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REMEDIES BY JUDICIAL REVIEW OF AGENCY ACTION IN MINNESOTA

by DUNCAN H. BAIRD†

In 1962, Mr. Baird authored a law review article entitled Judicial Review of Administrative Procedures in Minnesota. In that Article, special emphasis was given to the use of extraordinary remedies to obtain judicial review of administrative action. Since 1962, several developments have occurred which make timely a reevaluation of the remedies available to obtain judicial review. Three significant developments are the reinstatement of the mandamus remedy, the increased use of declaratory judgment actions, and the enactment of the Minnesota Administrative Procedure Act. In the following Article, Mr. Baird reevaluates the remedies by which judicial review of administrative actions can be obtained in Minnesota: the extraordinary remedies of certiorari, mandamus, prohibition, and quo warranto; the equitable remedies of injunction and declaratory judgment; and the statutory remedies included in special statutes governing particular agencies as well as those included in the Minnesota Administrative Procedure Act.

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I. INTRODUCTION

The subject of judicial control or review of administrative action in Minnesota has been extensively treated in the past,¹ but since the early sixties the topic has been given only short or narrowly topical attention.² In the period of almost a decade and one-half since the last extensive review there have been several developments which taken together make a new examination of the entire topic appropriate. Among the things which have occurred and which dictate such a conclusion are the following: the adoption in 1963 by the Minnesota Legislature of provisions for judicial review under the Minnesota Administrative Procedure Act (MAPA);³ the dethronement of the extraordinary writ of quo warranto;⁴ the further multiplication of administrative bodies at the state, regional, county, and local levels; and the beginnings of substantial misgivings on the part of the public and the courts concerning the exercise of power by administrative agencies.

At the outset the statement must be made that what follows in this Article is somewhat in the nature of a "no progress" report; and the lack of any substantial changes in the forms of judicial review of administrative action may be taken, depending on one's point of view, as either evidence of pervasive satisfaction with the workings of the present structure or as arising from lack of momentum for helpful change. Because a clearer insight into the whole problem could be obtained only by an extended empirical study of cases decided in the district courts and not appealed, and because such a study is beyond the resources available, we are left to draw the conclusions from the material at hand. This Article

1. See Baird, *Judicial Review of Administrative Procedures in Minnesota*, 46 MINN. L. REV. 451 (1962); Riesenfeld, Bauman & Maxwell, *Judicial Control of Administrative Action by Means of the Extraordinary Remedies in Minnesota* (pts. 1-4), 33 MINN. L. REV. 569, 685 (1949), 36 MINN. L. REV. 435 (1952), 37 MINN. L. REV. 1 (1952).

2. See, e.g., Triplett & Nobles, *Rule-Making Under Minnesota's Administrative Procedure Act: 1975 Amendments*, 43 HENNEPIN LAW. 14 (July-Aug. 1975); Note, *Appealable Orders, Prohibition, and Mandamus in Minnesota*, 51 MINN. L. REV. 115 (1967).

3. Act of May 22, 1963, ch. 809, 1963 Minn. Laws 1430.

4. Quo warranto is abolished under the Minnesota rules. MINN. R. CIV. P. 81.01(2). However, its statutory authorization remains valid. See note 90 *infra* and accompanying text.

will examine one aspect of the judicial review process: remedies by which judicial review is obtained in Minnesota.

A number of basic principles, however, involve prerequisites to all types of judicial review of administrative agency action.⁵ These jurisdictional principles deal with the problems of when, and to whom, judicial review is available. Discussed below is an overview of these principles, followed by an examination of the various judicial remedies available in Minnesota for review of administrative action.

II. PREREQUISITES TO JUDICIAL REMEDIES

A. Standing

Standing is the doctrine that determines who may challenge an administrative decision. It concerns the nature of the plaintiff's injury in relation to the administrative action. For a particular plaintiff to have standing, courts usually require that the plaintiff have a sufficient stake in the outcome to assure the competent presentation of issues to the court.⁶

The concept of standing presently is being completely revised, possibly as a judicial response to widespread demand for greater citizen participation in the governmental process of decisionmaking.⁷ Reinforcing the judicial trend toward a more expansive definition of standing are modern appeals statutes which likewise have broadened the concept of standing.⁸

Minnesota also has liberalized the standing requirements. In *Snyder's Drug Stores, Inc. v. Minnesota Board of Pharmacy*,⁹ two

5. For an in-depth discussion of prerequisites to judicial review, see Fuchs, *Prerequisites to Judicial Review of Administrative Agency Action*, 51 IND. L.J. 817 (1976).

6. See, e.g., *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, ___ Minn. ___, 257 N.W.2d 343, 346 (1977); *Minnesota State Bd. of Health v. City of Brainerd*, ___ Minn. ___, 241 N.W.2d 624, 628, *appeal dismissed*, 429 U.S. 803 (1976). In *Sierra Club v. Morton*, 405 U.S. 727 (1972) the apparent argument of the Sierra Club was that its long record of support for environmental protection was earnest enough to assure an adequately adverse presentation of issues. *Id.* at 736. A divided Court rejected this claim to standing. *Id.* at 736-41.

7. See, e.g., *United States v. SCRAP*, 412 U.S. 669, 683-90 (1973) (unincorporated association formed by law students to enhance environmental quality held to have standing to challenge an ICC freight rate increase). See generally *Panel II: Standing, Participation and Who Pays?*, 26 AD. L. REV. 423 (1974).

8. For example, 5 U.S.C. § 702 (1976) (emphasis added) provides in part: "A person . . . adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial relief thereof." The Minnesota statute is similar. See MINN. STAT. § 15.0424(1) (1976) (persons "aggrieved" by a final agency decision in a contested case may seek judicial review).

9. 301 Minn. 28, 221 N.W.2d 162 (1974).

nonprofit consumer advocate corporations were permitted to intervene in a suit challenging a rule of the Minnesota State Board of Pharmacy that prohibited the advertisement of prescription drug prices. In finding the consumer corporations to be proper parties acting on behalf of the drug-purchasing public, the court applied a requirement of "injury in fact"¹⁰ and thereby recognized that consumers may have standing.¹¹ Although some courts have also required that the alleged injury be "arguably within the zone of interests to be protected or regulated"¹² by the agency, the court in *Snyder's Drug Stores* made no mention of it.¹³

The requirement of injury in fact is clearly consistent with the provisions of MAPA relating to judicial review of contested cases. Minnesota Statutes section 15.0424(1) provides that any person "aggrieved" may seek judicial review;¹⁴ this broad language is similar to the broad requirement of injury in fact. With regard to judicial review of rulemaking, however, the Minnesota court's requirement of injury in fact seems broader than the statutory language which allows review only if the petitioner's "legal rights or privileges" have been threatened or impaired.¹⁵ In fact, because anyone "affected" by a proposed regulation is entitled to participate in the rulemaking procedure of an agency,¹⁶ it appears from the court's decision in *Snyder's Drug Stores* that the test applied to persons seeking judicial review of rules already in existence will be the same as the test for persons seeking participation in the initial rulemaking procedure. This conclusion is reinforced by a 1976 decision, *Minnesota Public Interest Research Group v. Minnesota Department of Labor & Industry*,¹⁷ where the Minnesota

10. *Id.* at 32, 221 N.W.2d at 165.

11. *See id.* at 32-36, 221 N.W.2d at 165-67.

12. *See, e.g., Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970); *Gifford-Hill & Co. v. FTC*, 523 F.2d 730, 731-32 (D.C. Cir. 1975); *Clinton Community Hosp. Corp. v. Southern Md. Medical Center*, 510 F.2d 1037, 1038 (4th Cir.) (per curiam), *cert. denied*, 422 U.S. 1048 (1975). *But see, e.g., Park View Heights Corp. v. City of Black Jack*, 467 F.2d 1208, 1212 & n.4 (8th Cir. 1972) (requiring only injury in fact); *Constructores Civiles de Centroamerica v. Hannah*, 459 F.2d 1183, 1188 (D.C. Cir. 1972) (discussing the criticisms of the zone test). *See generally* K. DAVIS, *ADMINISTRATIVE LAW OF THE SEVENTIES* § 22.02-11 (1976) (discussing the merits of the zone test).

13. *But see Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, ____ Minn. ____, ____, 257 N.W.2d 343, 346 (1977) (applying zone test).

14. MINN. STAT. § 15.0424(1) (1976).

15. *Id.* § 15.0416. In fact, the United States Supreme Court has rejected prior tests of standing which require interference with a legal right; the rationale is that the "legal right" test is too narrow, going to the merits of the case rather than standing. *Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970).

16. MINN. STAT. § 15.0412(4) (Supp. 1977).

17. ____ Minn. ____, 249 N.W.2d 437 (1976).

court reversed a lower court determination that MPIRG, a public interest organization, was entitled under the applicable statute¹⁸ to participate as an "interested person" in rulemaking procedure but not entitled to standing and judicial review of the rulemaking procedure. The Minnesota Supreme Court said:¹⁹

It is difficult to reconcile the trial court's separate determination (1) that MPIRG is an "interested person" and thus entitled to request a hearing under the Minnesota Act, but (2) that it does not have standing to bring a judicial action challenging the validity of standards adopted after a denial of such requested hearing. A right to demand a hearing is for all practical purposes nonexistent if its conceded violation cannot be vindicated through judicial action. By the same token, the right to demand a hearing is meaningless if the party making such demand may not present the relevant data and evidence in its possession at such hearing.

Thus, the Minnesota Supreme Court held that MPIRG was entitled to participation in the rulemaking procedure and judicial review of the rulemaking procedure. The reasoning of the court, although directed at rulemaking under the Minnesota Occupational Safety and Health Act, seems equally applicable to rulemaking under MAPA.

B. Ripeness and Exhaustion

Two doctrines concerning prerequisites to judicial review of agency action involve the timing of judicial review. One doctrine is ripeness. It is axiomatic that judicial review will be permitted only when the issues are clear and concrete.²⁰ The United States Supreme Court has characterized ripeness as follows:²¹

[I]ts basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an adminis-

18. The rulemaking occurred under the Minnesota Occupational Safety and Health Act, which allows "interested persons" to comment on proposed rules and request a public hearing on any objections. See MINN. STAT. § 182.655(2) (1976).

19. — Minn. at —, 249 N.W.2d at 440.

20. See Fuchs, *supra* note 5, at 819. See generally K. DAVIS, *supra* note 12, § 21.06.

21. *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967); accord, e.g., *A.O. Smith Corp. v. FTC*, 530 F.2d 515, 521 (3d Cir. 1976) (quoting *Abbott Laboratories*); *Continental Air Lines, Inc. v. CAB*, 522 F.2d 107, 124 (D.C. Cir. 1975) (on rehearing) (quoting *Abbott Laboratories*).

trative decision has been formalized and its effects felt in a concrete way by the challenging parties.

In *Abbott Laboratories v. Gardner*²² the Court adopted a two-pronged test: (1) fitness of the issues for judicial decision and (2) direct and immediate hardship from the agency action.²³ Upon satisfaction of both criteria, judicial review is proper.²⁴ Issues are fit for judicial decision when they are legal, rather than factual, and are a result of final agency action.²⁵ Hardship, on the other hand, is present if the plaintiff suffers immediate and substantial injury from an immediate economic burden, imminent threat of criminal or civil penalties, irreparable injury to business reputation, and other matters which have a "direct effect on the day-to-day business" of the plaintiff.²⁶

The second of the timing doctrines is the requirement that plaintiffs exhaust available administrative remedies before seeking judicial relief. Its purpose is to prevent premature interruptions of the administrative process and thus enable the agency to carry out its statutory powers and duties.²⁷ The doctrine bears a close resemblance to, or tends to shade into, the doctrine of ripeness. In either case the central question is whether it is proper for the court, at a particular point in time, to enter into the adjudication process. However, the doctrine requiring the plaintiff to exhaust his administrative remedies concerns the narrow question of whether the controversy must be treated further in the administrative process rather than in the courts, whereas ripeness concerns the existence of a judicially cognizable controversy at a given time.²⁸

The requirement of exhausting administrative remedies is statutory under MAPA with respect to appeals in contested

22. 387 U.S. 136 (1967), *noted in*, e.g., 52 MINN. L. REV. 872 (1968).

