

CHAPTER 51-01-02 PRACTICE AND PROCEDURE BEFORE THE BOARD

Section

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51-01-02-01. Appearance and practice before the board.

Any person may appear in any proceeding before the board who has a bona fide interest in the subject matter of the proceeding. Attorneys at law who are admitted to practice before the courts of the state of North Dakota may represent any participant in a proceeding. Any member of the bar of another state may be permitted by the board or a hearing officer to appear and conduct a cause or matter. Any other person who shall file proof to the satisfaction of the board or a hearing officer that the person is possessed of necessary legal or technical qualifications to enable the person to render valuable service may be permitted to practice before the board. All persons appearing before the board or a hearing officer must conform to the standards of ethical conduct required of practitioners before the courts of the state of North Dakota.

General Authority: NDCC 4.1-26-35

Law Implemented: NDCC 4.1-26-35

51-01-02-02. Pleadings and documents.

1. **Filing.** All pleadings and documents in proceedings before the board shall be filed with the executive secretary.
2. **Docket number and title.** Each matter coming formally before the board shall be given a docket number and a title descriptive of the subject matter. The number and title shall be used on all pleadings. As far as possible, any communication to the board in any particular matter shall bear the docket number.
3. **Signature.** All pleadings and other documents shall be signed by the person presenting the same or by the person's duly authorized attorney.
4. **Copies of exhibits.** All documents submitted in evidence as exhibits should consist of an original and five copies for the convenience of the board in preparing transcripts. (Failure to comply with this subsection is not fatal.)

General Authority: NDCC 4.1-26-35

Law Implemented: NDCC 4.1-26-35

51-01-02-03. Service of process.

1. **Complaint.** The notice of hearing and complaint in an adjudicatory matter shall be served on all parties to the proceeding either personally or by certified mail, as the board may direct. Such service may be waived in writing by the respondent.
2. **Decision of the board.** The findings of fact, conclusions of law, and decision of the board in an adjudicatory matter shall be served upon all the parties to the proceeding either personally or by registered or by certified mail.
3. **Other process.** All other notices, processes, and orders of the board may be served in the same manner as provided in the North Dakota Rules of Civil Procedure. Except where specifically provided by statute, any notices, processes, and orders of the board may be served by mailing it to the last known address of the person to be served.
4. **Proof of service.** The affidavit or certificate of service of the person, sheriff or other officer making the same setting forth the manner of service shall be proof of said service. When service by mail is made, an affidavit or certificate of mailing shall be proof of said service, and service by mail is complete upon mailing. Service may also be admitted in writing. When service by publication is made, an affidavit as provided in North Dakota Century Code section 31-04-06 shall be proof of service.

General Authority: NDCC 4.1-26-35, 28-32-05, 28-32-13; NDRCivP RULE 4, NDRCivP RULE 5

Law Implemented: NDCC 4.1-26-35

51-01-02-04. Computation of time.

In computing any period of time prescribed or allowed by this chapter, by order of the board, by the local rules of any district court, by the North Dakota Rules of Civil Procedure, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

General Authority: NDRCivP RULE 6

Law Implemented: NDCC 4.1-26-35

51-01-02-05. Notice and hearing in rulemaking matters.

Repealed effective June 1, 1990.

51-01-02-06. Notice and hearing in adjudicatory matters.

1. **Refusal of a license application.** If an application for a license is not granted within thirty days after it has been filed with the board, the board shall notify the applicant of the date on which a hearing will be held for the purpose of receiving evidence relative to the eligibility of the applicant for the license sought. The hearing shall be held on a date which is not less than twenty days after the date on which the notice is given, unless an earlier date is agreed upon by the board and the applicant. The board may deny the issuance of a license if it finds that the applicant has violated North Dakota Century Code chapter 4.1-26, or a regulation or stabilization plan promulgated by the board.

