

OFFICE OF ADMINISTRATIVE HEARINGS

The Office of Administrative Hearings (OAH) is an Executive Branch agency that provides independent administrative law judges (ALJs) to preside at administrative hearings and related proceedings for state agencies and other agencies of government which use OAH services. OAH ALJs endeavor to conduct orderly, fair, and impartial hearings. After the hearing, OAH ALJs endeavor to issue prompt, reasoned recommended or final decisions. OAH is providing this informational guide to help you prepare for and participate in your administrative hearing when you represent yourself. It is a guide which applies generally. Not all cases are the same, and your case may be different in some respects from the information provided in this guide. It is impossible in a short informational guide to tell you about all possible situations. OAH hopes this guide will help you better understand the hearings process. However, this guide is not a substitute for having an attorney represent you.

REMEMBER: *It is very important for you to read carefully all documents sent to you by OAH, by an agency, or by any other party involved in the hearing. Those documents may tell you about the issues involved or allegations of a complaint against you, important times and dates, deadlines you must meet, and rights you may have.*

WHAT RULES MUST I FOLLOW?

OAH ALJs conduct hearings under authority from the Administrative Agencies Practices Act (North Dakota Century Code chapter 28-32), specific agency statutes, agency procedural rules, and the Uniform Rules of Administrative Procedure for Adjudicative Proceedings (North Dakota Administrative Code Article 98-02), as applicable. The Century Code and the Administrative Code

may be found in law libraries or other libraries, may be available at various state government offices, and may be available on various state government websites. N.D. Admin. Code art. 98-02 can be found on OAH's website through "Other Links" (under North Dakota Administrative Code) or "Uniform Rules" on the OAH website at: <http://www.nd.gov/oah>.

WHAT IS AN ALJ?

An ALJ is not a judge as part of the court system. He or she is a specially trained judge or hearing officer who will conduct your hearing and preside at related proceedings. The ALJ is an employee of OAH and not an employee of another agency. Normally, following a hearing, the ALJ will issue a recommended decision for the agency, after which the agency will issue a final decision. In certain cases the ALJ will issue a final agency decision. An ALJ is an independent hearing officer who conducts an orderly, fair, and impartial hearing and issues a prompt, reasoned recommended or final decision for an agency matter pursuant to that agency's request for hearing officer services.

HOW WILL I KNOW WHEN MY CASE HAS BEEN SENT BY AN AGENCY TO OAH FOR A HEARING?

OAH may not begin proceedings until an agency requests its services. An agency will make a formal request by writing to OAH. Within one to five days of receiving a written request, OAH will designate an ALJ to be assigned to your case. You will receive a copy of that designation letter.



WILL I HAVE A PREHEARING CONFERENCE?

In some cases the ALJ or one of the parties will want to have a prehearing conference to discuss the issues, any preliminary questions, concerns, or procedures prior to the hearing. The ALJ will likely send you a notice scheduling the prehearing conference. As a rule these conferences are held by telephone conference. If you wish to request a prehearing conference, you may write to or call the ALJ. Prehearing conferences are usually informal and tape-recorded.

WHEN AND WHERE WILL THE HEARING BE?

Whether you have a prehearing conference or not, the ALJ will send you a Notice of Hearing. At times the notice will be sent by the agency. The notice will tell you the date, time, and place for the hearing. The hearing may be held by telephone conference or in person. An in-person hearing may be held in a hearing room at OAH offices in Bismarck or in another location in Bismarck. Sometimes the hearing is scheduled to be held in another location in the state. A statute or rule may require the hearing to be held in a specific location; otherwise, the ALJ will determine the hearing location.

WHAT WILL THE HEARING BE LIKE?

Your hearing will be similar to a trial in court, with witnesses, exhibits, and rules of evidence. In some cases, the rules of evidence will not be used; they will be waived. An ALJ will preside. Even though you are representing yourself, the agency or another party may be represented by an attorney.

When the hearing begins, the ALJ will explain the hearing procedure and what the hearing is about. Each party may make opening statements. These statements, which are not evidence, are offered for the purpose of telling the ALJ what you intend to

prove. After opening statements, each party presents its case with witnesses and other evidence, such as documents (exhibits). You may be required to prove the authenticity of exhibits you present. Witness testimony must be taken under oath or affirmation. You may testify as a witness yourself and you may call other witnesses to testify.

The type of case usually determines which party presents its case first. The agency, as a rule, presents its case first. You will then present your case. After a witness for another party is questioned (direct examination), you will have an opportunity to question the witness (cross-examination). Usually, the ALJ will allow direct examination, cross-examination, and such further questions of each witness as the parties desire.

Any party may object to evidence presented. The reason for the objection must be stated. Then, the ALJ will decide whether to admit (allow) the evidence.