23. 387 U.S. at 149.

24. *See, e.g.*, Toilet Goods Ass'n v. Gardner, 387 U.S. 158, 162 (1967); Booker Custom Packing Co. v. McLain, 427 F. Supp. 325, 327 (N.D. Tex. 1977); American Medical Ass'n v. Weinberger, 395 F. Supp. 515, 521-22 (D. Ill. 1975), *aff'd*, 522 F.2d 921 (7th Cir. 1975).

25. *E.g.*, Abbott Labs. v. Gardner, 387 U.S. 136, 149-52 (1967); A.O. Smith Corp. v. FTC, 530 F.2d 515, 521 (3d Cir. 1976).

26. *E.g.*, Abbott Labs. v. Gardner, 387 U.S. 136, 152-53 (1967); Gardner v. Toilet Goods Ass'n, 387 U.S. 167, 171-74 (1967); A.O. Smith Corp. v. FTC, 530 F.2d 515, 524 (3d Cir. 1976).

27. *E.g.*, McKart v. United States, 395 U.S. 185, 193-94 (1969); Fuchs, *supra* note 5, at 860.

28. *E.g.*, K. DAVIS, ADMINISTRATIVE LAW TREATISE § 21.01, at 116 (1958).

29. MINN. STAT. § 15.0424(1) (1976) provides that judicial review is available for a "final decision" in a contested case. "Final decision" does not include a tentative agency deci-

cases.²⁹ Elsewhere it is a judicial rule.³⁰ The United States Supreme Court has found finality in this context when³¹

the process of administrative decisionmaking has reached a stage where judicial review will not disrupt the orderly process of adjudication and . . . [the] rights or obligations have been determined or legal consequences will flow from the agency action.

Courts frequently proclaim their adherence to the principle and, as Professor Davis points out,³² just as frequently ignore it. Thus courts often will not invoke the exhaustion requirement if the agency's jurisdiction is questioned,³³ exhaustion would be futile,³⁴ administrative remedies are inadequate or nonexistent,³⁵ or exhaustion would subject the plaintiff to irreparable harm.³⁶ In addition, in cases arising under the Civil Rights Act, exhaustion of administrative remedies usually is not required.³⁷

sion unless "it has become the decision of the agency either by express approval or by the failure of an aggrieved person to file exceptions thereto within a prescribed time under the agency's rules." *Id.* Final agency action and its attendant opportunity for judicial review, when based on the plaintiff's failure to file timely exceptions under the agency's rules, arguably is an exception to exhaustion rather than a means of exhaustion. See Getts, *Judicial Review: The Procedural Mechanics*, in MINNESOTA CONTINUING LEGAL EDUCATION, THE ADMINISTRATIVE LAW PROCESS IN MINNESOTA: FROM AGENCY HEARING TO JUDICIAL REVIEW 132 (1976).

30. See, e.g., *State v. United States Steel Corp.*, 307 Minn. 374, 379-81, 240 N.W.2d 316, 319-20 (1976); *State Bd. of Medical Examiners v. Olson*, 295 Minn. 379, 387, 206 N.W.2d 12, 17 (1973); *Thomas v. Ramberg*, 240 Minn. 1, 4-7, 60 N.W.2d 18, 20-21 (1953), writ of prohibition quashed *sub nom.* *Ramberg v. District Court*, 241 Minn. 194, 62 N.W.2d 809 (1954), *rev'd on second appeal on other grounds*, 245 Minn. 474, 73 N.W.2d 195 (1955).

31. *Port of Boston Marine Terminal Ass'n v. Roderiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970).

32. K. DAVIS, *supra* note 12, § 20.01, at 466.

33. See, e.g., *Allen v. Grand Central Aircraft Co.*, 347 U.S. 535 (1954); *Skinner & Eddy Corp. v. United States*, 249 U.S. 557, 562-63 (1919); *Prentiss v. Atlantic Coast Line Co.*, 211 U.S. 210, 231 (1908). But see, e.g., *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938). See generally Fuchs, *supra* note 5, at 892-96.

34. See, e.g., *Eisen v. Eastman*, 421 F.2d 560, 569 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970); *Writers Guild of America, West, Inc. v. FTC*, 423 F. Supp. 1064, 1081 (C.D. Cal. 1976).

35. See, e.g., *Rosado v. Wyman*, 397 U.S. 397, 405-07 (1970); *McNeese v. Board of Educ.*, 373 U.S. 668 (1963); *McGrath v. Weinberger*, 541 F.2d 249, 251-53 (10th Cir. 1976), *cert. denied*, 430 U.S. 933 (1977).

36. See, e.g., *Martinez v. Richardson*, 472 F.2d 1121, 1125 n.10 (10th Cir. 1973) (dictum); *Bristol-Myers Co. v. FTC*, 469 F.2d 1116, 1118 (2d Cir. 1972); *Lyons v. Weinberger*, 376 F. Supp. 248, 257 (S.D.N.Y. 1974). This is especially true if the irreparable harm involves deprivation of constitutional rights. See, e.g., *Wolff v. Selective Serv. Local Bd.*, 372 F.2d 817, 820 (2d Cir. 1967).

37. See, e.g., *McNeese v. Board of Educ.*, 373 U.S. 668 (1963); *Monroe v. Pape*, 365 U.S. 167 (1961). Fuchs, *supra* note 5, at 886-92. See generally Comment, *Exhaustion of State*

The Minnesota case law shows a similar trend. Although exhaustion has been held to be the general rule,³⁸ the futility exception seems firmly established.³⁹ In *State Board of Medical Examiners v. Olson*,⁴⁰ the state medical board brought an action against a chiropractor to obtain a declaratory judgment that his use of certain devices constituted illegal practice of medicine. The lower court dismissed for lack of pursuit of administrative remedies through the chiropractic board. The supreme court reversed, stating:⁴¹

The doctrine of exhaustion of administrative remedies does have some limitations. Where it would be futile to seek redress from an administrative body, the courts are available to a party to seek redress. . . . Here, it would obviously have been fruitless to proceed before the Chiropractic Board. That is evident in the answer interposed in this action, where the board as well as Olson admit possession and use of the devices involved but claim a chiropractor has a right to use them in his practice. . . . [U]nder the facts in this case it would be useless to ask it [the Chiropractic Board] to determine whether the actions of the chiropractor constitute the practice of medicine.

The basic question in *Olson* appears to be one of law—interpretation of what constitutes medical practice. In such a situation a court may be emboldened to intervene, in contrast to a situation where a case turns upon fact questions or questions of mixed law and fact involving a high degree of administrative expertise.

Likewise, a showing that exhaustion would cause imminent and irreparable harm from action constitutionally impermissible or beyond the agency's jurisdiction usually will enable plaintiffs to bypass the administrative process in Minnesota.⁴² The Minne-

Administrative Remedies in Section 1983 Cases, 41 U. CHI. L. REV. 537 (1974).

38. See, e.g., *Garavalia v. City of Stillwater*, 283 Minn. 335, 347, 168 N.W.2d 336, 345 (1969) (exhaustion usually required before injunctive relief is available); *State ex rel. Sheehan v. District Court*, 253 Minn. 462, 466-67, 93 N.W.2d 1, 4-5 (1958) (per curiam) (same), cert. denied, 350 U.S. 909 (1959).

39. See *State Bd. of Medical Examiners v. Olson*, 295 Minn. 379, 387, 206 N.W.2d 12, 17 (1973); *Starkweather v. Blair*, 245 Minn. 371, 394-95, 71 N.W.2d 869, 884 (1955).

40. 295 Minn. 379, 206 N.W.2d 12 (1973).

41. *Id.* at 387, 206 N.W.2d at 17.

42. See, e.g., *Garavalia v. City of Stillwater*, 283 Minn. 335, 347, 168 N.W.2d 336, 345 (1969); *State ex rel. Turnbladh v. District Court*, 259 Minn. 228, 238-40, 107 N.W.2d 307, 314-15 (1960); *State ex rel. Sheehan v. District Court*, 253 Minn. 462, 466-67, 93 N.W.2d 1, 4-5 (1958) (per curiam); *Thomas v. Ramberg*, 240 Minn. 1, 4-7, 60 N.W.2d 18, 20-21 (1953), writ of prohibition quashed sub nom. *Ramberg v. District Court*, 241 Minn. 194,

sota court has also recognized, at least implicitly, that exhaustion is unnecessary when the administrative remedies are inadequate or nonexistent⁴³ and when an agency is acting in violation of state statute.⁴⁴

C. Primary Jurisdiction

Although related to exhaustion and ripeness, primary jurisdiction is concerned not with the timing of judicial review but rather the question of who should deal initially with the case: the administrative agency or the court?⁴⁵ The purpose of the doctrine is twofold. First, it utilizes the expertise of agencies and, second, it creates uniformity in the agency's regulation as well as the decisionmaking process.⁴⁶

The Minnesota Supreme Court has recognized the distinction between primary jurisdiction and exhaustion of administrative remedies and has suggested that judicial relief raises a question of primary jurisdiction rather than exhaustion if sought at a time before any administrative action has occurred.⁴⁷ The Minnesota court has also held that when the administrative agency itself is seeking to invoke judicial proceedings, questions of primary jurisdiction need not be considered and resort may be made initially to the court.⁴⁸

III. AN OVERVIEW OF THE REMEDIES IN JUDICIAL REVIEW

The available judicial instruments for control of administrative action can be collected under three headings: the extraordinary

62 N.W.2d 809 (1954), *rev'd on second appeal on other grounds*, 245 Minn. 474, 73 N.W.2d 195 (1955).

43. See *McKee v. County of Ramsey*, ___ Minn. ___, 245 N.W.2d 460 (1976) (*per curiam*); *Knutson Hotel Corp. v. City of Moorhead*, 250 Minn. 392, 397-98, 84 N.W.2d 626, 630 (1957).

44. See *Minneapolis Fed. of Teachers, Local 59 v. Obermeyer*, 275 Minn. 46, 144 N.W.2d 789 (labor conciliator enjoined from acting, without exhaustion, pending judicial determination of the constitutionality of the statute authorizing the conciliator's actions), *rev'd on second appeal on other grounds*, 275 Minn. 347, 147 N.W.2d 358 (1966).

45. K. DAVIS, *supra* note 12, § 19.01, at 435.

46. See, e.g., *Far East Conference v. United States*, 342 U.S. 570, 574-75 (1952) (expertise and flexible procedure of administrative agencies, utilized through primary jurisdiction, promote uniformity and consistency in regulation). See generally Travis, *Primary Jurisdiction: A General Theory and Its Application to the Securities Exchange Act*, 63 CALIF. L. REV. 926 (1975).

47. See *State ex rel. Sholes v. University of Minnesota*, 236 Minn. 452, 456-58, 54 N.W.2d 122, 126 (1952).

48. See *State v. United States Steel Corp.*, ___ Minn. ___, ___, 240 N.W.2d 316, 319-20 (1976) (judicial relief sought by Minnesota Pollution Control Agency).

remedies, equitable remedies, and special statutory proceedings. Included within the extraordinary remedies are certiorari and the writs of mandamus, prohibition, and quo warranto. The equitable remedies include injunction and, perhaps rather arbitrarily, the statutory remedy of the declaratory judgment. The special statutory proceedings include certain provisions of MAPA and a number of statutory provisions incorporated in the statutes that prescribe the procedures for particular administrative agencies. Many of these statutes for particular agencies bear a strong family resemblance, and in fact many have identical provisions. In general, they call for a limited review of the certiorari type.

