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2 **PURPOSE OF THE DRAFT REVISIONS:**  
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4 The purpose of these draft revisions to Parts 1400  
5 and 1405 is to: (a) streamline hearing procedures across  
6 different types of administrative proceedings; (b) leverage  
7 the broader familiarity with contested case procedures to  
8 improve predictability in the hearing process for other  
9 types of cases; (c) better reflect contemporary hearing  
10 practice and the technological changes occurring since  
11 September of 2001 (when the last revision of OAH's  
12 procedural rules was completed); and, (d) improve  
13 predictability in the hearing process by more closely  
14 aligning OAH's procedures with the General Rules of  
15 Practice of the District Courts.  
16

17 The Administrative Law Division is grateful to receive  
18 comments that will help the Division to update its  
19 procedures and achieve these objectives.  
20

21  
22  
23 **CONTESTED CASE HEARINGS**

24  
25 **1400.5010 SCOPE.**  
26

27 The procedures in parts 1400.5010 to 1400.8400 govern all  
28 contested cases conducted by the office under Minnesota  
29 Statutes, chapter 14, and to other hearings conducted by the  
30 office as provided by state or federal law.  
31

32  
33 **1400.5100 DEFINITIONS.**  
34

35 Subpart 1. Administrative law judge or judge.  
36 "Administrative law judge" or "judge" means the person or  
37 persons assigned by the chief administrative law judge  
38 pursuant to Minnesota Statutes, section 14.50, to hear the  
39 contested case.  
40

41 Subp. 2. Agency. "Agency" means the state or public  
42 agency for whom a contested case hearing is being  
43 conducted.  
44

1 Subp. 3. Chief judge. "Chief judge" means the chief  
2 administrative law judge of the Office of Administrative  
3 Hearings.

4  
5 Subp. 3a. Filing. "Filing" means transmission of a document  
6 to the Office of Administrative Hearings by through mail,  
7 delivery, fax, ~~or~~ licensed overnight express mail service, or  
8 an E-filing system approved by the chief judge. With  
9 approval of the assigned administrative law judge, a  
10 document may be filed by transmitting the document as an  
11 attachment to an electronic message sent to the judge.

12  
13 Subp. 4. [Repealed, 15 SR 1595]

14  
15 Subp. 5. [Repealed, 15 SR 1595]

16  
17 Subp. 6. Office. "Office" means the Office of Administrative  
18 Hearings.

19  
20 Subp. 6a. Participant. "Participant" means a nonparty who:

21  
22 A. files comments or makes a formal appearance in a  
23 proceeding authorized by the Minnesota Public Utilities  
24 Commission, other than those commission proceedings that  
25 are conducted to receive general public comments; or,

26  
27 B. with the approval of judge, offers testimony or  
28 evidence pursuant to part 1400.7150 or 1400.8605.

29  
30 Subp. 7. Party. "Party" means each person named as a  
31 party by the agency in the notice of and order for hearing, or  
32 persons granted permission to intervene pursuant to part  
33 1400.6200. The term "party" shall include the agency except  
34 when the agency participates in the contested case in a  
35 neutral or quasi-judicial capacity only.

36  
37 Subp. 8. Person. "Person" means any individual, business,  
38 nonprofit association or society, or governmental entity.

39  
40 Subp. 9. Service; serve. "Service" or "serve" means  
41 personal service or, unless otherwise provided by law,  
42 service by first class United States mail ~~or~~ a licensed  
43 overnight express mail service, or an E-filing system  
44 approved by the chief judge.

45  
46 1400.5200 [Repealed, 26 SR 391]

47

1 **1400.5275 DOCUMENTS FILED.**

2  
3 Forms, documents, or written materials prepared specifically  
4 for and used or filed in contested proceedings before the  
5 office must be ~~en~~ submitted in a standard size 8-1/2-inch by  
6 11-inch paper format. An oversized exhibit may be received  
7 into the hearing record, with approval of the judge, provided  
8 that a duplicate original of the exhibit, conforming to the  
9 standards of this part, is submitted into the record.

10  
11 **1400.5300 REQUEST FOR ADMINISTRATIVE LAW**  
12 **JUDGE; ORDER FOR HEARING.**

13  
14 Subpart 1. Before issuing a notice of and order for hearing,  
15 an agency must first file with the docket coordinator a  
16 request for assignment of an administrative law judge. The  
17 request must include a proposed time, date, and place for  
18 the hearing or prehearing conference.

19  
20 In proposing a hearing location, the requesting agency must  
21 take into account the location of known parties, witnesses,  
22 and other participants so as to maximize convenience and  
23 minimize costs.

24  
25 Subp. 2. Not public data. A notice and order for hearing that  
26 contains not public data must bear a legend, that is placed in  
27 the upper left hand margin of the document, stating that the  
28 document includes not public data.

29  
30 **1400.5400 ASSIGNMENT OF ADMINISTRATIVE LAW**  
31 **JUDGE.**

32  
33 Within ten days of the receipt of a request pursuant to part  
34 1400.5300, the chief judge shall assign a judge to hear the  
35 case and set the time, date, and place for hearing or  
36 prehearing conference, taking into account the agency's  
37 request. The agency shall issue the notice of and order for  
38 hearing, unless the substantive law requires it to be issued  
39 otherwise.

40  
41 **1400.5500 DUTIES OF ADMINISTRATIVE LAW JUDGE.**

42  
43 Consistent with law, the judge shall perform the following  
44 duties:  
45

- 1 A. grant or deny a demand for a more definite statement of  
2 charges;
- 3
- 4 B. grant or deny requests for discovery including the taking  
5 of depositions;
- 6
- 7 C. receive and recommend action upon requests for  
8 subpoenas where appropriate and consistent with part  
9 1400.7000;
- 10
- 11 D. hear and rule on motions;
- 12
- 13 E. preside at the contested case hearing;
- 14
- 15 F. administer oaths and affirmations;
- 16
- 17 G. grant or deny continuances;
- 18
- 19 H. examine witnesses as necessary to make a complete  
20 record;
- 21
- 22 I. prepare findings of fact, conclusions, and  
23 recommendations or a final order where required by law;
- 24
- 25 J. make preliminary, interlocutory, or other orders as  
26 deemed appropriate;
- 27
- 28 K. recommend a summary disposition of the case or any  
29 part thereof where there is no genuine issue as to any  
30 material fact or recommend dismissal where the case or any  
31 part thereof has become moot or for other reasons;
- 32
- 33 L. permit testimony, upon the request of a party or upon his  
34 or her own motion to be prefiling in whole or in part where the  
35 prefiling will expedite the conduct and disposition of the case  
36 without imposing an undue burden on any party;
- 37
- 38 M. ~~grant or deny a request to~~ substitute initials or numbers  
39 for proper names in the hearing record or in findings of fact,  
40 conclusions, and recommendations or order;
- 41
- 42 N. appoint an interpreter where necessary to provide a fair  
43 hearing;
- 44
- 45 O. set a reasonable limit on the time allowed for testimony  
46 after considering the requests of the parties;

1  
2 P. change the location of the hearing based upon the  
3 request of a party where necessary to provide a fair hearing;

4  
5 Q. do all things necessary and proper to the performance of  
6 the foregoing; and

7  
8 R. in his or her discretion, perform such other duties as may  
9 be delegated by the agency ordering the hearing.

10  
11 **1400.5550 SERVICE AND FILING PROCEDURE.**

12  
13 Subpart 1. Certificate of service. A certificate of service  
14 must be made by the person making the service. A  
15 certificate of service must bear the name of the person  
16 certifying that service has been made, but need not be  
17 signed or notarized.

18  
19 Subp. 2. Service by mail. Service by mail or licensed  
20 overnight express mail service is effective upon placing the  
21 item to be served in the mail or delivering it to the authorized  
22 agent of the express mail service. Postage must be prepaid.  
23 Mail to a person other than a state agency shall be  
24 addressed to the last known address of the person.  
25 Agencies of the state of Minnesota may also deposit the  
26 document with the state of Minnesota's central mail system  
27 for United States mail.

28  
29 Subp. 3. Personal service. Personal service may be  
30 accomplished by either delivering the document to the  
31 person or by leaving the document at the person's home or  
32 place of business with someone of suitable age and  
33 discretion who resides in the same house or who is located  
34 at the same business address as the person to be served.

35  
36 Subp. 4. Service upon a confined person. If a person is  
37 confined to a federal or state institution, a copy of the  
38 document must also be served upon the chief executive  
39 officer of the institution.

40  
41 Subp. 5. Filing ~~by facsimile and other means~~. Any paper  
42 relating to hearings conducted by an administrative law  
43 judge under Minnesota Statutes, chapter 14, may be filed  
44 with the office by ~~fax transmission~~ any of the methods  
45 authorized in part 1400.5100, subpart 3a. Filings are  
46 effective on the date that the office receives the fax

1 transmission if the transmission is begun before 4:30 p.m. on  
2 that date. The filing of a fax or an authorized electronic  
3 submission has the same force and effect as the filing of the  
4 original document. Filings made by other means described in  
5 part 1400.5100, subpart 3a, are effective on the date the  
6 office receives the filing.

7  
8 Subp. 6. Receipt of documents. When a document is  
9 served on a party, service shall be made on the party's  
10 attorney if represented, otherwise upon the non-represented  
11 party directly.

12  
13 Subp. 7. Undeliverable documents. If notices, pleadings or  
14 other documents filed in a contested case are returned to the  
15 sender by the postal service as undeliverable, the sender  
16 shall make reasonable efforts to obtain a valid current  
17 address and notify the judge of this change in address. If  
18 the efforts to obtain a valid current address are not  
19 successful, the office may omit making future mailings and  
20 shall place the appropriate notice in the file.

21  
22 **1400.5600 NOTICE AND ORDER FOR HEARING.**

23  
24 Subpart 1. Commencing a contested case. A contested  
25 case is commenced, subsequent to the assignment of a  
26 judge, by the service of a notice of and order for hearing by  
27 the agency.

28  
29 Subp. 2. Contents of notice and order. Unless otherwise  
30 provided by law, a notice of and order for hearing, which  
31 shall be a single document, shall be served upon all parties,  
32 shall be filed with the office and shall contain, among other  
33 things, the following:

34  
35 A. The time, date, and place for the hearing or a  
36 prehearing conference, or a statement that the matter has  
37 been referred to the office and that a hearing or prehearing  
38 time, date, and place will be set by the judge;

39  
40 B. Name, address, and telephone number of the judge;

41  
42 C. A citation to the agency's statutory authority to hold  
43 the hearing and to take the action proposed;

44  
45 D. A statement of the allegations or issues to be  
46 determined together with a citation to the relevant statutes or

1 rules allegedly violated or which control the outcome of the  
2 case;

3  
4 E. Notification of the right of the parties to be  
5 represented by an attorney, by themselves, or by a person of  
6 their choice if not otherwise prohibited as the unauthorized  
7 practice of law;

8  
9 F. A citation to parts 1400.5100 to 1400.8400, to any  
10 applicable procedural rules of the agency, and to the  
11 contested case provisions of Minnesota Statutes, chapter  
12 14, and notification of how copies may be obtained in print or  
13 online;

14  
15 G. A brief description of the procedure to be followed at  
16 the hearing;

17  
18 H. A statement advising the parties to bring to the  
19 hearing all documents, records, and witnesses they need to  
20 support their position;

21  
22 I. A statement that subpoenas may be available to  
23 compel the attendance of witnesses or the production of  
24 documents, referring the parties to part 1400.7000 relating to  
25 subpoenas;

26  
27 J. A statement advising the parties of the name of the  
28 agency official or member of the attorney general's staff to  
29 be contacted to discuss informal disposition pursuant to part  
30 1400.5900 or discovery pursuant to parts 1400.6700 and  
31 1400.6800;

32  
33 K. A statement advising the parties that a notice of  
34 appearance must be filed with the judge within 20 days of  
35 the date of service of the notice of and order for hearing if a  
36 party intends to appear at the hearing unless the hearing  
37 date is less than 20 days from the issuance of the notice of  
38 and order for hearing;

39  
40 L. A statement advising existing parties that failure to  
41 appear at a prehearing conference, settlement conference,  
42 or the hearing, or failure to comply with any order of the  
43 judge may result in the allegations of the notice of and order  
44 for hearing being taken as true, or the issues set out being  
45 deemed proved, and a statement that explains the possible

1 results of the allegations being taken as true or the issues  
2 proved;

3  
4 M. A statement advising the parties that state agencies  
5 are required by law to keep some data not public, that  
6 parties are required to advise the judge if not public data is  
7 offered into the record, and that if not public data is admitted  
8 into evidence it may become public unless a party objects  
9 and asks for relief under Minnesota Statutes, sections 14.60,  
10 subdivision 2;

11  
12 N. A statement advising the parties and counsel that the  
13 office conducts contested case proceedings in accordance  
14 with the Minnesota Rules of Professional Conduct and the  
15 Professionalism Aspirations adopted by the Minnesota State  
16 Bar Association;

17  
18 O. Notification that the agency will, upon request, make an  
19 accommodation so that the hearing is accessible and will  
20 appoint a qualified interpreter if necessary; and

21  
22 P. A statement advising the parties that if an interpreter is  
23 needed the judge must be promptly notified.

24  
25 Subp. 3. Service. Unless otherwise provided by law, the  
26 notice of and order for hearing shall be served and filed not  
27 less than 30 days prior to the hearing. ~~Provided, however,~~  
28 ~~that a~~ A shorter time may be allowed, where it can be shown  
29 to the chief judge that a shorter time is in the public interest  
30 and that interested persons are not likely to be prejudiced.

31  
32 Subp. 4. [Repealed, 26 SR 391]

33  
34 Subp. 5. Amendment. At any time prior to the start of the  
35 evidentiary hearing, the agency may file and serve an  
36 amended notice of and order for hearing, provided that,  
37 should the amended notice and order raise new issues or  
38 allegations, the parties shall have a reasonable time to  
39 prepare to meet the new issues or allegations if requested.  
40 Amendments sought after the start of the hearing must be  
41 approved by the judge.

42  
43 Subp. 6. Alternative documents and procedures. With the  
44 prior written concurrence of the chief judge, an agency may  
45 substitute other documents and procedures for the notice of  
46 and order for hearing provided that the documents and

1 procedures inform actual and potential parties of the  
2 information contained in subpart 2.

3  
4 ~~Subp. 7. Department of Human Rights hearings. After~~  
5 ~~receipt of a request for a hearing forwarded by the~~  
6 ~~commissioner of the Department of Human Rights under~~  
7 ~~Minnesota Statutes, section 363A.29, subdivision 2, and the~~  
8 ~~assignment of a judge to the case, the judge shall prepare~~  
9 ~~and issue a notice of and order for hearing. The notice shall~~  
10 ~~incorporate the charge or charges filed by the charging party~~  
11 ~~and shall state that an answer to the charges must be~~  
12 ~~served and filed by the respondent within 20 days after~~  
13 ~~service of the notice Whenever provided by state or federal~~  
14 ~~law, a service agreement with a state agency, or a contract~~  
15 ~~with a political subdivision under Minnesota Statutes, section~~  
16 ~~14.55, the office shall issue the notice of and order for~~  
17 ~~hearing.~~

18  
19 **1400.5700 NOTICE OF APPEARANCE.**

20  
21 Subpart 1. Notice. Each party intending to appear at a  
22 contested case hearing shall file with the judge and serve  
23 upon all other known parties a notice of appearance which  
24 shall advise the judge of the party's intent to appear and  
25 shall indicate the title of the case, the agency ordering the  
26 hearing, the party's current address and telephone number,  
27 and the name, office address, and telephone number of the  
28 party's attorney or other representative.

29  
30 Subp. 2. Filing and Service. The notice of appearance shall  
31 be filed and served within 20 days of the date of service of  
32 the notice of and order for hearing, except that, where the  
33 hearing or prehearing conference date is less than 20 days  
34 from the commencement of the contested case, the notice of  
35 appearance shall be filed as soon as possible. The failure to  
36 file and serve a notice may, in the discretion of the judge,  
37 result in a continuance of the hearing if the party failing to file  
38 appears at the hearing. A notice of appearance form shall be  
39 included with the notice of and order for hearing for use by  
40 the party served.

41  
42 Subp. 3. Withdrawal. After an attorney has filed a notice of  
43 appearance, withdrawal is effective only if a notice of  
44 withdrawal is promptly served on all parties and filed with the  
45 judge. The notice of withdrawal must include the address

1 and telephone number of the party. Withdrawal of counsel  
2 does not create any right to a continuance.

3  
4 **1400.5800 RIGHT TO COUNSEL.**

5  
6 Subpart 1. Appearances. Parties may be represented by an  
7 attorney throughout the proceedings in a contested case, ~~by~~  
8 ~~themselves, or by a person of their choice if not otherwise~~  
9 ~~prohibited as the unauthorized practice of law or may appear~~  
10 ~~on their own behalf without an attorney.~~ Corporate entities  
11 may be represented by an attorney or by a person  
12 authorized to appear in district court pursuant to Minnesota  
13 Statutes, section 481.02, subd. 3. Persons appearing in  
14 contested case proceedings in a representative capacity  
15 must conform to the standards of professional conduct  
16 required of attorneys before the courts of Minnesota. If any  
17 representative fails to conform to these standards, the judge  
18 may exclude the person from the proceeding.

