutes do not imply such a right to a hearing).

[7] *Minn. Pub. Interest Research Group*, 306 Minn. at 376, 237 N.W.2d at 379. *But see Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 660 N.W.2d 427, 434-35 (Minn. Ct. App. 2003) (interpreting the federal Clean Water Act's public hearing requirement to require public notice and comment on each city's plan for discharge of storm water rather than just one hearing on a general permit covering all cities); *M.T. Props., Inc. v. Alexander*, 433 N.W.2d 886, 891 (Minn. Ct. App. 1988) (concluding that a hearing requirement was not implied by environmental protection measures in pipeline construction statute).

[8] *Minnesota Pub. Interest Research Group*, 306 Minn. at 378-80, 237 N.W.2d at 380-81.

[9] *Henry v. Minn. Pub. Utils. Comm'n.*, 392 N.W.2d 209, 214-15 (Minn. 1986).

[10] *In re NSP Red Wing Ash Disposal Facility*, 421 N.W.2d 398, 404 (Minn. Ct. App. 1988).

of material facts is on the petitioners.[11] In addition, applicable statutes of limitation can cut off a complainant's right to a contested case hearing.[12]

In *In re Hibbing Taconite Co.,*[13] the Minnesota Court of Appeals found that the Pollution Control Agency's denial of a contested case hearing was error where it was established that specific facts needed to be developed concerning potential long-term pollution problems and the financial viability of a party. Similarly, where a cooperative electric power association raised issues of material fact regarding potential duplication of services and safety hazards with a city's municipal electric utility, the Minnesota Court of Appeals held that a contested case hearing was necessary to resolve these concerns.[14]

Even where there is no statutory rule or constitutional right to a hearing, an agency may choose to provide a hearing. The respondent does not acquire the right to judicial review under the APA simply because a "gratuitous hearing" was granted.[15] The right to a contested case hearing may also arise by contractual means, such as a collective bargaining agreement, or via a federal court order.

4.3 Right to a Hearing Arising from Due Process

If a party is adversely affected by agency action and there is no statutory authorization for a hearing, no agency rule allowing for a hearing, and no contractual agreement requiring a hearing, then that party must depend on constitutional due process as the basis for a hearing.[16] Where due process is relied on, the burden of proving a constitutionally protected interest rests with the petitioner.[17] The extent of what due process is required, if the party is granted a hearing, will depend on the nature of the interest in question[18] and the party asserting the

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[11] *Id*.

[12] *See Tharalson v. Hennepin Parks*, 551 N.W.2d 510, 512-13 (Minn. Ct. App. 1996) (concluding that a six year statute of limitations applied to bar veterans' claims for enforcement of Veterans Preference Act rights to hearing on merits of discharge).

[13] 431 N.W.2d 885, 891-92 (Minn. Ct. App. 1988).

[14] *In* re *People's Coop. Power Ass'n*, 447 N.W.2d 11, 13 (Minn. Ct. App. 1989)(); see also In re *City of Owatonna's NPDES/SDS Proposed Permit Reissuance for Discharge of Treated Wastewater*, 672 N.W.2d 921, 928-30 (Minn. Ct. App. 2004) (concluding that expert disagreement on effect of phosphorus discharge of wastewater treatment plants created a material issue of fact); In re *Winona Cnty. Mun. Solid Waste Incinerator*, 442 N.W.2d 344, 349 (Minn. Ct. App. 1989) concluding that a contested case hearing was required where specific issues of material fact regarding feasible alternatives to incinerator were raised), rev'd on other grounds sub nom. *City of Winona v. Minn. Pollution Control Agency*, 449 N.W.2d 441 (Minn. 1990). *But see In re Northern States Power*, 676 N.W.2d 326, 336 (Minn. Ct. App. 2004) (concluding that there were no contested material facts, which are required by PUC rule before a hearing is mandated).

[15] *Setty v. Minn. State Coll. Bd.*, 305 Minn. 495, 497, 235 N.W.2d 594, 595-96 (1975).

[16] *State ex rel. Indep. Sch. Dist. No. 276 v. Dep't of Educ.*, 256 N.W.2d 619, 624 (Minn. 1977); *Setty v. Minn. State Coll. Bd.*, 305 Minn. 495, 498, 235 N.W.2d 594, 596 (1975); *Jones v. Minn. State Bd. of Health*, 301 Minn. 481, 483-84, 221 N.W.2d 132, 134-35 (1974); *Indep. Sch. Dist. No. 581 v. Mattheis*, 275 Minn. 383, 386, 147 N.W.2d 374, 376 (1966) .

[17] *Setty,* 305 Minn. at 498, 235 N.W.2d at 596.