It is obvious that some of these remedies and proceedings may be used in conjunction or alternatively. Yet some respond better than others to the various kinds of administrative actions and situations. Thus a remedy suitable to review of a quasi-judicial decision may not be appropriate to deal with a troublesome rule promulgated by an agency.

With the customary caution that it is not intended as anything more than a helpful guide and not an infallible oracle, the following table briefly outlines the system.

	Reviewing Court: Authorizing Minnesota Statute or Rule of Court	Applies to Review of:
Remedy <i>Extraordinary</i>		
certiorari	district court: MINN. STAT. §§ 484.03, 606.01	quasi-judicial action
	supreme court: MINN. STAT. §§ 480.04, 606.01 MINN. R. CIV. APP. P. 115	
mandamus	district court: MINN. STAT. §§ 484.03, 586.01-.12	failure of an official to perform a clear legal duty and also where the official acted so arbitrarily and whimsically that the decision can be deemed no act at all
	supreme court: MINN. STAT. §§ 480.04, 586.01-.12 MINN. R. CIV. APP. P. 120	
prohibition	district court: not available	determination by an agency to proceed in spite of fatal defect in proceedings
	supreme court: MINN. STAT. § 480.04 MINN. R. CIV. APP. P. 120	

quo warranto	district court: probably not available	validity of quasi-judicial proceedings
	supreme court: MINN. STAT. § 480.04	

Equitable

injunction	district court: MINN. STAT. § 484.03 MINN. R. CIV. P. 65	includes mandatory injunction; used generally to direct administrative action and in connection with or as an alternative to declaratory judgment, mandamus, or quo warranto
	supreme court: MINN. R. CIV. APP. P. 103(b) (appellate review of district court's decision)	
declaratory judgment	district court: MINN. STAT. §§ 15.0416, 555.01-.16	agency rules; actual or threatened action by an agency
	supreme court: MINN. STAT. § 555.07 (appellate review of district court's decision)	

Statutory

MAPA	district court: MINN. STAT. §§ 15.0416-.0426	rulemaking and "contested cases" of state agencies
	supreme court: MINN. STAT. § 15.0426 (appellate review of district court's decision)	
special statutes for particular agencies	usually similar to MAPA	usually certiorari-type of review

A study of this table suggests the further question: What is the present status and application of each remedy? The following portion of this Article seeks to answer this question.

IV. THE EXTRAORDINARY REMEDIES

The extraordinary remedies are by far more difficult to use than equitable and statutory remedies. The greatest problem encountered in their use is the determination of when they are available. Certiorari, mandamus, prohibition, and quo warranto involve technical distinctions and requirements. Moreover, courts are hesitant to apply them, particularly the more drastic ones, if there appears to be another adequate remedy or if there is no

immediate threat of irreparable damage. Finally, used individually they may not be complete; therefore, they must sometimes be joined to provide a suitable form of relief. For purposes of this Article, however, each will be discussed separately.

A. *Certiorari*

The writ of certiorari, which is discretionary,⁴⁹ is appropriate to order up from some judicial or quasi-judicial body the record of that body's proceedings in order that it may be examined for a legal infirmity.⁵⁰ From this it follows that the outreach of certiorari is confined to those matters of law which can be determined by an examination of the record,⁵¹ including defects in jurisdiction;⁵² defective procedures, including whatever procedural safeguards are mandated by federal and state constitutions;⁵³ insufficient factual basis, as a matter of law, for fact findings;⁵⁴ and conclusions of law unjustified by the factual conclusions or otherwise improper.⁵⁵

Review of quasi-judicial agency action has traditionally been accomplished by certiorari, whereas review of agency ministerial or rulemaking action is usually accomplished by other remedies.⁵⁶ The continued viability of the distinction between quasi-judicial action on the one hand and ministerial or rulemaking action on the other can be questioned, however, for at least two reasons.

49. *E.g.*, *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 481, 124 N.W.2d 328, 349 (1963); *Libby v. Town of West St. Paul*, 14 Minn. 248, 249 (Gil. 181, 182) (1869).

50. *E.g.*, *Mahnerd v. Canfield*, 297 Minn. 148, 152, 211 N.W.2d 177, 179-80 (1973); *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 488, 124 N.W.2d 328, 351 (1963); *State ex rel. Spurck v. Civil Serv. Bd.*, 226 Minn. 240, 248-49, 32 N.W.2d 574, 580 (1948).

51. *E.g.*, *Hamlin v. Coolerator Co.*, 227 Minn. 437, 449, 35 N.W.2d 616, 622 (1949); *State ex rel. Hart v. Common Council*, 53 Minn. 238, 242, 55 N.W. 118, 119 (1893).

52. *E.g.*, *Bozied v. Edgerton*, 239 Minn. 227, 230, 58 N.W.2d 313, 315 (1953); *State ex rel. Dybdal v. State Sec. Comm'n*, 145 Minn. 221, 225, 176 N.W. 759, 761 (1920).

53. *E.g.*, *Keller v. Independent School Dist. No. 742*, 302 Minn. 324, 328, 224 N.W.2d 749, 752 (1974); *State ex rel. Ging v. Board of Educ.*, 213 Minn. 550, 571, 7 N.W.2d 544, 556 (1942), *overruled in part on other grounds in Foesch v. Independent School Dist. No. 646*, 300 Minn. 478, 223 N.W.2d 371 (1974).

54. *E.g.*, *Housing & Redev. Auth. v. Coleman's Serv., Inc.*, 281 Minn. 63, 73, 160 N.W.2d 266, 273 (1968) (evidence must be "reasonably sufficient"); *Williams v. W.W. Wallwork, Moorhead, Inc.*, 231 Minn. 244, 246, 42 N.W.2d 710, 711 (1950) (there must be "sufficient competent evidence to support the findings"). The Minnesota Supreme Court has used a variety of standards to test the sufficiency of the evidence, creating some confusion and inconsistency. *Baird*, *supra* note 1, at 462-64.

55. *E.g.*, *Sellin v. City of Duluth*, 248 Minn. 333, 339-40, 80 N.W.2d 67, 71-72 (1957); *State ex rel. Beise v. District Court*, 83 Minn. 464, 466, 86 N.W. 455, 456 (1901).

56. *See, e.g.*, *Mahnerd v. Canfield*, 297 Minn. 148, 152-53, 211 N.W.2d 177, 179-80 (1973); *State ex rel. Huntley School Dist. No. 4 v. Schweickhard*, 232 Minn. 342, 344, 45 N.W.2d 657, 658 (1951).

First, it is very difficult to distinguish quasi-judicial action from legislative action in borderline cases. The Minnesota Supreme Court has suggested these tests:⁵⁷

In determining whether an agency functions in an administrative or quasi-judicial capacity, no hard-and-fast rules can be set forth. Rather, it is necessary in each instance to examine the nature and quality of the action taken. A frequently used test is to see whether the function under consideration involves the exercise of discretion and requires notice and hearing. If these elements are present, the finding is considered a quasi-judicial act. . . . We have also said that the test . . . is whether an agency is created to represent the interests of the public or whether it is to act only in deciding controversies between other entities of government or individual members of the public. It is significant, in this respect, whether the agency may act on its own initiative or must wait for parties to appear before it.

A moment's reflection on these tests, however, will still leave one with a feeling of some lack of guidance. For example, it is apparent that in a number of cases of rulemaking, clearly an administrative or legislative matter,⁵⁸ the rule can be adopted only as an exercise of discretion after notice and hearing.⁵⁹ Furthermore, it is anomolous to contend that any agency, whatever the kind of action taken, is not "created to represent the interests of the public."

Secondly, it is arguable that certiorari is now available to review legislative functions of an agency. Under the rulemaking procedures set forth in section 15.0412 of MAPA, a hearing upon notice and a hearing record are required upon any proposed rule.⁶⁰ The presence of this record suggests the availability of certiorari, especially in view of the fact that the declaratory-judgment remedy set forth in the statute apparently is not exclusive.⁶¹ The real

57. *Minnesota State Bd. of Health v. Governor's Certificate of Need Appeal Bd.*, 304 Minn. 209, 214, 230 N.W.2d 176, 179-80 (1975).

58. *See, e.g., Vicker v. Starkey*, 265 Minn. 464, 469, 122 N.W.2d 169, 173 (1963); *Lee v. Delmont*, 228 Minn. 101, 110-15, 36 N.W.2d 530, 538-39 (1949).

59. MINN. STAT. § 15.0412(4) (Supp. 1977).

60. *Id.* § 15.0412(4), (6).

61. MINN. STAT. § 15.0416 (1976) provides that the "validity of any rule may be determined upon the petition for a declaratory judgment" Although it is arguable that this specific provision for declaratory judgment is separate from the general declaratory-judgment remedy set forth in MINN. STAT. ch. 555 (1976), it is more likely that section 15.0416 merely authorizes the use of the declaratory-judgment remedy set forth in chapter 555. Therefore, section 15.0416 would not provide the exclusive remedy because the remedy under chapter 555 is "an alternative remedy." *Montgomery v. Minneapolis Fire Dep't Relief Ass'n*, 218 Minn. 27, 30, 15 N.W.2d 122, 124 (1944) (quoting Borchard, *The Uniform*

issue here is the scope of the two remedies, in which it may well be that the declaratory judgment action permits a wider scope of review because of the nature of the action as a *de novo* proceeding.⁶²

B. *Mandamus*

Mandamus is a remedy designed to compel performance of a duty by a government official.⁶³ Mandamus has always been considered to be one of the extraordinary writs having particular efficacy because its thrust is somewhat more drastic than the remedy available under certiorari. The courts have always classified it as a legal remedy.⁶⁴ However, they have nevertheless considered it to be an equitable remedy in its essential nature and therefore equitable principles are used in its application.⁶⁵ The principle of equity which places the greatest restriction on its use is the ancient requirement of no other adequate legal remedy.⁶⁶ In addition, there may be attached a rather vague requirement that mandamus is available only where it is a *complete* remedy under the circumstances of the case.⁶⁷

Declaratory Judgments Act, 18 MINN. L. REV. 239, 242 (1934)). See also Kudak, *Judicial Review: Constitutional Objections, Procedural Shortcomings, Errors of Law, and Miscellaneous Considerations*, in MINNESOTA CONTINUING LEGAL EDUCATION, THE ADMINISTRATIVE LAW PROCESS IN MINNESOTA: FROM AGENCY HEARING TO JUDICIAL REVIEW 163 (1976) ("Review of rule making pursuant to Minn. Stats. § 15.0416 is by declaratory judgment. Arguably, new evidence may be admitted under the Declaratory Judgment Act (Minn. Stats. §555).").

62. For example, the court stated in *Town of Stillwater v. Minnesota Mun. Comm'n*, 300 Minn. 211, 217, 219 N.W.2d 82, 86 (1974):

In such cases [where an annexation ordinance is challenged by means of a declaratory judgment action], the party challenging the ordinance is entitled to a trial *de novo* on the merits of the proposed annexation, and the district court from which declaratory relief is sought is empowered to act as a finder of fact in determining the merits.

63. *E.g.*, *Marine v. Whipple*, 259 Minn. 18, 21, 104 N.W.2d 657, 659 (1960); *State ex rel. Longman v. Kachelmacher*, 255 Minn. 255, 258, 96 N.W.2d 542, 545 (1959); *State ex rel. Brenner v. Hodapp*, 234 Minn. 365, 369-70, 48 N.W.2d 519, 522 (1951).

