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# The Court of Appeals and Judicial Review of Agency Action

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## THE COURT OF APPEALS AND JUDICIAL REVIEW OF AGENCY ACTION

SAMUEL L. HANSON†

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### I. INTRODUCTION

The Court of Appeals Act<sup>1</sup> conferred jurisdiction upon the new court “to review on the record the validity of administrative rules . . . and the decisions of administrative agencies in contested cases

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1. Court of Appeals Act, ch. 501, 1982 Minn. Laws 569 (codified at MINN. STAT. §§ 480A.01-.11 (Supp. 1983)).

. . . .”<sup>2</sup> In conjunction with amendments to the Rules of Civil Appellate Procedure, several dozen statutory appeal provisions were reviewed in an effort to implement the court’s jurisdiction with respect to agency action. This review revealed that while the Court of Appeals Act contained a broad grant of jurisdiction to review agency action, no mechanism existed to bring many of those matters before the court. The Administrative Procedure Act<sup>3</sup> (APA), which provided specific mechanisms for judicial review of administrative rules<sup>4</sup> and many administrative decisions in contested cases,<sup>5</sup> had not been changed and continued to route all such proceedings to the district court. Further, the judicial review procedures of the APA were not exclusive. Contested cases, for example, involved dozens of agency statutes that provided alternative procedures for judicial review of agency decisions.<sup>6</sup> Like the APA, most of these statutes had not been amended and continued to route review proceedings to the district court.

The Minnesota Supreme Court, its Advisory Committee, the Revisor of Statutes, and the Minnesota Legislature undertook a coordinated review of agency statutes with the amended Rules of Appellate Procedure. Their objective was to effectuate to the degree possible, yet consistent with substantive agency practice, the court of appeals’ jurisdiction over these significant areas of agency action. As a result, the legislature promulgated comprehensive changes to the statutory procedures for judicial review of agency action.

Chapter 247 of the 1983 Minnesota Laws (Chapter 247), which embodies these changes, does not provide mechanisms to implement the original review of administrative rules by the court of appeals. However, it provides for original review by the court of appeals of administrative agency decisions in contested cases. For appeals taken on or after August 1, 1983, the court of appeals rather than the district court will review nearly all contested cases under the APA review procedure. Application to the court of ap-

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2. *Id.* § 8, subd. 4, 1982 Minn. Laws at 573 (codified at MINN. STAT. § 480A.06, subd. 4 (Supp. 1983)).

3. Administrative Procedure Act, ch. 806, 1957 Minn. Laws 1100 (current version at MINN. STAT. §§ 14.01-.68 (1982 & Supp. 1983)).

4. MINN. STAT. § 14.44 (1982).

5. *Id.* §§ 14.63, 14.65 (Supp. 1983).

6. The Appendix to this Article lists most of the special agency appeal provisions.

peals for review of contested cases is made by writ of certiorari.<sup>7</sup>

This Article reviews the relationship between the jurisdiction of the new Minnesota Court of Appeals, the statutory revisions under Chapter 247, and the amendments to the Rules of Civil Appellate Procedure. A discussion of remedies that have historically been available for the review of agency action precedes an analysis of current court of appeals review of agency rulemaking and contested cases. The Article concludes with a discussion of several remaining issues still requiring legislative action.

## II. REMEDIES AVAILABLE FOR JUDICIAL REVIEW OF AGENCY ACTION

In considering the impact of the new court of appeals and its enabling legislation upon agency practice, a synopsis of the types of remedies available for obtaining judicial review of agency action is helpful. Historically, remedies have been grouped into three categories: extraordinary, equitable, and statutory.<sup>8</sup>

### A. *Extraordinary Remedies*

Extraordinary remedies are provided by statute and consist of the classical writs of certiorari,<sup>9</sup> mandamus,<sup>10</sup> prohibition,<sup>11</sup> and quo warranto.<sup>12</sup> Each writ is technical in its focus and requires precise compliance with procedural requirements. Certiorari, for example, is limited to a review on the record of the administrative agency.<sup>13</sup> Mandamus is appropriate only when the administrative officer can be directed to take specific action based upon a clear statutory mandate.<sup>14</sup> Prohibition can be used only to prevent an agency from taking action which is beyond its delegated authority.<sup>15</sup> Quo warranto is intended to prevent the usurpation of office

7. Act of June 1, 1983, ch. 247, § 9, 1983 Minn. Laws 852, 856 (amending MINN. STAT. § 14.63 (1982)).

8. This categorization is adopted from Baird, *Remedies by Judicial Review of Agency Action in Minnesota*, 4 WM. MITCHELL L. REV. 277, 285-86 (1978), which contains an excellent discussion of this subject.

9. MINN. STAT. §§ 484.03, 606.01 (1982) (district court); *id.* §§ 480.04, 606.01 (supreme court).

10. *Id.* §§ 484.03, 586.01-.12 (district court); *id.* §§ 480.04, 586.01-.12 (supreme court).

11. *Id.* § 480.04 (supreme court).

12. *Id.* (district and supreme court).

13. *See, e.g.*, *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 482, 124 N.W.2d 328, 351 (1963).

14. *See, e.g.*, *Marine v. Whipple*, 259 Minn. 18, 21, 104 N.W.2d 657, 659 (1960).

15. *See, e.g.*, *Richardson v. School Bd.*, 297 Minn. 91, 93, 210 N.W.2d 911, 913 (1973).

by a public official.<sup>16</sup>

The supreme court has original jurisdiction over all four extraordinary remedies, but its jurisdiction is discretionary and rarely exercised.<sup>17</sup> The district courts also have original jurisdiction over certiorari and mandamus; their mandamus jurisdiction is exclusive except where the writ is directed to a district court judge.<sup>18</sup> In most cases, extraordinary writs are sought initially in the district court. Although these writs are considered remedies at law, they are generally available only when equitable principles are satisfied—when there is no other adequate remedy and there is a prospect of irreparable injury.<sup>19</sup> As their names imply, extraordinary remedies are the most difficult remedies to obtain.