19  
20 Subp. 2. Appearances by attorneys licensed in other states.  
21 Lawyers duly admitted to practice in the trial courts of any  
22 other jurisdiction may, in the discretion of the judge, appear  
23 without Minnesota counsel in proceedings before the office.  
24 Out-of-state attorneys shall submit a motion, substantially in  
25 the form of an application under Rule 5 of the General Rules  
26 of Practice for the District Courts, requesting approval to  
27 appear in a representative capacity. Any lawyer appearing  
28 pursuant to this rule shall be subject to the disciplinary rules  
29 governing Minnesota lawyers and by applying to appear or  
30 appearing in any action shall be subject to the jurisdiction of  
31 the Minnesota courts.

32  
33 **1400.5810 INTERPRETERS.**

34  
35 When appointing an interpreter, the judge shall use the  
36 procedures in Rule 8.02 of the General Rules of Practice for  
37 the District Courts.

38  
39 **1400.5900 CONSENT ORDER, SETTLEMENT, OR**  
40 **STIPULATION.**

41  
42 Informal disposition may be made of any contested case or  
43 any issue therein by stipulation, agreed settlement, or  
44 consent order at any point in the proceedings. Parties may  
45 enter into these agreements on their own or may utilize the  
46 mediation procedures in part 1400.5950 or the settlement

1 conference procedures in part 1400.6550. The parties must  
2 promptly notify the judge in writing of a settlement so that the  
3 office file can be closed.

4  
5 **1400.5950 MEDIATION.**

6  
7 Subpart 1. Definition. "Mediation" is a voluntary process  
8 where parties to a dispute jointly explore and resolve all or a  
9 part of their differences with the assistance of a neutral  
10 person. The mediator's role is to assist the parties in  
11 resolving the dispute themselves. The mediator has no  
12 authority to impose a settlement.

13  
14 Subp. 2. Office to provide. The office will provide mediation  
15 services to any state agency, court, or political subdivision in  
16 a contested case proceeding or other contested matter other  
17 than labor relation disputes which are within the jurisdiction  
18 of the Bureau of Mediation Services. For purposes of this  
19 part only, "agency" means either a state agency, court, or  
20 political subdivision of the state.

21  
22 Subp. 3. Initiating mediation. Mediation may be initiated in  
23 the following ways:

24  
25 A. Prior to the initiation of a contested case proceeding,  
26 an agency may propose mediation by filing a written request  
27 for mediation services with the chief judge. A copy of the  
28 request shall be served upon all persons whom the agency  
29 would name as parties in the notice of and order for hearing.

30  
31 B. Subsequent to the initiation of a contested case  
32 proceeding, the agency, a party to a contested case, or the  
33 judge assigned to the contested case may propose that the  
34 case be mediated by filing a request for mediation services  
35 with the chief judge. A copy of the request must be served  
36 upon the agency, the judge, and all parties.

37  
38 C. Upon receipt of a request for mediation, the chief  
39 judge or designee shall contact, either orally or in writing, the  
40 agency and all parties to determine whether they are willing  
41 to participate in mediation. No matter shall be ordered for  
42 mediation if the agency or any party is opposed.

43  
44 D. If the chief judge determines that no party or the  
45 agency is opposed to mediation, the chief judge shall

1 appoint a mediator and issue an order for mediation, which  
2 shall set forth:

3  
4 (1) the name, address, and telephone number of the  
5 mediator; and

6  
7 (2) a date by which the mediator must initiate the mediation  
8 proceedings.

9  
10 The order shall be served upon the agency, the parties, and  
11 the judge assigned to the contested case, if any.

12  
13 E. The mediator must initiate the mediation proceedings  
14 by contacting the agency and each party no later than the  
15 date set forth in the order for mediation.

16  
17 Subp. 4. Confidentiality. The mediator shall not  
18 communicate, either directly or indirectly, regarding any facts  
19 or issues in the mediation with any person not participating  
20 in the mediation unless authorized to do so by the parties to  
21 the mediation.

22  
23 Subp. 5. Termination. The mediation process shall  
24 terminate when all parties are, or the agency is, unwilling to  
25 continue mediation; or a settlement agreement is signed  
26 setting forth the resolution of the disputed issues.

27  
28 Upon termination, the mediator shall either forward the  
29 signed settlement agreement to the agency or the judge, if  
30 applicable, for appropriate action; or inform the agency or  
31 the judge, if applicable, that the mediation has been  
32 terminated without agreement.

33  
34 Subp. 6. Admissibility. Any offers to compromise or  
35 evidence of conduct or statements made during mediation  
36 are not admissible.

37  
38 Subp. 7. Unsuccessful mediation. The person appointed to  
39 mediate a dispute shall not be assigned to hear any portion  
40 of the case should mediation terminate unsuccessfully.

41  
42 **1400.6000 DEFAULT.**

43  
44 Subpart 1. The agency or the judge, where authorized, may  
45 dispose of a contested case adverse to a party which  
46 defaults. Upon default, the allegations of or the issues set

1 out in the notice of and order for hearing or other pleading  
2 may be taken as true or deemed proved without further  
3 evidence. A default occurs when a party fails to appear  
4 without the prior consent of the judge at a prehearing  
5 conference, settlement conference, or a hearing or fails to  
6 comply with any interlocutory orders of the judge.  
7

8 Subp. 2. Notwithstanding that timing and service  
9 requirements of part 1400.6600, a motion for a default may  
10 be made orally and that motion may be granted provided  
11 that one business day has elapsed following the default.  
12

13 **1400.6100 TIME.**  
14

15 Subpart 1. Computation. In computing any period of time  
16 prescribed by parts 1400.5100 to 1400.8400 or the  
17 procedural rules of any agency, the day of the last act,  
18 event, or default from which the designated period of time  
19 begins to run shall not be included. The last day of the  
20 period so computed shall be included, unless it is a  
21 Saturday, Sunday, or a legal holiday.  
22

23 Subp. 2. Extra time: service by mail. Whenever a party has  
24 the right or is required to do some act or take some action  
25 within a prescribed period after the service of a notice or  
26 other paper upon the party, or whenever service is required  
27 to be made within a prescribed period before a specified  
28 event, and the notice or paper is served by mail, three days  
29 shall be added to the prescribed period. In the event an  
30 agency chooses to utilize the Central Mailing Section,  
31 Publications Division, Department of Administration, four  
32 days shall be added to the prescribed period.  
33

34 **1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.**  
35

36 Subpart 1. Petition. Any person not named in the notice of  
37 hearing who desires to intervene in a contested case as a  
38 party shall submit a timely written petition to intervene to the  
39 judge and shall serve the petition upon all existing parties  
40 and the agency. Timeliness will be determined by the judge  
41 in each case based on circumstances at the time of filing.  
42 The petition shall show how the petitioner's legal rights,  
43 duties, or privileges may be determined or affected by the  
44 contested case; shall show how the petitioner may be  
45 directly affected by the outcome or that petitioner's  
46 participation is authorized by statute, rule, or court decision;

1 shall set forth the grounds and purposes for which  
2 intervention is sought; and shall indicate petitioner's statutory  
3 right to intervene if one should exist. The agency may, with  
4 the consent of the judge, and where good reason appears  
5 therefor, specify in the notice of and order for hearing or  
6 prehearing the final date upon which a petition for  
7 intervention may be submitted to the judge.

8  
9 Subp. 2. Objection. Any party may object to the petition for  
10 intervention by filing a written notice of objection with the  
11 judge within seven days of service of the petition if there is  
12 sufficient time before the hearing. The notice shall state the  
13 party's reasons for objection and shall be served upon all  
14 parties, the person petitioning to intervene and the agency. If  
15 there is insufficient time before the hearing for a written  
16 objection, the objection may be made orally at the hearing.

17  
18 Subp. 2a. Hearing on petition. Where necessary to develop  
19 a full record on the question of intervention, the judge shall  
20 conduct a hearing on the petition to determine specific  
21 standards that will apply to each category of intervenor, and  
22 to define the scope of intervention.

23  
24 Subp. 3. Order. The judge shall allow intervention upon a  
25 proper showing pursuant to subpart 1 unless the judge finds  
26 that the petitioner's interest is adequately represented by  
27 one or more parties participating in the case. An order  
28 allowing intervention shall specify the extent of participation  
29 permitted the petitioner and shall state the judge's reasons.  
30 A petitioner may be allowed to:

- 31  
32 A. file a written brief without acquiring the status of a party;  
33  
34 B. intervene as a party with all the rights of a party; or  
35  
36 C. intervene as a party with all the rights of a party but  
37 limited to specific issues and to the means necessary to  
38 present and develop those issues.

39  
40 Subp. 4. By agency in a neutral capacity. Where the agency  
41 participates in the hearing in a neutral or quasi-judicial  
42 capacity, the agency staff, or a portion of the agency staff,  
43 may petition to intervene under the rule.

44  
45 Subp. 5. Participation by public. The judge may, in the  
46 absence of a petition to intervene, nevertheless hear the

1 testimony and receive exhibits from any person at the  
2 hearing, ~~or allow a person to note that person's appearance,~~  
3 ~~or allow a person to question witnesses, but no person shall~~  
4 ~~become, or be deemed to have become, a party by reason~~  
5 ~~of such participation.~~ Persons offering testimony or exhibits  
6 may be questioned by parties to the proceeding.  
7

8 1400.6300 [Repealed, 9 SR 2276]  
9

10 **1400.6350 CONSOLIDATION OF CASES.**

11  
12 Subpart 1. Standards for consolidation. Whenever two or  
13 more separate contested cases present substantially the  
14 same issues of fact and law, that a holding in one case  
15 would affect the rights of parties in another case, that  
16 consolidating the cases for hearing would save time and  
17 costs, and that consolidation would not prejudice any party,  
18 the cases may be consolidated for hearing under this part.  
19

20 Subp. 2. Agency consolidation. Subject to a motion for  
21 severance as provided in subpart 7, prior to referring cases  
22 to the office for hearing an agency may consolidate two or  
23 more cases for hearing.  
24

25 Subp. 3. Service of petition. A party requesting  
26 consolidation shall serve a petition for consolidation on all  
27 parties to the cases to be consolidated, on the agency if the  
28 agency is not a party, and shall file the original with the judge  
29 assigned to the cases, together with a proof of service  
30 showing service as required herein. Any party objecting to  
31 the petition shall serve and file their objections within ten  
32 calendar days following service of the petition for  
33 consolidation.  
34

35 Subp. 4. Determination of petition. When more than one  
36 judge is assigned to the cases which are the subject of the  
37 petition for consolidation, the petition will be determined by  
38 the judge assigned to the first case submitted to the office.  
39

40 Subp. 5. Order. Upon determining whether cases should be  
41 consolidated, the judge shall serve a written order on all  
42 parties and the agency, if the agency is not a party. The  
43 order shall contain, among other things, a description of the  
44 cases for consolidation, the reasons for the decision, and  
45 notification of a consolidated prehearing conference if one is  
46 being scheduled.

1  
2 Subp. 6. Stipulations. Nothing contained in this part shall be  
3 deemed to prohibit parties from stipulating and agreeing to a  
4 consolidation which shall be granted upon submission of a  
5 written stipulation, signed by all parties, to the judge. A judge  
6 may consolidate two or more cases presently pending before  
7 that judge on the judge's own motion, applying the standards  
8 in subpart 1.

9  
10 Subp. 7. Petition for severance. Following receipt of a  
11 notice of or order for consolidation, any party may petition for  
12 severance by serving it on all other parties and the agency, if  
13 the agency is not a party, and filing it with the judge at least  
14 seven business days prior to the first scheduled hearing  
15 date. If the judge finds that the consolidation will prejudice  
16 the petitioner, the judge shall order the severance or other  
17 relief which will prevent the prejudice from occurring.

18  
19 **1400.6400 ADMINISTRATIVE LAW JUDGE**  
20 **DISQUALIFICATION.**

21  
22 The judge shall withdraw from participation in a contested  
23 case at any time if he or she deems himself or herself  
24 disqualified for any reason. Upon the filing in good faith by a  
25 party of an affidavit of prejudice, the chief judge shall  
26 determine the matter as a part of the record provided the  
27 affidavit shall be filed no later than five days prior to the date  
28 set for hearing. A judge must be removed upon an  
29 affirmative showing of prejudice or bias. A judge may not be  
30 removed merely because of rulings on prior cases.

31  
32 **1400.6500 PREHEARING CONFERENCE.**

33  
34 Subpart 1. Purpose. The purpose of the prehearing  
35 conference is to simplify the issues to be determined, to  
36 consider amendment of the agency's order if necessary, to  
37 obtain stipulations in regard to foundation for testimony or  
38 exhibits, to obtain stipulations of agreement on nondisputed  
39 facts or the application of particular laws, to consider the  
40 proposed witnesses for each party, to consider how the  
41 hearing will be recorded and whether a transcript will be  
42 prepared, to consider whether an interpreter or other  
43 accommodation is needed, to identify and exchange  
44 documentary evidence intended to be introduced at the  
45 hearing, to determine deadlines for the completion of any  
46 discovery, to consider a reasonable limit on the time allowed

1 for presenting evidence, to establish hearing dates and  
2 locations if not previously set, to determine whether the  
3 issues in the case are susceptible to mediation, to consider  
4 such other matters that may be necessary or advisable and,  
5 if possible, to reach a settlement without the necessity for  
6 further hearing.

7  
8 Subp. 2. Procedure. Upon the request of any party or upon  
9 his or her own motion, the judge may, in his or her  
10 discretion, hold a prehearing conference prior to each  
11 contested case hearing. A prehearing conference may be  
12 held by telephone. The judge may require the parties to file a  
13 prehearing statement prior to the prehearing conference  
14 which shall contain such items as the judge deems  
15 necessary to promote a useful prehearing conference. A  
16 prehearing conference shall be an informal proceeding  
17 conducted expeditiously by the judge. Agreements on the  
18 simplification of issues, amendments, stipulations, or other  
19 matters may be ~~entered on~~ included in the record or may be  
20 made the subject of an order by the judge.

21  
22 **1400.6550 SETTLEMENT CONFERENCE.**

23  
24 Subpart 1. Purpose. A settlement conference is for the  
25 primary purpose of assisting the parties in resolving disputes  
26 and for the secondary purpose of narrowing the issues and  
27 preparing for hearing as in part 1400.6500, subpart 1.

28  
29 Subp. 2. Scheduling. Upon the ~~request of any party~~ joint  
30 request of all parties or the judge, the chief judge shall  
31 assign the case to another judge for the purpose of  
32 conducting a settlement conference. Unless both parties and  
33 the judge agree, a unilateral request for a settlement  
34 conference will not constitute good cause for a continuance.  
35 The conference shall be conducted at a time and place  
36 agreeable to all parties and the judge. It shall be conducted  
37 by telephone if any party would be required to travel more  
38 than 50 miles to attend, unless that party agrees to travel to  
39 the location set for the conference. If a telephone conference  
40 is scheduled, the parties must be available by telephone at  
41 the time of the conference. Where mediation between the  
42 parties has previously occurred, a settlement conference will  
43 not be ordered unless all parties agree.

44  
45 Subp. 3. Procedures at conference. All parties shall attend  
46 or be represented at a settlement conference. Parties or

1 their representatives attending a settlement conference shall  
2 be prepared to participate in meaningful settlement  
3 discussions.

4  
5 Subp. 4. Preconference discussions. The parties shall  
6 discuss the possibility of settlement before a settlement  
7 conference if they believe that a reasonable basis for  
8 settlement exists.

9  
10 Subp. 5. Information provided. At the settlement conference,  
11 the parties shall be prepared to provide the information and  
12 to discuss all matters required by part 1400.6500, subpart 1.

13  
14 Subp. 6. Orders. If, following a settlement conference, a  
15 settlement has not been reached but the parties have  
16 reached an agreement on any facts or other issues, the  
17 judge presiding over the settlement conference shall issue  
18 an order confirming and approving, if necessary, those  
19 matters agreed upon. The order is binding on the judge who  
20 is assigned to hear the case.

21  
22 **1400.6600 MOTIONS.**

23  
24 Subpart 1. Types of motions. Any application to the judge  
25 for an order shall be by motion which, unless made during a  
26 hearing, shall be made in writing, shall state with particularity  
27 the grounds therefor, and shall set forth the relief or order  
28 sought. Motions provided for in parts 1400.5100 to  
29 1400.8400 shall be served on all parties, the agency, if it is  
30 not a party, and the judge.

31  
32 Subp. 2. Written motions. The written motion shall advise  
33 other parties that should they wish to contest the motion they  
34 must file a written response with the judge and serve copies  
35 on all parties, within ten working days after it is received. No  
36 memorandum of law submitted in connection with a motion  
37 may exceed 25 pages, except with the permission of the  
38 judge. If any party desires a hearing on the motion, they  
39 shall make a request for a hearing at the time of the  
40 submission of their motion or response.

41  
42 Subp. 3. Written responses. A response shall set forth the  
43 nonmoving party's objections. A hearing on a motion will be  
44 ordered by the judge only if it is determined that a hearing is  
45 necessary to the development of a full and complete record  
46 on which a proper decision can be made.

1  
2 Subp. 4. Disposition. Motions may be heard by telephone.  
3 All orders on such motions, other than those made during  
4 the course of the hearing, shall be in writing and shall be  
5 served upon all parties of record and the agency if it is not a  
6 party. In ruling on motions where parts 1400.5100 to  
7 1400.8400 are silent, the judge shall apply the Rules of Civil  
8 Procedure for the District Court for Minnesota to the extent  
9 that it is determined appropriate in order to promote a fair  
10 and expeditious proceeding.