64. See, *e.g.*, *Nationwide Corp. v. Northwestern Nat'l Life Ins. Co.*, 251 Minn. 255, 265, 87 N.W.2d 671, 679-80 (1958); *State ex rel. Barnes v. Tauer*, 178 Minn. 484, 487, 227 N.W. 499, 500 (1929).

65. See, *e.g.*, *Alevizos v. Metropolitan Airports Comm'n*, 298 Minn. 471, 494, 216 N.W.2d 651, 665 (1974) (mandamus is an equitable remedy and equitable defenses are available); *State ex rel. Brenner v. Hodapp*, 234 Minn. 365, 368, 48 N.W.2d 519, 521 (1951) (mandamus available in sound discretion of the court and upon equitable principles).

66. *E.g.*, *Victor Co. v. State*, 290 Minn. 40, 45, 186 N.W.2d 168, 172 (1971) (there cannot be another adequate remedy "at law"); *Zion Evangelical Lutheran Church v. City of Detroit Lakes*, 221 Minn. 55, 59, 21 N.W.2d 203, 206 (1945) (there cannot be another "plain, speedy, and adequate" remedy).

67. In *Curry v. Young*, 285 Minn. 387, 173 N.W.2d 410 (1969) the Minnesota court

Some practical question about the absolute necessity for the continued use of mandamus is raised by the fact that for almost ten years (1959 to 1968) the remedy was abolished at least procedurally, only to be reinstated in 1968.⁶⁸ In the interim period the function of mandamus appears to have been successfully carried out principally by mandatory injunction or possibly other extraordinary or statutory remedies.⁶⁹ At least one case decided before the interim suggests that there is a distinction between mandamus and mandatory injunction in that mandamus is a positive direction to do something, whereas mandatory injunction is a negative order to refrain from doing something.⁷⁰ A better view would seem to be that this is a distinction without a difference, and the remedy of injunction could easily be used to order the same action as mandamus itself. This may, in fact, be the present view of the Minnesota Supreme Court, which stated in *Curry v. Young*:⁷¹ "Whether we call the proceeding mandamus or a mandatory injunction has little significance."

It is clear that mandamus can be used for the sole purpose of requiring performance of an unequivocal legal duty, which is interpreted to mean that it cannot be used to direct the judgment of an administrative body in any instance where discretion is involved.⁷² However, mandamus can be used in the situation

stated that "about the only rule we can glean from our cases is that mandamus ordinarily will not lie to control the exercise of discretion by administrative agencies, but it will lie if there is no other adequate and complete remedy." *Id.* at 395, 173 N.W.2d at 414 (emphasis added). However, the court seemed to equate "complete" with "adequate" because it went on to say: "We think that is the situation here. A review by certiorari might lead to a decision that the city was wrong, but it would not provide the relief plaintiffs seek." *Id.*

68. Compare Minn. R. Civ. P. 81.01(2), 254 Minn. app. 77 (1959) with Minn. R. Civ. P. 81.01(2), 278 Minn. app. 85 (1968).

69. See *Scoles v. Hurd*, 275 Minn. 569, 570, 148 N.W.2d 164, 165 (1967) (per curiam) (dictum) ("While Rule 81, Rules of Civil Procedure, abolishes the writ of mandamus, the relief formerly secured through this writ is obtainable still in a proper case."); *State ex rel. Stubben v. Board of County Comm'rs*, 273 Minn. 361, 363-67, 141 N.W.2d 499, 501-04 (1966) (action similar to mandatory injunction); *Marine v. Whipple*, 259 Minn. 18, 104 N.W.2d 657 (1960) (writ of prohibition sought in lieu of mandamus).

70. In *State ex rel. Sholes v. University of Minnesota*, 236 Minn. 452, 54 N.W.2d 122 (1952) the Minnesota court distinguished mandamus from injunction by stating: "Whether mandamus or injunction is the proper remedy usually depends on whether the party demanding relief seeks to compel the board to do something it is required to do by law or to prevent it from doing something which is prohibited by law." *Id.* at 462, 54 N.W.2d at 129.

71. 285 Minn. 387, 393-94, 173 N.W.2d 410, 413 (1969). The court reiterated the point later: "Whether we call it mandamus or mandatory injunction does not seem too important if we reach the merits of the dispute." *Id.* at 394-95, 173 N.W.2d at 414.

72. *E.g.*, *State ex rel. Gopher Sales Co. v. City of Austin*, 246 Minn. 514, 518, 75 N.W.2d

where the action of an administrative body is so arbitrary, whimsical, capricious, and unreasonable that the result in a legal sense amounts to no action at all or a total miscarriage.⁷³ As a matter of fact, most of the mandamus cases fall into this category. Thus the reviewing court's essential task is to determine whether, upon all the facts surrounding the matter, the agency acted arbitrarily, capriciously, and unreasonably. It requires no profound study of the law to see that in many instances the determination of arbitrariness or capriciousness is a rather difficult matter, and will perforce depend upon a certain amount of judicial judgment. This is to say that each case will depend upon its own facts to a great extent.

In attempts to characterize the kind of administrative action to which mandamus applies, the courts uniformly declare that it must be administrative action which is "ministerial" or "purely ministerial."⁷⁴ Occasionally the courts have undertaken the duty of formulating a definition of the term "ministerial."⁷⁵ Generally, however, the courts seem to treat as "ministerial" all those activities which do not involve the application of administrative discretion.⁷⁶ This results in a circular or tautological definition: ministerial acts are those which do not involve discretion, and if acts do not involve discretion they are ministerial and proper for review by mandamus. The real question is: when is discretion involved? In marginal cases this is not easy to determine.

The appropriate remedy by way of mandamus is, of course, an order remanding the matter to the administrative body directing that body to produce a decision, and it follows from the nature of the action as well as from the separation of powers doctrine

780, 783-84 (1956); *State ex rel. Lewis v. City Council*, 140 Minn. 433, 434, 168 N.W. 188, 188 (1918).

73. *E.g.*, *Curry v. Young*, 285 Minn. 387, 394-95, 173 N.W.2d 410, 414 (1969); *State ex rel. Gopher Sales Co. v. City of Austin*, 246 Minn. 514, 518, 75 N.W.2d 780, 783-84 (1956).

74. *E.g.*, *Electronics Unlimited, Inc. v. Village of Burnsville*, 289 Minn. 118, 123, 182 N.W.2d 679, 682 (1971); *Cooke v. Iverson*, 108 Minn. 388, 393, 122 N.W. 251, 252-53 (1909).

75. The Minnesota court has quoted with approval the following definition of "ministerial duty" set forth in *People v. May*, 251 Ill. 54, 57, 95 N.E. 999, 1000 (1911): "Official duty is ministerial when it is absolute, certain and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." See *Williamson v. Cain*, — Minn. —, —, 245 N.W.2d 242, 244 (1976) (per curiam); *Cook v. Trovaten*, 200 Minn. 221, 224, 274 N.W. 165, 167 (1937):

76. *See, e.g.*, *Bauer v. Independent School Dist.* No. 656, 303 Minn. 449, 451-52, 229 N.W.2d 129, 130-31 (1975) (per curiam); *Waters v. Putnam*, 289 Minn. 165, 171-72, 183 N.W.2d 545, 550 (1971).

that the court cannot direct the contents of the decision in its particulars.⁷⁷

C. Prohibition

By its nature, prohibition is a remedy to which resort is seldom made. It is used at the present time for the purpose of preventing administrative agencies from adjudicating cases which lie outside their competency. The traditional purpose of the writ was to enjoin a court from proceeding when for some valid reason, such as lack of jurisdiction, it should not be permitted to continue.⁷⁸ By analogy, the writ as a means of administrative review applies only to quasi-judicial administrative action, not rulemaking. An additional reason for the scarce use of the writ is the fact that the remedy in the Minnesota judicial system is available only in the supreme court.⁷⁹

Since the remedy is a drastic one of direct and abrupt interference in the judicial process, courts are reluctant to apply it and do so only where there is no adequate remedy at law.⁸⁰ Although it might be argued that a somewhat lesser standard should be applicable to the use of the writ against administrative agencies than to its use against a court, the Minnesota cases on the point seem to make no distinction. As an example, in *State ex rel. Adent v. Industrial Commission*,⁸¹ the relator sought a writ of prohibition to prevent the Industrial Commission from hearing a compensation claim on the ground that the commissioner had no jurisdiction over the relators. The court denied the application for the writ on the ground that the jurisdictional claims could be raised at any time on appeal; thus, no irreparable injury was threatened even though this might require the relator to go through the futile activities of exhausting administrative remedies.⁸² It can also be inferred that the availability of statutory or

77. See, e.g., *Zion Evangelical Lutheran Church v. City of Detroit Lakes*, 221 Minn. 55, 57-59, 21 N.W.2d 203, 205-06 (1945); *State ex rel. Laurisch v. Pohl*, 214 Minn. 221, 226, 8 N.W.2d 227, 231 (1943).

78. See, e.g., *Griggs, Cooper & Co. v. Lauer's Inc.*, 264 Minn. 338, 341, 119 N.W.2d 850, 852 (1962) ("As this court has frequently stated, the writ of prohibition is an extraordinary writ issuing out of this court to keep inferior courts from exceeding their jurisdiction."). See also MINN. R. CIV. APP. P. 120.01 ("Application [to the supreme court] for a writ . . . of prohibition . . . directed to a judge or judges shall be made by petition.").

79. See MINN. R. CIV. APP. P. 120.

80. E.g., *Richardson v. School Bd.*, 297 Minn. 91, 93, 210 N.W.2d 911, 913 (1973); *Feist v. State*, 290 Minn. 491, 492, 186 N.W.2d 173, 174 (1971) (per curiam).

81. 234 Minn. 567, 48 N.W.2d 42 (1951) (per curiam).

82. *Id.* at 569, 48 N.W.2d at 43-44.

other means of judicial review in the regular course of the administrative proceedings is a factor which the supreme court is likely to consider in determining whether to grant the writ.

The writ of prohibition is said to be a remedy of "appellate prevention, not appellate correction."⁸³ Thus, it cannot be used to correct substantive errors of the agency;⁸⁴ rather, it is used to correct jurisdictional defects.⁸⁵ Moreover, it is clear that the writ can be used both where the agency has jurisdiction but exceeds the jurisdictional powers and where the agency has no jurisdiction at all.⁸⁶

D. *Quo Warranto*

The writ of quo warranto was abolished by Rule 81.01(2) of the Minnesota Rules of Civil Procedure, effective July 1, 1959.⁸⁷ Unlike the writ of mandamus, which was abolished at the same time,⁸⁸ quo warranto has never been resurrected.⁸⁹ Rule 81.01(2) applies, of course, to procedure in the Minnesota district courts; the Rule does not, therefore, repeal the underlying statute which authorizes quo warranto as a remedy available in the district courts.⁹⁰ The net result of this rather anomolous situation was clarified in *Town of Burnsville v. City of Bloomington*:⁹¹

Amicus curiae asserts that, since we abolished the writ of quo warranto by an amendment to our rules of civil procedure, only the supreme court has jurisdiction over proceedings to test the validity of municipal annexations. . . . [W]e do not agree with the contention. While the antiquated writ of quo warranto as such is abolished, and probably with it some of its former technical limitation, the remedies formerly afforded by the writ are expressly retained and may be obtained by any other available appropriate action. . . . It is abundantly clear that it is only the

83. *In re Giblin*, 304 Minn. 510, 516 n.4, 232 N.W.2d 214, 218 n.4 (1975).

84. See, e.g., *In re Parks*, 262 Minn. 319, 323, 114 N.W.2d 667, 669-70 (1962); *Bellows v. Ericson*, 233 Minn. 320, 325, 46 N.W.2d 654, 658 (1951).