### B. Equitable Remedies

Equitable remedies are available for judicial review of agency action in appropriate cases.<sup>20</sup> Injunctive relief provides more flexibility than an extraordinary remedy since it does not focus as narrowly upon the nature of the administrative action.<sup>21</sup> Further, an injunction is not necessarily limited to the parties of an administrative action, but is available to any person irreparably injured.<sup>22</sup> Injunctive relief is not available, however, where there is an adequate remedy at law or where irreparable injury would not other-

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16. *See, e.g.*, *Latola v. Turk*, 310 Minn. 395, 396, 247 N.W.2d 598, 598 (1976); *State ex rel. Danielson v. Village of Mound*, 234 Minn. 531, 537, 48 N.W.2d 855, 860 (1951).

17. One of the few reported decisions on the exercise of the original extraordinary writ jurisdiction by the supreme court is *State ex rel. Palmer v. Perpich*, 289 Minn. 149, 182 N.W.2d 182 (1971). Prior to the opening of the 1971 legislative session, then Lieutenant Governor Perpich ruled that an election contest brought against newly elected Senator Palmer prevented the Senator from taking his oath. This ruling resulted in a tie vote on a number of parliamentary moves and the Lieutenant Governor cast the deciding vote. Within hours of the vote, the supreme court heard legal challenges to the lieutenant governor's authority under a petition for alternative relief, styled as quo warranto, mandamus, and prohibition. The court acted under its quo warranto powers, and ruled that the Lieutenant Governor lacked authority to disqualify the Senator or to cast the tie-breaking vote. *Id.* at 151-53, 182 N.W.2d at 183-85.

18. MINN. STAT. § 586.11 (Supp. 1983).

19. *See, e.g.*, *Alevizos v. Metropolitan Airports Comm'n*, 298 Minn. 471, 494-95, 216 N.W.2d 651, 665-66 (1974).

20. MINN. STAT. § 484.03 (1982) (writs); *id.* §§ 14.44, 555.01-16 (declaratory judgment); MINN. R. CIV. P. 65 (injunction).

21. *See supra* notes 11-14.

22. *See, e.g.*, *North Cent. Pub. Serv. Co. v. Village of Circle Pines*, 302 Minn. 53, 60, 224 N.W.2d 741, 746 (1974); *Binder v. Village of Golden Valley*, 260 Minn. 418, 421-23, 110 N.W.2d 306, 308-09 (1961).

wise result.<sup>23</sup>

A declaratory judgment, while not technically an equitable action because of its statutory base,<sup>24</sup> is a broad and flexible remedy properly discussed with equitable remedies. For all practical purposes, the only prerequisite for a declaratory judgment is a justiciable controversy.<sup>25</sup> A declaratory judgment may be available even though an adequate remedy is available by statute or extraordinary writ.<sup>26</sup>

A declaratory judgment is the prescribed procedure for judicial review of agency rulemaking. The APA provides:

The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the district court where the principal office of the agency is located, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner.<sup>27</sup>

Only the district courts have original jurisdiction over injunctions and declaratory judgments.

### C. Statutory Remedies

There are more than one hundred state administrative agencies and boards.<sup>28</sup> The legislation establishing many of these agencies contained specific appeal provisions for that agency's decisions.<sup>29</sup> Some of these statutory appeal provisions dated back to the early 1900's and had not been modified until the enactment of Chapter 247 in 1983.

Originally, the APA contained a general provision for appeal of administrative agency decisions<sup>30</sup> that did not supplant many of the special appeal statutes. Some agencies were exempted generally from the APA,<sup>31</sup> others were exempted solely from its appeal

23. See, e.g., *North Cent. Pub. Serv. Co.*, 302 Minn. at 60, 224 N.W.2d at 746; *Binder*, 260 Minn. at 421-23, 110 N.W.2d at 309.

24. MINN. STAT. §§ 555.01-.16 (1982).

25. See, e.g., *Arens v. Village of Rogers*, 240 Minn. 386, 390, 61 N.W.2d 508, 513 (1953), *appeal dismissed*, 347 U.S. 947 (1954).

26. MINN. STAT. § 555.01 (1982).

27. *Id.* § 14.44.

28. See Baird, *supra* note 8, at 302 n.134; see also THE MINNESOTA LEGISLATIVE MANUAL 1983-1984, at 187-220 (1983).

29. See, e.g., MINN. STAT. §§ 49.18, 178.09, subd. 2, 216B.52, subd. 1, 246.55, 268.12, subd. 13 (1982).

30. Act of May 22, 1963, ch. 809, § 1, 1963 Minn. Laws 1430, 1430 (current version at MINN. STAT. § 14.63 (Supp. 1983)).

31. MINN. STAT. § 14.03, subd. 1 (1982). The statute provides:

provisions,<sup>32</sup> and still others were exempted generally from the APA but not from its appeal provisions.<sup>33</sup> Furthermore, the APA specifically provided that its appeal provisions were not exclusive of "other means of review."<sup>34</sup>

The APA review procedure is appellate in nature, limited to the agency record, and limited to the following scope:

In a judicial review under sections 14.63 and 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (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.<sup>35</sup>

Two forms of district court review were prevalent in the statutes for agency actions not subject to the APA appeal provisions: (1) trial de novo, where all evidence was presented to the court and little deference was paid to the agency decision;<sup>36</sup> and (2) appellate

The administrative procedure act in sections 14.01 to 14.70 does not apply to (a) agencies directly in the legislative or judicial branches, (b) emergency powers in sections 12.31 to 12.37, (c) the department of military affairs, (d) the comprehensive health association provided in section 62E.10, (e) the tax court provided by section 271.06, or (f) the regents of the University of Minnesota.