[18] *West v. Chafee*, 560 F.2d 942, 947 (8th Cir. 1977); *see* § 4.4 in this chapter.

right.[19] In general, the need for a hearing will depend on the due process guarantee that the state must ensure that all individuals are treated with fundamental fairness.[20]

A party must have more than an expectation or abstract need or interest in the matter in order to be entitled to a hearing. Constitutionally protected rights must be concrete and identifiable.[21] If a claim for a hearing is based on an abstract interest, then no hearing is required.[22] Simply because a party has an expectation or desire for a particular agency action does not ensure that the party has a right to a contested case hearing.[23] Describing a party's legal interest as a "privilege" rather than a "right" does not resolve the due process question; the right versus privilege distinction has been long abandoned in both Minnesota and federal courts.[24] With the demise of the right-privilege distinction, claimants only need to show sufficient entitlement to government benefits or grants before invoking due process protections.[25]

A due process argument may be raised when official action causes a denial of life, liberty, or property.[26] A threat to life rarely occurs; therefore, the most significant questions relate to determining what property or liberty interests are protected. The Minnesota Supreme Court has said if a person is "to have a due process right to a hearing, [that person] must have a liberty or property interest at stake."[27] A variety of interests have been found to qualify as sufficient liberty or property interests to be protected by the Constitution's due process language. Ordinarily, they are not created by the Constitution itself but are created or defined by state statute, administrative rule, or another independent source that establishes entitlement to certain benefits.[28] The range of interests protected by procedural due process is

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[19] *State ex rel. Indep. Sch. Dist. No. 276,* 256 N.W.2d at 624 (stating that governmental entities cannot demand formal hearings based on constitutional due process).

[20] *See Patagonia Corp. v. Bd. of Governors*, 517 F.2d 803, 816-17 (9th Cir. 1975); *American Airlines, Inc. v. CAB*, 359 F.2d 624, 632-33 (D.C. Cir. 1966).

[21] *Bd. of Regents v. Roth*, 408 U.S. 564, 576-77 (1972).

[22] *Id.* at 578.

[23] *Cable Comm. Bd. v. Nor-West Cable Comms. P'ship*, 356 N.W.2d 658, 666 (Minn. 1984); *see also Obara v. Minn. Dep't of Health*, 758 N.W.2d 873, 877-79 (Minn. Ct. App. 2008) (concluding that due process did not require an evidentiary hearing to determine whether appellant had committed criminal offenses disqualifying him from working in a state licensed program when he had been convicted of the offenses in a criminal trial); *In re Implementation of Util. Energy Conservation Improvement Programs*, 368 N.W.2d 308, 312-13 (Minn. Ct. App. 1985) (concluding that utility customers do not have a property interest in existing rates and therefore have no constitutional right to a hearing).

[24] *Hall v. Univ. of Minn.*, 530 F. Supp. 104, 107 (D. Minn. 1982); *see also Goldberg v. Kelly*, 397 U.S. 254, 261–63 (1970).

[25] *Goldberg,* 397 U.S. at 262-63.

[26] *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985).

[27] *Cable Commns. Bd.*, 356 N.W.2d at 666 ; *see also Smith v. City of Owatonna*, 439 N.W.2d 36, 40-41 (Minn. Ct. App. 1989) (concluding that the city was not required to provide property owners a pre-deprivation hearing on upgrading of gas mains), *aff'd*, 450 N.W.2d 309 (Minn. 1990); *M.T. Properties, Inc. v. Alexander*, 433 N.W.2d 886, 891 (Minn. Ct. App. 1988) (concluding that due process does not require a hearing on relocation of pipeline a distance under 3/4 mile).

[28] *Roth*, 408 U.S. at 577; *Hall,* 530 F. Supp. at 107; *see also Smith v. Hennepin Cnty.*, 383 N.W.2d 391, 393 (Minn. Ct. App. 1986) (stating that whether an employee has a legitimate claim of entitlement to his job is "determined by state law and the employee's employment contract").

not infinite, and interests must be grounded in state or federal law in order to rely upon such constitutional protection.[29] Termination of welfare benefits,[30] revocation of a driver's license,[31] parole,[32] and probation[33] have all qualified as protected interests.

According to the Minnesota Court of Appeals, residents of the Minnesota Veterans Home have a constitutional right to a contested case hearing on discharge or transfer, since they have a statutory entitlement to reside in the home and since discharge involves a state action that adjudicates important rights.[34] In addition, dismissal of a college professor,[35] suspension from public school for misconduct,[36] termination of social security disability payments,[37] and loss of a prisoner's "good time" credits[38] have also been determined to be within the protected interests that require a hearing. Additionally, registered nurses who were disqualified from direct care positions by the Commissioner of Human Services on the grounds that they failed to report maltreatment were found to be entitled to a hearing with the opportunity to present oral testimony, cross-examine, and subpoena witnesses.[39] The Minnesota Court of Appeals determined that the employees clearly had a property interest in their employment and that their good names and reputations were at stake.[40] The court also decided that a statute making the Commissioner's maltreatment decision conclusive in other proceedings was unconstitutional.[41]

To the contrary, the following have been found insufficient to justify a hearing: decision to not rehire an untenured professor after his one year contract has expired,[42] suspension with pay and reassignment of a probationary teacher pending the outcome of a grievance procedure,[43] placement of a teacher on medical leave,[44] loss of employment as a police

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[29] *Roth*, 408 U.S. at 576.
[30] *Goldberg v. Kelly*, 397 U.S. 254, 261-62 (1970).
[31] *Bell v. Burson*, 402 U.S. 535, 539 (1971).
[32] *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
[33] *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).
[34] *L.K. v. Gregg*, 380 N.W.2d 145, 151-52 (Minn. Ct. App. 1986).
[35] *Perry v. Sinderman*, 408 U.S. 593, 599-603 (1972).
[36] *Goss v. Lopez*, 419 U.S. 565, 573-76 (1975).
[37] *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).
[38] *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).
[39] *Fosselman v. Comm'r of Human Servs.*, 612 N.W.2d 456, 461-65 (Minn. Ct. App. 2000).
[40] *Id*. at 461.
[41] *Id*. at 464.
[42] *Roth*, 408 at 565.
[43] *Johnson v. Indep. Sch. Dist. No. 281*, 494 N.W.2d 270, 273-74 (Minn. 1992).
[44] *Palmer v. Indep. Sch. Dist. No. 917*, 547 N.W.2d 899, 904 (Minn. Ct. App. 1996).