2. **Violations of law, regulations, or stabilization plans.** The executive secretary shall inform the board whenever the executive secretary has reason to believe that a licensee has violated North Dakota Century Code chapter 4.1-26, any regulation, a stabilization plan issued by the board, or any order of the board. Any interested person may also inform the board in writing, setting forth any act or thing done which is claimed to constitute such a violation.
3. **Investigation or inquiry.** The board shall conduct such investigation or inquiry as it deems appropriate regarding alleged violations of law, regulations, stabilization plans, or orders of the board. If upon such investigation or inquiry the board shall have reason to believe that there is a violation of law over which the board has jurisdiction, and if it appears to the board that a proceeding by it in respect thereof would be in the public interest, the board shall issue a complaint and a notice of hearing.
4. **Complaint.** Each formal complaint shall show the venue, "Before the North Dakota Milk Stabilization Board" and shall contain a heading showing the matter involved and the name of the respondent. The complaint shall fully advise the respondent of the facts constituting the ground of the complaint including reference to the statute or rule alleged to be violated, and the relief sought.
5. **Notice of hearing.** The board shall issue a notice of hearing fixing the time and place for trial upon the merits. The board shall serve a copy of the complaint and the notice of hearing upon the respondent personally or by certified mail at least forty-five days before the time specified for hearing. Service may be waived in writing by the respondent, or the parties may agree upon a definite time and place for hearing.
6. **Answer.** An answer to the complaint must be served upon the board and the complainant within twenty days after service of the complaint and notice for hearing, or the complaint will be deemed admitted, and the board will enter such order as the facts and law may warrant. The answer shall contain a concise statement of the facts which constitute the grounds of defense. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state.
7. **Respondent's waiver of hearing.** If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in the complaint and to have authorized the board, without further evidence, or other procedure, to find the facts to be true, and if in the judgment of the board the facts admitted constitute a violation of law as charged in the complaint, to make and serve findings as to the facts and issue an appropriate order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such an answer, the respondent, in the discretion of the board, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute a violation of law as charged in the complaint.
8. **Emergency.** In an emergency, the board, at its discretion, may notice a proceeding for hearing upon the merits upon less than forty-five days' notice. Every party to an emergency proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.

General Authority: NDCC 4.1-26-32, 4.1-26-33

Law Implemented: NDCC 4.1-26-35

51-01-02-07. Continuances.

Every party to a proceeding, and the board, shall be given a reasonable time within which to prepare for a hearing. The board, upon good cause shown, may extend the time for hearing or grant such continuances as it deems appropriate to permit additional time for trial preparation or reasonable discovery procedures. Such extensions of time or continuances may be granted at, before, or after the time originally set for hearing.

General Authority: NDCC 4.1-26-35, 28-32-05

Law Implemented: NDCC 4.1-26-35

51-01-02-08. Hearing officer.

When evidence is to be taken in any proceeding, either the board, any member thereof, or a hearing officer, when duly designated for that purpose, may preside at the hearing.

A hearing officer duly designated by the board to preside at a hearing shall have the authority, within the board's powers and subject to its rules, to:

1. Regulate the course of hearing.
2. Administer oaths.
3. Issue subpoenas.
4. Take depositions or cause depositions to be taken.
5. Rule upon offers of proof and to receive evidence.
6. Hold appropriate conference before or during hearings.
7. Dispose of procedural matters, but not to dispose of a motion to dismiss a proceeding or any other motion which involves a final determination of a proceeding.
8. Take any other action necessary or appropriate to discharge the duties vested in the hearing officer, consistent with statutory or other authorities under which the board functions and with the rules, regulations, and policies of the board.

General Authority: NDCC 4.1-26-35, 28-32-11

Law Implemented: NDCC 4.1-26-35

51-01-02-09. Subpoenas.

Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the board upon its own motion, will issue only upon application in writing to the board, its executive secretary, or a hearing officer. The written application shall specify the general relevance and materiality of the testimony or documentary evidence sought, and specify the documents desired and the facts to be proved by them. The cost of serving subpoenas shall be paid by the party requesting it. Witnesses subpoenaed for a hearing or deposition shall receive the same fees and mileage as a witness in a civil case in the district court, and fees shall be paid by the party or agency at whose instance the witness appears. No witness fee will be allowed except on a subpoena.

