

10-15-1989

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Recommended Citation

William Brown, *Administrative Law in Minnesota*, 9 J. Nat'l Ass'n Admin. L. Judges. (1989)
available at <http://digitalcommons.pepperdine.edu/naalj/vol9/iss2/6>

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ADMINISTRATIVE LAW IN MINNESOTA

Hon. William Brown

PRESENTATION OF WILLIAM BROWN CHIEF ADMINISTRATIVE LAW JUDGE, STATE OF MINNESOTA TO THE NATIONAL ASSOCIATION OF ADMINISTRATIVE LAW JUDGES ANNUAL MEETING - October 6, 1988

I would like to thank Kent Todd for inviting me here this morning to discuss the issue of due process safeguards in high-volume administrative proceedings. Also, I think that the program which has been put together for this conference is excellent and contains the topics which are of primary interest to those of us who are engaged in administrative law. It demonstrates the vitality of our system here, and I think we can be particularly proud of the fact that Kent Todd is the president of the organization. He is a person who goes about his work in a somewhat quiet and very effective fashion and is low-key about his accomplishments, but I think it appropriate that we should thank him and the others from his department who organized this fine convention; and again it is a real credit to Minnesota's administrative law system to have had Kent as your president for this past year.

To begin, I would like to describe the current structure of our administrative law system in Minnesota. We do have several agencies involved in conducting administrative hearings, one being the Minnesota Office of Administrative Hearings, which is Minnesota's Central Panel Agency. We are a separate department in state government and conduct all administrative hearings for the state with the major exceptions of unemployment hearings and welfare eligibility hearings. Currently we have 29 Workers' Compensation Judges, 9 Administrative Law Judges, 30 support staff, and myself in the office. As I indicated, we are an independent agency. Our Workers' Compensation Judges conduct all Workers' Compensation trials in the state, and we do handle about 4,000 cases per year. Our Administrative Law Judges conduct contested case hearings for state agencies. A contested case is statutorily defined as a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. The cases, among others, include hearings on human rights charges, securities regulation, professional licensure, utilities regulation, transportation regulation and employee disciplinary cases for the state and local governments. We have been hearing liquor license revocation cases for cities, and most recently have undertaken a pilot project on child support hearings. With the primary exceptions of human rights cases and state employee disciplinary cases,

our judges' recommendations are finally dealt with in the executive branch, either by the Board of Commission in charge of the activity or an agency head. Judicial review of their decision is by the Intermediate Court of Appeals. The appeal of workers' compensation decisions is to the Workers' Compensation Court of Appeals, with judicial review by the Minnesota Supreme Court.

The unemployment compensation hearings in Minnesota are conducted by the Appellate Office of the Department of Jobs and Training. There are 22 referees in the office and the case load involves approximately 12,000 appeals per year. Their decisions may be appealed to the Department's Commissioner Representatives and judicial review is by the Intermediate Court of Appeals. Public assistance eligibility hearings are conducted by 9 referees within the Appeals and Contracts Division of the Department of Human Services, or the county's referee, with the Commissioner being the final authority and judicial review is district court.

Over the past several years there have been a variety of attempts to bring these units together in a combined Office of Administrative Hearings, but for one reason or another that has not happened. Having been involved with the major entities, I think I can say with reasonable assurance that the systems which we currently have for conducting administrative hearings in Minnesota are working very well. The basic administrative law system for contested cases and rulemaking in the Office of Administrative Hearings has a comprehensive set of procedures in both statute and rule relating to those activities and functions very effectively in dealing with those hearings.

Our workers' compensation hearing process, revised by legislation in 1987, and with the addition of several judges, has experienced a somewhat dramatic reduction in delays in the hearing process, and we project that the goal in Minnesota of being afforded a hearing within six months of the filing of an initial claim petition will be reached by late 1989.

Our unemployment compensation hearing process has repeatedly met Federal standards for timeliness, and in April of this year we finished the promulgation of a new set of rules which, I believe, establish a clear due process system for hearings on unemployment benefit and tax matters. My discussions with the assistant commissioner in charge of the welfare appeals division indicates that the procedures as well as the production of that office have greatly improved and the additional staff and resource commitment to the office has proven to be well worthwhile.