officer,[45] loss of reputation because of the circulation of an arrest record,[46] transfer of a prisoner to a less favorable prison,[47] and dismissal of a medical student.[48]

In general, a property interest sufficient to support a constitutional claim to a hearing goes beyond simple ownership of property such as land, chattel, or money and includes such things as specific benefits or licenses.[49] For example, a commercial fishing license is a protected property interest.[50] A student's interest in attending a college or university was found to be a property right protected by due process.[51] A state civil service classified position[52] and the opportunity to participate in intercollegiate athletics[53] are property interests sufficient to be protected by due process. The holder of a used car dealer's license has a property interest in the license that may not be revoked without a due process hearing.[54] An individual licensed to provide Truth-in-Sale-of-Housing evaluations has a property right protected by due process.[55] However, an expectation of approval to teach a vocational school course is not a property right sufficient to require a contested case hearing.[56] And the holder of a non-exclusive cable communications franchise was not entitled to a contested case hearing on due process grounds when a city awarded a second cable franchise.[57]

A liberty interest has been defined as something more than the simple freedom from bodily restraint. It includes the right to contract, to engage in the common occupations of life, to marry or raise a family, to worship freely, to preserve one's personal reputation, and to enjoy those privileges essential to the pursuit of happiness.[58] Liberty interests may include such things as damage to one's good name, reputation, honor, or integrity.[59] Deprivation of such an interest requires that one be allowed the opportunity to respond to the adverse action because of the potential for damage to one's standing in the community.[60] It is often difficult to determine

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[45] *Bishop v. Wood*, 426 U.S. 341, 343-47 (1976); *see also Smith v. Hennepin Cnty.*, 383 N.W.2d 391, 393 (Minn. Ct. App. 1986) (concluding that a probationary deputy sheriff had no constitutional right to a hearing on dismissal).

[46] *Paul v. Davis*, 424 U.S. 693, 712 (1976).

[47] *Meachum v. Fano*, 427 U.S. 215, 224-25 (1976).

[48] *Bd. of Curators v. Horowitz*, 435 U.S. 78, 84-91 (1978); *see also Ross v. Univ. of Minn.*, 439 N.W.2d 28, 34 (Minn. Ct. App. 1989) (concluding that university was not required to provide hearing to medical resident upon academic dismissal from school).

[49] *Roth*, 408 U.S. at 571-72; Hall, 530 F. Supp. at 107-08. For example, a commercial fishing license is a protected property interest. *Meins v. Comm'r of Natural Res.*, 755 N.W.2d 329, 337 (Minn. Ct. App. 2008).

[50] *Meins v. Comm'r of Natural Res.*, 755 N.W.2d 329, 337 (Minn. Ct. App. 2008).

[51] *Hall,* 530 F. Supp. at 107; *Abbariao v. Hamline Univ. Sch. of Law*, 258 N.W.2d 108, 112 (Minn. 1977).

[52] *Nyhus v. Civil Servs. Bd.*, 305 Minn. 184, 232 N.W.2d 779, 782 (1975); *see also Martin v. Itasca Cnty.*, 448 N.W.2d 368, 370 (Minn. 1989) (concluding that required temporary leave of absence from county civil service position constituted sufficient property loss to invoke due process protection).

[53] *Regents of Univ. of Minn. v. Nat'l Collegiate Athletic Ass'n*, 422 F. Supp. 1158, 1161 (D. Minn. 1976), *rev'd on other grounds,* 560 F.2d 352 (8th Cir. 1977), *cert. dismissed,* 434 U.S 978 (1977); *Behagan v. Intercollegiate Conf. of Faculty Representatives*, 346 F. Supp. 602, 604 (D. Minn. 1972).

[54] *Bird v. State Dep't of Pub. Safety*, 375 N.W.2d 36, 43 (Minn. Ct. App. 1985).

[55] *Staeheli v. City of Saint Paul*, 732 N.W.2d 298, 304 (Minn. Ct. App. 2007).

[56] *Voettiner v. Comm'r of Educ.*, 376 N.W.2d 444, 448 (Minn. Ct. App. 1985).

[57] *In re Dakota Telecomm. Group*, 590 N.W.2d 644, 648-49 (Minn. Ct. App. 1999).

[58] *Roth*, 408 U.S. at 572-73.

[59] *Goss v. Lopez*, 419 U.S. 565, 574 (1975).