*Id.*; see also *id.* § 14.03 note.

32. *Id.* § 14.03, subd. 2. Subdivision 2 provides:

The contested case procedures of the administrative procedure act provided in sections 14.57 to 14.70 do not apply to (a) the Minnesota municipal board, (b) the corrections board, (c) the unemployment insurance program in the department of economic security, (d) the director of mediation services, (e) the workers' compensation division in the department of labor and industry, (f) the workers' compensation court of appeals, (g) the board of pardons, or (h) the public employment relations board.

*Id.*; see also *id.* § 14.03 note.

33. See Act of May 22, 1963, ch. 809, § 1, 1963 Minn. Laws 1430, 1430 (current version at MINN. STAT. § 14.63 (Supp. 1983)) (board of tax appeals, the industrial commission sitting on workers' compensation cases, the department of employment security, the labor conciliator, and the railroad and warehouse commission).

34. MINN. STAT. § 14.63 (Supp. 1983).

35. *Id.* § 14.69 (1982).

36. See, e.g., MINN. STAT. § 49.18 (1982) (banking); *id.* § 178.09, subd. 2 (labor); *id.* § 246.55 (public institutions).

review, where the agency record was reviewed, but no additional evidence was presented to the court, and the agency decision was accorded great deference.<sup>37</sup>

### III. COURT OF APPEALS REVIEW OF AGENCY RULEMAKING

Agency "rules" consist of statements having general applicability and future effect, as distinguished from specific determinations of a set of present rights.<sup>38</sup> An agency rule is the product of that "part of the administrative process that resembles a legislature's enactment of a statute."<sup>39</sup>

Although judicial review of agency rules may be available through extraordinary, equitable, or statutory remedies, the remedy of declaratory judgment is the most appropriate means of relief.<sup>40</sup> While the court of appeals enabling legislation spoke of jurisdiction "to review on the record the validity of administrative rules,"<sup>41</sup> the 1983 Legislature did not enact a mechanism for direct appeal to the court of appeals from an agency rulemaking proceeding. Minnesota Statutes section 14.44 continues to provide for the initial review of agency rulemaking by the district court through declaratory judgment.

The APA was amended in 1983 to allow appeals from district court declaratory judgment actions to the court of appeals rather than the supreme court.<sup>42</sup> Extraordinary and injunctive remedies were unchanged and continue to be available only in the district

37. See, e.g., *id.* § 116.07 (pollution control); *id.* § 216B.52, subd. 4 (public utilities); *id.* § 268.12 (economic security).

38. *Id.* § 14.02, subd. 4 (formerly MINN. STAT. § 15.0411, subd. 3 (1980)).

39. 1 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 5.01, at 123 (1958).

40. The statutory provision for the use of declaratory judgment actions to obtain review of agency rules is not exclusive. It states that the "validity of any rule *may* be determined upon a petition for a declaratory judgment." MINN. STAT. § 14.44 (1982) (emphasis added). One commentator has suggested that certiorari may be available to review agency rules because of the rulemaking hearing and record now required under section 14.14 of the APA. See Baird, *supra* note 8, at 289. Two limitations, however, may prevent its use to review agency rules: appeal is generally not available when another remedy (such as declaratory judgment) has been provided, see, e.g., MINN. R. CIV. APP. P. 103.03, and certiorari is generally confined to review of judicial or quasi-judicial agency action. See Mahnerd v. Canfield, 297 Minn. 148, 152, 211 N.W.2d 177, 179 (1973). Rulemaking, however, is generally considered legislative action. See K. DAVIS, *supra* note 39, § 5.03. The injunctive remedy can be used in conjunction with declaratory judgment to enjoin enforcement or execution of a challenged rule. See, e.g., McKee v. Likins, 261 N.W.2d 566 (Minn. 1977).

41. MINN. STAT. § 480A.06, subd. 4 (1982).

42. Act of June 1, 1983, ch. 247, § 7, 1983 Minn. Laws 852, 855-56 (codified as amended at MINN. STAT. § 14.45 (Supp. 1983)).



court. Appeals from these decisions are made to the court of appeals, not the supreme court.<sup>43</sup> The scope of review used by the court of appeals for declaratory judgment actions involving agency rules will presumably be the one previously employed by the supreme court: independent, nondeferential examination of the agency action to determine whether the rule violates the constitution, exceeds statutory authority, or was adopted without compliance with statutory rulemaking procedures.<sup>44</sup>

The legislative decision to continue using district court declaratory judgments to review agency rules was probably based upon the nature of the record in rulemaking hearings and the frequent need for presenting additional evidence to facilitate judicial review. Although the APA rulemaking procedures contemplate that hearings will be conducted and a record developed, the record is ordinarily dissimilar to the trial-type transcript developed in a contested case. A rulemaking hearing is not a typical adversary proceeding. "Interested persons" are not required to intervene as parties, but may simply "register" with the hearing examiner immediately before the hearing.<sup>45</sup> Often, the "testimony" consists of public statements which are not subject to strict evidentiary rules or cross-examination. The agency that proposes and considers the rules acts both as advocate and judge; the agency makes an affirmative presentation of the need for and reasonableness of the rules, and no party is statutorily mandated to be adverse or independent.<sup>46</sup>

Judicial review of agency rulemaking often requires taking additional evidence not contained in the agency record.<sup>47</sup> The right to obtain review is afforded where "the rule or its threatened application" interferes or threatens to interfere with the "legal rights and privileges of the petitioner."<sup>48</sup> Naturally, if the petitioner was not a party to the agency proceeding, the proof necessary to establish the petitioner's right to bring the action, such as interference with the rights and privileges of the petitioner, would probably not be

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43. See MINN. R. CIV. APP. P. 103.03.

