

Representative Koppelman:

I have compiled a summary touching on several important requirements related to administrative agency proceedings under Chapter 28-32. This summary is not comprehensive but will provide a framework to understand the process.

Agency action:

Perhaps an agency:

- Fails to follow the statutory rulemaking requirements,
- Abuses or exceeds its statutory authority,
- Unjustifiably denies state healthcare coverage,
- Violates due process, denying a business license or expelling a student without a fair hearing, or
- Imposes an excessive fine.

Complaint:

An aggrieved person may file a complaint regarding the agency's action with that agency.

Notice:

Unless provided otherwise by statute, the agency will designate the time and place for the hearing and provide all parties with notice at least 20 days before the hearing. I am unaware of a timeframe within which an agency must schedule the hearing to prevent delay to the complainant, except when specifically provided in law for a certain kind of hearing. The notice requirements may be shortened in an emergency situation.

If there is a specifically named respondent in the complaint, the agency will serve a copy of the complaint upon the respondent at least 45 days before the hearing on the complaint. If the respondent fails to answer as required within 20 days after service of the complaint, the agency may enter an order in default as the facts and law may warrant.

Prehearing conference:

Before a hearing, an administrative agency may conduct a prehearing conference after giving reasonable notice to all parties and other interested persons. If a party fails to attend or participate in a prehearing conference, hearing, or other stage of an adjudicative proceeding, the agency may enter and serve upon all parties written notice of default and a default order, including a statement of the grounds for default, which may be appealed.

Informal disposition:

Unless otherwise prohibited by specific statute or rule, informal disposition may be made of any adjudicative proceeding, or any part or issue thereof, by stipulation, settlement, waiver of hearing, consent order, default, alternative dispute resolution, or other informal disposition, subject to agency approval.

Hearing:

A hearing will be held according to Chapter 28-32.

Evidence and discovery:

The North Dakota Rules of Evidence apply to any adjudicative proceedings, which may be waived if necessary to ascertain the substantial rights of a party to the proceeding. The agency or person conducting a proceeding may exclude objectionable evidence. All testimony must be given under oath, and official notice may be taken of facts. Discovery may be obtained in accordance with the North Dakota Rules of Civil Procedure.

Hearing officer (ALJ):

A hearing officer, who may be an administrative law judge, will preside over the hearing. Only an agency head or designee may make a request for the designation of an administrative law judge, unless otherwise required by law. Requests submitted by unauthorized persons will not be accepted by the Office of Administrative Hearings for designation. The Office of Administrative Hearings is governed by Chapter 54-57. When designating administrative law judges to preside in an administrative proceeding or

adjudicative proceeding, the director shall attempt to assign an administrative law judge having expertise in the subject matter to be dealt with.

The hearing officer shall assure that all hearings and related proceedings are conducted in a fair and impartial manner. The agency must make a record and the person presiding at the hearing shall afford to all parties and participants the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence.

The hearing officer shall make findings of fact and conclusions of law and issue a final order, if required by statute or requested by an agency. A copy of the final order must be served within 30 days after evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible. Unless a later date is stated in the order, a final order of an administrative agency is effective immediately.

Petition for reconsideration:

Within 15 days of notice of the final order, an aggrieved party may file a petition for reconsideration. Filing of the petition is not a prerequisite for seeking judicial review. The administrative agency may deny the petition for reconsideration or may grant the petition on such terms as it may prescribe. If a rehearing is granted, the agency may allow a new hearing or limit the hearing as appropriate. The agency may dissolve or amend the final order and set the matter for further hearing. The petition is deemed to have been denied if the agency does not dispose of it within 30 days after the filing of the petition.

Appeal:

An aggrieved party may file an appeal within 30 days. The appeal of an order may be taken to the district court designated by law, and if none is designated, then to the district court of the county in which the hearing was held. If the administrative proceeding was disposed of informally, or for some other reason no hearing was held, an appeal may be taken to the district court of Burleigh County. Only final orders are appealable.

The party appealing shall pay the administrative agency the estimated costs of preparation and filing of the entire hearing record of the proceedings. The cost of preparation and filing

of the record may be waived by the district court upon application by an appellant, showing that the appellant is a low-income person unable to afford these costs. When a waiver is granted, the costs of preparation and filing of the record must be paid by the administrative agency.

An appeal from an order or the rulemaking action of an administrative agency or the commission does not stay the enforcement of the order or the effect of a published rule unless the court to which the appeal is taken, upon application and after a hearing or the submission of briefs, orders a stay.

The judgment of the district court in an appeal from an order or rulemaking action of an administrative agency or the commission may be reviewed in the supreme court on appeal if the appeal is filed within 60 days of the notice of judgment in district court.

Here are the timing requirements and other information you inquired about:

- An agency must provide notice to a specifically named respondent to a complaint 45 days prior to the hearing.
- An agency must provide notice of the hearing to all parties 20 days prior to the hearing.
- A final order must be issued within 30 days after all evidence has been received and arguments have been made, or as soon as possible.
- An aggrieved party has 15 days to petition for reconsideration of a final order.
 - No reply within 30 days indicates a denial of the petition.
- An aggrieved party has 30 days to appeal a final order to the district court.
- An aggrieved party has 60 days to file an appeal of the district court's judgment to the North Dakota Supreme Court.
- I am not aware of any general requirement for an agency, administrative law judge, or court to hold a proceeding within a certain number of days after receiving a complaint, petition for reconsideration, or appeal.

- There may be specific requirements (e.g., a hearing respecting the determination of the community spouse countable asset allowance must be held within 30 days of the request for hearing under NDAC Section 75-02-02.1-24).
- There are no automatic stays granted under Chapters 28-32 or 54-57.
- Courts in North Dakota require the exhaustion of remedies before the appropriate administrative agency as a prerequisite to making a claim in court. There may be exceptions based on the expertise of administrative bodies, statutory interpretation, pure questions of law, constitutional issues, discretionary authority of the courts, primary, concurrent, or exclusive jurisdiction, inadequacies of administrative bodies, etc. However, administrative agencies routinely construe statutes under which they operate in the performance of administering those laws.

I hope this is helpful. If you have additional questions, please let me know.

Thank you,



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