General Authority: NDCC 28-32-09

Law Implemented: NDCC 4.1-26-35

51-01-02-10. Depositions and interrogatories.

The deposition of a witness or party in any proceeding before the board may be taken in the same manner and on the same notice as in a civil action pending in the district court. Interrogatories may be sent to any witness or party in a proceeding in the same manner and on the same notice as in an action pending in the district court. A party, other than the board, must first show good cause before undertaking discovery proceedings, including interrogatories.

General Authority: NDCC 28-32-09

Law Implemented: NDCC 4.1-26-35

51-01-02-11. Evidence.

1. **Admissibility of evidence.** The admissibility of evidence at a public hearing shall be determined generally in accordance with the practice in the district courts in this state. However, the board or a hearing officer may waive the usual common law or statutory rules of evidence where such waiver is necessary to ascertain the substantial rights of the public and interested parties. When objection is made to the admissibility of evidence, a hearing officer may receive such evidence subject to later ruling by the board.
2. **Witnesses.** Witnesses appearing before the board or wishing to be heard by giving testimony must be sworn before their testimony shall be considered. All witnesses shall be subject to cross-examination within the limits of the purpose of the hearing at which they are testifying by any other party or party's attorney or representative and by members of the board and its attorney or representative.
3. **Stipulations.** The parties to any proceeding or investigation before the board may by stipulation agree upon the facts, or any portion thereof, involved in the controversy, and such stipulation shall be regarded and used as evidence at the hearing.
4. **Documentary evidence.** Where relevant and material matter offered in evidence by any party is embraced in a book, paper, or a document containing other matter not material or relevant, the party must plainly designate the matter so offered. If the other matter is in such volume as would unnecessarily encumber the record, the relevant and material matter may be read into the record, or a true copy thereof shall be received as an exhibit. All parties shall be afforded an opportunity to examine the entire book, paper, or document and to offer in evidence any additional portions thereof found to be material and relevant.
5. **Official notice.** The board may take notice of any fact or facts set forth in its duly established regulations, or any facts which are judicially noticed by the courts of this state.

General Authority: NDCC 28-32-06, 28-32-07

Law Implemented: NDCC 4.1-26-35

51-01-02-12. Oral argument.

A hearing officer may, either on the hearing officer's own motion or at the request of any party, allow and fix a time for the presentation of oral argument imposing such limits of time on the argument as the hearing officer deems appropriate. Such argument shall be transcribed and bound with the transcript of testimony unless waived by the hearing officer and all parties. Request for authority to present oral argument before a quorum of the board may be made at any time during the hearing, at the conclusion of the taking of evidence or on brief. The board will announce and fix the time for oral argument, if allowed.

General Authority: NDCC 4.1-26-35

Law Implemented: NDCC 4.1-26-35

51-01-02-13. Record of proceedings.

A record will be made of all proceedings before the board and shall be filed in the office of the executive secretary. A transcript of such evidence will be furnished to any party interested in the proceedings upon written request, and on payment of a reasonable fee as established by the board.

General Authority: NDCC 4.1-26-35, 28-32-12

Law Implemented: NDCC 4.1-26-35

51-01-02-14. Briefs.

The board reserves the right to call for briefs in its discretion and to designate the time within which briefs shall be filed. All briefs must be filed with the executive secretary of the board within the time limits fixed by the board and briefs tendered after expiration of the times fixed will be filed only by special permission of the board. Appearance of additional counsel in a case will not constitute grounds for extending time for filing briefs. An original and five copies of each brief shall be filed. Briefs shall contain a concise statement of the facts, issues, and arguments of law relied upon by the party submitting the briefs. Briefs shall contain an index with reference to pages where legal citations appear.

General Authority: NDCC 4.1-26-35

Law Implemented: NDCC 4.1-26-35

51-01-02-15. Deliberations.

