CONTESTED CASES UNDER THE ADMINISTRATIVE PROCEDURES ACT

By Evan Meenan, Deputy State's Attorney

Pertinent Statutes

3 V.S.A. § 801. Short title and definitions

3 V.S.A. § 801

§ 801. Short title and definitions

Currentness

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."

(b) As used in this chapter:

(1) "Agency" means a State board, commission, department, agency, or other entity or officer of State government, other than the Legislature, the courts, the Commander in Chief, and the Military Department, authorized by law to make rules or to determine contested cases.

(2) "Contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(3) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.

* Several references in 20 V.S.A. Ch. 151, Subch. 2 (Unprofessional Conduct) indicate the Council should hold hearings in professional responsibility cases.

3 V.S.A. §§ 809-816. Contested Cases

Subchapter 2. Contested Cases

- § 809. Contested Cases; Notice; Hearing; Records
- § 809a. Enforcement of Subpoenas; Compulsion of Testimony
- § 809b. Modification of Subpoena or Discovery Order
- § 810. Rules of Evidence; Official Notice
- § 811. Examination of Evidence by Agency
- § 812. Decisions and Orders
- § 813. Ex Parte Consultations
- § 814. Licenses
- § 815. Judicial Review of Contested Cases
- § 816. Exemptions

Notice – 3 V.S.A. § 809

- Requires "reasonable notice" (timing and content)
  - "Notice is adequate in an administrative proceeding if the parties are sufficiently apprised of the nature of the proceeding so that there is no unfair surprise." *In re Central Vermont Medical Center*, 174 Vt. 607, 611 (2002).
  - "[W]hether or not the parties were given an adequate opportunity to prepare and respond to the issues raised in the proceeding." *In re Waitsfield-Fayston Telephone Co., Inc.*, 2007 VT 55, 10.
- The notice must include:
  - "A statement of the time, place, and nature of the hearing.
  - A statement of the legal authority and jurisdiction under which the hearing is to be held.
  - A reference to the particular sections of the statutes and rules involved.
  - A short and plain statement of the matters at issue. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished."

Notice – 3 V.S.A. § 814

Prior to the revocation or suspension of a license, notice must be given to the licensee who must be given "an opportunity to show compliance with all lawful requirements for the retention of the license."

Can summarily suspend a license pending revocation proceedings if there is a finding "that public health, safety, or welfare imperatively requires emergency action."

Evidence

- All parties get to present evidence, respond to evidence, and present argument. 3 V.S.A. §809(c). Includes cross examination. 3 V.S.A. § 810.
- The Council Chair, any Council Hearing Officer, and any licensed attorney representing a party before the Council can issue subpoenas. 3 V.S.A. §§ 809(h), 809a, and 809b.
- "Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Rules of Evidence…shall be followed." However, "when necessary" evidence "of a type commonly relied upon by reasonably prudent men in the conduct of their affairs" may be admitted. 3 V.S.A. § 810.
- Judicial notice permitted. 3 V.S.A. § 810.
- Ex parte communications prohibited. 3 V.S.A. § 813.

Record

- Must consist of the following (3 V.S.A. § 809(e)):
  - All pleadings.
  - All rulings.
  - All evidence.
  - A statement of matters all officially noticed.
  - Offers of proof, objections, and rulings thereon.
  - All proposed findings and exceptions thereto.
- Parties may request transcripts. 3 V.S.A. § 809(f).
  - Can audio record and transcribe later upon request.
  - Can also retain a court reporter to transcribe.

Resolutions

- Cases can be resolved via "stipulation, agreed settlement, consent order, or default." 3 V.S.A. § 809(d).
- If a majority of the Council members rendering the decision have not heard the case, there must be a proposal for decision. 3 V.S.A. § 811.
  - For example, if the Council enacted a rule permitting hearing officers or a panel to hear a case.
- Final, adverse decisions must be in writing or stated in the record. Must include findings of fact and conclusions of law. If there were proposed findings, each must be ruled on. Must be provided to the parties. 3 V.S.A. § 812.
  - Proposed findings can be lengthy and responding to them can be time consuming.

Appeals – 3 V.S.A. § 815

- Go to the Supreme Court because there is no provision in 20 V.S.A. Ch. 151 indicating they go to the Superior Court.