[60] *Roth*, 408 U.S. at 573.

whether a sufficient liberty interest is at stake to require specific due process protections. When corporal punishment or bodily restraint is involved, or when the state's actions stigmatize an individual, due process protections are required.[61]

Due process protections are triggered when there is a significant injury to a property or liberty interest, and not simply because a serious loss has been caused by specific government action.[62] If the injured interest is minimal or trivial, a due process hearing may not be necessary or appropriate. In the opinion of some courts, some claims do not "rise to the dignity of a protectable constitutional right."[63] For example, a high school student whose history grade was reduced to zero for plagiarism was not entitled to a full evidentiary hearing before an impartial hearing officer as a matter of due process because a hearing before the superintendent, followed by written findings by the school board, was sufficient.[64]

4.4 Process Due under the Constitution

The Constitution not only prescribes a hearing in certain situations, it may also prescribe how that hearing is to be conducted. Once it has been determined that a constitutionally protected property or liberty interest exists, "the question remains what process is due."[65] The kind of hearing available to a person aggrieved by agency action, the form of the hearing, and the time within which the aggrieved party must be given a hearing are several questions that flow directly from the inquiry regarding what process is due. The fundamental requirement for due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."[66]

The extent of due process that must be provided if a hearing is required will depend on the nature of the interest in question and the party asserting the right. The kind of hearing required may depend on whether the issue in question deals with adjudicative or legislative facts. “Adjudicative facts generally are the type of facts decided by juries. Facts about the parties, their activities, properties, motives, and intent, the facts that give rise to the controversy, are adjudicative facts.”[67] In contrast, legislative facts are not particular to parties

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[61] *Ingraham v. Wright*, 430 U.S. 651, 673-74 (1977).

[62] *1 Meachum v. Fano*, 427 U.S. 215, 224 (1976).

[63] *Moore v. Valder*, 65 F.3d 189, 195 (D.C. Cir. 1995) *citing Sami v. United States*, 617 F.2d 755, 773 (D.C. Cir. 1979); *Zeller v. Donegal Sch. Dist. Bd. of Educ.*, 517 F.2d 600, 606 (3d Cir. 1975).

[64] *Zellman v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220-22 (Minn. Ct. App. 1999).

[65] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see* 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 9.4 - 9.5 (3d ed. 1994); *see, e.g.*, *Sweet v. Comm’r*, 702 N.W.2d 314, 320-22 (Minn. Ct. App. 2005) (concluding that appellant had a property interest in employment as a counselor in the public sector, but agency decision to disqualify appellant from working in a state-licensed program due to his criminal record did not require evidentiary hearing; because appellant’s conviction was not contested, the court saw no value to an evidentiary hearing and found opportunity for written submission to contest the disqualification was sufficient).

[66] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted).

[67] *In re Guardianship of Doyle*, 778 N.W.2d 342, 348 (Minn. Ct. App. 2010) (quoting Minn. R. Evid. 201 1989 comm. cmt.; citing Kenneth C. Davis, *An Approach to Problems of Evidence in the Administrative Process,* 55 Harv. L. Rev. 364, 402 (1942) (defining adjudicative facts as “facts concerning immediate parties—what the parties did, what the circumstances were, what the background conditions were”)).

but are generalized facts that apply broadly and may be used as a basis for establishing general rules of law.[68] If the facts to be determined are adjudicative in nature, due process may require a hearing with features of a judicial trial. Legislative facts need not be determined by an adjudicative or trial-type hearing but, rather, may be determined in an informal legislative type hearing.[69]

Two cases that demonstrate the distinction between adjudicative and legislative facts are *Londoner v. Denver*[70] and *Bi-Metallic Investment Co. v. State Board of Equalization.*[71] In *Londoner,* the plaintiffs were given additional opportunity to argue their cases because the particular facts regarding the tax assessments against their land were individualized and not general in nature.[72] To the contrary, in *Bi-Metallic* the court concluded that no additional due process was necessary for the plaintiff because the state action of increasing the valuation of real property was legislative in nature and applied equally to all similar property owners.[73]

The exact nature of the required hearing in terms of formality will vary depending on the specific situation.[74] Due process is flexible in regard to the formality of the proposed hearing. In order to determine what formality is required, it is necessary to balance the governmental interest in a summary action against the individual's interest in a meaningful hearing before adverse action can be taken.[75] Federal courts have generally followed the standard set forth in *Mathews v. Eldridge*, [76] which determined that the following factors must be considered when deciding whether due process has been satisfied: (1) the private interests affected; (2) the risk of an erroneous deprivation of such interests through the process and procedures used and the value of additional process or procedural safeguards; and (3) the government's interests involved, including appropriate fiscal and administrative burdens. Some of the variables that courts consider when analyzing how much process is due are whether the agency action affects legal rights, whether the proceeding is adjudicative in nature, and whether the injured party is entitled to subsequent adjudicative procedures that will accord traditional safeguards.[77]

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[68] *See U.S. v. Gould*, 536 F.2d 216, 220 (8th Cir.1976) ("[l]egislative facts are established truths, facts or pronouncements that do not change from case to case but apply universally ...").

[69] *Am. Bancorporation, Inc. v. Bd. of Governors*, 509 F.2d 29, 36-37 (8th Cir. 1974) (noting that a formal hearing is not required to resolve legislative facts related to questions of broad applicability as opposed to adjudicative facts about the parties and their activities.)

[70] 210 U.S. 373 (1908).

[71] 239 U.S. 441 (1915).

[72] *Londoner*, 210 U.S. at 386.

[73] *Bi-Metallic*, 239 U.S. at 445-46.

[74] *See Am. Airlines v. CAB*, 359 F.2d 624, 629 (D.C. Cir. 1966).

[75] *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Hall*, 530 F. Supp. at 108; *see also Martin v. Itasca Cnty.*, 448 N.W.2d 368, 371-72 (Minn. 1989) (stating that review of written documents by county board is sufficient procedure prior to imposing temporary leave of absence to run for elective office; notice and hearing not required).; *Henry v. Minnesota Pub. Utils. Comm'n.*, 392 N.W.2d 209, 215 (Minn. 1986) (concluding that summary procedure for rehearing on one issue did not violate constitutional due process).