After all the evidence is presented, the ALJ may ask for closing argument. Closing argument is also not evidence but, rather, a summary of what you believe the evidence shows and what you believe the law requires based upon the evidence. As an alternative to oral argument, the ALJ may require the parties to file written closing argument (briefs). After closing argument, the ALJ will close the hearing.

DO I NEED AN ATTORNEY TO REPRESENT ME AT MY HEARING?

Any individual may represent himself or herself at an administrative hearing without an attorney, but having an attorney represent you may help you understand and follow the issues and procedures for your case. It may be especially helpful to have an attorney if one of the other parties, such as the agency, has an attorney. In some cases

you may have a non-attorney assist you. However, the law may require, in some cases, that if you have someone assist you, it must be an attorney. Neither the ALJ nor anyone else from OAH may give you legal advice, although they will do everything they can to provide you with a fair and impartial hearing.

MAY I PRESENT LETTERS OR AFFIDAVITS AT THE HEARING?

Ordinarily, evidence is presented through the testimony of witnesses or the offer of documents. Some letters may be admitted as evidence, but it is generally better to bring a witness to the hearing to testify about facts and so that the witness can answer questions. If a witness cannot be available for the hearing, an affidavit of testimony the witness would give if present can be admitted if it is provided to the ALJ and the other parties at least fifteen days prior to the hearing. If within seven days another party requests an opportunity to cross-examine the affiant (witness), the ALJ may not admit the affidavit unless the affiant is made available for cross-examination.

WHAT IS THE BURDEN OF PROOF? WHO HAS IT?

The burden of proof is the duty to present evidence to show, by the preponderance (or greater weight) of the evidence, that an allegation or fact is true. Basically, it means that you must prove your side or view of the issues. Generally, the party requesting the action or relief has the burden of proof. In a complaint hearing, the burden of proof is on the complainant, which is usually the agency, not on the respondent. In many other types of cases, the burden of proof may be on you, as an applicant or an appellant. For example, if you are applying for a license, permit, or other

benefit, you have the burden of proving that you meet the qualifications for that license, permit, or benefit.

WILL THERE BE A RECORD?

There will always be a record of any hearing and there will usually be a record of a prehearing conference, either in transcript form or on an audio tape. Most hearings are recorded by tape recorder. Some agencies use court reporters. A party can have a court reporter instead of a tape recorder if they pay for it. Generally, after the hearing, the party requesting a copy of the record must pay for it. After a hearing, the party appealing the final agency decision must pay for a transcript to be provided to the courts.

MOTIONS OR REQUESTS

After your case is assigned to an ALJ, all requests or motions must be in writing and must be filed with the ALJ, if they are not made orally at the hearing or at a prehearing conference. A copy of all written motions or requests filed must be sent to each of the other parties.

SUBPOENAS

Requests for the issuance of either a witness subpoena (for a witness to appear to give testimony at the hearing) or for a subpoena duces tecum (for a person to attend a hearing or a prehearing conference and bring certain documents with them) must be made to the ALJ. Statutes and rules make certain requirements regarding the issuance of subpoenas. Though the ALJ must sign a subpoena for you, you will be responsible for serving it. You should make requests for subpoenas well in advance of the hearing or prehearing conference. You may have to pay a witness fee to get a witness to attend the hearing.

CAN I GET MY HEARING DELAYED?

Usually you can get your hearing or prehearing conference delayed if you are unable to attend, provided there is a good reason (good cause) for the delay. First, contact the other parties and see if each will agree to a delay (continuance). If all parties agree to a continuance, make a written request for a continuance to the ALJ, indicating that all parties agree to the continuance. If any party does not agree, you must submit a written request for a continuance stating good cause for the continuance. If any party objects to the continuance in writing, the ALJ must decide whether to grant the continuance. If you can, make your request for a continuance well in advance of the hearing or prehearing conference. The final decision to grant a continuance rests with the ALJ.

Remember: *You must send to each of the other parties a copy of any correspondence, request, motion, or anything else you send to the ALJ.*

MAY I SEE THE OTHER PARTY'S EVIDENCE BEFORE THE HEARING?

As a rule, you may be able to see (discover) the evidence against you prior to the hearing. The other party may also discover your evidence. If you wish to conduct discovery against an agency, you must first petition (request) the ALJ to allow discovery, showing good cause, and get the ALJ's approval. However, you may be able to informally contact another party and get information or documents. If the documents you seek are public records, you must first attempt to obtain the public records from the agency having possession before you request discovery. Statutes and rules contain requirements regarding discovery. A request to conduct discovery should be made well in advance of the hearing. If you believe you need to conduct

considerable discovery, you may wish to ask the ALJ for a prehearing conference.