11  
12 **1400.6610 PROTECTIVE ORDERS.**

13  
14 Subp. 1. Scope of protections. The judge may issue a  
15 protective order as justice requires to protect a party or  
16 person from annoyance, embarrassment, oppression or  
17 undue burden or expense.

18  
19 Subp. 2. Disclosure of not public data. When a party is  
20 asked to reveal material designated as proprietary  
21 information, or trade secrets, or not public data, that party  
22 may bring the matter to the attention of the judge, who shall  
23 make such protective orders as are reasonable and  
24 necessary or as otherwise provided by law.

25  
26 Subp. 3. Submissions of not public data. If a party seeks to  
27 offer not public data into the hearing record, and an order  
28 regulating the use and disclosure of not public data has not  
29 been issued, the party submitting the not public data shall  
30 identify the data, the statutory basis for its classification and  
31 whether it should retain this classification in the hearing  
32 record.

33  
34 **1400.6700 DISCOVERY.**

35  
36 Subpart 1. Witnesses; statement by parties or witnesses.

37  
38 Each party shall, within ten days of a written demand by  
39 another party, disclose the following:

40  
41 A. The names and addresses of all witnesses that a party  
42 intends to call at the hearing, along with a brief summary of  
43 each witness' testimony. All witnesses unknown at the time  
44 of said disclosure shall be disclosed as soon as they  
45 become known.

46

1 B. Any relevant written or recorded statements made by the  
2 party or by witnesses on behalf of a party. The demanding  
3 party shall be permitted to inspect and reproduce any such  
4 statements.

5  
6 C. All written exhibits to be introduced at the hearing. The  
7 exhibits need not be produced until one week before the  
8 hearing unless otherwise ordered.

9  
10 D. Any party unreasonably failing upon demand to make the  
11 disclosure required by this subpart may, in the discretion of  
12 the judge, be foreclosed from presenting any evidence at the  
13 hearing through witnesses or exhibits not disclosed or  
14 through witnesses whose statements are not disclosed.

15  
16 Subp. 2. Discovery of other information. Any means of  
17 discovery available pursuant to the Rules of Civil Procedure  
18 for the District Court of Minnesota is allowed. If the party  
19 from whom discovery is sought objects to the discovery, the  
20 party seeking the discovery may bring a motion before the  
21 judge to obtain an order compelling discovery. In the motion  
22 proceeding, the party seeking discovery shall have the  
23 burden of showing that the discovery is needed for the  
24 proper presentation of the party's case, is not for purposes of  
25 delay, and that the issues or amounts in controversy are  
26 significant enough to warrant the discovery. In ruling on a  
27 discovery motion, the judge shall recognize all privileges  
28 recognized at law.

29  
30 Subp. 3. Noncompliance. Upon the failure of a party to  
31 reasonably comply with an order of the judge made pursuant  
32 to subpart 2, the judge may make a further order as follows:

33  
34 A. an order that the subject matter of the order for discovery  
35 or any other relevant facts shall be taken as established for  
36 the purposes of the case in accordance with the claim of the  
37 party requesting the order;

38  
39 B. an order refusing to allow the party failing to comply to  
40 support or oppose designated claims or defenses, or  
41 prohibiting that party from introducing designated matters in  
42 evidence.

43  
44 ~~Subp. 4. Protective orders. The judge may issue a~~  
45 ~~protective order as justice requires to protect a party or~~  
46 ~~person from annoyance, embarrassment, oppression, or~~

1 ~~undue burden or expense due to a discovery request. When~~  
2 ~~a party is asked to reveal material considered to be~~  
3 ~~proprietary information or trade secrets, or not public data,~~  
4 ~~that party may bring the matter to the attention of the judge,~~  
5 ~~who shall make such protective orders as are reasonable~~  
6 ~~and necessary or as otherwise provided by law.~~  
7

8 Subp. 5. Filing. Copies of a party's request for discovery as  
9 well as the responses to those requests and copies of  
10 discovery depositions shall not be filed with the office unless  
11 otherwise ordered by the judge or unless they are filed in  
12 support of any motion or unless they are introduced as  
13 evidence in the hearing.  
14

15 **1400.6800 REQUESTS FOR ADMISSION OF FACTS OR**  
16 **OPINIONS.**  
17

18 A party may serve upon any other party a written request for  
19 the admission of relevant facts or opinions, or of the  
20 application of law to relevant facts or opinions, including the  
21 genuineness of any document. The request must be served  
22 at least 15 days prior to the hearing, and it shall be  
23 answered in writing by the party to whom the request is  
24 directed within ten days of receipt of the request. The written  
25 answer shall either admit or deny the truth of the matters  
26 contained in the request or shall make a specific objection  
27 thereto. Failure to make a written answer within ten days will  
28 result in the subject matter of the request being deemed  
29 admitted unless it can be shown that there was a justifiable  
30 excuse for failing to respond.  
31

32 **1400.6900 DEPOSITIONS TO PRESERVE TESTIMONY.**  
33

34 Upon the request of any party, the judge may order that the  
35 testimony of any witness be taken by deposition to preserve  
36 that witness' testimony in the manner prescribed by law for  
37 depositions in civil actions. The request shall indicate the  
38 relevancy of the testimony and shall make a showing that  
39 the witness will be unable or cannot be compelled to attend  
40 the hearing or show other good cause.  
41  
42

1 **1400.6950 EXCHANGE OF WITNESS LISTS AND**  
2 **EXHIBITS.**

3  
4 Subpart 1. Order. Prior to the hearing the judge may, upon a  
5 party's request or at the judge's own motion, order the  
6 parties by a date certain to:

7  
8 A. exchange a list of all witnesses to be called at the  
9 hearing. The list must include the witness' occupation and  
10 address; and

11  
12 B. exchange all written exhibits to be offered at the hearing;

13  
14 C. filing these materials according to part 1400.5500,  
15 subpart 5.

16  
17 Subp. 2. Objection to foundation. Any party objecting to the  
18 foundation for any written exhibit received under subpart 1,  
19 on the grounds that the exhibit is not a complete copy of the  
20 original or is not a true and correct copy of the original, must  
21 notify both the offering party and the judge in writing at least  
22 two working days before the hearing or the foundation  
23 objection is waived.

24  
25 **1400.7000 SUBPOENAS.**

26  
27 Subpart 1. Written request. Requests for subpoenas for the  
28 attendance of witnesses or the production of documents,  
29 either at a hearing or for the purpose of discovery, shall be  
30 made in writing to the judge, shall contain a brief statement  
31 demonstrating the potential relevance of the testimony or  
32 evidence sought, shall identify any documents sought with  
33 specificity, shall include the full name and home or business  
34 address of all persons to be subpoenaed and, if known, the  
35 date, time, and place for responding to the subpoena.

36  
37 Subp. 2. Service. A subpoena shall be served in the  
38 manner provided by the Rules of Civil Procedure for the  
39 District Courts of Minnesota unless otherwise provided by  
40 law. The cost of service, fees, and expenses of any  
41 witnesses subpoenaed shall be paid by the party at whose  
42 request the witness appears. The person serving the  
43 subpoena is not required to make proof of service by filing  
44 the subpoena with the judge. However, a filing with an  
45 affidavit of service will be required with the motion of a party  
46 seeking an order imposing sanctions for failure to comply

1 with any subpoena issued under parts 1400.5100 to  
2 1400.8400.

3  
4 Subp. 2a. Copies to parties. Any party submitting a  
5 subpoena request shall simultaneously send a copy of the  
6 request to all other parties.

7  
8 Subp. 3. Objection to subpoena. Any person served with a  
9 subpoena who has an objection to it may file an objection  
10 with the judge. The objection shall be filed promptly, and in  
11 any event at or before the time specified in the subpoena for  
12 compliance. The judge shall cancel or modify the subpoena  
13 if it is unreasonable or oppressive, taking into account the  
14 issues or amounts in controversy, the costs or other burdens  
15 of compliance when compared with the value of the  
16 testimony or evidence sought for the presentation of a  
17 party's case, and whether or not there are alternative  
18 methods of obtaining the desired testimony or evidence.  
19 Modification may include requiring the party requesting the  
20 subpoena to pay reasonable costs of producing documents,  
21 books, papers, or other tangible things.

22  
23 **1400.7050 SANCTIONS IN DISCRIMINATION CASES.**

24  
25 Subpart 1. Precomplaint procedure.

26  
27 If, at any time prior to the issuance of a complaint in any  
28 matter pending before the Minnesota Department of Human  
29 Rights, the charging party or the respondent believes that  
30 the other is intentionally and frivolously delaying any  
31 precomplaint proceedings, it may petition the chief judge for  
32 an order imposing sanctions. For the purpose of this subpart,  
33 a respondent is any person against whom a charge has  
34 been filed. The sanctions and the procedures are as follows:

35  
36 A. A party requesting the imposition of sanctions shall file a  
37 petition with the chief judge which shall include proof that a  
38 copy of the petition has been served on the other party.

39  
40 B. A petition for the imposition of sanctions shall state, with  
41 specificity, the acts of the other party which are alleged to be  
42 intentional and frivolous delay; the sanctions requested;  
43 whether an oral hearing is requested; and shall include  
44 sworn affidavits of persons having first-hand knowledge of  
45 the alleged acts.

46

1 C. The party against whom sanctions are sought shall have  
2 ten working days following receipt of the petition to file an  
3 objection to the petition. The objection shall respond to each  
4 alleged act of delay with specificity; shall include sworn  
5 affidavits of persons having first-hand knowledge of the  
6 alleged acts; and shall state whether an oral hearing is  
7 requested. Objections are timely filed only if received by the  
8 office at or before 4:30 p.m. of the tenth working day. The  
9 objection shall include proof that it was served on the other  
10 party.

11  
12 D. Upon receipt of a petition and objection under this part,  
13 the chief judge shall either determine the matter or assign it  
14 to a judge for determination. If either party has requested an  
15 oral hearing, it shall be conducted no earlier than ten  
16 calendar days following the receipt of a notice of the hearing.

17  
18 E. Intentional and frivolous delay occurs when a party  
19 deliberately delays proceedings for immaterial, meritless,  
20 trivial, or unjustifiable reasons. In determining whether  
21 intentional and frivolous delay has occurred, the judge shall  
22 also give consideration to the number of issues and amount  
23 of damages in controversy, any pattern of similar acts by the  
24 party, and effects of the delay.

25  
26 F. If it is determined that intentional and frivolous delay has  
27 occurred, the judge shall enter an order requiring the  
28 offending party to cease and desist from the act; compelling  
29 cooperation in all phases of the proceedings; or imposing  
30 any other sanctions, other than fines, deemed necessary to  
31 compel expeditious cooperation and completion of the  
32 investigation.

33  
34 G. In the event the investigation results in a finding of  
35 probable cause and issuance of a complaint, the  
36 determination of intentional and frivolous delay and  
37 compliance with any orders issued under item F shall be  
38 taken into consideration in awarding damages and attorney's  
39 fees, where applicable.

40  
41 Subp. 2. Procedure during proceedings. If during the  
42 pendency of a contested case before the office either the  
43 charging party or the respondent believe that the other is  
44 intentionally and frivolously delaying the proceedings, they  
45 may bring a motion before the judge by following the  
46 procedures in part 1400.6600. If the judge determines, using

1 the criteria in subpart 1, item E, that intentional and frivolous  
2 delay has occurred, the judge shall issue an order containing  
3 any of the following:

- 4
- 5 A. that the party shall cease and desist from the acts;
- 6
- 7 B. compelling cooperation during further pendency of the  
8 case;
- 9
- 10 C. dismissing any or all charges or defenses to charges,  
11 whichever may be appropriate;
- 12
- 13 D. foreclosing the testimony of specified witnesses or the  
14 presentation of evidence on specified issues;
- 15
- 16 E. that the delay will be taken into consideration in awarding  
17 damages or attorney's fees; or
- 18
- 19 F. any sanctions available in civil cases in the district courts  
20 of Minnesota.

21  
22 **1400.7100 RIGHTS AND RESPONSIBILITIES OF**  
23 **PARTIES.**

24  
25 Subpart 1. Generally. All parties shall have the right to  
26 present evidence, rebuttal testimony, and argument with  
27 respect to the issues, and to cross-examine witnesses.

28  
29 Subp. 2. Necessary preparation. A party shall have all  
30 evidence to be presented, both oral and written, available on  
31 the date for hearing. Requests for subpoenas, depositions,  
32 or continuances shall be made within a reasonable time after  
33 their need becomes evident to the requesting party. In cases  
34 where the hearing time is expected to exceed one day, the  
35 parties shall be prepared to present their evidence at the  
36 date and time ordered by the judge or as agreed upon at a  
37 prehearing conference. Parties shall have enough copies of  
38 exhibits so that they can provide a copy to each other party  
39 at the time the exhibit is introduced, unless that other party  
40 has already obtained a copy through discovery.

41  
42 Subp. 3. Responding to orders. If the judge orders that  
43 parties do an act or not do an act, the parties shall comply  
44 with the order. If a party objects to an order, the objection  
45 shall be stated in advance of the order as part of the record.  
46 If the party had no advance knowledge that the order was to

1 be issued, any objection shall be made as part of the record  
2 as soon as the party becomes aware of the order.

3  
4 Subp. 4. Copies. The judge shall send copies of all orders  
5 or decisions to all parties simultaneously. Any party sending  
6 a letter, exhibit, brief, memorandum, subpoena request, or  
7 other document to the judge shall simultaneously send a  
8 copy to all other parties.

9  
10 Subp. 5. Representation by attorney. A party need not be  
11 represented by an attorney. If a party has notified other  
12 parties of that party's representation by an attorney, all  
13 communications shall be directed to that attorney.

14  
15 Subp. 6. Communication with judge. No party or attorney  
16 may communicate with the judge on the merits of the case  
17 unless all parties have the opportunity to participate.

18  
19 **1400.7150 RIGHTS AND RESPONSIBILITIES OF**  
20 **NONPARTIES.**

21  
22 Subpart 1. Offering evidence. With the approval of the  
23 judge, ~~any person~~ a person who is not a party to the action,  
24 and not called as a witness by a party, may offer testimony  
25 or other evidence relevant to the case. Any nonparty offering  
26 testimony or other evidence may be questioned by parties to  
27 the case and by the judge.

28  
29 ~~Subp. 2. Questioning witnesses. The judge may allow~~  
30 ~~nonparties to question witnesses if deemed necessary for~~  
31 ~~the development of a full and complete record.~~

32  
33 **1400.7200 WITNESSES.**

34  
35 Subpart 1. Testimony. Any party may be a witness and may  
36 present witnesses on the party's behalf at the hearing. All  
37 oral testimony at the hearing shall be under oath or  
38 affirmation.

39  
40 Subp. 2. Sequestration. At the request of a party or upon  
41 the judge's own motion, the judge shall exclude witnesses  
42 from the hearing room so that they cannot hear the  
43 testimony of other witnesses.

1 **1400.7300 RULES OF EVIDENCE.**

2

3 Subpart 1. Admissible evidence. The judge may admit all  
4 evidence which possesses probative value, including  
5 hearsay, if it is the type of evidence ~~on~~ upon which  
6 reasonable, and prudent persons are accustomed to rely in  
7 the conduct of their serious affairs. The judge shall give  
8 effect to the rules of privilege recognized by law. Evidence  
9 which is incompetent, irrelevant, immaterial, or unduly  
10 repetitious shall be excluded.

11

12 Subp. 2. Evidence part of record. All evidence to be  
13 considered in the case, including all records and documents  
14 in the possession of the agency or a true and accurate  
15 photocopy, shall be offered and made a part of the record in  
16 the case. No other factual information or evidence shall be  
17 considered in the determination of the case.

18

19 Subp. 3. Documents. Documentary evidence in the form of  
20 copies or excerpts may be received or incorporated by  
21 reference in the discretion of the judge or upon agreement of  
22 the parties. Copies of a document shall be received to the  
23 same extent as the original document unless a genuine  
24 question is raised as to the accuracy or authenticity of the  
25 copy or, under the circumstances, it would be unfair to admit  
26 the copy in lieu of the original.

27

28 Subp. 4. Official notice of facts. The judge may take notice of  
29 judicially cognizable facts but shall do so on the record and  
30 with the opportunity for any party to contest the facts so  
31 noticed.

32

33 Subp. 5. Burden of proof. The party proposing that certain  
34 action be taken must prove the facts at issue by a  
35 preponderance of the evidence, unless the substantive law  
36 provides a different burden or standard. A party asserting an  
37 affirmative defense shall have the burden of proving the  
38 existence of the defense by a preponderance of the  
39 evidence. In employee disciplinary actions, the agency or  
40 political subdivision initiating the disciplinary action shall  
41 have the burden of proof.

42

43 Subp. 6. Examination of adverse party. A party may call an  
44 adverse party or a managing agent, or employees or an  
45 officer, director, managing agent, or employee of the state or  
46 any political subdivision thereof or of a public or private

1 corporation or of a partnership or association or body politic  
2 which is an adverse party, and interrogate that party by  
3 leading questions and contradict and impeach that party on  
4 material matters in all respects as if that party had been  
5 called by the adverse party. The adverse party may be  
6 examined by that party's counsel upon the subject matter of  
7 that party's examination in chief under the rules applicable to  
8 direct examination, and may be cross-examined,  
9 contradicted, and impeached by any other party adversely  
10 affected by the testimony.