44. See, e.g., *Minnesota-Dakotas Retail Hardware Ass'n v. State*, 279 N.W.2d 360, 363 (Minn. 1979). If the matter is reviewed by the supreme court under certiorari, the court will likely provide an independent review of the agency action.

45. MINN. STAT. § 14.14, subd. 1a (Supp. 1983); 9 MINN. CODE AGENCY R. § 2.107 (1982).

46. MINN. STAT. § 14.14, subd. 2 (1982); 9 MINN. CODE AGENCY R. § 2.107 (1982).

47. See *Reserve Mining Co. v. Minnesota Pollution Control Agency*, 294 Minn. 300, 307, 200 N.W.2d 142, 146 (1972); Baird, *supra* note 8, at 306-07.

48. MINN. STAT. § 14.44 (1982).

in the agency record. Proof must ordinarily be supplied by additional testimony before the court.<sup>49</sup> Similarly, the rulemaking record alone may be an inadequate basis for review of the "threatened application" of the rule.<sup>50</sup>

Under these circumstances, the jurisdictional grant to the court of appeals was impractical insofar as it contemplated original review of agency rules. The court of appeals is not equipped to take testimony, develop a record, or make findings.<sup>51</sup> Original review of agency rulemaking was properly left in the district courts under declaratory judgment, with the district court's judgment reviewable by the court of appeals on appeal.<sup>52</sup>

#### IV. COURT OF APPEALS REVIEW OF CONTESTED CASES

A contested case is "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."<sup>53</sup> An agency order in a contested case is the product of that "part of the administrative process that resembles a court's decision of a case."<sup>54</sup> Agency decisions in contested cases may be subject to judicial review through extraordinary, equitable, or statutory remedies. Chapter 247 made no significant changes with respect to review of the extraordinary and equitable remedies discussed in Part II of this Article. These remedies remain available in the district court, with appeals from the district court to the court of appeals.<sup>55</sup> With respect to the statutory remedies, however, Chapter 247 made extensive changes to provide a nearly uniform method for obtaining original review of agency action by the court of appeals.

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49. *See, e.g.*, *Snyder Drug Stores, Inc. v. Minnesota State Bd. of Pharmacy*, 301 Minn. 28, 221 N.W.2d 162 (1974).

50. *See, e.g.*, *Reserve Mining Co. v. Minnesota Pollution Control Agency*, 294 Minn. 300, 200 N.W.2d 142 (1972).

51. Hence, under Minnesota Statutes section 14.68, where review is sought in the court of appeals but includes a claim of "irregularities in procedure, not shown in the record" and requires the taking of supplemental evidence, the matter may be transferred to the district court to take evidence and make findings on the claims of irregularity. *See* MINN. STAT. § 14.68 (Supp. 1983).

52. MINN. R. CIV. APP. P. 103.03(a).

53. MINN. STAT. § 14.02, subd. 3 (1982).

54. K. DAVIS, *supra* note 39, § 5.01, at 123.

55. MINN. R. CIV. APP. P. 103.03.

### A. *Extraordinary and Equitable Remedies*

Chapter 247 made only one change to the statutory provisions regarding extraordinary remedies. It amended Minnesota Statutes section 586.11 to provide that a writ of mandamus directed to the district court or a judge thereof is within the exclusive jurisdiction of the court of appeals, not the supreme court.<sup>56</sup> The district court retained its original jurisdiction over certiorari or mandamus not directed to the district court or the court of appeals.

Although the supreme court still possesses jurisdiction to issue extraordinary writs, amendments to the Rules of Civil Appellate Procedure transferred original jurisdiction over these writs to the court of appeals. For extraordinary remedies initially sought in the district court, appeal is now to the court of appeals, not to the supreme court.<sup>57</sup> An exception was provided for writs addressed to court of appeals' actions over which the supreme court has jurisdiction.<sup>58</sup>

Equitable remedies remain within the original jurisdiction of the district court. District court decisions concerning these remedies are now reviewable by the court of appeals.<sup>59</sup>

### B. *Statutory Remedies for Contested Cases*

While the Court of Appeals Act provided original jurisdiction to the court of appeals over decisions of administrative agencies in contested cases, it did not amend the APA to route those cases to the court of appeals. Further, while the Act<sup>60</sup> changed the procedures for a few of the special appeals statutes, it left dozens of others intact. Consequently, nearly all review of agency action in contested cases would have been provided by the district court.

The 1983 Legislature endeavored to review all administrative appeal procedures and determine to what extent the statutory grant of jurisdiction to the court of appeals should be implemented. In so doing, the legislature undoubtedly found significant problems with existing appeal procedures. The establishment of the court of appeals provided an opportunity to resolve these problems and eliminate unnecessary complexity and duplication.

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56. Act of June 1, 1983, ch. 247, § 196, 1983 Minn. Laws 852, 956.

57. MINN. R. CIV. APP. P. 103.03(a), (g).

58. *Id.* 120.

59. *Id.* 103.03(a)-(b).