WHAT WILL HAPPEN IF I DO NOT ATTEND MY HEARING?

If you do not attend your hearing you may lose your case, either because you are considered in default or because the agency proved its case and you were not there to offer contrary evidence. If there is an emergency and you will be late, call the ALJ before the hearing. If you are unable to call the ALJ, contact the ALJ as soon as possible and explain your situation. In some cases, when you are in default, the agency may give you an opportunity to explain your default before it issues a final order against you.

MAY I PRESENT EVIDENCE AFTER THE HEARING?

The hearing is the time for presentation of evidence and you will not generally be allowed to present evidence, *e.g.*, by mail, later. In certain situations, you may request that the case be reopened for the presentation of new evidence, prior to the issuance of a recommended decision. The ALJ may grant your request. You may also ask that a matter be reconsidered because of new evidence after a final decision has been issued. In that case, the agency will consider your request.

MAY I APPEAL?

After the issuance of the final decision, you may have appeal rights or other rights. Appeals of final agency decisions are to the North Dakota district courts, pursuant to statutes and rules. Usually, the agency sends you notice of your appeal rights along with its final decision. As a

rule, you have thirty (30) days from the date of issuance to appeal the final decision.

DO I NEED A HEARING TO SETTLE MY CASE?

Generally, any administrative matter may be informally settled without the need to have a hearing. Contact the agency attorney or the other party, or the attorney for the other party, to try and informally work something out. It may also be possible to resolve a matter by mediation or arbitration. A case may even be informally settled after the hearing but before a final decision is issued.

ACCOMMODATIONS AND INTERPRETERS

If you need an accommodation for a disability, a translator, or a sign language interpreter, you must submit a written request to the agency to which you made your request for hearing, well in advance of the hearing, if possible. Be as specific as you can about the accommodation you require. A copy of this request should also be sent to the ALJ assigned to your case. It may not be sufficient to bring a friend or relative to interpret for you. Hearings will be held at accessible locations.

CAN MY HEARING BE CONDUCTED BY TELEPHONE?

Although some hearings must be conducted as in-person hearings, many hearings are held by telephone conference. If your hearing is scheduled as an in-person hearing and you desire a telephone conference hearing, or if you wish one or more witnesses to appear by telephone conference, contact the ALJ well in advance of the hearing.

MAY I CALL THE ALJ ABOUT MY CASE?

You may call the ALJ and ask basic, general questions about the hearing, but the ALJ may not specifically advise you about how to present your case. If you wish to discuss specific issues with the ALJ or talk about your side of the case, the other party(s) must be included in the conversation. Again, you may wish to ask the ALJ for a prehearing conference.

WHEN MUST A DECISION ON MY CASE BE ISSUED?

Generally, the ALJ will issue a recommended or final decision on your case within 30 days after hearing closure. The agency will issue a final decision within 60 days after the ALJ issues a recommended decision. In some cases where there is extensive evidence or complex issues, a decision may be issued longer than 30 days after hearing closure or 60 days after a recommended decision is issued.

CAN I OBJECT TO A RECOMMENDED DECISION AFTER THE ALJ ISSUES IT?

Agencies may allow a petition for review of an ALJ's recommended decision and oral argument pending the issuance of a final decision. You can contact the agency to inquire about review of recommended decisions.

HOW CAN I FIND AN ATTORNEY TO HELP ME?

Ask friends or a relative to recommend an attorney. You may be able to find an attorney through the State Bar Association of North Dakota or you may qualify for legal assistance from Legal Assistance of North Dakota. The ALJ cannot recommend an attorney to you.

ARE HEARINGS CONFIDENTIAL?

By and large, administrative hearings are open to the public and anyone can attend. However, some hearings or portions of hearings are closed by statute or rule. Others may be closed at the request of a party. If you are concerned about confidentiality for your hearing or you want to know if it is a public hearing, please contact the ALJ.

COMPLAINTS

Sometimes things may not appear to be going along as you think they should. Not everyone will be pleased with all the decisions of the ALJ. However, all parties have the right to be treated courteously and to have their hearing conducted with the aim of finding the truth. If you have a complaint about an ALJ's conduct of your hearing or the timeliness in issuing a decision, please make your complaint to the director of the Office of Administrative Hearings. Your concerns will be addressed consistent with the spirit of providing a fair, impartial, and independent hearing.

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STATE OF NORTH DAKOTA



OFFICE OF ADMINISTRATIVE HEARINGS

Informational Guide

WHAT IF I REPRESENT MYSELF?



This guide is issued for informational purposes only. Nothing contained in it may bind the Office of Administrative Hearings or its administrative law judges to any practice or procedure described in it.

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