11

12 **1400.7400 HEARING RECORD.**

13

14 Subpart 1. Content. The judge shall maintain the official  
15 record in each contested case until the issuance of the  
16 judge's final report, at which time the record, except for the  
17 ~~audiomagnetic~~ recordings of the hearing, shall be sent to the  
18 agency. The ~~audiomagnetic~~ recordings of the hearing shall  
19 be retained by the office for five years from the date that the  
20 record is returned to the agency. Unless an agency requests  
21 a longer retention period for a specific case, the recordings  
22 may be erased or otherwise destroyed at the end of the five-  
23 year period.

24

25 The record in a contested case shall contain all pleadings,  
26 motions, and orders; evidence offered or considered; offers  
27 of proof, objections, and rulings thereon; the judge's findings  
28 of fact, conclusions, and recommendations; all memoranda  
29 or data submitted by any party in connection with the case;  
30 and the transcript of the hearing, if one was prepared.

31

32 Subp. 2. Transcript. The verbatim record shall be  
33 transcribed if requested by the agency, a party, or in the  
34 discretion of the chief judge. The agency or party requesting  
35 a transcript is responsible for the cost. The parties may  
36 agree to divide the cost. When the chief administrative law  
37 judge requests a transcript the agency is responsible for the  
38 cost.

39

40 **1400.7500 CONTINUANCES.**

41

42 Requests for a continuance of a hearing shall be granted  
43 upon a showing of good cause. Unless time does not permit,  
44 a request for continuance of the hearing shall be made in  
45 writing to the judge and shall be served upon all parties of  
46 record and the agency if it is not a party. In determining

1 whether good cause exists, due regard shall be given to the  
2 ability of the party requesting a continuance to effectively  
3 proceed without a continuance. A request for a continuance  
4 filed within five business days of the hearing shall be denied  
5 unless the reason for the request could not have been earlier  
6 ascertained.

7  
8 "Good cause" shall include: death or incapacitating illness of  
9 a party, representative, or attorney of a party; a court order  
10 requiring a continuance; lack of proper notice of the hearing;  
11 a substitution of the representative or attorney of a party if  
12 the substitution is shown to be required; a change in the  
13 parties or pleadings requiring postponement; and agreement  
14 for a continuance by all parties provided that it is shown that  
15 more time is clearly necessary to complete authorized  
16 discovery or other mandatory preparation for the case and  
17 the parties and the judge have agreed to a new hearing  
18 date, or, the parties are engaged in serious settlement  
19 negotiations or have agreed to a settlement of the case  
20 which has been or will likely be approved by the final  
21 decision maker.

22  
23 "Good cause" shall not include: intentional delay;  
24 ~~unavailability of counsel or other representative due to~~  
25 ~~engagement in another judicial or administrative proceeding~~  
26 ~~unless all other members of the attorney's or~~  
27 ~~representative's firm familiar with the case are similarly~~  
28 ~~engaged, or if the notice of the other proceeding was~~  
29 ~~received subsequent to the notice of the hearing for which~~  
30 ~~the continuance is sought;~~ unavailability of a witness if the  
31 witness' testimony can be taken by deposition; and failure of  
32 the attorney or representative to properly utilize the statutory  
33 notice period to prepare for the hearing.

34  
35 During a hearing, if it appears in the interest of justice that  
36 further testimony should be received and sufficient time does  
37 not remain to conclude the testimony, the judge shall either  
38 order the additional testimony be taken by deposition or  
39 continue the hearing to a future date and oral notice on the  
40 record shall be sufficient.

41  
42 A continuance shall not be granted when to do so would  
43 prevent the case from being concluded within any statutory  
44 deadline.

45  
46

1 **1400.7600 CERTIFICATION OF MOTIONS TO AGENCY.**

2  
3 No motions shall be made directly to or be decided by the  
4 agency subsequent to the assignment of a judge and prior to  
5 the completion and filing of the judge's report unless the  
6 motion is certified to the agency by the judge. No motions  
7 will be certified in cases where the judge's report is binding  
8 on the agency. Uncertified motions shall be made to and  
9 decided by the judge and considered by the agency in its  
10 consideration of the record as a whole subsequent to the  
11 filing of the judge's report. Any party may request that a  
12 pending motion or a motion decided adversely to that party  
13 by the judge before or during the course of the hearing, other  
14 than rulings on the admissibility of evidence or  
15 interpretations of parts 1400.5100 to 1400.8400, be certified  
16 by the judge to the agency. In deciding what motions should  
17 be certified, the judge shall consider the following:

18  
19 A. whether the motion involves a controlling question of law  
20 as to which there is substantial ground for a difference of  
21 opinion; or

22  
23 B. whether a final determination by the agency on the  
24 motion would materially advance the ultimate termination of  
25 the hearing; or

26  
27 C. whether or not the delay between the ruling and the  
28 motion to certify would adversely affect the prevailing party;  
29 or

30  
31 D. whether to wait until after the hearing would render the  
32 matter moot and impossible for the agency to reverse or for  
33 a reversal to have any meaning; or

34  
35 E. whether it is necessary to promote the development of  
36 the full record and avoid remanding; or

37  
38 F. whether the issues are solely within the expertise of the  
39 agency.

40  
41 **1400.7700 ADMINISTRATIVE LAW JUDGE'S CONDUCT.**

42  
43 Subpart 1. Communication with parties. The judge shall not  
44 communicate, directly or indirectly, in connection with any  
45 issue of fact or law with any person or party including the  
46 agency concerning any pending case, except upon notice

1 and opportunity for all parties to participate. When these  
2 rules authorize communications contrary to this part, the  
3 communications shall be limited to only those matters  
4 permitted by these rules. The judge may respond to  
5 questions relating solely to procedures for the hearing  
6 without violating this part.

7  
8 Subp. 2. Ex parte communication.

9  
10 Where circumstances require, ex parte communications for  
11 scheduling, administrative purposes, or emergencies that do  
12 not deal with substantive matters or issues on the merits are  
13 authorized, provided;

14  
15 A. the judge reasonably believes that no party will gain a  
16 procedural or tactical advantage as a result of the ex parte  
17 communication; and

18  
19 B. the judge makes provisions promptly to notify all other  
20 parties of the substance of the ex parte communication and  
21 allows an opportunity to respond.

22  
23 Subp. 3. Other communication. The administrative law  
24 judge may:

25  
26 A. obtain the advice of a disinterested expert on the law  
27 applicable to a proceeding before the judge if the judge gives  
28 prior notice to the parties of the person to be consulted and  
29 an opportunity to object. If the advice is obtained, the judge  
30 shall notify the parties of the substance of the advice and  
31 afford the parties a reasonable opportunity to respond;

32  
33 B. consult with other judges and with office personnel  
34 whose function is to aid the judge in carrying out the judge's  
35 adjudicative responsibilities;

36  
37 C. if the parties consent, confer separately with the parties  
38 and/or their representatives in an effort to mediate or settle  
39 matters pending before the judge, subject to part 1400.5950,  
40 subpart 7; and

41  
42 D. initiate or consider any ex parte communication when  
43 expressly authorized by law to do so.

44  
45 Subp. 4. Code of conduct. Administrative law judges are  
46 subject to the provisions of the Code of Judicial Conduct.

1 **1400.7800 CONDUCT OF HEARING.**  
2

3 In the absence of a specific provision mandating or  
4 permitting a closed hearing, all contested case hearings are  
5 open to the public. Unless the judge determines that the  
6 public interest will be equally served otherwise, the hearing  
7 shall be conducted substantially in the following manner:  
8

9 A. The judge shall open the hearing by reading the title of  
10 the case, asking the parties or counsel to note their  
11 appearances, and explaining the hearing procedure to  
12 unrepresented parties.  
13

14 B. After opening the hearing, the judge shall, unless all  
15 parties are represented by counsel or are otherwise familiar  
16 with the procedures, state the procedural rules for the  
17 hearing including the following:  
18

19 (1) All parties may present evidence and argument with  
20 respect to the issues and cross-examine witnesses.  
21

22 (2) All parties have a right to be represented by an attorney  
23 at the hearing.  
24

25 (3) The rules of evidence in part 1400.7300, subpart 1.  
26

27 C. Any stipulations, settlement agreements, or consent  
28 orders entered into by any of the parties prior to the hearing  
29 shall be entered into the record.  
30

31 D. The party with the burden of proof may make an opening  
32 statement. All other parties may make statements in a  
33 sequence determined by the judge.  
34

35 E. After any opening statements, the party with the burden  
36 of proof shall begin the presentation of evidence unless the  
37 parties have agreed otherwise or the administrative law  
38 judge determines that requiring another party to proceed first  
39 would be more expeditious and would not jeopardize the  
40 rights of any other party. It shall be followed by the other  
41 parties in a sequence determined by the judge.  
42

43 F. Cross-examination of witnesses shall be conducted in a  
44 sequence and in a manner determined by the judge to  
45 expedite the hearing while ensuring a fair hearing. At the  
46 request of a party whose witness is being cross-examined,

1 the judge shall make rulings as are necessary to prevent  
2 argumentative, repetitive, or irrelevant questioning and to  
3 expedite the cross-examination to the extent consistent with  
4 the disclosure of all relevant testimony and information.

5  
6 G. Any party may be a witness or may present other  
7 persons as witnesses at the hearing. All evidentiary  
8 testimony presented to prove or disprove a fact at issue shall  
9 be under oath or affirmation.

10  
11 H. When all parties and witnesses have been heard,  
12 opportunity shall be offered to present oral final argument, in  
13 a sequence determined by the judge. Final argument may, in  
14 the discretion of the judge, be in the form of written  
15 memoranda or oral argument, or both. Final argument need  
16 not be recorded, in the discretion of the judge. Written  
17 memoranda may, in the discretion of the judge, be submitted  
18 simultaneously or sequentially and within time periods as the  
19 judge may prescribe. The judge may limit the length of  
20 written memoranda.

21  
22 I. After final argument, the hearing shall be closed unless a  
23 continuance has been ordered under part 1400.7500. If  
24 continued, it shall be either: continued to a certain time and  
25 day, announced at the time of the hearing and made a part  
26 of the record; set by stipulation of the parties and approval of  
27 the judge; or continued to a date to be determined later,  
28 which must be upon not less than five days' written notice to  
29 the parties.

30  
31 J. The record of the contested case proceeding shall be  
32 closed upon receipt of the final written memorandum,  
33 transcript, if any, or late filed exhibits which the parties and  
34 the judge have agreed should be received into the record,  
35 whichever occurs latest.

36  
37 **1400.7900 PARTICIPATION BY AGENCY.**

38  
39 An agency which is a party to a contested case may only  
40 participate in the hearing by the giving of testimony and  
41 through its designated representative or counsel. Where the  
42 agency is not a party and participates in the hearing in a  
43 neutral or quasi-judicial capacity, the agency head or a  
44 member of the governing body of the agency or designee  
45 may engage in examination of witnesses as the judge  
46 deems appropriate.

1  
2 **1400.8000 DISRUPTION OF HEARING.**

3  
4 Subpart 1. ~~Cameras~~ Recordings. Television, ~~newsreel,~~  
5 motion picture, still, or other cameras, and mechanical  
6 recording devices may not be operated in the hearing room  
7 during the course of the hearing ~~after permission is obtained~~  
8 ~~from the judge and then only pursuant to any conditions the~~  
9 ~~judge may impose to avoid disruption of the hearing.~~ No  
10 recording shall be made of any telephone hearing except the  
11 recording that is made by the office for the hearing record.  
12

13 Subp. 2. Other conduct. Pursuant to and in accordance  
14 with Minnesota Statutes, section 624.72, no person shall  
15 interfere with the free, proper, and lawful access to or egress  
16 from the hearing room. No person shall interfere with the  
17 conduct of, disrupt, or threaten interference with or disruption  
18 of the hearing. In the event of interference, disruption, or  
19 threat, the judge shall read this subpart to those persons  
20 causing such interference or disruption and thereafter  
21 proceed as deemed appropriate, which may include ordering  
22 the disruptive person to leave or be removed from the  
23 hearing.  
24

25 **1400.8100 ADMINISTRATIVE LAW JUDGE'S REPORT.**

26  
27 Subpart 1. Based on record. No factual information or  
28 evidence which is not a part of the record shall be  
29 considered by the judge or the agency in the determination  
30 of a contested case.  
31

32 Subp. 2. Administrative notice. The judge and agency may  
33 take administrative notice of general, technical, or scientific  
34 facts within their specialized knowledge in conformance with  
35 Minnesota Statutes, section 14.60.  
36

37 Subp. 3. Completion and distribution. Following the close of  
38 the record, the judge shall make a report pursuant to  
39 Minnesota Statutes, section 14.50, and, upon completion, a  
40 copy of the report shall be served upon all parties by  
41 personal service, by first class mail, or by depositing it with  
42 the Central Mailing Section, Publications Division,  
43 Department of Administration.  
44  
45

1 **1400.8200 AGENCY DECISION.**

2  
3 Following receipt of the judge's report, the agency shall  
4 proceed to make its final decision in accordance with  
5 Minnesota Statutes, sections 14.61 and 14.62 and shall  
6 serve a copy of its final order upon the office by first class  
7 mail.

8  
9 **1400.8300 RECONSIDERATION OR REHEARING.**

10  
11 Once a judge has issued a report, unless that report is  
12 binding on the agency, the judge loses jurisdiction to amend  
13 the report except for clerical or mathematical errors. Unless  
14 the report is a final order, binding on the agency, petitions for  
15 reconsideration or rehearing must be filed with the agency.

16  
17 Where the judge's decision is binding on the agency, a  
18 petition for reconsideration or rehearing shall be filed with  
19 the judge. The petition must be filed within a reasonable time  
20 but not after an appeal is taken nor more than one year after  
21 the decision was issued. ~~Pursuant to Minnesota Statutes,~~  
22 ~~section 14.64, a petition for reconsideration must be filed~~  
23 ~~within ten days after the decision in order to toll the time for~~  
24 ~~appeal to the Court of Appeals. A notice of and order for~~  
25 ~~rehearing shall be served on all parties in the same manner~~  
26 ~~prescribed for the notice of and order for hearing provided~~  
27 ~~that the judge may permit service of the notice and order for~~  
28 ~~rehearing less than 30 days prior to rehearing.~~ The rehearing  
29 shall be conducted in the same manner prescribed for a  
30 hearing.

31  
32 In ruling on a motion for reconsideration or rehearing ~~in~~  
33 ~~cases where the judge's decision is binding on the agency,~~  
34 the judge shall grant reconsideration or rehearing if it  
35 appears that to deny it would be inconsistent with substantial  
36 justice and any one of the following has occurred:

- 37  
38 A. irregularity in the proceedings whereby the moving party  
39 was deprived of a fair hearing;  
40  
41 B. accident or surprise that could not have been prevented  
42 by ordinary prudence;  
43  
44 C. material evidence newly discovered that with reasonable  
45 diligence could not have been found and produced at  
46 hearing;

- 1
- 2 D. fraud upon the hearing process;
- 3
- 4 E. mistake, inadvertence, or excusable neglect; or
- 5
- 6 F. the decision is not justified by the evidence, or is contrary
- 7 to law; but unless it be so expressly stated in the order
- 8 granting rehearing, it shall not be presumed, on appeal, to
- 9 have been made on the ground that the decision was not
- 10 justified by the evidence.

11  
12 **1400.8400 EMERGENCY PROCEDURES NOT**  
13 **PREEMPTED.**

14  
15 Nothing contained in these rules is intended to preempt,  
16 repeal, or be in conflict with any rule or statute which  
17 provides for acts by the agency in an emergency or  
18 procedure for conduct by the agency in such a situation.

19  
20 **AWARDS OF EXPENSES AND ATTORNEYS FEES**  
21 **1400.8401 EXPENSES AND ATTORNEY FEES.**

22  
23 Subpart. 1. [Repealed, 26 SR 391]

24  
25 Subp. 2. [Repealed, 26 SR 391]

26  
27 Subp. 3. Application. A party seeking an award of expenses  
28 and attorney's fees shall submit to the judge an application  
29 that shows:

30  
31 A. an itemization of the amount of fees and expenses  
32 sought. This shall include full documentation of fees and  
33 expenses, including an affidavit from each attorney, agent,  
34 or expert witness representing or appearing on behalf of the  
35 applicant stating the actual time expended and the rate at  
36 which fees have been computed and describing the specific  
37 services performed.

38  
39 The affidavit shall itemize in detail the services performed by  
40 the date, number of hours per date, and the services  
41 performed during those hours. In order to establish the  
42 hourly rate, the affidavit shall state the hourly rate which is  
43 billed and paid by the majority of clients for similar services  
44 during the relevant time periods.

45

1 The documentation shall also include a description of any  
2 expenses for which reimbursement is sought and a  
3 statement of the amounts paid and payable by the applicant  
4 or by any other person or entity for the services provided;

5  
6 B. a statement that explains with specificity how or why the  
7 position of the state agency was not substantially justified;

8  
9 C. if the claim for attorney's fees exceeds \$125 per hour, a  
10 statement of facts showing that the excess award qualifies  
11 under Minnesota Statutes, section 15.471, subdivision 5,  
12 paragraph (c); and

13  
14 D. a proof of service showing that the state agency and all  
15 other parties have been served, either personally or by first  
16 class mail, with a copy of the application.