60. Court of Appeals Act, ch. 501, 1982 Minn. Laws 569 (codified at MINN. STAT. ch. 480A (Supp. 1983)).

## 1. The Problems

### a. Multiplicity of Appeal Statutes

Many of the individual agency statutes contained specific procedures for judicial review. Since these statutes had been individually adopted over the years, the types of and procedures for review varied considerably. Enactment of the APA did not produce uniformity because its appeal provisions were not exclusive. The APA provided that "nothing in [its appeal provisions] shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law."<sup>61</sup> Prior to 1983, the APA appeal procedures were as follows:

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision . . . . Proceedings for review . . . shall be instituted by serving a petition personally or by certified mail upon the agency and by filing the petition in the office of the clerk of district court for the county where the agency has its principal office or the county of residence of the petitioners. A petition . . . for judicial review must be filed with the district court and served on the agency not more than 30 days after the party receives the final decision.<sup>62</sup>

The numerous special agency statutes contained procedures which varied significantly from the APA procedure and from each other. They contained different time limits for filing appeals,<sup>63</sup> and different descriptions of the event triggering those time limits.<sup>64</sup> The various statutes provided disparate formats for appeals, ranging from complex petitions to simple notice.<sup>65</sup> They provided dissimilar scopes of review, ranging from trial de novo to appellate review based exclusively on the agency record.<sup>66</sup> Even a funda-

61. MINN. STAT. § 14.63 (Supp. 1983).

62. *Id.* §§ 14.63-.64 (1982).

63. *See, e.g., id.* § 49.18 (banking—20 days); *id.* § 32A.09, subd. 5(b) (dairy industry—20 days); *id.* § 168.68(d) (motor vehicles—30 days); *id.* § 273.16 (revenue—30 days); *id.* § 116C.65 (Environmental Quality Board—60 days).

64. *E.g., id.* § 179.64, subd. 5 (public employees—"after the results of the hearing have been announced"); *id.* § 216B.52 (public utilities—"after the service of the order and decision"); *id.* § 246.55 (state hospital—"from the date the order was mailed"); *id.* § 115.49, subd. 5 (sanitary districts—"after the decision or order has been made and the parties notified thereof").

65. *Id.* § 56.23 (banking—simple notice); *id.* § 216.25 (public utilities—simple notice); *id.* § 268.12, subd. 13(4) (economic security—petition for writ of certiorari); *id.* § 60A.05 (insurance—petition for review); *id.* § 32A.09, subd. 5(b) (dairy industry—petition for review).

66. Several statutes provide for de novo appeals. *See id.* § 49.18 (banking); *id.*

mental issue such as who could initiate review varied from the "parties" before the agency to any "person aggrieved" by the agency action.<sup>67</sup> This procedural multiplicity produced much uncertainty and inefficiency for practitioners and courts handling administrative appeals.

*b. Partial Uniformity Through Judicial Interpretation*

Prior to enactment of Chapter 247, judicial interpretation had unified one aspect of administrative review procedure—the scope of review. In *Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co.*,<sup>68</sup> an appeal was taken under the special appeal statute for the Railroad and Warehouse Commission.<sup>69</sup> The statute allowed appeal to the district court, made the Commission's findings prima facie correct, and permitted new evidence to be brought before the district court to support the Commission's action.<sup>70</sup> As a result of the prima facie language in the statute, the court construed the scope of review to require application of a "scintilla of the evidence" test.<sup>71</sup> This contradicted the broader scope of review provided by the APA, which required that agency action be supported by "substantial evidence."<sup>72</sup> In *Minneapolis Van & Warehouse*, the supreme court held that the legislature intended the APA to provide a uniform scope of review by the district court in all administrative appeals, except those providing for a trial de novo.<sup>73</sup> Under the court's ruling, the APA substantial evidence rule applied to all appellate review of agency action, whether taken pursuant to APA procedures or the special appeal statutes of particular agencies.<sup>74</sup>

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§ 178.09, subd. 2 (labor); *id.* § 246.55 (state hospital). Others provide for review on the record. *See id.* § 237.25 (public utilities); *id.* § 268.12, subd. 13(4) (economic security). Appeals from a ruling by the Civil Service Commissioner provided a further variation: the "court may hear such additional evidence as it deems relevant to the matter." *Id.* § 387.41.

67. There were several definitions of "parties." *See, e.g., id.* § 237.25 (public utilities, telephone); *id.* § 231.33 (warehouse rates). Similarly, there were several definitions of "persons aggrieved." *See, e.g., id.* § 110A.36 (rural water district); *id.* § 216B.52, subd. 1 (public utilities, electric and gas).

68. 288 Minn. 294, 180 N.W.2d 175 (1970).

69. MINN. STAT. §§ 216.24-.25 (1966).

70. *Id.*

71. 288 Minn. at 297, 180 N.W.2d at 177.

72. MINN. STAT. § 14.69 (1982) (formerly MINN. STAT. § 15.0425 (1980)).

73. 288 Minn. at 298, 180 N.W.2d at 177.

74. *See also* Fisher Nut Co. v. Lewis *ex rel.* Garcia, 320 N.W.2d 731 (Minn. 1982); State v. Northwestern Bell Tel. Co., 310 Minn. 146, 246 N.W.2d 28 (1976). In Reserve Mining Co. v. Minnesota Pollution Control Agency, 294 Minn. 300, 200 N.W.2d 142

After *Minneapolis Van & Warehouse*, many practitioners continued to initiate appeals pursuant to the special appeal statutes, assuming that the scope of review was the only element controlled by the APA. This assumption was challenged in *County of Ramsey v. Minnesota Public Utilities Commission*.<sup>75</sup>