85. *In re Giblin*, 304 Minn. 510, 515-16, 232 N.W.2d 214, 218 (1975); *Ginsberg v. William*, 270 Minn. 474, 479-80, 135 N.W.2d 213, 218 (1965).

86. E.g., *Wasmund v. Nunamaker*, 277 Minn. 52, 54-55, 151 N.W.2d 577, 579 (1967); *Thermorama, Inc. v. Shiller*, 271 Minn. 79, 83-84, 135 N.W.2d 43, 46 (1965); see, e.g., *In re Giblin*, 304 Minn. 510, 515-16, 232 N.W.2d 214, 218 (1975).

87. Minn. R. Civ. P. 81.01(2), 254 Minn. app. 77 (1959).

88. See *id.*

89. The writ of mandamus was reinstated in 1968. Compare Minn. R. Civ. P. 81.01(2), 278 Minn. app. 85 (1968) with Minn. R. Civ. P. 81.01(2), 254 Minn. app. 77 (1959).

90. MINN. STAT. § 484.03 (1976).

91. 264 Minn. 133, 146, 117 N.W.2d 746, 754 (1962).

procedure that is affected by the amended rule and not the relief.

This is so because, in the words of Rule 81.01(2), "the relief heretofore available thereby may be obtained by appropriate action or appropriate motion under the practice prescribed in these rules." Furthermore, it should be noted that *quo warranto* is still specified as a remedy available in the Minnesota Supreme Court.⁹²

The writ is designed to correct the "usurpation, misuser, or nonuser" of a public office.⁹³ Therefore, it is probably the proper remedy to address matters such as the usurpation by one agency of the powers of another,⁹⁴ the penetration by an agency into an area beyond its legitimate powers,⁹⁵ and the constitutionality of the statute delegating power to an administrative agency.⁹⁶

Perhaps the greatest area of difficulty in the application of the writ is to determine the types of "misuser" which can be corrected by the writ. The writ is not available to correct single acts of agency misconduct or temporary acts in excess of agency jurisdiction. For example, in *State ex rel. Grozbach v. Common School District No. 65*,⁹⁷ the writ was sought to invalidate the assumption of a school district's bond indebtedness by another school district. The court held the writ was not available to challenge the bond assumption because "the writ of *quo warranto* is not allowable as preventative of, or remedy for, 'official misconduct and can not be employed to test the legality of the official action of public

92. See, e.g., *Latola v. Turk*, ___ Minn. ___, 247 N.W.2d 598 (1976) (per curiam); MINN. STAT. § 480.04 (1976).

93. E.g., *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 542, 48 N.W.2d 855, 863 (1951); *Riesenfeld, Bauman & Maxwell*, *supra* note 1, 37 MINN. L. REV. at 3.

94. See, e.g., *State ex rel. Village of Fridley v. City of Columbia Heights*, 237 Minn. 124, 53 N.W.2d 831 (1952) (*quo warranto* used to preclude one municipality from annexing and exercising jurisdiction over land in another municipality); *State ex rel. Childs v. Board of County Comm'rs*, 66 Minn. 519, 69 N.W. 925 (1897) (*quo warranto* used to challenge acquisition by organized county of territory located in an unorganized county), *aff'd on second appeal*, 66 Minn. 519, 73 N.W. 631 (1898).

95. See cases cited in note 94 *supra*; cf. *State ex rel. Clapp v. Fidelity & Cas. Ins. Co.*, 39 Minn. 538, 41 N.W. 108 (1888) (*quo warranto* may be used to determine whether a foreign corporation has the power to do business in Minnesota).

96. See *State ex rel. Goodwin v. Flahavin*, 289 Minn. 149, 153, 182 N.W.2d 182, 184 (1971) (per curiam) (dictum) ("quo warranto is a proper proceeding to determine whether a branch of the legislature has been organized according to the Constitution"); *State ex rel. Olsen v. Board of Control of State Institutions*, 85 Minn. 165, 88 N.W. 533 (1902) (writ of *quo warranto* sought to invalidate statutory delegation of control to one school board on the ground that such delegation usurped the powers of another school board).

97. 237 Minn. 150, 54 N.W.2d 130 (1952).

corporate officers.'"⁹⁸ However, if the agency permanently or continuously engages in misconduct or other actions beyond its jurisdiction, the writ of quo warranto probably is an available remedy.⁹⁹

In the final analysis, questions concerning the use of quo warranto are probably of minimal significance, since the abolition of the writ as a procedure has, as a practical matter, caused its disappearance as a means of obtaining judicial review of administrative action. The same objectives undoubtedly can be accomplished better through the use of declaratory judgment, injunction, or both. Because its most likely use would occur in precisely those cases which involve the problem of determining the type of "misuser" to which the writ will apply, it seems the wisest course for any practitioner is to steer clear of the whole problem and use the other, more flexible remedies. For this reason, the former touchy questions concerning the necessity of joining the attorney general in any quo warranto proceeding need not be considered in this Article.¹⁰⁰

98. *Id.* at 160, 54 N.W.2d at 136 (quoting *State ex rel. Lommen v. Gravlén*, 209 Minn. 136, 137, 295 N.W. 654, 655 (1941) and *J. HIGH, EXTRAORDINARY LEGAL REMEDIES* § 618, at 485 (2d ed. 1884)).

99. *See, e.g., State ex rel. Harrier v. Village of Spring Lake Park*, 245 Minn. 302, 71 N.W.2d 812 (1955) (quo warranto used to challenge an annexation); *State v. Minnesota Thresher Mfg. Co.*, 40 Minn. 213, 226, 41 N.W. 1020, 1025 (1889). In *State ex rel. Childs v. Board of County Comm'rs*, 66 Minn. 519, 69 N.W. 925 (1896) the Minnesota court held that quo warranto applied to challenge acts which would have been in excess of jurisdiction permanently or continuously. The court said:

True, the authorities all lay it down generally that quo warranto will not lie to prevent official acts in excess of jurisdiction, or to correct official misconduct. But, where a municipal corporation has permanently and continuously exercised jurisdiction over territory beyond its de jure limits, the case is not at all analogous to one of mere official misconduct, which is usually of a casual or temporary character, and to correct which quo warranto will not lie.

Id. at 530, 69 N.W. at 926.

100. Usually a private relator does not have standing to institute quo warranto proceedings unless he can demonstrate a special interest in challenging the legality of the administrative action. *See Riesenfeld, Bauman & Maxwell, supra* note 1, 37 MINN. L. REV. at 10-15; *cf. State ex rel. Burk v. Thuet*, 230 Minn. 365, 41 N.W.2d 585 (1950) (private citizens generally have no right to use quo warranto to challenge the title of a public official). The court is more inclined to allow a private action, however, if the attorney general has at least consented to the action. *See, e.g., State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 538, 48 N.W.2d 855, 861 (1951); *State ex rel. Arpagaus v. Todd*, 225 Minn. 91, 92, 29 N.W.2d 810, 810 (1947). *See generally Riesenfeld, Bauman & Maxwell, supra* at 8-15.

V. THE EQUITABLE REMEDIES

A. Injunction

Except for the statutory remedy of declaratory judgment, injunctive relief is the most flexible of all remedies for agency error because it has a broad range of applicability. It has been used, usually in conjunction with declaratory judgment, to supplant quo warranto and, during its temporary eclipse, mandamus.¹⁰¹ As the classic equitable remedy, the use of injunction is hedged by the precedent conditions of irreparable damage and no other adequate remedy,¹⁰² and therefore is applied in the face of other remedies which may themselves be subject to the same limitation. Mandamus, for example, like injunction, is available only if there are no other adequate legal remedies;¹⁰³ yet the Minnesota court, in *Binder v. Village of Golden Valley*,¹⁰⁴ denied the issuance of an injunction based in part on the availability of mandamus as an alternative remedy.¹⁰⁵ Because the extraordinary remedies are legal in nature, it is probably the rule that an injunction will not be issued unless the narrower, extraordinary legal remedies are not available.

The requirements of no adequate legal remedies and irreparable harm also make injunction particularly inappropriate when rulemaking is challenged. Generally, an injunction against legislative proceedings will not be issued; the rationale is that the person affected by the legislative action is not irreparably harmed from mere enactment and will have adequate remedies when the law is enforced or its impact felt.¹⁰⁶

Similarly, the requirement of irreparable damage has particular importance in administrative cases as a factor used in determining ripeness for judicial review or the necessity of exhausting administrative remedies. The court is not likely to entertain a suit for an injunction against threatened administrative action, particularly in cases of adjudication, unless irreparable injury

101. See Baird, *supra* note 1, at 452-53.

102. See, e.g., *North Central Pub. Serv. Co. v. Village of Circle Pines*, 302 Minn. 53, 59-60, 224 N.W.2d 741, 745-46 (1974); *Borom v. City of St. Paul*, 289 Minn. 371, 376, 184 N.W.2d 595, 598 (1971); *Williams v. Rolfe*, 257 Minn. 237, 239-41, 101 N.W.2d 923, 925-26 (1960).

103. See notes 65-67 *supra* and accompanying text.

104. 260 Minn. 418, 110 N.W.2d 306 (1961).

105. See *id.* at 422-23, 110 N.W.2d at 309.

106. See, e.g., *Binder v. Village of Golden Valley*, 260 Minn. 418, 110 N.W.2d 306 (1961); *Heller v. Schroeder*, 182 Minn. 353, 234 N.W. 461 (1931).

clearly and substantially appears. Thus, in *Garavalia v. City of Stillwater*¹⁰⁷ the court took the position:¹⁰⁸

The rule has long been settled in this state that no one is entitled to injunctive protection against the actual or threatened acts of an administrative agency until the prescribed statutory remedy has been exhausted, unless the party seeking injunctive protection can show that the pursuit and exhaustion of such administrative remedy will cause imminent and irreparable harm as distinguished from merely speculative damages based on nothing more than an apprehension that the final outcome of the administrative proceedings will be prejudicial.

Moreover, the court clearly stated that where administrative action has not reached the stage of irreparable injury, the remedy of injunction is not available even in the face of a charge that the threatened action is in fact unconstitutional.¹⁰⁹

The flexibility of injunction as a remedy lies in the fact that its application is not conditioned by the nature of the administrative action as is the case with mandamus, certiorari, and quo warranto. Thus injunction is applicable to a broader range of administrative actions than the extraordinary remedies.¹¹⁰ Furthermore, it seems that injunctive relief is open to a potentially larger group of litigants than some of the other remedies, notably certiorari and mandamus, which by their very nature provide an avenue of relief to a limited group of litigants. Injunctive relief is available to any person irreparably injured,¹¹¹ and the modern trend of the courts to broaden the scope of the requisites for standing¹¹² has implications for the expanded use of injunctive relief.

B. Declaratory Judgment

The remedy of declaratory judgment is unique in this discussion because it is part of the general structure of remedies under

107. 283 Minn. 335, 168 N.W.2d 336 (1969).

108. *Id.* at 347, 168 N.W.2d at 345.

109. *See id.*

110. Baird, *supra* note 1, at 469-70.

111. *See, e.g.,* Channel 10, Inc. v. Independent School Dist. No. 709, 298 Minn. 306, 314-18, 215 N.W.2d 814, 821-24 (1974); Thomas v. Ramberg, 240 Minn. 1, 60 N.W.2d 18 (1953), writ of prohibition quashed sub nom. Ramberg v. District Court, 241 Minn. 194, 62 N.W.2d 809 (1954), rev'd on third appeal on other grounds, 245 Minn. 474, 73 N.W.2d 195 (1955).

112. *See* notes 6-19 *supra* and accompanying text.