17  
18 The application must be signed and sworn to by the party  
19 and the attorney or other agent or representative submitting  
20 the application on behalf of the party, showing the addresses  
21 and phone numbers of all persons signing the application.

22  
23 Subp. 4. Response or objection to application. The state  
24 agency or any other party may respond or object to all or any  
25 part of the application for expenses and fees. A response or  
26 objection must be sworn to and filed with the judge within 14  
27 days following the service of the application and must show:

28  
29 A. the name, address, and phone number of the party and  
30 the person submitting the response or objection on behalf of  
31 the party;

32  
33 B. in detail any objections to the award requested and  
34 identify the facts relied on to support the objection. If the  
35 response or objection is based on any alleged facts not  
36 already reflected in the record of the proceeding, the  
37 response or objection shall include either a supporting  
38 affidavit or affidavits or request for further proceedings under  
39 subpart 5b; and

40  
41 C. a proof of service showing that all other parties have  
42 been served, either personally or by first class mail, with a  
43 copy of the response or objection.

44  
45 Subp. 5. [Repealed, 11 SR 1385]

46

1 Subp. 5a. Settlement. A prevailing party and the agency  
2 may agree on a proposed settlement of an award before  
3 final action on the application. If a settlement occurs, a  
4 stipulation for settlement shall be filed with the judge  
5 together with a proposed order which shall be prepared for  
6 the judge's signature. Upon receipt of a stipulation for  
7 settlement and proposed order, the judge shall issue an  
8 order, serve all parties and the chief administrative law judge  
9 with a copy, and send the original to the agency for inclusion  
10 with the record of the contested case which gave rise to the  
11 application.

12  
13 Subp. 5b. Extensions of time and further proceedings.

14  
15 A. The judge may, on motion and for good cause shown,  
16 grant extensions of time, other than for filing an application  
17 for fees and expenses, after final disposition in the contested  
18 case.

19  
20 B. Ordinarily, the determination of an award will be made on  
21 the basis of the written record of the underlying contested  
22 case and the filings required or permitted by this part.  
23 However, on the judge's own motion or on the motion of any  
24 party to the underlying contested case, further filings or other  
25 action can be required or permitted, such as an informal  
26 conference, oral argument, additional written submissions, or  
27 an evidentiary hearing. Any further action shall be allowed  
28 only when necessary for a full and fair resolution of the  
29 issues arising from the application and shall take place on  
30 the first date available on the judge's calendar which is also  
31 agreeable to all parties. A motion for further filings or other  
32 action shall specifically identify the information sought on the  
33 disputed issues and shall explain why the further filings or  
34 other action are necessary to resolve the issues.

35  
36 C. In the event that an evidentiary hearing is required or  
37 permitted by the judge, the hearing and any related filings or  
38 other action required or permitted shall be conducted under  
39 parts 1400.8505 to 1400.8612.

40  
41 Subp. 6. [Repealed, 26 SR 391]

42  
43 Subp. 7. Decision of the administrative law judge. Within 30  
44 days following the close of the record in the proceeding for  
45 the award of expenses and attorney's fees, the  
46 administrative law judge shall issue a written order which

1 shall also contain findings and conclusions on each of the  
2 following which are relevant to the decision:

- 3
- 4 A. the applicant's status as a prevailing party;
- 5
- 6 B. the applicant's qualification as a party under Minnesota  
7 Statutes, section 15.471, subdivision 6;
- 8
- 9 C. whether the agency's position as a party to the  
10 proceeding was substantially justified;
- 11
- 12 D. whether special circumstances make an award unjust;
- 13
- 14 E. whether the applicant during the course of the  
15 proceeding engaged in conduct that unduly and  
16 unreasonably protracted the final resolution of the matter in  
17 controversy; and
- 18
- 19 F. the amounts, if any, awarded for fees and other  
20 expenses, explaining any difference between the amount  
21 requested and the amount awarded.
- 22

23 The order shall be served on all parties and the state  
24 agency. The original order and the rest of the record of the  
25 proceedings shall be filed with the state agency at the time  
26 the order is served.

## 27

## 28

## 29 **REVENUE RECAPTURE ACT HEARINGS**

### 30

### 31 **1400.8505 SCOPE.**

32

33 Subpart 1. Application. The procedures in parts Parts  
34 1400.8505 to 1400.8612 govern hearings based on the  
35 Revenue Recapture Act, Minnesota Statutes, sections  
36 114C.23; 115.076; 116.072, subdivision 6; 144.991; and  
37 270A.01 to 270A.12; and for other hearings as directed by  
38 statute. These procedures are for expedited  
39 administrative hearings as provided by state law. In  
40 addition, parts 1400.8505 to 1400.8612 may be used for  
41 any other hearings conducted by the state Office of  
42 Administrative Hearings if all parties to a particular  
43 hearing and the administrative law judge agree to use  
44 them.

1 Subp. 2. For expedited hearings, the contested case  
2 procedures of parts 1400.5010 to 1400.8400 are modified  
3 as set forth in parts 1400.8505 to 1400.8612. As to  
4 matters as to which parts 1400.8505 to 1400.8612 are  
5 silent, the judge shall apply the contested case  
6 procedures of parts 1400.5010 to 1400.8400, the Rules of  
7 Civil Procedure for the District Court for Minnesota, or other  
8 applicable law in order to promote a fair and expeditious  
9 proceeding.

10  
11 **1400.8510 DEFINITIONS.**

12  
13 ~~Subpart 1. Agency. "Agency" means the public agency for~~  
14 ~~whom the hearing is conducted. Expedited hearing.~~  
15 ~~"Expedited hearing" is a hearing conducted according to~~  
16 ~~parts 1400.8505 to 1400.8612.~~

17  
18 Subp. 2. [Repealed, 26 SR 391]

19  
20 ~~Subp. 3. Party. "Party" means each person named as a~~  
21 ~~party by the agency in the notice of hearing or any other~~  
22 ~~persons granted permission to intervene pursuant to part~~  
23 ~~1400.8570. "Party" includes the agency except when the~~  
24 ~~agency participates in the hearing in a neutral or quasi-~~  
25 ~~judicial capacity only.~~

26  
27 ~~Subp. 3a. Person. "Person" means any individual,~~  
28 ~~business, nonprofit association or society, or~~  
29 ~~governmental entity.~~

30  
31 ~~Subp. 4. Service; serve. "Service" or "serve" means~~  
32 ~~personal service or, unless otherwise provided by law,~~  
33 ~~service by first class United States mail or a licensed~~  
34 ~~express mail service.~~

35  
36 **1400.8520** [Repealed, 26 SR 391]

37  
38 **1400.8530 WAIVER.**

39  
40 Upon request of all parties, the administrative law judge  
41 shall waive or modify any of the procedures in parts  
42 1400.8505 to 1400.8612, provided that the waiver or  
43 modification does not conflict with any provision of  
44 Minnesota Statutes, sections 14.48 to 14.69, or statutes  
45 conferring jurisdiction on the Office of Administrative  
46 Hearings.

1  
2 ~~1400.8540 ADMINISTRATIVE LAW JUDGE~~  
3 ~~ASSIGNMENT.~~

4  
5 ~~Subpart 1. Request for assignment. Any agency may~~  
6 ~~order a Revenue Recapture Act hearing by filing with the~~  
7 ~~docket coordinator a request for assignment of an~~  
8 ~~administrative law judge. The request must include a~~  
9 ~~proposed date, time, and place for the hearing or~~  
10 ~~prehearing conference. In proposing a hearing location,~~  
11 ~~the requesting agency must take into account the location~~  
12 ~~of known parties, witnesses, and other participants so as~~  
13 ~~to maximize convenience and minimize costs. If~~  
14 ~~requested by the chief administrative law judge or~~  
15 ~~designee, the agency shall file a copy of the notice of~~  
16 ~~hearing proposed to be issued.~~

17  
18 ~~Subp. 2. Assignment. Within ten days of the receipt of a~~  
19 ~~request, the chief administrative law judge or designee~~  
20 ~~shall assign an administrative law judge to hear the case~~  
21 ~~and set the time, date, and place for hearing or~~  
22 ~~prehearing conference, taking into account the agency's~~  
23 ~~request.~~

24  
25 ~~1400.8545 SERVICE AND FILING PROCEDURE.~~

26  
27 ~~Subpart 1. Certificate of service. A certificate of service~~  
28 ~~must be made by the person making the service. A~~  
29 ~~certificate of service must bear the name of the person~~  
30 ~~certifying that service has been made, but need not be~~  
31 ~~signed or notarized.~~

32  
33 ~~Subp. 2. Service by mail. Service by mail or licensed~~  
34 ~~overnight express mail service is effective upon placing~~  
35 ~~the item to be served in the mail or delivering it to the~~  
36 ~~authorized agent of the express mail service. Postage~~  
37 ~~must be prepaid. Mail to a person other than a state~~  
38 ~~agency shall be addressed to the last known address of~~  
39 ~~the person. Agencies of the state of Minnesota may also~~  
40 ~~deposit the document with the state of Minnesota's central~~  
41 ~~mail system for United States mail.~~

42  
43 ~~Subp. 3. Personal service. Personal service may be~~  
44 ~~accomplished by either delivering the document to the~~  
45 ~~person or by leaving the document at the person's home~~  
46 ~~or place of business with someone of suitable age and~~

1 ~~discretion who resides in the same house or who is~~  
2 ~~located at the same business address as the person to be~~  
3 ~~served.~~

4  
5 ~~Subp. 4. Service upon a confined person. If a person is~~  
6 ~~confined to a federal or state institution, a copy of the~~  
7 ~~document must also be served upon the chief executive~~  
8 ~~officer of the institution.~~

9  
10 ~~Subp. 5. Filing by facsimile and other means. Any paper~~  
11 ~~relating to hearings conducted by an administrative law~~  
12 ~~judge under these rules may be filed with the office by fax~~  
13 ~~transmission. Filings are effective on the date that the~~  
14 ~~office receives the fax transmission if the transmission is~~  
15 ~~begun before 4:30 p.m. on that date. The filing of a fax~~  
16 ~~has the same force and effect as the filing of the original~~  
17 ~~document. Filings made by other means are effective on~~  
18 ~~the date the office receives the filing.~~

19  
20 ~~**1400.8550 NOTICE OF HEARING.**~~

21  
22 ~~The agency shall issue the notice of hearing. The notice~~  
23 ~~of hearing shall be served at least 20 days before the~~  
24 ~~hearing. The notice of hearing shall be served upon all~~  
25 ~~parties. The notice shall be worded in clear, nontechnical~~  
26 ~~language and shall contain, at a minimum, the following:~~

27  
28 ~~A. the time, date, and place for the hearing or prehearing~~  
29 ~~conference;~~

30  
31 ~~B. the name, address, and telephone number of the~~  
32 ~~administrative law judge;~~

33  
34 ~~C. a statement of the allegations or issues to be~~  
35 ~~determined at the hearing, together with a citation to any~~  
36 ~~relevant statutes and rules. Each alleged violation of~~  
37 ~~statute or rule shall be noted;~~

38  
39 ~~D. a citation to the statutory authority to hold the hearing~~  
40 ~~and to take the action proposed;~~

41  
42 ~~E. a citation to these rules, and notification of how copies~~  
43 ~~may be obtained in print or online;~~

44  
45 ~~F. a brief description of the procedure to be followed at~~  
46 ~~the hearing;~~

1  
2 ~~G. the name, address, and telephone number of the~~  
3 ~~agency representative to be contacted to discuss informal~~  
4 ~~disposition of the dispute, along with an explanation of the~~  
5 ~~types of informal disposition that the agency might~~  
6 ~~consider;~~

7  
8 ~~H. notification that a party need not be represented by an~~  
9 ~~attorney but may choose to be represented by an attorney~~  
10 ~~or by any other person;~~

11  
12 ~~I. notification that the agency will, upon request, make an~~  
13 ~~accommodation so that the hearing location is accessible~~  
14 ~~and will appoint a qualified interpreter if necessary;~~

15  
16 ~~J. a statement advising the parties to bring to the hearing~~  
17 ~~all documents, records, and witnesses they need to~~  
18 ~~present their position; in addition, a statement that~~  
19 ~~subpoenas may be available to compel the attendance of~~  
20 ~~witnesses or the production of documents and a reference~~  
21 ~~to part 1400.8601 relating to subpoenas;~~

22  
23 ~~K. a statement advising parties that failure to appear at~~  
24 ~~the hearing or prehearing conference will result in the~~  
25 ~~allegations of the notice being taken as true, and a~~  
26 ~~statement which explains the possible results if the~~  
27 ~~allegations are taken as true; and~~

28  
29 ~~L. a statement advising the parties that state agencies are~~  
30 ~~required by law to keep some data not public, that parties~~  
31 ~~are required to advise the judge if not public data is~~  
32 ~~offered into the record, and that if not public data is~~  
33 ~~admitted into evidence it may become public unless a~~  
34 ~~party objects and asks for relief under Minnesota~~  
35 ~~Statutes, section 14.60, subdivision 2.~~

36  
37 **~~1400.8560 DEFAULT.~~**

38  
39 ~~A default occurs when a party fails to appear without the~~  
40 ~~prior consent of the judge at a prehearing conference,~~  
41 ~~settlement conference, or a hearing. If the agency~~  
42 ~~appears at a hearing but the party against whom the~~  
43 ~~agency intends to take action does not, the allegations in~~  
44 ~~the notice of hearing shall be taken as true and deemed~~  
45 ~~proved without further evidence. If the party against whom~~  
46 ~~the agency intends to take action appears at a hearing,~~

1 but the agency fails to appear, the administrative law  
2 judge shall recommend that the hearing be dismissed with  
3 prejudice. If neither the agency nor any other party appear  
4 at a hearing, the administrative law judge shall  
5 recommend that the case be dismissed with prejudice.  
6

7 **~~1400.8570 INTERVENTION AS PARTY.~~**

8  
9 Subpart 1. Petition. Any person not named in the notice of  
10 hearing who desires to participate as a party shall submit  
11 a written petition to intervene to the administrative law  
12 judge and shall serve a copy of the petition upon all  
13 existing parties and the agency. The petition shall show  
14 how the petitioner's legal rights, duties, or privileges may  
15 be determined or affected by the proceeding; shall set  
16 forth the grounds and purposes for which intervention is  
17 sought; and shall indicate petitioner's statutory right to  
18 intervene if one should exist.  
19

20 Subp. 2. Objection. Any party may object to the petition  
21 for intervention by filing a written notice of objection with  
22 the administrative law judge within seven days of service  
23 of the petition if there is sufficient time before the hearing.  
24 The notice shall state the party's reasons for objection,  
25 and a copy shall be served upon all parties, the person  
26 petitioning to intervene, and the agency. If there is  
27 insufficient time before the hearing for such written  
28 objection, the objection may be made orally at the  
29 hearing.  
30

31 Subp. 3. Order. The administrative law judge shall allow  
32 intervention upon a proper showing pursuant to subpart 1  
33 unless the administrative law judge finds that the  
34 petitioner's interest is adequately represented by one or  
35 more other parties participating in the case.  
36

37 **~~1400.8580 PREHEARING CONFERENCE.~~**

38  
39 The administrative law judge shall hold a prehearing  
40 conference prior to the hearing upon request of any party  
41 or if the judge determines that a prehearing conference is  
42 necessary.  
43

44 The purpose of the prehearing conference is to simplify  
45 the issues to be determined at the hearing; to consider  
46 amendment of the agency's notice if necessary; to obtain

1 ~~agreements about uncontested facts or admissibility of~~  
2 ~~testimony or exhibits; to determine the identity and~~  
3 ~~number of proposed witnesses for each party; to consider~~  
4 ~~such other matters that may be necessary or advisable; to~~  
5 ~~set the time, date, and place for hearing if not previously~~  
6 ~~set; to identify and exchange documentary evidence; to~~  
7 ~~consider whether an interpreter or other accommodation~~  
8 ~~is needed; and, if possible, to reach a settlement without~~  
9 ~~the necessity for further hearing.~~

10  
11 ~~A prehearing conference shall be an informal proceeding~~  
12 ~~conducted expeditiously by the administrative law judge. It~~  
13 ~~may be conducted by telephone. Agreements on the~~  
14 ~~simplification of issues, uncontested facts, admissibility of~~  
15 ~~evidence, or other matters shall be either entered on the~~  
16 ~~record at the hearing or included in a written order by the~~  
17 ~~administrative law judge.~~

18  
19 **~~1400.8590 PREHEARING MOTIONS.~~**

20  
21 ~~A party desiring the administrative law judge to issue an~~  
22 ~~order before the hearing or during a continuance in the~~  
23 ~~hearing (other than a request for a continuance or a~~  
24 ~~subpoena) shall make a request to the administrative law~~  
25 ~~judge in writing. The request shall state, in detail, the~~  
26 ~~need for the order and what is being requested. A copy of~~  
27 ~~the request shall be served upon all parties. A party who~~  
28 ~~opposes the granting of a motion should notify the~~  
29 ~~administrative law judge as soon as possible. The~~  
30 ~~administrative law judge shall notify all parties of the order~~  
31 ~~orally or in writing.~~