In *County of Ramsey*, orders of the Public Utilities Commission in a telephone rate case were appealed to the district court.<sup>76</sup> The documents used on appeal referred to and complied with the appeal provisions in Minnesota Statutes chapters 237 and 216, relating specifically to orders of the Public Utilities Commission. The documents, however, did not adhere to the appeal format set forth in the APA.<sup>77</sup> The appellants were parties to the rate case and non-parties who claimed to be “persons aggrieved” by the Commission’s final order.<sup>78</sup>

The district court dismissed the non-parties’ claims on the ground that chapters 237 and 216 permit appeal only by “any party to a proceeding,”<sup>79</sup> and dismissed the parties’ appeals, reasoning that those chapters had been superseded by the exclusive appeal provisions of the APA.<sup>80</sup> The district court’s decision, as the last judicial statement on the subject at the time Chapter 247 was considered, dramatized the complexity and uncertainty of administrative appeals. It also demonstrated the risks faced by practitioners in attempting to reconcile the different procedures.<sup>81</sup>

### *c. The Role of the District Court*

The one common element in all administrative appeals statutes

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(1972), however, the court held that the specific appeal provisions of Minnesota Statutes section 115.05, subdivision 7 (Water Pollution Control Act) took precedence over the APA appeal provisions in terms of the disposition which the district court was authorized to make in judicial review of agency rulemaking. *Id.* at 307, 200 N.W.2d at 146.

75. 345 N.W.2d 740 (Minn. 1984). While the supreme court reversed certain aspects of the district court’s decision, it was the district court’s decision which was extant when the legislature considered Chapter 247. *Id.* at 743.

76. *Id.* at 742.

77. *Id.*

78. *Id.* at 742, 744.

79. *Id.*

80. *Id.* at 743.

81. The supreme court reversed the district court on both grounds. It determined that the appeals of parties under chapters 237 and 216 were proper since the APA provided alternative, and not exclusive, procedures for appeal. *Id.* at 743. The court further determined that the appeals by the non-parties, though styled as under Chapters 237 and 126, could be deemed to be sufficient petitions for review under the APA, which permitted appeal by a non-party. *Id.* at 744.

was initial review of agency actions by the district court. The need for or desirability of district court involvement, however, were questionable. Review by the district court involved substantial time and expense. The review seemed to be nothing more than a way station because the supreme court independently reviewed agency decisions without deference to the district courts' opinions.<sup>82</sup> In *Reserve Mining Co. v. Herbst*,<sup>83</sup> the supreme court focused specifically upon the scope of review for district court orders reviewing agency action. The court set out a two-part test: (i) Where the district court hears the matter de novo, the supreme court will review the district court's order under the "clearly erroneous" standard of review—that is, the district court decision will be given great deference and will not be reversed unless clearly erroneous; and (ii) Where the district court performs appellate-type review, the supreme court will scrutinize the agency decision and defer to the district court order only as much as an appellate decision of another jurisdiction.<sup>84</sup>

The district court was not particularly suited to the handling of complex contested case administrative appeals. Since the appeals did not require taking additional testimony, the district court's trial facilities were not needed. Furthermore, the presentation of voluminous administrative records disrupted the district court's calendar, which was not designed to manage appeals on the record. Finally, the grant of jurisdiction for direct review of contested cases by the new court of appeals led practitioners, judges, and the general public to expect that creation of the new court would eliminate the apparent unnecessary duplication of effort at the district court level.

## 2. *The Solutions*

The process of amending the Rules of Civil Appellate Procedure to accommodate the Minnesota Court of Appeals provided the opportunity to reconcile these conflicts and eliminate unnecessary ambiguity and duplication. The process required legislative review of dozens of special administrative appeal statutes. The objective was to unify appellate procedures to the extent possible and

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82. See, e.g., *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 822 (Minn. 1977); see also *City of Moorhead v. Minnesota Pub. Util. Comm'n*, 343 N.W.2d 843 (Minn. 1984); *Western Area Business & Civic Club v. Duluth School Bd.*, 324 N.W.2d 361 (Minn. 1982).

83. 256 N.W.2d 808 (Minn. 1977).

84. *Id.* at 823.

consistent with the substantive rights protected by each statute. The legislature distinguished between statutes contemplating trial de novo and those contemplating an "appellate" review on the agency record. The amendments contained in Chapter 247 can be categorized by the use of this basic distinction.

Where a specific agency statute contemplated judicial review by trial de novo, Chapter 247 made no changes. For these agency actions, judicial review remains available at the district court under the applicable statutory appeal procedures.<sup>85</sup> As in other civil cases, decisions of the district court will be appealable to the court of appeals.<sup>86</sup> The court of appeals' scope of review for district court decisions should be as previously applied by the supreme court for de novo decisions: the district court's decision will be affirmed unless clearly erroneous.<sup>87</sup>

Chapter 247 provides for original review by the court of appeals where the judicial review contemplated in the agency statute was review by an appellate court. The specific statutory appeal provisions for agency actions meeting these criteria were made uniform by amendments providing that "appeals" are to be made "in accordance with Chapter 14."<sup>88</sup> The use of the word "appeal" is misleading because the APA, as amended by Chapter 247, does not use the word. Instead, it provides that "[p]roceedings for review . . . shall be instituted by serving a petition for a writ of certiorari . . ." <sup>89</sup> This discrepancy was not intended to render judicial review discretionary with the court, because Chapter 247 further provides that "[a] writ of certiorari for review of an administrative decision pursuant to [the APA] is a matter of right."<sup>90</sup>

## V. REMAINING ISSUES

Although Chapter 247 made significant changes in the availability and standards of review for agency decisions, several ambiguities were left unresolved. Three areas—agency decisions in

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85. The Appendix to this Article identifies where de novo review by the district court will be continued.

86. See MINN. R. CIV. APP. P. 103.

87. Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 823 (Minn. 1977).