Minnesota Statutes chapter 555¹¹³ and also is part of the specific statutory method of review provided by MAPA.¹¹⁴ The ensuing discussion refers to declaratory judgment as a general remedy under chapter 555. Use of the declaratory judgment under MAPA is discussed elsewhere in this Article.¹¹⁵

Declaratory judgment is, as inspection of its statutory scope reveals, a remedy of great breadth and flexibility.¹¹⁶ Its form and nature do not inhibit its application to narrow sets of facts like the more specialized extraordinary writs, and its express application to situations involving "uncertainty and insecurity with respect to rights"¹¹⁷ makes it more generally applicable to threatened situations than the extraordinary writs with their "last resort" atmosphere. For this same reason, courts may be less constrained in declaratory judgment actions to apply strict rules of ripeness for review or exhaustion of remedies.

The limit of the declaratory judgment action is bounded in the first direction by the constitutional requirement of a justiciable controversy.¹¹⁸ The question of the presence of a justiciable controversy can be determined by reference to two sources: parties and subject matter.¹¹⁹ Thus, for example, no justiciable controversy may exist if the parties are in fact alter egos¹²⁰ or, on the

113. For a general discussion of the Uniform Declaratory Judgments Act appearing in chapter 555, see Borchard, *The Uniform Declaratory Judgments Act*, 18 MINN. L. REV. 239 (1934).

114. See MINN. STAT. § 15.0416 (1976).

115. See notes 145-62 *supra* and accompanying text.

116. The Minnesota Legislature has declared that the Uniform Declaratory Judgments Act "is . . . to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered." MINN. STAT. § 555.12 (1976).

117. *Id.*

118. *E.g.*, *Minnesota Ass'n of Pub. Schools v. Hanson*, 287 Minn. 415, 418-20, 178 N.W.2d 846, 850-51 (1970) (nonprofit organization, the purpose of which was to aid school boards, lacked standing to challenge legislation affecting school boards because its interest was no greater than that of any other member of the public); *Beatty v. Winona Hous. & Redev. Auth.*, 277 Minn. 76, 82-86, 151 N.W.2d 584, 588-90 (1967) (no standing to challenge agency action when such action was still in planning stage); *Arens v. Village of Rogers*, 240 Minn. 386, 390-93, 61 N.W.2d 508, 513 (1953) (taxpayer had standing to challenge statute authorizing municipal liquor stores when such stores spent public funds), *appeal dismissed per curiam*, 347 U.S. 949 (1954).

119. See, *e.g.*, *Medtronic, Inc. v. American Optical Corp.*, 327 F. Supp. 1327, 1330 (D. Minn. 1971) ("the facts [must] reveal the existence of an actual controversy between parties having opposing legal interests of such immediacy that a declaration of rights is warranted").

120. See, *e.g.*, *First Nat'l Bank v. Nowlin*, 374 F. Supp. 1037, 1038 n.1 (E.D. Ark. 1974), *aff'd*, 509 F.2d 872 (8th Cir. 1975); *Clinton Coop. Farmers Elev. Ass'n v. Farmers Union Grain Terminal Ass'n*, 223 Minn. 253, 258-60, 26 N.W.2d 117, 121 (1947). In *Clinton* the

other hand, if the surrounding fact situation has not yet developed a threat of cognizable size.¹²¹ Generally, the courts have been willing to entertain actions for declaratory judgment if the suitor has been "injured in fact."¹²²

As a general rule, declaratory judgment is available as a remedy even in cases where there is another adequate remedy by way of statute or extraordinary writ.¹²³ There is nothing in the declaratory judgment statute itself which implies that it is an exclusive remedy.¹²⁴ One exception to this general rule arises in situations where judicial review is governed by special statute and the remedies set forth in the statute are exclusive. This situation arose in *Town of Stillwater v. Minnesota Municipal Commission*.¹²⁵ In that case the Minnesota Municipal Commission was considering the proposed annexation of two tracts of land to the City of Stillwater. Before final action on the proposal, the Township of Stillwater brought a declaratory judgment action seeking to quash the proceedings on the ground that the commission would exceed its powers if it ordered the annexation. Judicial review of the commission's orders was governed by a specific statute, Minnesota Statutes section 414.07. The commission took the position that the provisions in the statute governing appeal were exclusive,

Minnesota court distinguished collusive cases from "friendly" test cases, holding that the latter did present a justiciable controversy. The court said:

A clean-cut issue was presented. . . . Tested by the manner and skill in which this case was presented to the court, there is nothing here to meet the legal requirements of collusion. The fact that an action is amicable does not make it collusive.

Id. at 259, 26 N.W.2d at 121.

121. See, e.g., *Beatty v. Winona Hous. & Redev. Auth.*, 277 Minn. 76, 82-86, 151 N.W.2d 584, 588-90 (1967) (no justiciable controversy where challenged agency action is still in planning stage); *Seiz v. Citizens Pure Ice Co.*, 207 Minn. 277, 290 N.W. 802 (1940) (no justiciable controversy when employee challenging section of unemployment compensation act was not unemployed but merely had expectation of unemployment).

122. E.g., *Snyder's Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy*, 301 Minn. 28, 32, 221 N.W.2d 162, 165 (1974) (absent discernible legislative intent to the contrary, the test of standing is injury in fact). For a discussion of the requirements of standing and injury in fact, see notes 6-19 *supra* and accompanying text.

123. See, e.g., *Conner v. Township of Chanhassen*, 249 Minn. 205, 208-09, 81 N.W.2d 789, 793-94 (1957) (declaratory judgment available even though certiorari also might have been available); *Barron v. City of Minneapolis*, 212 Minn. 566, 569, 4 N.W.2d 622, 624 (1942) (dictum). See generally *Breese, Atrocities of Declaratory Judgments Law*, 31 MINN. L. REV. 575, 575-90 (1947) (discussing decisions which, perhaps erroneously, have failed to view the declaratory judgment as an alternative remedy).

124. Moreover, MINN. R. Civ. P. 57, which applies to declaratory judgments under chapter 555 of Minnesota Statutes, provides: "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate."

125. 300 Minn. 211, 219 N.W.2d 82 (1974).

thus barring declaratory judgment as an alternative remedy. The supreme court agreed with the commission, stating:¹²⁶

To allow a declaratory judgment action challenging annexation proceedings requiring commission approval would in effect allow a de novo consideration of the proceedings by the court and would frustrate the clear intent of the legislature and would create havoc with the commission's power to carry out its statutory duty.

The precedential value of *Stillwater* might be questioned because the court may have felt that the plaintiffs were premature in their assault on the administrative process, which clearly was not completed at the time of suit.¹²⁷ However, in an earlier case, *Land O'Lakes Dairy Co. v. Village of Sebeka*,¹²⁸ the Minnesota Supreme Court unambiguously rejected declaratory judgment as a means of review where there is an exclusive, special statutory provision for judicial review.¹²⁹ In *Land O'Lakes Dairy* a taxpayer had attempted to avoid real estate and personal property taxes by having the property declared exempt from taxation on the grounds that it technically was owned by the United States. The court stated that the special statute for defense or objection to taxes provides a taxpayer with a remedy which was intended to be "adequate, speedy, and simple."¹³⁰ Thus, the court held the declaratory judgment action was precluded.¹³¹

The *Stillwater* and *Land O'Lakes Dairy* cases should stand as a timely reminder that the declaratory judgment remedy as well as the extraordinary remedies are considered by the courts as more or less drastic methods of review and may therefore fail in light of a specific statutory remedy, even though the statutory remedy appears to be an alternative form of relief. Courts here seem to operate on some perceived concept of orderly administration of justice, somewhat parallel to the concept of primary juris-

126. *Id.* at 217, 219 N.W.2d at 86.

127. *See id.* at 212, 219 N.W.2d at 84 (action commenced "[b]efore the commission had completed hearings and issued all final orders").

128. 225 Minn. 540, 31 N.W.2d 660, *cert. denied*, 334 U.S. 844 (1948).

129. *See* 225 Minn. at 544-49, 31 N.W.2d at 662-65. However, unlike the remedy for real property tax grievances, the court held that the statutory remedy then available to contest personal property taxes was inadequate because those taxes must be paid before relief is available; thus, declaratory judgment was an alternative remedy to contest the personal property taxes. *Id.* at 549, 31 N.W.2d at 665.

130. *Id.* at 548, 31 N.W.2d at 665.

131. *Id.*

diction,¹³² where the court will refuse to move in a proceeding where there is an extensive legislative scheme encompassing the agency.¹³³

VI. THE STATUTORY REMEDIES

The statutory provisions for judicial oversight of administrative action divide themselves into two parts. The first part embraces a number of special review statutes expressly applying to particular agencies. The second part is provided by MAPA.

A. *Special Review Statutes for Particular Agencies*

At the last count, there were more than 250 agencies in Minnesota at the state level alone.¹³⁴ Many agencies, at least prior to enactment of MAPA, had special review procedures set forth in their enabling statutes. Since passage of MAPA, and especially in recent years, some of the statutes providing for these procedures have been repealed.¹³⁵ As a result, the special statutes are not as pervasive as they were at an earlier time.

It would be unwise to do more with the special statutes than to make a few general remarks about them and then to leave the reader to a study in depth of the particular statutes governing the agency involved because subtle differences abound. In general, the statutes provide for appeal to the district court by persons affected or aggrieved.¹³⁶ Moreover, they generally involve the re-

132. For a discussion of primary jurisdiction, see notes 45-48 *supra* and accompanying text.

133. In *Town of Stillwater v. Minnesota Mun. Comm'n*, 300 Minn. 211, 219 N.W.2d 82 (1974) the court said:

In establishing the intricate substantive and procedural standards for annexation, consolidation, incorporation, and detachment, embodied in [the statute governing the agency] . . . , and by creating the commission to administer these complex matters, it is clear that the legislature intended the commission to have *virtually exclusive jurisdiction* in determining the boundary changes of political subdivisions by annexation.

Id. at 217, 219 N.W.2d at 86 (emphasis added).

134. MINNESOTA SECRETARY OF STATE, *THE MINNESOTA LEGISLATIVE MANUAL 1977-1978*, at 272 (1977).

135. See, e.g., Act of May 19, 1977, ch. 162, § 8, 1977 Minn. Laws 276 (repealing MINN. STAT. § 105.47 (1976), which provided for judicial review of decisions by the Commissioner of Natural Resources); Act of Apr. 9, 1976, ch. 223, § 41, 1976 Minn. Laws 748 (repealing special review provisions for the State Board of Medical Examiners under MINN. STAT. § 147.13 (1974)); Act of Mar. 25, 1976, ch. 76, §§ 2, 8, 1976 Minn. Laws 194, 197 (amending MINN. STAT. § 115.05 (1974) to provide for judicial review of the Minnesota PCA in accordance with MAPA).

136. See, e.g., MINN. STAT. §§ 216.24-.25 (1976 & Supp. 1977) (Minnesota Public Service Commission); *id.* § 414.07 (1976), as amended by Act of Mar. 28, 1978, ch. 705, § 31,

view of formal proceedings and the record.

For example, the rather terse provisions for review of the Minnesota Municipal Board set forth these broad grounds for appeal:¹³⁷

- (a) That the board had no jurisdiction to act;
- (b) That the board exceeded its jurisdiction;
- (c) That the order of the board is arbitrary, fraudulent, capricious or oppressive or in unreasonable disregard of the best interests of the territory affected;
- (d) That the order is based upon an erroneous theory of law.

Some appeal statutes also provide for partial or perhaps complete trial de novo in the district court.¹³⁸

B. *The Minnesota Administrative Procedure Act*

The second part of the statutory scheme is found in the provisions of MAPA, particularly sections 15.0411 through 15.0426 of Minnesota Statutes.¹³⁹ This Article will examine three general aspects of these MAPA provisions: the agencies to which MAPA applies, judicial review of rulemaking, and judicial review of adjudication.