32  
33 **~~1400.8600 PREHEARING DISCOVERY.~~**

34  
35 ~~A party may demand that any other party disclose the~~  
36 ~~names and addresses of all witnesses that the other party~~  
37 ~~intends to have testify at the hearing. The demand shall~~  
38 ~~be in writing and shall be directed to the party or the~~  
39 ~~party's attorney. Responses to the demand shall be~~  
40 ~~served within ten days of receipt of the demand. Any~~  
41 ~~witnesses unknown at the time of the disclosure shall be~~  
42 ~~disclosed as soon as they become known. Any party that~~  
43 ~~unreasonably fails to make a requested disclosure shall~~  
44 ~~not be allowed to call the witness at hearing.~~

1 ~~1400.8601 SUBPOENAS.~~

2  
3 ~~Subpart 1. Requests. A party may obtain a subpoena to~~  
4 ~~compel the attendance of a witness or the production of~~  
5 ~~documents by submitting a written request to the~~  
6 ~~administrative law judge. The request shall indicate the~~  
7 ~~name and address of the person upon whom the~~  
8 ~~subpoena will be served; a brief statement of the potential~~  
9 ~~relevance of the testimony or documents sought; and, if~~  
10 ~~the subpoena request is for the production of documents,~~  
11 ~~the requested documents should be identified with~~  
12 ~~specificity.~~

13  
14 ~~Subp. 2. Service. Subpoenas shall be served personally~~  
15 ~~in the manner provided in part 1400.8545. They shall not~~  
16 ~~be served by mail. The witness fees applicable in the~~  
17 ~~district courts pursuant to Minnesota Statutes, section~~  
18 ~~357.22, shall apply and shall be paid to the potential~~  
19 ~~witness at the time of service.~~

20  
21 ~~Subp. 3. Objection to a subpoena. Any person served~~  
22 ~~with a subpoena may file an objection to the subpoena~~  
23 ~~with the administrative law judge. The objection shall be~~  
24 ~~filed promptly, and in any event at or before the time~~  
25 ~~specified in the subpoena for compliance. The~~  
26 ~~administrative law judge shall cancel or modify a~~  
27 ~~subpoena that is unreasonable or oppressive, taking into~~  
28 ~~account the issues or amounts in controversy, the costs or~~  
29 ~~other burdens of compliance compared to the value of the~~  
30 ~~testimony or evidence to a party's case, and any~~  
31 ~~alternative methods of obtaining the desired testimony or~~  
32 ~~evidence. Modification may include requiring the party~~  
33 ~~requesting the subpoena to pay reasonable costs of~~  
34 ~~producing documents, books, papers, or other tangible~~  
35 ~~things.~~

36  
37 ~~1400.8602 CHANGES IN DATE, TIME, OR PLACE OF~~  
38 ~~HEARING.~~

39  
40 ~~Subpart 1. Requests. Any party who desires to change~~  
41 ~~the date, time, or place from that announced in the notice~~  
42 ~~of hearing shall contact the other known parties, or their~~  
43 ~~representatives, and seek agreement regarding a new~~  
44 ~~time, date, or place. If the parties can agree, and if the~~  
45 ~~administrative law judge's schedule allows, the~~  
46 ~~administrative law judge shall approve the change.~~

1  
2 ~~Subp. 2. Notice. If time permits, the agency shall send a~~  
3 ~~written notice to all parties and the administrative law~~  
4 ~~judge setting forth the new time, date, or place.~~

5  
6 ~~Subp. 3. Continuances during a hearing. If it appears in~~  
7 ~~the interest of justice that further evidence should be~~  
8 ~~received, the administrative law judge shall continue the~~  
9 ~~hearing to a future date. Oral notice on the record shall be~~  
10 ~~sufficient notice of the additional date.~~

11  
12 ~~**1400.8603 CONDUCT OF HEARING.**~~

13  
14 ~~The hearing shall be conducted substantially in the~~  
15 ~~following manner:~~

16  
17 ~~A. The administrative law judge shall open the hearing by~~  
18 ~~reading the title of the case, asking the parties or counsel~~  
19 ~~to note their appearances, and explaining the hearing~~  
20 ~~procedure to unrepresented parties.~~

21  
22 ~~B. Any stipulations, settlement agreements, or consent~~  
23 ~~orders entered into by any of the parties prior to the~~  
24 ~~hearing shall be entered into the record.~~

25  
26 ~~C. The party with the burden of proof shall begin the~~  
27 ~~presentation of evidence unless ordered otherwise. It~~  
28 ~~shall be followed by the other parties in a sequence~~  
29 ~~determined by the administrative law judge.~~

30  
31 ~~D. Testimony may be given in narrative fashion by~~  
32 ~~witnesses rather than by question and answer format.~~

33  
34 ~~E. Cross examination of witnesses shall be conducted in~~  
35 ~~a sequence and in a manner determined by the~~  
36 ~~administrative law judge to expedite the hearing while~~  
37 ~~ensuring a fair hearing. At the request of the party whose~~  
38 ~~witness is being cross examined, the administrative law~~  
39 ~~judge shall make such rulings as are necessary to prevent~~  
40 ~~argumentative, repetitive, or irrelevant questioning and to~~  
41 ~~expedite the cross examination to the extent consistent~~  
42 ~~with the disclosure of all relevant testimony and~~  
43 ~~information.~~

44

1 ~~F. Any party may be a witness or may present other~~  
2 ~~persons as witnesses at the hearing. All oral testimony at~~  
3 ~~the hearing shall be under oath or affirmation.~~

4  
5 ~~G. A party may question an adverse party or any witness~~  
6 ~~identified with an adverse party by leading questions and~~  
7 ~~contradict and impeach that witness on material matters.~~

8  
9 ~~H. When all parties and witnesses have been heard, the~~  
10 ~~hearing shall be closed unless a continuance has been~~  
11 ~~ordered under part 1400.8602.~~

12  
13 ~~**1400.8604 RESPONSIBILITIES AND RIGHTS OF**~~  
14 ~~**PARTIES.**~~

15  
16 ~~Subpart 1. Necessary preparation. A party shall have all~~  
17 ~~evidence to be presented, both oral and written, available~~  
18 ~~on the date for hearing. Requests for subpoenas,~~  
19 ~~depositions, or continuances shall be made within a~~  
20 ~~reasonable time after their need becomes evident to the~~  
21 ~~requesting party. Parties shall have enough copies of~~  
22 ~~exhibits so that they can provide a copy to each other~~  
23 ~~party at the time the exhibit is introduced, unless that~~  
24 ~~other party has already obtained a copy through~~  
25 ~~discovery.~~

26  
27 ~~Subp. 2. Responding to orders. If the administrative law~~  
28 ~~judge orders that parties do an act, or not do an act, the~~  
29 ~~parties shall comply with the order. If a party objects to an~~  
30 ~~order, such objection shall be stated in advance of the~~  
31 ~~order as part of the record.~~

32  
33 ~~Subp. 3. Copies. The administrative law judge shall send~~  
34 ~~copies of all orders or decisions to all parties~~  
35 ~~simultaneously. Any party sending a letter, exhibit, brief,~~  
36 ~~memorandum, or other document to the administrative law~~  
37 ~~judge shall simultaneously send a copy to all other~~  
38 ~~parties, provided, however, that this requirement shall not~~  
39 ~~apply to requests for subpoenas, unless the subpoena~~  
40 ~~requests documents or other discovery.~~

41  
42 ~~Subp. 4. Representation by counsel. A party need not be~~  
43 ~~represented by an attorney but may choose to be~~  
44 ~~represented by an attorney or by any other person. If a~~  
45 ~~party has notified other parties that he/she will be~~

1 ~~represented by an attorney, all communications shall be~~  
2 ~~directed to that attorney.~~

3  
4 **1400.8605 RESPONSIBILITIES AND RIGHTS OF**  
5 **NONPARTIES.**

6  
7 Subpart 1. Offering evidence. Any person may offer  
8 testimony or other evidence relevant to the case. Any  
9 nonparty offering testimony or other evidence may be  
10 questioned by parties to the proceeding.

11  
12 Subp. 2. Questioning witnesses. Generally, nonparties  
13 shall not be allowed to question witnesses, provided,  
14 however, that the administrative law judge may allow such  
15 questioning as is necessary for the development of a full  
16 and complete record.

17  
18 ~~**1400.8606 ADMINISTRATIVE LAW JUDGES.**~~

19  
20 ~~Subpart 1. Impartiality. An administrative law judge shall~~  
21 ~~be impartial, objective, and even-handed. If at any time~~  
22 ~~the administrative law judge is unable to conduct any~~  
23 ~~proceeding in an impartial manner, the administrative law~~  
24 ~~judge shall withdraw. Upon the filing in good faith by a~~  
25 ~~party of an affidavit of prejudice, the chief judge shall~~  
26 ~~determine the matter as a part of the record provided the~~  
27 ~~affidavit shall be filed no later than five days prior to the~~  
28 ~~date set for hearing. A judge must be removed upon an~~  
29 ~~affirmative showing of prejudice or bias. A judge may not~~  
30 ~~be removed merely because of rulings on prior cases.~~

31  
32 ~~Subp. 2. Communications. The administrative law judge~~  
33 ~~shall not communicate directly or indirectly with any~~  
34 ~~person or party concerning any issue of fact or law~~  
35 ~~relevant to a pending case except upon notice to all~~  
36 ~~parties and opportunity for them to participate, except~~  
37 ~~that:~~

38  
39 ~~A. ex parte communication for scheduling, administrative~~  
40 ~~purposes, or emergencies that do not deal with~~  
41 ~~substantive matters or issues on the merits are~~  
42 ~~authorized;~~

43  
44 ~~B. a judge may consult with other judges and with office~~  
45 ~~personnel in carrying out the judge's adjudicative~~  
46 ~~responsibilities; and~~

1  
2 ~~C. communication expressly authorized by law is~~  
3 ~~permitted.~~

4  
5 ~~Subp. 3. Duties. Consistent with law and these rules, the~~  
6 ~~administrative law judge shall perform the following~~  
7 ~~duties:~~

8  
9 ~~A. receive, and recommend action to the chief~~  
10 ~~administrative law judge upon receipt of, requests for~~  
11 ~~subpoenas;~~

12  
13 ~~B. hear and rule on motions;~~

14  
15 ~~C. preside at the hearing;~~

16  
17 ~~D. administer oaths and affirmations;~~

18  
19 ~~E. grant or deny continuances;~~

20  
21 ~~F. examine witnesses as necessary to make a complete~~  
22 ~~record;~~

23  
24 ~~G. prepare findings of fact, conclusions, and~~  
25 ~~recommendations;~~

26  
27 ~~H. make preliminary, interlocutory, or other orders as~~  
28 ~~necessary to assure a fair hearing;~~

29  
30 ~~I. recommend a summary disposition of the case or a~~  
31 ~~portion of it where there is no genuine issue as to any~~  
32 ~~material fact or recommend dismissal where the case or a~~  
33 ~~portion of it has become moot or for other reasons; and~~

34  
35 ~~J. do all things necessary and proper to the performance~~  
36 ~~of the foregoing.~~

37  
38 **~~1400.8607 RULES OF EVIDENCE.~~**

39  
40 ~~Subpart 1. Admissibility. The administrative law judge~~  
41 ~~shall admit all evidence that logically tends to prove or~~  
42 ~~disprove an important fact, including hearsay, if it is the~~  
43 ~~type of evidence on which reasonable, prudent persons~~  
44 ~~are accustomed to rely in the conduct of their serious~~  
45 ~~affairs. The administrative law judge shall give effect to~~  
46 ~~the rules of privilege recognized by law. Evidence which is~~

1 incompetent, irrelevant, immaterial, or unduly repetitious  
2 shall be excluded.

3  
4 ~~Subp. 2. Submitting. Evidence must be offered to be~~  
5 ~~considered. All evidence to be considered in the case,~~  
6 ~~including all records and documents in the possession of~~  
7 ~~the claimant agency or a true and accurate photocopy~~  
8 ~~thereof, shall be offered and made a part of the record in~~  
9 ~~the case. No other factual information or evidence shall~~  
10 ~~be considered in the determination of the case.~~

11  
12 ~~Subp. 3. Documents. Documentary evidence may be~~  
13 ~~introduced in the form of copies or excerpts or may be~~  
14 ~~incorporated by reference into the record. Copies of a~~  
15 ~~document shall be received to the same extent as the~~  
16 ~~original document unless a genuine question is raised as~~  
17 ~~to the accuracy or authenticity of the copy or, in the~~  
18 ~~circumstances, it would be unfair to admit the copy in lieu~~  
19 ~~of the original.~~

20  
21 ~~Subp. 4. Administrative notice of facts. The administrative~~  
22 ~~law judge may take notice of judicially cognizable facts~~  
23 ~~but shall do so on the record and with the opportunity for~~  
24 ~~any party to contest the facts so noticed.~~

25  
26 ~~**1400.8608 BURDEN OF PROOF.**~~

27  
28 ~~The party with the burden of proof shall have the burden~~  
29 ~~of supporting its proposed action by a preponderance of~~  
30 ~~the evidence. If another party asserts any affirmative~~  
31 ~~defenses, that party shall have the burden of proving the~~  
32 ~~defense by a preponderance of the evidence.~~

33  
34 ~~**1400.8609 HEARING RECORD.**~~

35  
36 ~~Subpart 1. Maintaining. The administrative law judge shall~~  
37 ~~maintain the official record in each case until the issuance~~  
38 ~~of the report, at which time the record, except for the~~  
39 ~~audiomagnetic recordings thereof, shall be sent to the~~  
40 ~~agency. The audiomagnetic recordings shall be retained~~  
41 ~~by the office for five years from the date that the record is~~  
42 ~~returned to the agency. Unless an agency requests a~~  
43 ~~longer retention period for a specific case, the recordings~~  
44 ~~may be erased or otherwise destroyed at the end of the~~  
45 ~~five-year period.~~

46

1 ~~Subp. 2. Content.~~

2

3 ~~The record shall contain:~~

4

5 ~~A. the notice of hearing and all motions and orders which~~  
6 ~~have been reduced to writing;~~

7

8 ~~B. evidence received or considered;~~

9

10 ~~C. an audiomagnetic recording of the hearing;~~

11

12 ~~D. the administrative law judge's report;~~

13

14 ~~E. all memoranda or data submitted by any party in~~  
15 ~~connection with the case; and~~

16

17 ~~F. the transcript of the hearing, if one was prepared.~~

18

19 ~~Subp. 3. Closing hearing record. The hearing record of~~  
20 ~~the contested case proceeding shall be closed upon the~~  
21 ~~completion of the testimony, or receipt of the final written~~  
22 ~~memorandum or transcript, if any, or late-filed exhibits~~  
23 ~~which the parties and the administrative law judge have~~  
24 ~~agreed should be received into the record, whichever~~  
25 ~~occurs latest.~~

26

27 ~~Subp. 4. Transcript. The audiomagnetic recording of the~~  
28 ~~hearing shall be transcribed if requested by a party or if~~  
29 ~~ordered by the chief administrative law judge. The party~~  
30 ~~requesting a transcript is responsible for the cost. The~~  
31 ~~parties may agree to divide the cost. When the chief~~  
32 ~~administrative law judge requests a transcript, the agency~~  
33 ~~is responsible for the cost.~~

34

35 ~~**1400.8610 ADMINISTRATIVE LAW JUDGE'S REPORT.**~~

36

37 ~~Following the close of the hearing record, the~~  
38 ~~administrative law judge shall make a report pursuant to~~  
39 ~~Minnesota Statutes, section 14.50, and, upon completion,~~  
40 ~~a copy of the report shall be served upon all parties.~~

41

42 ~~**1400.8611 DISRUPTION OF HEARING.**~~

43

44 ~~Subpart 1. Cameras. Television, newsreel, motion picture,~~  
45 ~~still or other cameras may be operated in the hearing~~  
46 ~~room during the course of the hearing unless the~~

1 ~~administrative law judge determines that such operation is~~  
2 ~~disrupting the hearing.~~

3  
4 ~~Subp. 2. Recordings. The official audiomagnetic recording~~  
5 ~~of the hearing shall be made by the administrative law~~  
6 ~~judge. Any party may also record all or part of the~~  
7 ~~proceedings. Nonparties may record all or part of the~~  
8 ~~proceedings unless the administrative law judge~~  
9 ~~determines that such recording is disrupting the hearing.~~  
10 ~~In the event of failure of the official recording equipment,~~  
11 ~~the administrative law judge may direct any person or~~  
12 ~~party to provide the administrative law judge with its~~  
13 ~~original recording or a copy of any recording of the~~  
14 ~~proceeding upon payment of the cost of the recording~~  
15 ~~medium.~~

16  
17 ~~Subp. 3. Other conduct. Pursuant to and in accordance~~  
18 ~~with the provisions of Minnesota Statutes, section 624.72,~~  
19 ~~no person shall interfere with the free, proper, and lawful~~  
20 ~~access to or egress from the hearing room. No person~~  
21 ~~shall interfere with the conduct of, disrupt, or threaten~~  
22 ~~interference with or disruption of the hearing. In the event~~  
23 ~~of such interference or disruption or threat thereof, the~~  
24 ~~administrative law judge shall read this rule to those~~  
25 ~~persons causing such interference or disruption and~~  
26 ~~thereafter proceed as is deemed appropriate.~~

27  
28 **1400.8612 REHEARING.**

29  
30 Any agency notice of and order for rehearing shall be  
31 served on all parties in the same manner prescribed for  
32 the notice of and order for hearing, provided that the  
33 administrative law judge shall permit service of the notice  
34 of and order for rehearing less than 20 days prior to  
35 rehearing if the parties agree to such earlier service. The  
36 rehearing shall be conducted in the same manner  
37 prescribed for a hearing.