So I think it is fair to say that the State of Minnesota's administrative law system is very good, and that is due primarily to the people who are in the system. It is the judges and support staff within the system which dictate whether the goal of administrative law, which is to facilitate the optimum delivery of government services to the public, is obtained. And the primary requirement of such a system is that the decision maker be fair and impartial. This was clearly set forth in the landmark U.S. Supreme Court case of Goldberg v. Kelly, which required a due process hearing prior to the termination of AFDC benefits. An impartial decision maker is essential. The judge must approach each case with an open mind. His or her concern should be to provide a fair hearing and a prompt and just decision under the law. It has been said, quite appropriately, that "The judge shall know nothing about the parties, everything about the case. He shall do everything for justice, nothing for himself, nothing for his patron, nothing for his sovereign." (Rufus Choate)

And I think in this regard we have been extremely fortunate in Minnesota. Our laws call for administrative judges who are fair and impartial in all respects. Our Administrative Procedure Act provides that all Administrative Law Judges shall have demonstrated knowledge of administrative procedures and shall be free of any political or economic association that would impair their ability to function officially in a fair and objective manner. All Workers' Compensation Judges shall be learned in the law, shall have demonstrated knowledge of Workers' Compensation laws, and shall be free of any political or economic association that would impair their ability to function official in a fair and objective manner. The Unemployment Compensation law in Minnesota relating to the appointment of our Unemployment Judges provides that he or she shall not hear any appeal in which he or she has a direct interest and shall be impartial. Clearly then, the primary requirement of a functioning administrative law system is that it be fair and perceived as fair by the participants in the system.

The second major component is competence, and it is not only the competence of the judges in hearings and deciding the cases. It is also the competence of the support staff and the system in general to ensure that you can always respond precisely as to the status of a file, when the case will be heard, and when it is likely to be decided.

A third component--and I have experienced quite a lot of concern about this in the past--is consistency. Consistency is easily obtainable when there is a clear statute or court precedent involved. And I think it is essential that people

know what to expect and what impact their action or inaction is likely to have. But when there is doubt and the agency must act to clarify or interpret the application of the law, and the people conducting the hearings disagree with that interpretation, particularly when that judge is housed with the agency, a relatively significant issue is raised--that of the judge's independence versus the agency's established position. If an Administrative Law Judge, in good conscience, does not follow an agency directive on the interpretation of a statute, and if the agency attempts to involve itself in that persons' decision-making process, it will threaten the perception of fairness. At the same time, I think that the person trying the case and making the decision must understand that inconsistency results in misunderstanding and confusion, among parties and potential parties, and ongoing interpretations and final decision of executive branch officials are given weight by the courts.

One must address, in this regard, the issue of having agency employees preside in agency hearings and make case dispositions. While this collides with the ancient maxim that no man should be the judge of his own case, it has been held by the courts that due process is violated only where the decision maker has prejudged a specific case or is so biased as to be incapable of properly deciding the case on the merits of the evidence. The combination of the investigatory, prosecutory and adjudicatory functions within a single agency does not per se offend due process. Withrow v. Larkin, 42L U.S. 35 (1975). Only where it can be shown that there is a risk of actual bias or prejudgment does due process require disqualification. In Minnesota, our Supreme Court held in Ging v. Board of Education, 7 N.W.2d 544 (1943), that the fact an administrative body acts in the triple capacity of complainant, prosecutor and judge does not subject it's decision to attack for lack of due process of law. I do think that where this situation exists it is important to maintain an organizational separation between the hearing officers and agency employees who are performing executive functions.

The final component is efficiency, which means giving notice of the hearing, holding the hearing and issuing the decision in a timely fashion. We are dealing with cases, particularly in unemployment compensation, workers' compensation and public assistance, where justice delayed is clearly justice denied. People have to know whether or not they are entitled to these benefits in a timely fashion because they are obviously in need of them; and if they are receiving them unjustifiably due to a prior decision, they may be asked to repay what they have received. Thus it is critical, and our systems reflect this

with the timeliness standards and the emphasis on delay reduction, that the decisions involved be issued in a timely fashion.

These are the components which I find essential to a good administrative law system--fairness, competence, consistency, and efficiency. And they must be fashioned in such a way as to meet the requirements of constitutional due process, because the cases which we deal with in the high-volume administrative hearings which I have described, clearly involve what the courts have concluded are property rights. Two constitutional amendments assure that both Federal and state agencies must accord due process to individuals affected by agency actions in these areas. The fifth amendment commands the Federal government that no person shall be deprived of life, liberty or property without due process of law. The fourteenth amendment provides "nor shall any state deprive any person of life, liberty or property without due process of law." Thus, the fourteenth amendment incorporates due process requirements as applied to the states which are the same as those applicable to the Federal government. Henry Culp Davis, in reviewing the Court's decision in Goldberg v. Kelly, found that the Court required ten elements in a trial-type hearing: timely and adequate notice, an opportunity to defend by confronting any adverse witness, oral presentation of arguments, oral presentation of evidence, cross-examination of adverse witnesses, disclosure to the claimant of opposing evidence, the right to retain an attorney, a determination resting solely on the legal rules and evidence adduced at the hearing, the decision maker should state the reasons for his/her determination, and indicate the evidence relied on, and an impartial decision maker is essential.