1. *The Agencies Encompassed by MAPA*

MAPA is by no means a comprehensive system of judicial review because it applies only to "any state officer, board, commission, bureau, division, department, or tribunal, other than a court, having a *statewide jurisdiction* and authorized by law to make rules or to adjudicate contested cases."¹⁴⁰ There then follows a list of expressly exempt statewide agencies.¹⁴¹ Obviously,

1978 Minn. Sess. Law Serv. 533 (West) (Minnesota Municipal Board).

137. MINN. STAT. § 414.07(2) (1976).

138. See, e.g., *id.* § 116A.19(3) (additional evidence permitted in appeal from county board's order dismissing petition for any waste or sewer system or establishing or refusing to establish any water or sewer system). One limitation, however, is that a court cannot have a de novo trial on issues which are nonjudicial in nature. For example, the court in *State ex rel. McGinnis v. Police Civil Serv. Comm'n*, 253 Minn. 62, 65-71, 91 N.W.2d 154, 157-60 (1958) held that it would not give effect to a statute which provided for trial de novo on the administrative decision of a municipality to discharge one of its employees. Because the municipality's decision was clearly administrative and nonjudicial, the supreme court stated that review could be by certiorari only.

139. MINN. STAT. §§ 15.0411-.0426 (1976 & Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 674, §§ 2-3, 1978 Minn. Sess. Law Serv. 431 (West) (revisor's bill).

140. MINN. STAT. § 15.0411(2) (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 674, § 2, 1978 Minn. Sess. Law Serv. 431 (West) (emphasis added).

141. The MAPA provisions do not apply to:

local agencies not having statewide jurisdiction are also exempt. This is not the place to enter upon a conjecture whether there are agencies of doubtful scope of jurisdiction or whether adjudication and rulemaking "authorized by law" encompasses actions done under authorization implied from the terms of the statute which created the agency as well as actions which are expressly authorized by the empowering statute.

2. Review of Rulemaking

The review plan provides for separate treatment for the two types of administrative action, rulemaking and adjudication.¹⁴² It is assumed that these two categories are mutually exclusive, but whether between them they exhaust the entire category of appealable administrative action is an open question.

The term "rule" is carefully defined in traditional terms¹⁴³ but contains further express exceptions from the operation of MAPA.¹⁴⁴ Review of rules takes place under MAPA by a declaratory judgment action in accordance with section 15.0416 of Min-

(a) agencies directly in the legislative or judicial branches, (b) emergency powers in sections 12.31 to 12.37, (c) corrections board and pardon board, (d) the unemployment insurance program in the department of economic security, (e) the director of mediation services, (f) the workers compensation division in the department of labor and industry, (g) the workers compensation court of appeals, (h) board of pardons, or (i) the department of military affairs.

MINN. STAT. § 15.0411(2) (Supp. 1977), *as amended* by Act of Mar. 28, 1978, ch. 674, § 2, 1978 Minn. Sess. Law Serv. 431 (West) (revisor's bill). In addition, the Minnesota Municipal Board is excepted from the provisions relating to review of contested cases. MINN. STAT. § 15.0411(2) (Supp. 1977), *as amended* by Act of Mar. 28, 1978, ch. 674, § 2, 1978 Minn. Sess. Law Serv. 431 (West) (revisor's bill).

142. Compare MINN. STAT. §§ 15.0416-.0417 (1976 & Supp. 1977) (review of rules) with *id.* §§ 15.0424-.0426 (review of contested cases).

143. The term "rule" includes "every agency statement of general applicability and future effect, including the amendment, suspension, or repeal thereof, made to implement or make specific the law enforced or administered by it or to govern its organization or procedure" *Id.* § 15.0411(3) (1976).

144. The express exceptions from the definition of "rule" are: (1) internal agency rules which do not directly affect the public, (2) rules of the commissioner of corrections relating to the internal management of prisons, (3) rules of the division of game and fish, (4) rules relating to weight limitations on highways indicated by signs, and (5) opinions of the attorney general. *Id.*

In addition, mere statements of agency policy are not "rules" if they are not intended to have the force and effect of law. See *Steere v. State*, ___ Minn. ___, ___, 243 N.W.2d 112, 116 (1976); *Wacha v. Kandiyohi County Welfare Bd.*, ___ Minn. ___, ___, 242 N.W.2d 837, 839 (1976) (per curiam). However, a statement of agency policy will be deemed a "rule" if it involves "a question of social and political policy so important to the public as a whole as to require that the rulemaking process of the Minnesota Administrative Procedure Act be followed." *McKee v. Likins*, ___ Minn. ___, ___, 261 N.W.2d 566, 577-78 (1977) (per curiam).

nesota Statutes, which states: "The validity of any rule may be determined upon the petition for a declaratory judgment thereon"¹⁴⁵ Although some question may be raised whether the statute applies only to declaratory judgment relief under Minnesota Statutes chapter 555,¹⁴⁶ it is reasonable to assume that it does and therefore does not call forth a new or different remedy.

A declaratory judgment may be sought by any person whose legal rights or privileges are threatened or impaired by the rule.¹⁴⁷ In addition, a declaratory judgment may be sought even though the agency has not been requested to judge the validity of the rule.¹⁴⁸

Under the provisions of section 15.0417, relief may be granted if the rule (1) violates constitutional provisions, (2) exceeds statutory authority of the agency, or (3) was adopted without compliance with statutory rulemaking procedures.¹⁴⁹ Time will tell whether this rather stark enumeration of grounds for relief contains any hurtful omissions; yet it seems likely that if the courts apply the declaratory judgment remedy in accordance with the broad principles of flexibility which underlie it, the categories will prove to be adequate. Category (1) is certainly comprehensive enough to cover the situation where a rule is adopted without due process by methods which are capricious, arbitrary, and unreasonable.¹⁵⁰ Category (2) should encompass both the situation where an agency trenches beyond its granted powers, such as extending its jurisdiction by an unwarranted agency interpretation of its enabling statute,¹⁵¹ and the less likely situation (under modern interpretations of the law) where there is a faulty delegation of power by the legislature.¹⁵² These two categories therefore

145. MINN. STAT. § 15.0416 (1976).

146. See notes 113-33 *supra* and accompanying text. See also note 61 *supra*.

147. MINN. STAT. § 15.0416 (1976).

148. *Id.*

149. *Id.* § 15.0417.

150. See, e.g., *Monk & Excelsior, Inc. v. Minnesota State Bd. of Health*, 302 Minn. 502, 509-10, 225 N.W.2d 821, 825 (1975) (arbitrary and capricious promulgation of rules in violation of MAPA is violative of due process).

151. See *Francis v. Minnesota Bd. of Barber Examiners*, ___ Minn. ___, ___, 256 N.W.2d 521, 525 (1977) (no authority to adopt a rule requiring proof of public necessity to obtain a barber school license); *Guerrero v. Wagner*, ___ Minn. ___, ___, 246 N.W.2d 838, 841 (1976) (no authority to promulgate a rule delegating a duty which, by statute, is assigned to someone else).

152. The Minnesota Supreme Court has allowed liberal delegation of power to administrative agencies. Although statutory standards have been required traditionally for valid delegation, see, e.g., *Lee v. Delmont*, 228 Minn. 101, 112-15, 36 N.W.2d 530, 538-39 (1949), the court more recently has held that specific standards are unnecessary when complex

seem to cover matters of substance, and the remaining category (3) simply confirms the obvious by reaching matters of procedure.

Section 15.0417 provides rather cryptically that "the court shall declare the rule invalid" if it finds that the agency has violated any of the substantive or procedural requirements. From this language it may be inferred that the court has only an alternative to either affirm or invalidate. A recent case demonstrates the power of the reviewing court with respect to disposition after review of the rulemaking process.

In *Reserve Mining Co. v. Minnesota Pollution Control Agency*¹⁵³ there was an appeal from rules made by the Pollution Control Agency under specific provisions of Minnesota Statutes section 115.05, which provided that the reviewing court may validate the rule or, if the rule is found invalid, the court may remand the case to the agency for further proceedings. After hearing additional evidence, the district court found the rule invalid as applied to Reserve Mining Company.¹⁵⁴ Rather than remanding the case to the agency, however, the district court took further action itself by compelling negotiations between the agency and Reserve Mining Company.¹⁵⁵ The supreme court held that the district court had authority to remand only,¹⁵⁶ even though under section 115.05(7) the reviewing district court was clearly authorized to develop additional evidence in reviewing the validity of the rule.¹⁵⁷ Thus, even if the court could itself generate the additional evidence necessary to shape an invalid rule into a valid rule, the court may not legally do so and must remand the case if the rule is found invalid.

Reserve Mining involved the application of a special review statute, Minnesota Statutes section 115.05. Although this statute has since been amended to provide for judicial review in accordance with MAPA,¹⁵⁸ the principle derived from *Reserve Mining* regarding the proper use of evidence generated in the reviewing court under section 115.05 is also relevant to review under MAPA. Section 15.0416 of MAPA provides for review by declaratory judg-

and varied subject matter renders such standards impracticable. See, e.g., *City of Minneapolis v. Krebs*, 303 Minn. 219, 223-24, 226 N.W.2d 617, 620-21 (1975); *Anderson v. Commissioner of Highways*, 267 Minn. 308, 311-12, 126 N.W.2d 778, 780-81 (1964).

153. 294 Minn. 300, 200 N.W.2d 142 (1972).

154. *Id.* at 308, 200 N.W.2d at 146-47.

155. *Id.* at 309, 200 N.W.2d at 147.

156. *Id.* at 306-09, 200 N.W.2d at 145-47.

157. *Id.* at 306-07, 200 N.W.2d at 146 (quoting section 115.05(7)).

158. See Act of Mar. 25, 1976, ch. 76, §§ 2, 8, 1976 Minn. Laws 194, 197.

ment,¹⁵⁹ which arguably encompasses a *de novo* proceeding and the introduction of additional evidence.¹⁶⁰

After the district court proceeding, any party to the proceeding, including the agency, may appeal an adverse decision to the Minnesota Supreme Court.¹⁶¹ Presumably this appeal is governed by the rules applicable to civil appeals.¹⁶²

3. Review of Adjudication

The second half of MAPA's review scheme covers review of decisions in contested cases.¹⁶³ "Contested case" is defined in part 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."¹⁶⁴ It is substantially similar to the definition set forth in the Model State Administrative Procedure Act, which adds ratemaking, licensing, and price fixing.¹⁶⁵ The Minnesota definition encompasses situations where the requirements of due process or other legal principles implicitly dictate an "agency hearing"¹⁶⁶ as well as situations where an agency hearing is expressly dictated by statute.¹⁶⁷

159. MINN. STAT. § 15.0416 (1976).

160. See Kudak, *supra* note 61, at 163; note 62 *supra*.

161. MINN. STAT. § 15.0417 (Supp. 1977).

162. See *id.* § 555.07 (1976) (supreme court review of declaratory judgments under chapter 555 proceeds as other appeals); *cf. id.* § 15.0426 (Supp. 1977) (appeals to supreme court in agency adjudication, as distinguished from rulemaking, proceed like other civil appeals).

163. *Id.* §§ 15.0424-.0426 (1976 & Supp. 1977).

164. *Id.* § 15.0411(4) (1976). However, hearings by the Department of Corrections involving inmate discipline, transfers, or management are specifically excluded from the definition of contested case. See *id.*

165. MODEL STATE ADMINISTRATIVE PROCEDURE ACT § 1(2) (1961) defines contested case as "a proceeding, including but not restricted to ratemaking, [price fixing], 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"

166. See, e.g., *State ex rel. Independent School Dist. No. 276 v. Department of Educ.*, ___ Minn. ___, ___, 256 N.W.2d 619, 624-25 (1977); *Setty v. Minnesota State College Bd.*, 305 Minn. 495, 498-500, 235 N.W.2d 594, 596-97 (1975). See also *Minnesota Pub. Interest Research Group v. Minnesota Environmental Quality Council*, 306 Minn. 370, 381, 237 N.W.2d 375, 382 (1975) (court declined to determine whether, in context of a "contested case," a hearing was required under the due process clause because there was a statute which required a hearing).