88. The Appendix to this Article contains a listing of the administrative appeal statutes which were amended by Chapter 247. See, e.g., Act of June 1, 1983, ch. 247, § 96, 1983 Minn. Laws 852, 900 (amending MINN. STAT. § 216B.52, subd. 1 (1982)).

89. *Id.* § 10, 1983 Minn. Laws at 856 (amending MINN. STAT. § 14.64 (1982)).

90. *Id.* § 207, 1983 Minn. Laws at 959 (amending MINN. STAT. § 606.06 (1982)) (emphasis added).



other than contested cases, scope of review, and remaining procedural differences for appeals—are briefly discussed.

### A. Agency Decisions in Non-Contested Cases

Many agency appeal statutes applied broadly to all final orders of that agency.<sup>91</sup> Chapter 247 modified these statutes by borrowing the appeal procedures of the APA. These statutes are now limited to the types of orders appealable under the APA. The APA provides the right to judicial review of an agency adjudication only for a “decision in a contested case.”<sup>92</sup> Thus, the question arises whether there is any statutory right of review for agency adjudications in actions not constituting “contested cases,” such as the granting of licenses or certificates of authority on application. Funneling of judicial review procedures through the APA appears to have eliminated statutory appeal rights for non-contested adjudications.

Judicial review of non-contested cases can now be obtained only by extraordinary or equitable remedies at the district court. In fact, the elimination of the statutory right of appeal supplies a requisite for obtaining an extraordinary or equitable remedy—there is now no adequate remedy at law.<sup>93</sup>

### B. Scope of Review

Chapter 247 did not change the APA’s scope of judicial review for agency decisions in contested cases. By amending agency statutes to provide for exclusive appeals through the APA, Chapter 247 reinforced the previous interpretation that the scope of review described in APA section 14.69 governs all administrative appeals.<sup>94</sup>

A secondary question, the scope of review to be applied by the

91. *See, e.g.*, MINN. STAT. § 216B.52 (1982).

92. *Id.* § 14.63 (Supp. 1983).

93. Northern States Power Co. v. City of St. Paul, 256 Minn. 489, 99 N.W.2d 207 (1959), may provide some guidance on this issue. In that case, the supreme court ruled that the utility could seek equitable relief from the district court because there was no statutory right to appeal from the city’s refusal to grant an interim rate increase. *Id.* at 494, 99 N.W.2d at 211. The court stated: “The statute involved in this proceeding (L.1935, c. 286) provides for no appeal from the decision of the city. Aside from injunctive relief restraining the city from enforcing confiscatory rates, the utility has no adequate remedy.” *Id.*

94. *See, e.g.*, Minneapolis Van & Warehouse Co. v. St. Paul Terminal Warehouse Co., 288 Minn. 294, 180 N.W.2d 175 (1970); State *ex rel.* Gomez-Bethke v. Eastern Air Lines, No. C4-83-1750 (Minn. Ct. App. Mar. 16, 1984).

supreme court when reviewing court of appeals' decisions, also was not addressed by Chapter 247. The supreme court will likely continue to perform independent review of agency action, without deference to the court of appeals' decision. Nothing in the rationale of *Reserve Mining*, in which the supreme court decided to review agency action independently without deference to the district court decision,<sup>95</sup> suggests that supreme court review of a district court order should be distinguished from supreme court review of a court of appeals order. In fact, since that rationale is based primarily upon the deference to be shown to the "agencies' expertise,"<sup>96</sup> the supreme court should continue to review agency decisions independently.

### C. Procedural Differences

Several procedural differences were not eliminated by Chapter 247. While the funneling of most appeals through the APA establishes substantial uniformity in procedure, certain inconsistencies among the prerequisites and timing of appeals remain in some statutes which have otherwise borrowed APA procedures. A few examples illustrate this point.

The APA provides that the petition for a writ of certiorari must be filed and served within thirty days "after the party receives the final decision and order of the agency."<sup>97</sup> Certain statutes that borrow the APA judicial review mechanism still contain their former timing language. For example, the Environmental Quality Board provision states that the appeal "shall be filed within 60 days after the *publication* in the state register of notice of the issuance of the certificate or permit . . . ."<sup>98</sup>

The discrepancy litigated in *County of Ramsey* remains in the Minnesota Statutes. While the APA defines a proper party to an appeal as "any person aggrieved,"<sup>99</sup> the provision for telephone orders of the Public Utilities Commission limits appeals to "[a]ny

95. *Reserve Mining*, 256 N.W.2d at 822.

96. *Id.* at 824; see also *Western Area Business & Civic Club v. Duluth School Bd.*, 324 N.W.2d 361, 365 (Minn. 1982).

97. Act of June 1, 1983, ch. 247, § 9, 1983 Minn. Laws 852, 856 (amending MINN. STAT. § 14.63 (1982)).

98. MINN. STAT. § 116C.65 (1982) (emphasis added).

99. Act of June 1, 1983, ch. 247, § 9, 1983 Minn. Laws 852, 856 (amending MINN. STAT. § 14.64 (1982)).

party to a proceeding before the commission or the attorney general . . . ."<sup>100</sup>

The timing of petitions for a writ of certiorari under the APA also differs from the timing under specific agency statutes. Decisions of the Commission of Economic Security may be reviewed by certiorari, but the agency statute requires the petition to be filed and served upon the adverse party "[w]ithin 30 days after mailing of the notice of an appeal tribunal decision to the claimant . . . at his last known address . . . ." <sup>101</sup> The commencement of the thirty day notice period from the *date of mailing* differs from the APA thirty day period, which commences from the *date received*. The Rules of Civil Appellate Procedure address this lack of uniformity by providing that review of certiorari "may be had by securing issuance of a writ of certiorari within 30 days after the date of mailing notice of the decision to the party applying for the writ, *unless an applicable statute prescribes a different period.*" <sup>102</sup>

## VI. CONCLUSION

The multiplicity of procedures for judicial review of agency action resulted from the tremendous growth in the number and activities of administrative agencies over the past few decades. The establishment of the court of appeals provided an opportunity to review and consolidate many of those procedures. The consolidation adequately complements the new court's jurisdiction, the amended rules of Civil Appellate Procedure, and the specific objectives of each of the affected agencies.