[76] 424 U.S. 319, 321 (1976); *see also United States v. Raddatz*, 447 U.S. 667, 677 (1980)

[77] *Equal Emp't Opportunity Comm'n v. Johnson Co.*, 421 F. Supp. 652, 657 (D. Minn. 1975).

The leading case of *Goldberg v. Kelly,*[78] in addition to establishing the concept of "entitlement," demonstrates how the balancing test functions when it is applied to a specific set of circumstances. The *Goldberg* court required a pre-termination hearing for a recipient of public welfare benefits because the payments were the recipient's only means of support. As such, any termination of benefits placed the recipient in a desperate economic situation which, when weighed against the government's interest of avoiding unnecessary payments, justified extensive procedural protections for the recipient.[79]

In *Goldberg,* the basic essentials for due process in the pre-termination hearing were held to include:

1. timely and adequate notice detailing the reasons for the proposed action;
2. an opportunity to defend by confronting and cross-examining any adverse witnesses relied on by the agency;
3. an opportunity to present one's own arguments and evidence orally (as opposed to written submissions);
4. assistance of retained counsel if the recipient so desires;
5. a decision that is based on legal rules and on evidence produced at the hearing;
6. a decision stating the evidence relied on and the reasons for the determination; and
7. an impartial decision maker.[80]

Similar but not identical standards have been applied to cases relating to revocation of parole,[81] revocation of probation,[82] and expulsion from college.[83] These standards were not applied when students were suspended from high school,[84] a short order cook at a military installation was terminated for an undisclosed security violation,[85] or when a public utility attempted to terminate certain utility services.[86] A pre-termination hearing has been held not to be required for a recipient of social security disability payments.[87] Likewise, the Minnesota Court of Appeals has held that, while nursing homes have a protectable interest in not having their medical assistance payments reduced, a pre-reduction hearing is not required.[88]

Public employees with a constitutionally protected property interest in that employment are entitled to pre-termination hearings consisting of notice and an opportunity to

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[78] 397 U.S. 254 (1970).

[79] *Id*. at 262-266.

[80] *Id*. at 267-71.

[81] *Morrissey,* 408 U.S. at 484-89.

[82] *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82, 791 (1973).

[83] *Dixon v. Ala. State Bd. of Educ.*, 294 F.2d 150, 158-59 (5th Cir. 1961).

[84] *Goss v. Lopez*, 419 U.S. 565, 581-84 (1975).

[85] *Cafeteria & Restaurant Workers Union v. McElroy*, 284 F.2d 173, 182 (D.C. Cir. 1960), *aff'd* 367 U.S. 886.

[86] *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 16-21 (1978).

[87] *Mathews v. Eldridge*, 424 U.S. 319, 339-43 (1976).

[88] *In re Good Neighbor Care Ctrs., Inc. v. Minn. Dept. of Human Servs.*, 428 N.W.2d 397, 405 (Minn. Ct. App. 1988).

respond.[89] A full evidentiary hearing is usually not necessary if a more complete hearing is available to the employee after the termination.[90] Rather, the pre-termination hearing "should be an initial check against mistaken decisions."[91] Notice providing an opportunity to respond may be either written or oral.[92]

Informal meetings with supervisors, in which unacceptable performance is discussed, have been found to satisfy due process requirements.[93] In *Conlin v. City of St. Paul,*[94] the Minnesota Court of Appeals held that an employee was afforded due process when his employer sent a letter informing him that he would be terminated in a week and that he could meet with his supervisor to discuss the matter during the intervening week. A different result was reached in *Winegar v. Des Moines Independent Community School District*[95], the court held that the school district violated the due process rights of a tenured high school teacher accused of child abuse where the district refused to provide the teacher with an opportunity for an oral evidentiary hearing either before or after suspending him for four days and transferring him to another school. The school district had conducted two investigations, involving numerous interviews of witnesses, several meetings with the teacher in which he was allowed to present his version of the incident, and review of the teacher's written submissions. Despite this, the court concluded that a school board must provide an oral evidentiary hearing when it suspends a teacher on the basis of a finding of misconduct that can injure the teacher's reputation.[96]

In addition to the balancing test mentioned in *Mathews v. Eldridge,*[97] courts will consider the interests of society, such as the rehabilitation of prisoners and the importance of education, when determining the sufficiency of due process provided in a given procedure. Likewise, courts will consider the costs and benefits of requiring due process protections. The accuracy of the decision and the fairness of the process are balanced in some cases against the cost in time, effort, and impact on the program or agency. In some situations, especially when public health and safety are concerned, the need for a hearing before agency action will be waived and summary action by the agency will be allowed as long as a form of compensation may be made for injury that might occur from the agency action.[98]

In support of and in addition to these constitutional parameters, the rules of the Minnesota Office of Administrative Hearings provide for considerable procedural protections for parties in contested cases. Those rules are discussed in subsequent chapters.

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[89] *Cleveland Bd. of Educ. v. Loudermill* 470 U.S. 532, 542 (1985).

[90] *Id*. at 545.

[91] *Id*.

[92] *Id*. at 546.

[93] *Riggins v. Bd. of Regents*, 790 F.2d 707, 710-11 (8th Cir. 1986).

