CHAPTER 54-57
OFFICE OF ADMINISTRATIVE HEARINGS

54-57-01. Office of administrative hearings - Agency defined - Administrative agency defined.

1. A state office of administrative hearings is created.
2. The office is under the direction of a director of administrative hearings who must be free of any association that would impair the director's ability to function officially in a fair and objective manner. The director must be an attorney at law in good standing, admitted to the bar in this state, and currently licensed by the state board of law examiners. The director of administrative hearings must be appointed by the governor and confirmed by the senate and shall hold office for a term of six years, the term beginning July first of the year of appointment and ending June thirtieth of the sixth calendar year after appointment.
3. The director of administrative hearings may preside as an administrative law judge at administrative hearings and may employ or appoint additional administrative law judges to serve in the office as necessary to fulfill the duties of office as described in section 54-57-04 and section 28-32-31 and to provide administrative law judges to preside at administrative hearings as requested by agencies. The director of administrative hearings may employ or appoint only such additional administrative law judges who are attorneys at law in good standing, admitted to the bar in the state, and currently licensed by the state board of law examiners. Administrative law judges employed by the director before August 1, 1995, need not be attorneys at law and may be designated by the director to preside at any administrative proceedings or adjudicative proceedings under section 54-57-03. The director may delegate to an employee the exercise of a specific statutory power or duty as deemed advisable, subject to the director's control, including the powers and duties of a deputy director. All administrative law judges must be classified employees, except that the director of administrative hearings must be an unclassified employee who only may be removed, during a term of office, for cause. Each administrative law judge must have a demonstrated knowledge of administrative practices and procedures and must be free of any association that would impair the person's ability to function officially in a fair and objective manner.
4. The director of administrative hearings may employ the necessary support staff required by the office. Support staff must be classified employees.
5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of administrative law judges and support staff in consultation with and approved by the director of North Dakota human resource management services, including the salary to be paid for each position or category of position.
6. The director shall file a report with the governor and the state advisory council for administrative hearings not later than the first day of December of each odd-numbered year. The report must provide information regarding all administrative hearings conducted by the office of administrative hearings during the previous biennium. The report must provide information regarding meeting case processing guidelines for each agency, the cost of hearings for each agency, the decisions issued for each agency, and the results of the office of administrative hearings' service survey.
7. In this chapter, unless the context or subject matter otherwise requires, "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government whether headed by an appointed or elected official.
8. In this chapter, unless the context or subject matter otherwise requires, "administrative agency" means that term as defined in section 28-32-01.

54-57-02. Temporary administrative law judges.

When regularly appointed administrative law judges are not available, the director of administrative hearings may contract on a temporary basis with qualified individuals to serve as administrative law judges for the office of administrative hearings. Temporary administrative law judges are not employees of the state.

54-57-03. Hearings before administrative law judges.

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the department of water resources, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the department of water resources pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapter 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.
2. The agency head shall make a written request to the director requesting the designation of an administrative law judge to preside for each administrative proceeding or adjudicative proceeding to be held.
3. Informal disposition of an administrative proceeding or adjudicative proceeding may be made by an agency at any time before or after the designation of an administrative law judge from the office of administrative hearings.
4. If a party to an administrative proceeding or adjudicative proceeding is in default, the agency may issue a default order and a written notice of default, including a statement of the grounds for default, prior to the hearing. The agency shall determine all the issues involved. If issued, the default notice and order must be served upon all the parties and the administrative law judge, if one has been designated to preside. After service of the default notice and order, if a hearing is necessary to complete the administrative action with or without the participation of the party in default, an administrative law judge from the office of administrative hearings must preside.
5. 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.
6. The director of administrative hearings may assign an administrative law judge to preside in an administrative proceeding or adjudicative proceeding, upon request, to any agency exempted from the provisions of this section, to any agency, or part of any agency, that is not an administrative agency subject to the provisions of chapter 28-32, to any unit of local government in this state, to any tribal government in this state, to the judicial branch, or to any agency to conduct a rulemaking hearing.

54-57-03.1. Hearings after judgment.

The office of administrative hearings may not hold hearings on the same issue involving the same parties as the original hearing after a judgment has been rendered by a court concerning that issue unless authorized to or directed to by that court.