38  
39 1400.8613 [Repealed, 15 SR 1595]  
40  
41  
42  
43

1 **CHAPTER 1405**  
2 **Power Lines; Plant Siting**

3  
4 **1405.0200 DEFINITIONS.**

5  
6 Subpart 1. Board. ~~"Board" means the Environmental Quality~~  
7 ~~Board Commission. "Commission" means the Minnesota~~  
8 ~~Public Utilities Commission.~~

9  
10 Subp. 2. Intervenor. ~~"Intervenor" means any person granted~~  
11 ~~permission to intervene in any proceeding pursuant to these~~  
12 ~~rules.~~

13  
14 Subp. 3. Party. ~~"Party" means the applicant, persons~~  
15 ~~proposing routes or sites which the board orders to be~~  
16 ~~considered pursuant to Minnesota Statutes, chapter 116C,~~  
17 ~~and rules adopted thereunder, and persons granted~~  
18 ~~permission to intervene pursuant to part 1405.0900. State~~  
19 ~~agencies or participating department staff, citizen~~  
20 ~~committees appointed by the board, shall intervene if they~~  
21 ~~are to formally advocate one route or site in preference to~~  
22 ~~another. Notice is given that, pursuant to Minnesota~~  
23 ~~Statutes, section 14.61, only parties who could be adversely~~  
24 ~~affected by the report of the administrative law judge can be~~  
25 ~~legally assured of the opportunity to present argument to the~~  
26 ~~board prior to its decision.~~

27  
28 Subp. 4. Person. ~~"Person" means an individual, partnership,~~  
29 ~~joint venture, private or public corporation, association or~~  
30 ~~society, firm, public service company, cooperative, political~~  
31 ~~subdivision, municipal corporation, governmental unit or~~  
32 ~~agency, public utility district, or any other entity, public or~~  
33 ~~private, however organized.~~

34  
35 Subp. 5. Proceeding. As used herein, "proceeding" or  
36 "proceedings" means all events including prehearings,  
37 hearings, orders, and reports issued necessary to the  
38 completion of this hearing process on any application by a  
39 utility for the siting of a power plant, the routing of a  
40 transmission line, or exemptions.

41  
42 Subp. 6. Service; serve. Unless otherwise provided by law,  
43 "service" or "serve" means service by first class United  
44 States mail, postage prepaid, and addressed to the person  
45 to be served at his or her last known address. An affidavit of

1 ~~service shall be made by the person making such service.~~  
2 ~~Service by mail is complete upon the placing of the item to~~  
3 ~~be served in the mail. Service may also be made personally.~~  
4

5 ~~Any paper relating to hearings conducted by an~~  
6 ~~administrative law judge under Minnesota Statutes, chapter~~  
7 ~~14, may be filed with or served on the office by facsimile~~  
8 ~~transmission. A transmission which is commenced by 4:30~~  
9 ~~p.m. shall be deemed to have been timely filed. The person~~  
10 ~~filing the document shall forward the original signed~~  
11 ~~document within five days. Filings or service shall be~~  
12 ~~effective at the time that the facsimile transmission is~~  
13 ~~received by the office. The filing or service of a facsimile~~  
14 ~~shall have the same force and effect as the filing or service~~  
15 ~~of the original document.~~  
16

17 **1405.0300 SCOPE AND PURPOSE.**

18  
19 The procedures contained herein shall govern the conduct of  
20 all hearings conducted for the ~~Environmental Quality Board~~  
21 ~~Commission~~ involving the siting of large electric power  
22 generating plants, and the routing of high voltage  
23 transmission lines, ~~and to the site and route exemption~~  
24 ~~processes contained in Minnesota Statutes, section~~  
25 ~~116C.57, subdivisions 5 and 5 provided, however, that the~~  
26 ~~procedures for hearing concerning the revocation or~~  
27 ~~suspension of a site certificate or construction permit shall~~  
28 ~~be those contained in parts 1400.5100 to 1400.8401, as are~~  
29 ~~the hearings conducted pursuant to Minnesota Statutes,~~  
30 ~~section 216E.06, relating to the determination of~~  
31 ~~emergencies. See part 1405.2700.~~  
32

33 To maximize citizen participation in ways that are consistent  
34 with statutory timeframes for completion of Commission  
35 decision-making, public hearings and contested case  
36 hearings in proceedings shall be governed by part  
37 1400.5010 through 1400.8401, except as modified by this  
38 chapter or Commission Order. ~~, provided, however, that the~~  
39 ~~procedures for hearing concerning the revocation or~~  
40 ~~suspension of a site certificate or construction permit shall~~  
41 ~~be those contained in parts 1400.5100 to 1400.8401, as are~~  
42 ~~the hearings conducted pursuant to Minnesota Statutes,~~  
43 ~~section 216E.06, relating to the determination of~~  
44 ~~emergencies. See part 1405.2700.~~  
45  
46

1 **1405.0400 ADMINISTRATIVE LAW JUDGES.**

2  
3 Subpart 1. Request for assignment. When the board  
4 Commission desires to order a hearing under parts  
5 1405.0200 to 1405.2800, it shall first file with the chief  
6 administrative law judge a request for assignment of an  
7 administrative law judge, ~~together with a draft of the notice of~~  
8 ~~hearing proposed to be published and served.~~

9  
10 Subp. 2. Assignment. Within ten days of receipt of a request  
11 pursuant to subpart 1, the chief administrative law judge  
12 shall assign an administrative law judge to hear the case,  
13 ~~and the administrative law judge shall advise the board as to~~  
14 ~~the location at which and time during which a hearing should~~  
15 ~~be held so as to allow for participation by all affected~~  
16 ~~persons.~~

17  
18 Subp. 3. Duties. ~~Consistent with law, the administrative law~~  
19 ~~judge shall perform the following duties:~~

20  
21 ~~A. grant or deny motions for discovery or for the taking of~~  
22 ~~depositions;~~

23  
24 ~~B. receive and act upon requests for subpoenas;~~

25  
26 ~~C. hear and rule on motions;~~

27  
28 ~~D. preside at the hearing;~~

29  
30 ~~E. administer oaths and affirmations;~~

31  
32 ~~F. grant or deny continuances;~~

33  
34 ~~G. examine witnesses on deeming it necessary;~~

35  
36 ~~H. prepare findings of fact, conclusions, and~~  
37 ~~recommendations;~~

38  
39 ~~I. make preliminary, interlocutory, or other orders on~~  
40 ~~deeming it appropriate; and~~

41  
42 ~~J. do all things necessary and proper to the performance of~~  
43 ~~the foregoing.~~

1 **1405.0500 NOTICE OF HEARING.**

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Subpart 1. Contents. Proceedings under parts 1405.0200 to 1405.2800 are commenced by the ~~board~~ Commission issuing a notice of hearing pursuant to the requirements of Minnesota Statutes, chapter 146C 216E. The notice of hearing shall contain, but not be limited to, the following:

- A. the date, time, and place for each hearing;
- B. name and address and telephone number of the administrative law judge;
- C. a citation to the ~~board's~~ Commission's statutory authority to hold the hearing and to take the action proposed;
- D. a description of the proposed project together with a citation to the relevant statutes or rules;
- E. notification that all persons may be represented by legal counsel, but that such representation is not required;
- F. a citation to these rules and to any applicable procedural rules of the ~~board~~ Commission and where they may be obtained;
- G. the name, address, phone number, and function of the public adviser designated by the ~~board~~ Commission pursuant to Minnesota Statutes, section 216E.08, subdivision 3;
- H. ~~the name, address, and telephone number of the appropriate member of the power plant siting staff who will be representing the board and~~ the name, address, and telephone number of the member of the attorney general's staff who may be contacted for advice on matters ~~dealing with board~~ relating to Commission procedures;
- I. a statement advising all persons of the right to intervene, the procedures which must be complied with, and a summary description of the rights and responsibilities intervening parties have as opposed to other persons wishing to participate;

1 J. the date, time, and place of any prehearing conference, or  
2 a statement that the judge will set the prehearing  
3 conference;

4  
5 K. a description of the E-docket system and the filings that  
6 this system contains the place where all interested persons  
7 may review all materials including all prefiled testimony, and  
8 the date when such will be available; and,

9  
10 L. a listing of the existing parties giving the name and  
11 address of the person designated to receive all notices;

12  
13 M. a statement of the commencement times and places of  
14 the public hearings where cross examination by parties will  
15 occur, where questioning by interested persons will occur,  
16 and where direct testimony or comments from the public will  
17 occur;

18  
19 N. a statement indicating that hearings may be recessed and  
20 reset by the administrative law judge pursuant to parts  
21 1405.1400 to 1405.2300; and

22  
23 O. a listing of witnesses exempted from appearing  
24 throughout the hearing process pursuant to part 1405.2000,  
25 and a listing of the dates and places such witnesses will be  
26 in attendance.

27  
28 ~~Subp. 2. Subsequent notices. The administrative law judge~~  
29 ~~may order subsequent notices to be issued by the board as~~  
30 ~~the judge deems appropriate containing corrections of earlier~~  
31 ~~notices and additional information available after issuance of~~  
32 ~~earlier notices. Such subsequent notices shall be~~  
33 ~~disseminated in the same manner as the original notice,~~  
34 ~~unless the administrative law judge, for good cause shown,~~  
35 ~~orders some other method of dissemination.~~

36  
37 ~~Subp. 3. Defects. Defects in the notices shall not invalidate~~  
38 ~~the proceedings, provided a bona fide attempt to comply with~~  
39 ~~this part has been made.~~

40  
41 ~~**1405.0600 RIGHT TO COUNSEL.**~~

42  
43 ~~All persons may be represented by legal counsel, or by a~~  
44 ~~person of their choice, or they may represent themselves.~~

45  
46

1 **1405.0700 TIME.**

2  
3 ~~Subpart 1. Computation of time. In computing any period of~~  
4 ~~time prescribed by these rules or the procedural rules of the~~  
5 ~~board, the day of the last act, event, or default from which~~  
6 ~~the designated period of time begins to run shall not be~~  
7 ~~included. The last calendar day of the period so computed~~  
8 ~~shall be included, unless it is a Saturday, Sunday, or legal~~  
9 ~~holiday, in which event the next working day shall be~~  
10 ~~deemed the last day of the period.~~

11  
12 ~~Subp. 2. Extra time after service by mail. Whenever a~~  
13 ~~person has the right or is required to do some act or take~~  
14 ~~some action within a prescribed period after the service of a~~  
15 ~~notice or other paper upon that person, or whenever such~~  
16 ~~service is required to be made within a prescribed period~~  
17 ~~before a specified event, and the notice or paper is served~~  
18 ~~by mail, three days shall be added to the prescribed period.~~

19  
20 **1405.0800 PUBLIC PARTICIPATION.**

21  
22 At all public hearings conducted in proceedings pursuant to  
23 an order of the Commission parts 1405.0200 to 1405.2800,  
24 all persons will be allowed and encouraged to participate  
25 without the necessity of intervening as parties. Such  
26 participation shall include, but not be limited to:

- 27  
28 A. offering testimony or other material at the public  
29 hearing;  
30  
31 B. questioning any agency official or agent of an  
32 applicant who participates in the public hearing; or,  
33  
34 C. offering testimony or other material within the  
35 designated comment period.

36  
37 ~~A Offering direct testimony with or without benefit of oath or~~  
38 ~~affirmation and without the necessity of prefilling as required~~  
39 ~~by part 1405.1900.~~

40  
41 ~~B. Offering direct testimony or other material in written~~  
42 ~~form at the public hearing or within the designated comment~~  
43 ~~period following the hearing. However, testimony which is~~  
44 ~~offered without benefit of oath or affirmation, or written~~  
45 ~~testimony which is not subject to cross-examination, shall be~~

1 given such weight as the administrative law judge deems  
2 appropriate.

3  
4 ~~C. Questioning all persons testifying. Any person who~~  
5 ~~wishes to cross-examine a witness but who does not want to~~  
6 ~~ask questions orally, may submit questions in writing to the~~  
7 ~~administrative law judge, who will then ask the questions of~~  
8 ~~the witness. Questions may be submitted before or during~~  
9 ~~the hearings.~~

10  
11 **~~1405.0900 INTERVENTION AS PARTY.~~**

12  
13 ~~Subpart 1. Petition. Any person desiring to intervene in the~~  
14 ~~hearings as a party shall submit a timely petition to intervene~~  
15 ~~to the administrative law judge and shall serve the petition~~  
16 ~~upon all existing parties. Timeliness will be determined by~~  
17 ~~the administrative law judge in each case based on~~  
18 ~~circumstances at the time of filing. The petition shall show~~  
19 ~~how the petitioner's legal rights, duties, or privileges may be~~  
20 ~~determined or affected by the proceedings, how those rights,~~  
21 ~~duties, and privileges are not otherwise represented, and~~  
22 ~~shall set forth the grounds and purposes for which~~  
23 ~~intervention is sought and shall indicate petitioner's statutory~~  
24 ~~or legal right to intervene, if one should exist. The~~  
25 ~~administrative law judge, with the consent of all parties, may~~  
26 ~~waive the requirement that the petition be in writing.~~

27  
28 ~~Subp. 2. Objection. Any party may object to the petition for~~  
29 ~~intervention by filing a notice of objection with the~~  
30 ~~administrative law judge within seven days of service of the~~  
31 ~~petition. The notice shall state the party's reasons for~~  
32 ~~objecting and shall be served upon all parties and the person~~  
33 ~~petitioning to intervene.~~

34  
35 ~~Subp. 3. Order. The administrative law judge shall allow~~  
36 ~~intervention upon a proper showing pursuant to subpart 1~~  
37 ~~unless the administrative law judge finds that the petitioner's~~  
38 ~~interest is adequately represented by one or more parties~~  
39 ~~participating in the case. In the event the administrative law~~  
40 ~~judge finds that one or more petitions are similar, the~~  
41 ~~administrative law judge may order the petitions to be~~  
42 ~~consolidated as one, allowing all such petitioners~~  
43 ~~intervention but only as one party.~~

1 ~~Subp. 4. Responsibilities of intervenors. Once a petition to~~  
2 ~~intervene has been granted, an intervenor shall have all of~~  
3 ~~the rights and responsibilities of a party.~~

4  
5 ~~**1405.1000 DISQUALIFICATION OF ADMINISTRATIVE**~~  
6 ~~**LAW JUDGE.**~~

7  
8 ~~The administrative law judge shall withdraw from~~  
9 ~~participating in the proceedings at any time upon deeming~~  
10 ~~himself or herself disqualified for any reason. Upon the filing~~  
11 ~~in good faith by a person of an affidavit of prejudice, the chief~~  
12 ~~administrative law judge shall determine the matter as a part~~  
13 ~~of the record provided the affidavit shall be filed no later than~~  
14 ~~five days prior to the date set for the first hearing date.~~

15  
16 ~~**1405.1100 PREHEARING CONFERENCE.**~~

17  
18 ~~Subpart 1. Purpose. The purpose of the prehearing~~  
19 ~~conference is to simplify the issues to be determined, to~~  
20 ~~obtain stipulations to foundation for testimony or exhibits, to~~  
21 ~~discuss schedules for hearings and other procedural events,~~  
22 ~~and to resolve other matters that may be necessary or~~  
23 ~~appropriate. Potential intervenors, and other interested~~  
24 ~~persons, may attend the prehearing conference.~~

25  
26 ~~Subp. 2. Procedure. Upon the request of any party or upon~~  
27 ~~the judge's own motion, the administrative law judge may, in~~  
28 ~~the judge's discretion, hold a prehearing conference which~~  
29 ~~shall be held at a time, date, and place to be determined by~~  
30 ~~the administrative law judge to best maximize the ability of~~  
31 ~~all interested persons to attend. Notice of any prehearing~~  
32 ~~conference shall be given in the notice of hearing, if~~  
33 ~~possible. Otherwise, notice shall be given pursuant to part~~  
34 ~~1405.0500, subpart 2. The administrative law judge may~~  
35 ~~require the parties to file a prehearing statement prior to the~~  
36 ~~prehearing conference which shall contain such items as the~~  
37 ~~administrative law judge deems necessary to promote a~~  
38 ~~useful prehearing conference. A prehearing conference shall~~  
39 ~~be an informal proceeding conducted expeditiously by the~~  
40 ~~administrative law judge. Agreements on the simplification of~~  
41 ~~issues, amendments, stipulations, or other matters may be~~  
42 ~~entered on the record or may be made the subject of an~~  
43 ~~order by the administrative law judge.~~

1 ~~1405.1200 DEPOSITIONS TO PRESERVE TESTIMONY.~~

2  
3 Upon the request of any person, the administrative law judge  
4 may order that the testimony of any witness be taken by  
5 deposition to preserve the testimony in the manner  
6 prescribed by law for depositions in civil actions. The request  
7 shall indicate the relevance of the testimony and shall make  
8 a showing that the witness will be unable or cannot be  
9 compelled to attend the hearing or show other good cause.