[94] 418 N.W.2d 741, 744-45 (Minn. Ct. App. 1988).; s*ee also Pelerin v. Carlton Cnty.*, 498 N.W.2d 33, 37 (Minn. Ct. App. 1993).

[95] 20 F.3d 895, 899-902 (8th Cir. 1994).

[96] *Id*.

[97] 424 U.S. 319, 335 (1976).

[98] *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 599-600 (1950); *N. Am. Cold Storage Co. v. City of Chicago*, 211 U.S. 306, 315-16 (1908); *Reutzel v. State Dep't of Highways*, 290 Minn. 88, 102-03, 186 N.W.2d 521, 529 (1971).

4.5 The Office of Administrative Hearings and the Administrative Law Judge (ALJ)

All hearings of state agencies required to be conducted under the APA must be conducted by an administrative law judge (ALJ) assigned by the Chief ALJ of the state Office of Administrative Hearings (OAH).[99] The OAH is under the direction of a Chief ALJ who must be learned in the law.[100] The Chief ALJ is appointed by the governor, subject to Senate confirmation, and serves a six-year term.[101] OAH's full-time ALJs serve in the classified service of the state and are removable only for cause.[102] The office at times contracts with private attorneys who are available to serve as contract ALJs on a part-time basis.[103] The APA requires that all ALJs be learned in the law, have a demonstrated knowledge of administrative procedures and be free of any political or economic association that would impair their ability to function officially in a fair and objective manner.[104]

Like other state employees, ALJs are subject to a code of ethics applicable to employees in the executive branch of state government.[105] The executive branch code deals with such topics as acceptance of gifts or favors and conflicts of interest.[106] All administrative law judges and workers compensation judges employed by the OAH are also subject to the Code of Judicial Conduct.[107] The Chief Administrative Law Judge is statutorily directed to apply the provisions of the Code of Judicial Conduct to OAH judges consistent with interpretations of the Board of Judicial Standards.[108] The Chief ALJ is made subject to the Board of Judicial Standards directly.[109]

An ALJ must not communicate directly or indirectly, in connection with any issue of fact or law, with any person or party concerning a pending case except on notice and with opportunity for all parties to participate.[110] Although the rule prohibits improper ex parte communications, it specifically does not apply to purely procedural matters.[111] It requires that all communications made to the ALJ that are intended to influence a decision be made known to all parties. Improper ex parte contact with a fact-finder concerning the merits of a case may also be a violation of due process given that the essence of procedural due process is notice

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[99] Minn. Stat. § 14.50 (2022). Under this same authority, the Chief ALJ also appoints workers' compensation judges.

[100] Minn. Stat. § 14.48, subd. 2 (2022).

[101] *Id.*

[102] *Id.*, subd. 3.

[103] Minn. Stat. § 14.49 (2022).

[104] Minn. Stat. § 14.48, subd. 3(b) (2022).

[105] Minn. Stat. § 43A.38 (2022).

[106] *Id.*

[107] Minn. Stat. § 14.48, subd. 3 (2022).

[108] *Id.*

[109] *Id.*, subd. 2.

[110] Minn. R. 1400.7700 (2023).

[111] *Id.*

and the opportunity to be heard.[112] Not all ex parte contacts violate due process.[113] It has been held that any notion of due process that would place an absolute prohibition on ex parte contacts would be in error.[114] When an improper ex parte contact occurs, the reviewing court will consider whether or not the contact was prejudicial to any party.[115]

The United States Supreme Court has observed that the role of the modern federal ALJ is functionally comparable to that of a judicial branch judge.[116] Accordingly, the Court has granted absolute immunity from damages liability for the judicial acts of ALJs and has stated that those who complain of error in agency proceedings must seek agency or judicial review.[117] The immunity applies only when the ALJ is acting as an impartial arbiter of a case in controversy over which he or she has jurisdiction,[118] and may not apply to acts involving office administrative duties.[119] Generally, the privilege of immunity for damages liability extends to hearings before a tribunal with quasi-judicial powers;[120] in Minnesota it does not extend to immunity from injunctive relief.[121] Other jurisdictions have specifically held that state agency decision-makers and administrative hearing officers who act in a quasi-judicial capacity also have absolute immunity for their discretionary acts when they are acting within their jurisdiction.[122]

The permissible jurisdiction of administrative law judges was the subject of a decision of the Minnesota Supreme Court in *Holmberg v. Holmberg*.[123] The *Holmberg* court found that a statute empowering executive branch administrative law judges to make final decisions about child support that were appealable only under an abuse of discretion standard to the Court of

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[112] *Crosby-Ironton Fed'n of Teachers, Local 1325 v. Indep. Sch. Dist. No. 182*, 285 N.W.2d 667, 670 (Minn. 1979); *see also Meinzer v. Buhl 66 C & B Warehouse Dist., Inc.*, 584 N.W.2d 5, 6-7 (Minn. Ct. App. 1998) (concluding that ex parte communication between reemployment insurance judge and employer's representative constitutes reversible error).

[113] *See State v. Schlienz*, 774 N.W.2d 361, 366 (Minn. 2009) (noting that "[a] judge may, when circumstances require, engage in ex parte communications for scheduling or administrative purposes, or in an emergency.")

[114] *Simer v. Rios*, 661 F.2d 655, 679 (7th Cir. 1981).