54-57-04. Duties of administrative law judges.

All administrative law judges shall comply with the duties of hearing officers under section 28-32-31 for all hearings of administrative agencies under chapter 28-32, as well as for all hearings of administrative agencies not under chapter 28-32, in accordance with applicable laws.

54-57-05. Uniform rules of administrative practice or procedure - Effective date - Administrative law judge rules.

1. The director of administrative hearings shall adopt, in accordance with chapter 28-32, rules of administrative hearings practice or procedure which implement chapter 28-32 and which aid in the course and conduct of all administrative hearings and related proceedings conducted by administrative agencies under chapter 28-32. The uniform rules must be used by all administrative agencies subject to chapter 28-32 which do not have their own rules of administrative hearings practice or procedure governing the course and conduct of hearings. If an administrative agency's rules are silent on any aspect of the agency's administrative hearings practice or procedure, the applicable uniform rule governs.
2. The director of administrative hearings may adopt rules to further establish qualifications for administrative law judges; to establish procedures for requesting and designating administrative law judges; and to facilitate the performance of duties and responsibilities conferred by this chapter. Any rules adopted by the director of administrative hearings pursuant to this subsection must be adopted in accordance with chapter 28-32.

54-57-06. Transfer and transition provisions.

Repealed by S.L. 1995, ch. 313, § 14.

54-57-07. Compensation for provision of administrative law judges - Special fund established - Continuing appropriation.

1. The office of administrative hearings shall require payment for services rendered by any administrative law judge provided by it to any agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment must include payment for support staff necessary to render administrative law judge services. Moneys received by the office of administrative hearings in payment for providing an administrative law judge to conduct an administrative hearing and related proceedings must be deposited into the operating fund of the office of administrative hearings.
2. The office of administrative hearings shall require payment for mileage, meals, and lodging in connection with services rendered by an administrative law judge provided to any agency, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch, in the conduct of an administrative hearing and related proceedings, and those entities must make the required payment to the office. Payment for meals and lodging must be in the amounts allowable under section 44-08-04. Payment for mileage when using state vehicles must be in amounts set for user charges under section 24-02-03.5. All other payments must be in amounts allowed for other state officials and employees. Either general fund or special fund moneys, or other income, may be used for the payment of mileage, meals, and lodging under this subsection.
3. A special fund is established in the state treasury and designated as the administrative hearings fund. The office of administrative hearings shall deposit in the fund all moneys received by it in payment for providing services rendered by any administrative law judge in the conduct of an administrative hearing and related proceedings under this chapter, as well as all moneys received by the office in payment for mileage, meals, and lodging in connection with providing any

administrative law judge to conduct an administrative hearing and related proceedings. The moneys in the fund are a standing and continuing appropriation and are appropriated, as necessary, for the following purposes:

a. For the office of administrative hearings to pay for salaries, wages, benefits, operating expenses, and equipment, including payment to temporary administrative law judges, as necessary, for the purpose of providing requested administrative law judges to agencies, to any unit of local government in this state, to any tribal government in this state, or to the judicial branch.
b. For the office of administrative hearings to pay mileage, meals, and lodging to any administrative law judges, as necessary, in connection with the services to be provided under this chapter.

54-57-08. Advisory council.

There is created a state advisory council for administrative hearings. The advisory council must be a committee or subcommittee of the state bar association of North Dakota, appointed by its president. The advisory council shall meet with the director at least semiannually and shall advise the director on policy matters affecting the office of administrative hearings and on rules adopted by the director.

54-57-09. Case processing tracking and reporting.

1. The office of administrative hearings shall track the time elapsed between the date the office receives a file from workforce safety and insurance and the date of the administrative law judge's decision, and monthly calculate a rolling six-month average of time elapsed.
2. The office of administrative hearings shall adopt case processing standards and policies, including provisions intended to meet a goal of an average of two hundred fifteen days or less per case. Administrative law judges have an average of two hundred fifteen days to issue a decision for any injured worker case from the date the office of administrative hearings receives a file from workforce safety and insurance. The date of the last assigned file is the date of assignment for all consolidated files.
3. The office of administrative hearings shall report statistical information regarding results under the case processing standards and policies to the state advisory council each quarter. The reports must include the information required under subsection 1.