I find it an inherent responsibility of an administrative law system to clearly set forth and advise the system's participants of the procedural safeguards which guaranty the due process required by our Constitution and case law. Justice Frankfurter succinctly said in McNab v. United States, a 1943 case, that the history of liberty has largely been the history of procedural safeguards. The procedures which have been developed to guaranty due process rights in administrative hearings differ from the judicial model in most cases. Normally while reference is made to common law rules of evidence in making evidentiary rulings, Administrative Law Judges are not bound by those rules.

In Mathews v. Elridge, a 1976 Supreme Court case, the court stated: "The judicial model for an evidentiary hearing is not required nor even the most effective method of decision making in all circumstances." Administrative procedure must develop as a compromise between what a British judge once called "The methods of natural justice and those of courts of justice."

For areas where there are high-volume case loads, such as the unemployment compensation systems, we are dealing with what amounts to a people's court. People must be advised as succinctly as possible as to what the procedure is, what the issues are in the case, and how they can be affected by the decision. And the procedural system which is designed must respect and foster individual dignity. A process which results in perfectly accurate decisions is unacceptable if it causes alienation and a loss of individual dignity.

In dealing with the development of administrative law procedures and high-volume case load situations, I have found that the areas which raise concern are: (1) that people be properly notified what the hearing is about with respect to the issues involved in the case; (2) that some type of discovery be allowed at least as to who the other party's witnesses are and what documents are to be introduced; (3) that all parties at the hearing be treated with dignity and respect and, to the extent possible, that an atmosphere be created that allows them to tell their side of the story; (4) that a decision be issued in a timely fashion subsequent to the hearing and clearly explain what the impact of that decision is on the parties to the hearing; and, most importantly, that the judge who hears and decides the case be fair and impartial and understand that it is critical that he or she is perceived as fair and impartial by the parties to the action.

Finally, I would like to address an issue which I think is coming quickly into the area of high-volume administrative hearings. That is, when such hearings are conducted through the telephone hearing process do they create significant due process issues. I think it is fairly well established that the telephone hearing process can meet due process standards. However, if such hearings significantly compromise a party's opportunity to be heard by the manner in which the particular hearing is conducted, they could be, to that extent, violative of due process. Sterling v. D.C. Department of Employee Services, App. 513 A.2d 253 (1984).

In Minnesota, in our highest volume appeal system, unemployment compensation, our statute provides that the hearing may be conducted by means of a telephone conference call except that the appellant may request that the hearing be conducted in person.

The types of hearings where telephone conferences are used involve single party issues, such as availability for work, and cases where the parties are at such locations as to make a prompt in-person hearing impractical. And there are certain

equities involved in that type of situation. If there is going to be substantial delay in holding an in-person hearing in an outstate area, it would certainly seem, considering the types of cases these are, that a telephone conference hearing would be appropriate. In Sterling v. District of Columbia, the D.C. Court indicated in response to a petitioner's contention that telephone hearings should be abolished, that it was inclined to view that the elimination of telephone hearings might increase the risk of error because fewer people might be able to participate in hearings and because overall parties' opportunities to confront each other contemporaneously might be curtailed. In saying this, the Court was aware that the quality of confrontation is diminished when the clash of the parties is by telephone rather than in person. The Court also found telephone hearings to be a reasonable means of conserving administrative and fiscal resources. It did, however, hold that the particular hearing in question did not meet the due process test because the appeals examiner cut off the receptionist who evidently did not know what the call was about, so there was no opportunity to be heard.

I think the processes used in our telephone hearings should be specifically set forth in rule form. The procedures relating to when a request for an in-person hearing will be granted or denied, how exhibits are to be handled, how the parties can appear in such a hearing--for instance, one party may be willing to travel to where the referee is located and appear in person, with the other appearing by telephone--should be clearly set forth in rule form. And we did accomplish this in Minnesota in April of this year. Minnesota now has established rules which are available to all parties on the manner and means in which telephone conference hearings are to be conducted in unemployment cases.

And that is indicative of what I consider a necessity for providing due process in high-volume case load situations. An established set of rules which are sufficiently concise and brief that they can be provided to and understood by the parties. So people know what to expect at these hearings and come into them with as little fear and uneasiness as possible. For many, this is their first involvement with a judicial-type process and to the extent they can be advised, in advance, of what is going to occur and be made to understand that they have some control over the situation, the more prepared they will be to freely explain their side of the case. And in the end it is that right which will make them feel they have had a fair hearing.

Thank you and I will be happy to respond to any questions.