[115] *Id.* at 680; *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 506 F.3d 350, 357 (4th Cir. 2007); *Estate of Trentadue ex rel. Aguilar v. United States*, 397 F.3d 840, 865 (10th Cir. 2005); *Doe v. Hampton*, 566 F.2d 265, 276-77 (D.C. Cir. 1977).

[116] *Butz v. Economou*, 438 U.S. 478, 513 (1978).

[117] *Id*. at 513-14.

[118] *Strothman v. Gefreh*, 552 F. Supp. 41, 44 (D. Colo. 1982), *rev'd in part on other grounds*, 739 F. 2d 515 (10th Cir. 1984).

[119] *Id*.

[120] *Figg v. Russell*, 433 F.3d 593, 598 (8th Cir. 2006) (parole board); *Jenson v. Olson*, 273 Minn. 390, 393, 141 N.W.2d 488, 490 (1965) (civil service commission); *Matthis v. Kennedy*, 243 Minn. 219, 223-24, 67 N.W.2d 413, 417 (1954) (probate court); *Frier v. Indep. Sch. Dist. No. 197*, 356 N.W.2d 724, 728-29 (Minn. Ct. App. 1984) (school board).

[121] *Simmons v. Fabian*, 743 N.W.2d 281 (Minn. Ct. App. 2007).

[122] *Vakas v. Rodriguez*, 728 F.2d 1293, 1296-97 (10th Cir. 1984); *Loran v. Iszler*, 373 N.W.2d 870, 876 (N.D. 1985) ("[S]tate administrative proceedings are sufficiently comparable to judicial proceedings to warrant the extension of immunity to an administrative hearing officer engaging in a function that is quasi-judicial in nature."); *In re Dwyer*, 486 Pa. 585, 594-97, 406 A.2d 1355, 1359-61 (1979).

[123] 588 N.W.2d 720 (Minn. 1999).

Appeals violated the separation of powers clause of the Minnesota Constitution.[124] The court held that the legislature cannot infringe on the original family law jurisdiction of the district courts established in the state constitution, and cannot delegate the district courts' inherent equitable power or interfere with the court's ability to regulate child support officers engaged in the practice of law.[125]

Later in the same year, the Minnesota Supreme Court issued another decision limiting the delegation of quasi-judicial functions to executive branch agencies. In *Irwin v. Surdyk's Liquor*,[126] the court held that a statutorily imposed limitation on workers' compensation attorney fees violated the separation of powers doctrine because it was not subject to review by a court and therefore granted final authority over attorney fees to the Workers' Compensation Court of Appeals, a non-judicial administrative body within the executive branch of state government.[127] The court observed that delegations of quasi-judicial powers to executive branch agencies are constitutional only as long as the determinations of those agencies lack judicial finality and are subject to judicial review.[128]

4.6 Disqualification of the Administrative Law Judge

By rule, the ALJ is directed to withdraw from participation in a contested case if the ALJ deems himself or herself disqualified for any reason.[129] The APA states that an ALJ must be free of any political or economic association that would impair the judge's ability to function officially in a fair and objective manner.[130] An ALJ is not automatically disqualified by the filing of an affidavit of prejudice. Instead, upon filing of an affidavit of prejudice the Chief ALJ must determine, on the record of the case, whether the ALJ should be disqualified.[131] The affidavit must be filed no later than five days before the date set for the hearing of the contested case.[132]

The due process clause of the United States Constitution entitles a person to an impartial and disinterested tribunal.[133] The burden of establishing bias or other disqualifying interests rests on the party challenging the hearing officer.[134] Generally, the same standards that apply to judicial branch judges concerning bias, prejudice, interest, and disqualification also apply to ALJs. The right to an impartial quasi-judicial officer is a protected aspect of due process but can be waived if not timely or sufficiently raised. An objection is timely if it is raised at the first reasonable opportunity after discovery of the facts tending to establish the

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[124] *Id.* at 721.

[125] *Id.* at 725. *See also Otto v. Wright County*, 910 N.W.2d 446, 454 (Minn. 2018) (examining basis for Holmberg decision).

[126] 599 N.W.2d 132 (Minn. 1999).

[127] *Id.*

[128] *Id.* at 140-141.

[129] Minn. R. 1400.6400 (2023).

[130] Minn. Stat. § 14.48, subd. 3 (2022).

[131] Minn. R. 1400.6400 (2023). The rule further provides that a judge must be removed upon an affirmative showing of prejudice or bias, but also states that rulings on prior cases is not a sufficient reason by itself. *Id.*

[132] *Id.*

[133] *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

[134] *Schweiker v. McClure*, 456 U.S. 188, 196 (1982).

disqualification. In order for the motion to disqualify to be sufficient, it must be based on sworn testimony.[135] Alleged prejudice must be based on more than mere speculation or tenuous inferences.[136]

Disqualification is appropriate where the ALJ is not capable of judging a particular controversy fairly on the basis of its own circumstances.[137] One ground for disqualification is the establishment of a personal prejudice or a partiality toward a party or a party's group.[138] Disqualification is also appropriate where a personal or a pecuniary interest or economic bias is shown.[139] Generally, a preconceived point of view about law or policy does not disqualify an administrative decision-maker.[140] However, where the hearing officer's words or actions create a likelihood, or the appearance of a likelihood, that their mind is effectively closed to reason or persuasion from one side, disqualification may be appropriate.[141] An ALJ will not be disqualified merely for having made rulings adverse to the filing party in prior cases.[142] Neither will an ALJ be disqualified from presiding over a rehearing of a contested case after reversal of the ALJ's earlier ruling.[143]

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.[144] The rules of practice of individual agencies apply to the extent that they are not inconsistent with the rules of the OAH.[145] Agencies may also be

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[135] *Long Beach Fed. Sav. & Loan Ass'n v. Fed. Home Loan Bank Bd.*, 189 F. Supp. 589, 609□12 (S.D. Cal. 1960), *rev'd on other grounds,* 295 F.2d 403 (9th Cir. 1961*).*

[136] *Duke v. N. Texas State Univ.*, 469 F.2d 829, 834 (5th Cir. 1972).