In all matters where a public hearing has been held and persons interested have been afforded an opportunity to make an appearance and present evidence, the board may exclude such persons from participating during deliberations regarding the subject matter of such public hearing as such could constitute an opportunity to exert additional influence or an opportunity to present matters which would not be a part of the official record of such proceeding and deny an absent party due process of law.

General Authority: NDCC 4.1-26-35

Law Implemented: NDCC 4.1-26-35

51-01-02-16. Prehearing conferences in adjudicatory matters.

In order to provide an opportunity for a settlement of a proceeding in an adjudicatory matter, or any of the issues therein, there may be held at any time prior to or during hearings before the board or a hearing officer such informal conference of parties for the admission and consideration of facts, arguments, offers of settlement, or proposals of adjustments as time, the nature of the proceeding, and the public interest may permit. To expedite the orderly conduct and disposition of any hearing, and at such prehearing conferences as may be held, there may be considered, in addition to any offer of settlement or proposals of adjustment, the possibility of the following:

1. The simplification of issues.
2. The necessity or desirability of amendment to the pleadings.
3. The exchange and acceptance of service of exhibits proposed to be offered in evidence.
4. The obtaining of admissions or stipulations of facts not remaining in dispute, or the authenticity of documents which may properly shorten the hearing.
5. The limitation of the number of witnesses.
6. Such other matters as may properly be dealt with to aid in expediting the orderly conduct of the proceeding.

The board with or without motion may direct that a prehearing conference be held. Upon motion by a party, the hearing officer may direct the parties to such proceedings to appear for a prehearing conference. Due notice of the time and place of such conference will be given to all parties to the proceeding. Upon conclusion of a prehearing conference, the parties shall immediately reduce the results thereof to the form of a written stipulation which recites the matters agreed upon, and the original and five copies shall be filed with the board. Any such stipulation may be received in evidence at a hearing and, when so received, shall be binding on the parties with respect to the matters therein stipulated.

General Authority: NDCC 28-32-05

Law Implemented: NDCC 4.1-26-35

51-01-02-17. Decision of board in adjudicatory matters.

Within thirty days after the evidence has been received, briefs filed, and arguments closed in an adjudicatory proceeding before the board, or as soon thereafter as possible, the board shall make and state concisely and explicitly its findings of fact, and its separate conclusions of law, and the decision of the board based upon such findings and conclusions. The board shall give notice of its findings of fact, conclusions of law, and decision by delivering a copy thereof to all parties to the proceeding. Copies of such decisions shall be served either personally or by registered or certified mail.

General Authority: NDCC 28-32-13

Law Implemented: NDCC 4.1-26-35

51-01-02-18. Petition for rehearing in adjudicatory matters.

A petition for rehearing of an adjudicatory proceeding must be filed within fifteen days after a copy of the decision of the board has been served. Such petition shall state concisely the alleged errors in the board's decision and the specific grounds relied upon by the petitioner. If an order of the board is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision, or by reason of a consequence that would result from the compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition. A petition for rehearing shall be served by the petitioner upon all parties to the proceeding or their attorneys or record, and a certificate to that effect will be forwarded to the board at the time the petition is filed. The original and five copies must be filed with the board. Within ten days following the service of such petition, any party to the proceeding may file with the board the party's answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such petition. The board may deny such request for a rehearing or may grant the same on such terms as it may prescribe.

General Authority: NDCC 28-32-14

Law Implemented: NDCC 4.1-26-35

51-01-02-19. Appeal in adjudicatory matters.

Any party to any adjudicatory proceeding heard by the board may appeal from a decision within thirty days after notice has been given in the manner prescribed in North Dakota Century Code section 28-32-15.

General Authority: NDCC 28-32-15

Law Implemented: NDCC 4.1-26-35

51-01-02-20. Interpretation.

If any portion of this chapter is held invalid or unconstitutional, the holding shall not affect the validity of the chapter as a whole, or of any part thereof which can be given effect without the part held to be unconstitutional or invalid.

General Authority: NDCC 4.1-26-35

Law Implemented: NDCC 4.1-26-35