10  
11 ~~1405.1300 SUBPOENAS.~~

12  
13 Subpart 1. Written request for subpoena.—Requests for  
14 subpoenas for the attendance of witnesses or the production  
15 of documents shall be made in writing to the administrative  
16 law judge and shall contain a brief statement demonstrating  
17 the potential relevance of the testimony or evidence sought  
18 and shall identify any documents sought with specificity. The  
19 administrative law judge will grant the request for subpoenas  
20 only upon a finding of such relevance.

21  
22 Subp. 2. Service. A subpoena shall be served in the manner  
23 provided by the Rules of Civil Procedure for the District  
24 Court of the state of Minnesota unless otherwise provided by  
25 law. The cost of service, fees, and expenses of any witness  
26 subpoenaed shall be paid by the person at whose request  
27 the witness appears. The person serving the subpoena shall  
28 make proof of service by filing the subpoena with the  
29 administrative law judge, together with affidavit of service.

30  
31 Subp. 3. Motion to quash. Upon motion made promptly, and  
32 in any event at or before the time specified in the subpoena  
33 for compliance therewith, the administrative law judge may  
34 quash or modify the subpoena on finding that it is  
35 unreasonable or oppressive.

36  
37 ~~1405.1400 CONDUCT OF HEARING.~~

38  
39 The proceedings shall be conducted substantially in the  
40 following manner. After opening the hearing, the  
41 administrative law judge shall indicate the procedural rules  
42 for the hearing including, but not limited to, the following:

43  
44 A. all persons may present evidence and argument with  
45 respect to the issues and cross-examine witnesses;

1 ~~B. all persons may be represented by legal counsel, but~~  
2 ~~such representation is not required; and~~

3  
4 ~~C. the rules of evidence as set forth in part 1405.1700,~~  
5 ~~subparts 3 to 8.~~

6  
7 ~~Cross-examination shall be conducted in a sequence~~  
8 ~~determined by the administrative law judge. The record of~~  
9 ~~the hearing shall be closed at a date to be set by the~~  
10 ~~administrative law judge. Such date will correspond to a~~  
11 ~~specific number of calendar days beyond the close of the~~  
12 ~~last hearing date, computed pursuant to part 1405.0700,~~  
13 ~~subpart 1. Written comment will be accepted if postmarked~~  
14 ~~no later than the date set by the administrative law judge.~~  
15 ~~However, the record shall remain open beyond that date for~~  
16 ~~the sole purpose of receiving board responses to relevant~~  
17 ~~comments received on the environmental impact~~  
18 ~~assessment.~~

19  
20 **1405.1500 SEQUENCE OF PROCEEDINGS.**

21  
22 Subpart 1. Recess. All hearings shall recess at 44 10:00  
23 p.m. unless the administrative law judge determines that the  
24 public interest will best be served in any given hearing by  
25 continuing the hearing beyond 44 10:00 p.m. No public  
26 hearing shall proceed beyond 11:00 p.m. The administrative  
27 law judge may, in the judge's discretion, order a time and  
28 place for a continuance of that hearing.

29  
30 ~~Subp. 2. Two-stage hearing. The hearing may be scheduled~~  
31 ~~in two stages. The first stage shall be for the purpose of~~  
32 ~~introducing into evidence all of the prefiled direct testimony~~  
33 ~~of the parties, and the cross-examination of each witness by~~  
34 ~~all other parties. The subsequent stage shall be for the~~  
35 ~~purpose of allowing all other interested persons to present~~  
36 ~~their direct testimony and to question witnesses that offered~~  
37 ~~testimony during the first stage of the hearing process.~~

38  
39 ~~Nothing contained herein shall be interpreted so as to~~  
40 ~~prevent the public from being present during the first stage of~~  
41 ~~the proceedings or to question witnesses at an appropriate~~  
42 ~~time during the first stage of the proceedings, should time~~  
43 ~~allow. The administrative law judge may give priority to those~~  
44 ~~members of the public desiring to ask questions which would~~  
45 ~~enable them to better prepare for cross-examination during~~  
46 ~~subsequent stages. It is the intended purpose of the two-~~

1 ~~stage process to establish specific hearing dates for the~~  
2 ~~primary purpose of public participation in order to avoid~~  
3 ~~inconveniencing the general public by requiring them to wait~~  
4 ~~until late at each hearing before having opportunity to offer~~  
5 ~~direct testimony and ask questions. However, at the~~  
6 ~~discretion of the administrative law judge, the applicant and~~  
7 ~~other parties may present a brief summary of the prefiled~~  
8 ~~direct testimony at the beginning of each session.~~

9  
10 ~~Subp. 3. Additional hearing dates. Nothing contained herein~~  
11 ~~shall be interpreted so as to prevent the administrative law~~  
12 ~~judge from establishing additional hearing dates on motion~~  
13 ~~or at the judge's discretion.~~

14  
15 **~~1405.1600 REPRESENTATION OF STATE AGENCIES.~~**

16  
17 ~~Any state agency which participates in the proceedings as a~~  
18 ~~party may only participate through its designated~~  
19 ~~representative or counsel. Exceptions to this rule may be~~  
20 ~~allowed at the discretion of the administrative law judge for~~  
21 ~~good cause shown.~~

22  
23 **~~1405.1700 RULES OF EVIDENCE.~~**

24  
25 ~~Subpart 1. Right to present evidence. All persons shall have~~  
26 ~~the right to present evidence, rebuttal testimony, and~~  
27 ~~argument with respect to the issues and to cross-examine~~  
28 ~~witnesses.~~

29  
30 ~~Subp. 2. Witnesses. Any person may be a witness or~~  
31 ~~present witnesses on the person's behalf at the hearings.~~  
32 ~~Direct testimony shall be admitted as allowed by part~~  
33 ~~1405.0800.~~

34  
35 ~~Subp. 3. Admissible evidence. The administrative law judge~~  
36 ~~may admit all evidence which possesses probative value,~~  
37 ~~including hearsay, if it is the type of evidence on which~~  
38 ~~prudent persons are accustomed to rely in the conduct of~~  
39 ~~their serious affairs. The administrative law judge shall give~~  
40 ~~effect to the rules of privilege recognized by law. Evidence~~  
41 ~~which is incompetent, irrelevant, immaterial, or unduly~~  
42 ~~repetitious may be excluded.~~

43  
44 ~~Subp. 4. Submission of evidence. Evidence must be offered~~  
45 ~~to be considered. All evidence to be considered in the case,~~  
46 ~~including all records and documents (except tax returns and~~

1 tax reports) in the possession of the board or a true and  
2 accurate photocopy thereof, shall be offered and made a  
3 part of the record in the case. No other factual information or  
4 evidence (except tax returns and tax reports) shall be  
5 considered in the determination of the case.

6  
7 Subp. 5. Documentary evidence. Documentary evidence in  
8 the form of copies or excerpts may be received or  
9 incorporated by reference in the discretion of the  
10 administrative law judge.

11  
12 Subp. 6. Administrative notice of facts. The administrative  
13 law judge may take notice of judicially cognizable facts but  
14 shall do so on the record and with the opportunity for any  
15 person to rebut.

16  
17 Subp. 7. Burden of proof. Any route or site proposer must  
18 prove the facts at issue by a preponderance of the evidence,  
19 unless the substantive law provides a different burden.

20  
21 Subp. 8. Weight of testimony. Oral testimony received  
22 without benefit of oath or affirmation and written submissions  
23 that are not subject to cross-examination shall be given such  
24 weight as the administrative law judge deems appropriate.

25  
26 **1405.1800 HEARING RECORD.**

27  
28 Subpart 1. Preparation. Pursuant to Minnesota Statutes,  
29 sections 14.04 to 14.36, the Office of Administrative  
30 Hearings, upon certification of the official record of the case  
31 by the board to it, shall prepare and maintain the official  
32 record in each proceeding.

33  
34 Subp. 2. Contents. The record in a hearing shall contain: all  
35 pleadings, motions, and orders; evidence received or  
36 considered; offers of proof, objections, and rulings thereon;  
37 the administrative law judge's findings of fact, conclusions,  
38 and recommendations; all memoranda or data submitted by  
39 any person and considered by the administrative law judge  
40 in connection with the case; and the transcript of each  
41 hearing, if any.

42  
43 Subp. 3. Recorder or reporter. Unless the chief  
44 administrative law judge determines that the use of a court  
45 reporter is more appropriate, an audiomagnetic recording

1 ~~device shall be used to keep a record at any hearing which~~  
2 ~~takes place under parts 1405.0200 to 1405.2800.~~

3  
4 ~~The audiomagnetic recordings shall be retained by the office~~  
5 ~~for five years from the date that the record is returned to the~~  
6 ~~agency. Unless an agency requests a longer retention period~~  
7 ~~for a specific case, the recordings may be erased or~~  
8 ~~otherwise destroyed at the end of the five year period.~~

9  
10 ~~Subp. 4. Transcript. The verbatim record shall be transcribed~~  
11 ~~if requested by a person or in the discretion of the chief~~  
12 ~~administrative law judge. If a transcription is made, the chief~~  
13 ~~administrative law judge may require the requesting person~~  
14 ~~and other persons who request copies of the transcript to~~  
15 ~~pay a reasonable charge therefor. The charge shall be set~~  
16 ~~by the chief administrative law judge, and all moneys~~  
17 ~~received for transcripts shall be payable to the commissioner~~  
18 ~~of management and budget and shall be deposited in the~~  
19 ~~state Office of Administrative Hearings account in the state~~  
20 ~~treasury.~~

21  
22 ~~Subp. 5. Environmental documents. The environmental~~  
23 ~~impact assessment prepared pursuant to parts 4400.1210~~  
24 ~~and 4400.3210 shall be entered into the record at a point~~  
25 ~~during the hearing process which will allow all persons an~~  
26 ~~opportunity to review and comment on the material. In~~  
27 ~~addition, all comments and responses to comments which~~  
28 ~~the board desires to consider shall be entered into the record~~  
29 ~~promptly after they are received.~~

30  
31 **~~1405.1900 PREFILED TESTIMONY.~~**

32  
33 ~~Subpart 1. Preparing and filing. All direct testimony to be~~  
34 ~~offered by any party proposing a route or site shall be~~  
35 ~~prepared in advance in question and answer form and shall~~  
36 ~~be filed 14 days prior to the first hearing date in the following~~  
37 ~~manner:~~

38  
39 ~~A. the original and one copy with the administrative law~~  
40 ~~judge;~~

41  
42 ~~B. one copy with the board;~~

43  
44 ~~C. one copy with each party; and~~  
45

1 ~~D. one copy at a place in each county where a hearing is to~~  
2 ~~be held pursuant to statute at a location designated by the~~  
3 ~~board for public review.~~

4  
5 ~~Subp. 2. Procedure. Prefiled testimony will be part of the~~  
6 ~~record in each proceeding as if read, but all of the witnesses~~  
7 ~~shall be available for cross-examination and questioning at~~  
8 ~~each and every hearing subject to the provisions of part~~  
9 ~~1405.2000. Objections to such direct testimony may be~~  
10 ~~made by any person, any time during the hearings~~  
11 ~~conducted pursuant to parts 1405.0200 to 1405.2800. Five~~  
12 ~~copies of the prefiled testimony of each witness shall be~~  
13 ~~made available for the review by the public at each hearing.~~  
14 ~~At the hearing, the party presenting the testimony may, if it~~  
15 ~~deems appropriate, briefly summarize the prefiled testimony~~  
16 ~~prior to start of cross-examination.~~

17  
18 ~~Subp. 3. Rebuttal testimony. Nothing contained herein shall~~  
19 ~~be deemed to foreclose any party from presenting rebuttal~~  
20 ~~testimony or from presenting testimony in response to~~  
21 ~~reasonably unforeseen areas, both without the necessity of~~  
22 ~~prefiling.~~

23  
24 ~~**1405.2000 AVAILABILITY OF WITNESSES.**~~

25  
26 ~~All witnesses who offer prefiled direct testimony in~~  
27 ~~compliance with part 1405.1900 shall be available for~~  
28 ~~questioning by interested persons at each hearing date and~~  
29 ~~place. In the event a witness cannot be available throughout~~  
30 ~~the hearing process, the party on whose behalf the witness~~  
31 ~~testified shall request an exemption from this rule of the~~  
32 ~~administrative law judge prior to the publication of the notice~~  
33 ~~of hearing. The request shall state the reasons why the~~  
34 ~~witness cannot be present at each hearing, and the date, or~~  
35 ~~dates, on which the witness can be available. For good~~  
36 ~~cause shown, the administrative law judge shall grant the~~  
37 ~~exemption and shall immediately notify the board. The board~~  
38 ~~shall then include in the notice of hearing a statement~~  
39 ~~indicating the name of the witness, the nature of the~~  
40 ~~testimony, and the dates and places where the witness will~~  
41 ~~be available for questioning by all parties and persons. The~~  
42 ~~party requesting the exemption shall do so in writing and~~  
43 ~~shall serve a copy of the request on all other parties. Any~~  
44 ~~party may object to the exemption by filing a written~~  
45 ~~objection with the administrative law judge and serving a~~  
46 ~~copy on all parties within five working days of the date of the~~

1 request. In the event an objection is made, the administrative  
2 law judge shall immediately notify all parties of the date,  
3 time, and place to hear arguments on the request, and  
4 subsequent to which shall issue an order granting or denying  
5 the request for exemption. The administrative law judge may  
6 also grant exemptions, at any time, upon a showing of need  
7 due to unforeseeable circumstances. The same notice and  
8 objection procedure may be followed if circumstances  
9 permit, or the administrative law judge may utilize any other  
10 procedure on deeming it more appropriate. A subsequent  
11 notice of hearing shall issue reflecting any such exemption  
12 granted by the administrative law judge. In the event a  
13 witness has prefiled testimony and fails to appear for  
14 questioning, such prefiled testimony shall be given such  
15 weight as the administrative law judge deems appropriate.  
16

17 **~~1405.2100 CONTINUANCES.~~**

18  
19 During a hearing, if it appears in the interest of justice that  
20 further testimony should be received, the administrative law  
21 judge, in the judge's discretion, may continue the hearing to  
22 a future date and such oral notice on the record may be  
23 sufficient.  
24

25 **~~1405.2200 MOTIONS.~~**

26  
27 No motions shall be made directly to or be decided by the  
28 board subsequent to the appointment of an administrative  
29 law judge and prior to the completion and filing of the  
30 administrative law judge's report unless the motion is  
31 certified to the board by the administrative law judge.  
32 Uncertified motions shall be made to the administrative law  
33 judge and considered by the board in its consideration of the  
34 record as a whole subsequent to the filing of the  
35 administrative law judge's report.  
36

37 **~~1405.2300 DISRUPTION OF HEARING.~~**

38  
39 Subpart 1. Cameras. Television, newsreel, motion picture,  
40 still, or other cameras shall be operated in a manner as not  
41 to disrupt the hearing. The administrative law judge may limit  
42 operation if disruption occurs.  
43

44 Subp. 2. Other conduct. Pursuant to and in accordance with  
45 the provisions of Minnesota Statutes, section 624.72, no  
46 person shall interfere with the free, proper, and lawful access

1 to or egress from the hearing room. No person shall interfere  
2 with the conduct of, disrupt, or threaten interference with or  
3 disruption of the hearing. In the event of such interference or  
4 disruption or threat thereof, the administrative law judge shall  
5 read this part to those persons causing such interference or  
6 disruption and thereafter proceed as the judge deems  
7 appropriate.

8  
9 **1405.2400 ADMINISTRATIVE LAW JUDGE'S REPORT.**

10  
11 Subpart 1. Basis for determination. No factual information or  
12 evidence, except tax returns and tax reports, which is not a  
13 part of the record shall be considered by the administrative  
14 law judge or the board in the determination of a hearing. The  
15 administrative law judge or the board may take  
16 administrative notice of general, technical, or scientific facts  
17 within their specialized knowledge in conformance with the  
18 requirements of Minnesota Statutes, section 14.60,  
19 subdivision 4.

20  
21 Subp. 2. Completion and filing. Following the close of the  
22 record and the completion of the transcript, the  
23 administrative law judge shall make the report pursuant to  
24 Minnesota Statutes, section 14.50, and, upon completion, a  
25 copy of said report shall be served upon all parties by first  
26 class mail. A copy of the report shall also be filed at places  
27 designated for public review pursuant to part 1405.1900,  
28 subpart 1, item D.

29  
30 **1405.2500 BOARD DECISION.**

31  
32 Following receipt of the administrative law judge's report, the  
33 board shall proceed to make its final decision in accordance  
34 with Minnesota Statutes, chapters 14 and 116C.

35  
36 **1405.2600 REHEARING.**

37  
38 A rehearing pursuant to board order shall be commenced in  
39 the same manner as set forth for commencement of  
40 proceeding in part 1405.0500. The rehearing shall be  
41 conducted in the same manner prescribed for a hearing.

42  
43 **1405.2700 EMERGENCY PROCEDURES.**

44  
45 Any hearings held pursuant to Minnesota Statutes, section  
46 216E.06, to determine if an emergency exists shall be

1 ~~governed by the contested case procedures contained in~~  
2 ~~parts 1400.5100 to 1400.8500. If the board finds that an~~  
3 ~~emergency does exist, then any hearings on the designation~~  
4 ~~of a site or route shall be governed by the rules contained in~~  
5 ~~parts 1405.0200 to 1405.2800, provided, however, that the~~  
6 ~~administrative law judge, in the judge's discretion, may~~  
7 ~~modify any time limits contained herein on finding that such~~  
8 ~~modification is needed to expedite the hearings.~~