[137] *Anstey v. Iowa State Commerce Comm'n*, 292 N.W.2d 380, 390 (Iowa 1980); *See Pinkney v. Indep. Sch. Dist. No. 691*, 366 N.W.2d 362, 365 (Minn. Ct. App. 1985) (appearance of unfairness given hearing officer's personal relationship to school employee involved in pending matter); *Safeco Ins. Co. v. Stariha,* 346 N.W.2d 663, 667 (Minn. Ct. App. 1984) (disqualification of arbitrator).

[138] *See Royal v. Police & Fire Comm'n*, 345 Mich. 214, 75 N.W.2d 841, 845 (1956).

[139] *Gibson v. Berryhill*, 411 U.S. 564, 578-79 (1973); *Smith v. Dep't of Educ. & Registration*, 412 Ill. 332, 342, 106 N.E.2d 722, 727 (1952); *Boughan v. Bd. of Eng'g Examiners*, 46 Or. App. 287, 293-94, 611 P.2d 670, 673 (1980); *see also Haas v. County of San Bernadino*, 45 P.3d 280, 289-90 (Cal. 2002) (concluding that a hearing officer selected and paid by the county to conduct a license revocation proceeding had financial interest bias because she had an incentive to decide in favor of the county and then be selected for future cases).

[140] *See Ass'n of Nat'l Advertisers v. Fed. Trade Comm'n*, 627 F.2d 1151, 1171□72 (D.C. Cir. 1979).

[141] *Belsinger v. District of Columbia*, 295 F. Supp. 159, 162 (D. D.C. 1969), *rev'd on other grounds*, 436 F. 2d 214 (D.C. Cir. 1970); *see also Shockency v. Jefferson Lines*, 439 N.W.2d 715, 717-18 (Minn. 1989) (mere questioning of witnesses by hearing panel without more does not demonstrate bias or unfairness but where record demonstrates friction between the panel and a party the appointment of an independent hearing examiner may be warranted).

[142] Minn. R. 1400.6400 (2023).

[143] *NLRB v. Donnelly Garment Co.*, 330 U.S. 219, 236-37 (1947).

[144] *See, e.g.,* Minn. R. ch. 7829 (Minnesota Public Utilities Commission) (2023).

[145] Minn. Stat. § 14.51 (2022).

governed by statutory procedural provisions.[146] The APA also authorizes an agency to initiate an arbitration proceeding conducted by an ALJ, under Minnesota arbitration law, if all parties agree to the arbitration.[147]

The generally applicable OAH rules provide a basic framework for proceedings in contested cases that will apply in most cases.[148] 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 in state personnel cases and Hennepin County personnel cases involving non-veterans.[149] An interested person may request an agency to commence a contested case, but 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.[150]

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.[151] The notice must also name the ALJ assigned to the case by the Chief ALJ.[152] 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 to the ALJ through the OAH.[153]

Generally, there is no time limit within which an agency must initiate a contested case proceeding[154] except as its actions might be limited under the doctrines of laches or estoppel[155] or principles of due process relating to the remoteness of the conduct alleged.[156]

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

[147] *Id*. § 14.57(b) (2022).

[148] Minn. R. ch. 1400 (2023).

[149] *See* Minn. Stat. §§ 43A.33, 383B.38 (2022). Under Minn. Stat. § 363A.29 (2022), OAH initiates some discrimination cases after a referral from the Department of Human Rights.

[150] *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).

[151] Minn. R., 1400.5600 (2023); *see also* Minn. Stat. § 14.58 (2022).

[152] Minn. R., 1400.5600, subp. 2B (2023).

[153] Minn. Stat. § 14.58 (2022).

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

[155] *See* chapter 12.

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

4.7.2 Prehearing

Discovery is conducted during the prehearing stage of a contested case. 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 ALJ assigned to the case. If all the parties directly affected are willing to participate, the Chief ALJ 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. Chapter 10 contains 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, usually contains findings of fact, conclusions of law, and a recommendation with regard to necessary action.

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

Parties may file exceptions to the ALJ's report or recommended decision 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,[157] 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 an appeal to the Minnesota Court of Appeals under Minnesota Statutes sections 14.63 to 14.69 (2022). In a judicial review, the court may affirm the decision of the agency or remand the case for further proceedings.[158] The court may also reverse or modify the decision if the substantial rights of the petitioner have been prejudiced because the findings, conclusions or decision are: in violation of constitutional provisions; in excess of the statutory authority or jurisdiction of the agency; made upon unlawful procedure; affected by other error of law; unsupported by substantial evidence in view of the entire record submitted; or arbitrary of capricious.[159]

[157] *See, e.g.*, Minn. Stat. § 363A.29, subd. 1. (2022) (Minnesota Human Rights Act).
[158] Minn. Stat. § 14.69 (2022).
[159] *Id*.