The Minnesota Supreme Court has held consistently that agency disputes with other governmental entities are not contested cases because, in the absence of statute, a governmental entity is not entitled under the due process clause to a hearing. See, e.g., *State ex rel. Independent School Dist. No. 276 v. Department of Educ.*, ___ Minn. ___, ___, 256 N.W.2d 619, 623-25 (1977); *Independent School Dist. No. 581 v. Mattheis*, 275 Minn. 383, 386-88, 147 N.W.2d 374, 376-78 (1966).

167. See, e.g., *Minnesota Pub. Interest Research Group v. Minnesota Environmental*

The provisions for review set forth in section 15.0424 of Minnesota Statutes are long and complex and should therefore be read with some care. One important provision is that some agencies which are excepted from the general provisions of MAPA are included in the specific MAPA provisions for judicial review of contested cases. Judicial review of contested cases, under MAPA section 15.0424(1), includes cases coming from¹⁶⁸

any agency as defined in section 15.0411, subdivision 2 (including those agencies excluded from the definition of "agency" in section 15.0411, subdivision 2, but excepting the tax court of appeals, the workers compensation court of appeals sitting on workers compensation cases, the department of employment services, the director of mediation services, and the department of public services)

Thus, included within the review procedures for contested cases are the following which would otherwise be exempt from the MAPA definition of "agency": agencies directly in the legislative or judicial branches, acts of emergency powers exercised pursuant to Minnesota Statutes sections 12.31 through 12.37, the Corrections Board, the unemployment insurance program in the Department of Economic Security, the Worker's Compensation Division in the Department of Labor and Industry, the Board of Pardons, and the Department of Military Affairs.¹⁶⁹

The appeal may be taken whether the agency decision is affirmative or negative in form.¹⁷⁰ With two exceptions,¹⁷¹ the peti-

Quality Council, 306 Minn. 370, 380-81, 237 N.W.2d 375, 381-82 (1975); *Waters v. Putnam*, 289 Minn. 165, 168-69, 183 N.W.2d 545, 548 (1971).

168. MINN. STAT. § 15.0424(1) (1976).

169. Compare *id.* with *id.* § 15.0411(2) (Supp. 1977), as amended by Act of Mar. 28, 1978, ch. 674, § 2, 1978 Minn. Sess. Law Serv. 431 (West) (revisor's bill).

170. MINN. STAT. § 15.0424(1) (1976).

171. These exceptions are as follows:

(1) In the case of a tentative or proposed decision which has become the decision of the agency either by express approval or by a failure by an aggrieved person to file exceptions within a prescribed time under the agency's rules, such 30-day period shall not begin to run until the latest of the following events shall have occurred: (a) such decision shall have become the decision of the agency as aforesaid; (b) such decision, either before or after it has become the decision of the agency, shall have been served by mail by such agency on the parties of record in such proceeding.

(2) In case a request for rehearing or reconsideration shall have been made within the time permitted and in conformity with the agency's rules, such 30-day period shall not begin to run until service of the order finally disposing of the application for rehearing or reconsideration, but nothing herein shall be construed as requiring that an application for rehearing or reconsideration be

tion for review must be served upon the agency and filed in the district court for the county where the agency has its principal office or where the petitioners reside within thirty days after the final agency decision has been mailed to the parties.¹⁷²

Other parties in the contested case must be notified,¹⁷³ and each has twenty days from the date of notification to answer in a "notice of appearance" with an indication of his stance as to the disposition on review.¹⁷⁴ The agency decision is not stayed during the appeal.¹⁷⁵

There is some question about the use of alternative remedies as a means of obtaining review *after* the time has lapsed under section 15.0424. Although the particular facts of the case may have affected the result, this issue came before the court in *Waters v. Putnam*,¹⁷⁶ where the plaintiffs elected to proceed to review an order of the Water Resources Board by way of certiorari and mandamus instead of section 15.0424. The appeal was taken after the statutory time limit had passed, and the court indicated that the statute limited the time for review on the theory that "[t]he right to appeal having lapsed, appellants cannot now do indirectly (by certiorari and mandamus) what they failed to do directly by appeal."¹⁷⁷ Because the facts in the case are peculiar, however, the precedent should be treated with caution.¹⁷⁸

The district court review proceeding is usually conducted under the rules of civil procedure and is without a jury.¹⁷⁹ The scope of review provisions for contested cases is very complete. The reviewing court may reverse or modify the agency decision if the "substantial" rights of the petitioner may have been prejudiced because the administrative decision was:¹⁸⁰

filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under this section.

Id. § 15.0424(2)(a).

172. *Id.*

173. The petitioner must notify the other parties within 30 days after the review proceeding is initiated. *Id.* § 15.0424(2)(b).

174. *Id.* § 15.0424(2)(c).

175. *Id.* § 15.0424(3).

176. 289 Minn. 165, 183 N.W.2d 545 (1971).

177. *Id.* at 172, 183 N.W.2d at 550.

178. See also *Blixt v. Civil Serv. Bd.*, 297 Minn. 504, 504-05, 210 N.W.2d 230, 231 (1973) (per curiam) (relying on *Waters*, the court held that failure to appeal within the time provided by section 15.0424 deprives the district court of jurisdiction).

179. MINN. STAT. § 15.0424(6) (1976).

180. *Id.* § 15.0425.

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Unsupported by substantial evidence in view of the entire record as submitted; or
- (f) Arbitrary or capricious.

Unlike the conventional remedy of certiorari which is confined to matters in the record,¹⁸¹ the statutory provisions for review may involve the introduction of facts outside the record. Minnesota Statutes section 15.0424(5) provides for additional evidence if the reviewing court feels that such evidence is "material" and that it was excusably omitted at the agency hearing.¹⁸² For this reason it seems certain that the statutory remedy, where available, offers a remedy preferable to the more narrow extraordinary remedies. Of course, even the general statutory remedies might not be preferable to special statutory remedies which may include trial de novo. In this regard, MAPA is careful to preserve whatever advantage may lie in other remedies: "[N]othing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law now or hereafter enacted."¹⁸³

After the district court review, an aggrieved party may appeal to the supreme court in accordance with the rules governing civil actions.¹⁸⁴ At one time, the agency itself was not entitled to an appeal under MAPA. The Minnesota Supreme Court has, on several occasions, denied an agency's appeal because "[w]here no statute provides otherwise, an agency which functions in a judicial or quasi-judicial capacity is without right to appeal since, in such a case, the agency is in no different position from a court or judge which has rendered the decision."¹⁸⁵ In 1977, however,

181. See notes 51-55 *supra* and accompanying text.

182. MINN. STAT. § 15.0424(5) (1976).

183. *Id.* § 15.0424(1); see *In re West St. Paul State Bank*, 302 Minn. 124, 126 n.1, 223 N.W.2d 793, 795 n.1 (1974); *Bryan v. Community State Bank*, 285 Minn. 226, 230, 172 N.W.2d 771, 774 (1969).

184. MINN. STAT. § 15.0426 (Supp. 1977).

185. The leading case in which this quote appears is *In re Getsug*, 290 Minn. 110, 114, 186 N.W.2d 686, 689 (1971) (citing, *inter alia*, *Minnesota Water Resources Bd. v. County of Traverse*, 287 Minn. 130, 177 N.W.2d 44 (1970) and *Town of Eagan v. Minnesota Mun. Comm'n*, 269 Minn. 239, 130 N.W.2d 525 (1964)).

The principle set forth in *Getsug* has been followed in subsequent Minnesota cases. See *Minnesota Dep't of Highways v. Minnesota Dep't of Human Rights*, ___ Minn. ___,

the Minnesota Legislature changed the effect of these cases by amending MAPA to include the agency as a party entitled to an appeal.¹⁸⁶

VII. CONCLUSION

Presently, many local agencies are not subject to MAPA or other specific statutes. There would seem to be good reason for legislative action which would impose standard methods of procedure for rulemaking and adjudication upon the administrative structure at all levels. Although exceptions are necessary or desirable, it can be assumed that most of the exceptions already have been written into the law at the state agency level now covered by MAPA. Whether these exceptions reflect actual necessity or in some instances political reality and ancient prerogatives is a matter which, ideally, should be carefully considered in any thorough overhaul of the Act.

Further, there seems to be little reason not to apply, in like manner, a general statute governing judicial review. The Minnesota Legislature could provide, under general statute, a single form of review which would obviate resort to the various extraordinary remedies with their many potential pitfalls. It is conceivable that such a review action could be the present declaratory judgment and its attendant relief. This form of action is certainly flexible enough to permit courts to tailor the relief to the requirements of any particular situation under longstanding judicial concepts, supplemented by legislative guidelines already embodied in section 706 of the federal Administrative Procedures Act.¹⁸⁷

—, 241 N.W.2d 310, 313-14 (1976) (*per curiam*), *cert. denied*, 429 U.S. 863 (1976); *Minnesota State Bd. of Health v. Governor's Certificate of Need Appeal Bd.*, 304 Minn. 209, 213-14, 230 N.W.2d 176, 179 (1975).

186. See Act of June 2, 1977, ch. 443, § 5, 1977 Minn. Laws 1221 (codified as MINN. STAT. § 15.0426 (Supp. 1977)).

187. 5 U.S.C. § 706 (1976) provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or

immunity;

Another great concern today is the matter of judicial control over the wide discretion heretofore given to administrators and confirmed by benign court treatment of administrative power. It is certainly time that the legislature itself take the responsibility for minimizing discretion as much as possible. It is also within the scope of judicial power to do the same. One obvious way is to leave legislative grants of administrative power undisturbed, but by judicial action require administrative agencies to provide at least procedural safeguards and, to the extent possible, statements of substantive policy. A tendency in this direction is perhaps discernible in the seeming ambivalence of the courts toward *de novo* proceedings on appeal. The *de novo* device appears to be particularly apt where the subject matter is not an adjudicative decision on the record but is the more common form of a rule or policy decision based upon no proper record as such. Courts can aid in this quarter by requiring a statement of reasons for such action and such a statement could by itself be one basis for judicial review. At any rate it does seem clear that the Minnesota courts are aware of the general problem and that further case law will show where the guidelines are.

It seems also to be the case that there will be a continuing tendency for courts to permit people or groups access to the courts under enlarged concepts of standing. The present attitudes toward standing obviously arose in the recent historical period of widespread demand by various activist groups for direct access to the governmental decisionmaking process. However, questions may now be raised about the overall desirability of permitting numbers of groups and individuals unlimited access to courts if their legitimate rights can otherwise be protected. Access to the courts is a powerful weapon, but it should not be used to delay or frustrate legitimate public undertakings. It should indeed be proper to consider carefully what additions should be made to the administrative-judicial process that would provide the proper

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial *de novo* by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

balance between individual rights on the one side and public objectives on the other. An indication of such a device, with very probable application to other upcoming cases, is the recent proposal of Minnesota Governor Perpich for a "science court" to determine complex technical issues concerning a 400-kilovolt power transmission line.

It seems probable that the future holds for all of us severe restrictions upon activities which for generations have been considered a citizen's natural right, particularly those activities and amenities of life requiring high consumption of energy and materials. But mere restrictions, unpalatable as they must be, may be rendered unbearable without a responsible and intelligent administration, which in turn must depend upon rational, orderly, and understandable processes. In this area much has been done, but more can be accomplished.