Chapter 247 accomplished the major task of placing nearly all judicial review of contested agency cases under the uniform procedure of the APA. Some minor discrepancies remain and further legislative attention is necessary for complete uniformity. Chapter 247 wisely left untouched the original judicial review procedure for agency rulemaking, which relies significantly upon the district court's ability to take additional evidence and make findings.

Although the establishment of the new court was the catalyst for review and improvement of judicial review of agency action, the review was limited. No significant attempt was undertaken to analyze agency procedures as a whole to determine whether further consolidation and uniformity should be achieved in general administrative practice. For example, agency statutes that provided

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100. MINN. STAT. § 237.25 (1982).

101. *Id.* § 268.10, subd. 5.

102. MINN. R. CIV. APP. P. 115.01 (emphasis added).

judicial review by trial de novo were left untouched by Chapter 247 on the assumption that the provision of a trial de novo might be substantively important to the practice of those agencies. Legislative review of agency statutes permitting trial de novo is warranted to determine whether this type of review is appropriate for some fundamental agency processes or is simply a historical anomaly. Further, the minor discrepancies remaining in those agency statutes which have otherwise borrowed the APA appeal procedures are likely not based upon substantive differences and should be reexamined.

Since its enactment, the APA has produced a significantly more cohesive body of administrative law in Minnesota. The considerable experience under the APA is sufficient to permit a comprehensive reexamination of the state's administrative practices and an investigation into the desirability of further uniformity. Chapter 247 contributed an important element of cohesiveness by adding a significant measure of uniformity to judicial review procedures.

**APPENDIX****SPECIAL AGENCY APPEAL PROVISIONS****I. Review by District or County Court; Appeal to Court of Appeals****Minnesota Statutes sections:**

- 3.737 - Claims; livestock destroyed
- 32A.09 - Unfair dairy practices
- 44.09 - Personnel Board; dismissal or suspension
- 49.18 - Banking; assessment against stockholders
- 60A.05 - Insurance; suspension of authority
- 60A.15 - Insurance; taxation of insurance companies
- 106.631 - Drainage; county ditch
- 110A.36 - Rural water district
  - 111.42 - Conservancy
  - 112.82 - Watersheds
  - 115.49 - Sanitary districts
- 116A.19 - Public water and sewer assessments
- 123.32 - Independent school district; elections
- 161.34 - Claims; state highway construction
- 168.68 - Motor vehicle sales finance license
- 178.09 - Labor; apprentice agreements
- 231.33 - Warehouse rates
- 237.20 - Public utilities; municipal acquisition
- 237.39 - Public service; private lines sold
- 246.55 - State hospital; patient care charges
- 253B.23 - Review board; retention of commitment
  - 290.48 - Delinquent tax proceedings
  - 294.09 - Gross earnings tax
  - 340.54 - Unstamped liquor
  - 414.07 - Municipal board; incorporation, detachment, annexation
  - 430.03 - Special assessments; streets and parks
  - 462.14 - Condemnation; housing redevelopment districts

**II. Review by Court of Appeals under Chapter 14****Minnesota Statutes sections:**

- 16.863 - Administration; building codes
- 25.43 - Agriculture; commercial feed lots
- 45.07 - Commerce; bank charters
- 56.23 - Banking; lending license
- 62A.02 - Insurance; policy forms
- 62C.14 - Health service plan; subscriber contracts
- 62G.16 - Legal service plan; subscriber contracts
- 65B.04 - Automobile insurance; shared risk facility

- 70A.22 - Insurance; rate regulation
- 72A.24 - Trade practices; cease and desist
- 79.073 - Compensation insurance; rates
- 84.59 - Natural resources; underground permits
- 116.07 - Pollution Control Agency
- 116.11 - Pollution Control Agency emergency orders
- 116C.65 - Environmental Quality Board
- 120.17 - Education; handicapped children
- 124.15 - School aid
- 127.33 - Pupil dismissal
- 141.29 - Revocation of private school license;  
commissioner of education
- 149.05 - Embalmers' licenses
- 156A.071 - Water well contractors' licenses
- 168.65 - Intercity bus registration and taxation
- 169.073 - Red light displayed by highway
- 174A.05 - Transportation Regulation Board
- 177.29 - Minimum wage
- 179.64 - Public employees
- 197.481 - Veterans privileges
- 216.25 - Public Utilities Commission; complaints against  
carriers
- 216B.52 - Public Utilities Commission; gas and electric
- 237.25 - Public Utilities Commission; telephone
- 268.12 - Economic security; employing units
- 282.01 - Tax-forfeited land sales
- 299D.03 - State Trooper suspension
- 327B.05 - Manufactured homes; dealers license
- 360.019 - Orders of commissioner of transportation;  
review
- 360.072 - Airport zoning
- 363.06 - Human rights
- 363.072 - Human rights
- 375.67 - County Personnel Board of Appeals
- 387.41 - Removal; Sheriff's office
- 419.12 - Police civil service
- 420.13 - Firefighters civil service
- 458A.06 - St. Cloud Transit Commission
- 473.413 - Metropolitan Commission

### III. Review by Court of Appeals under Specific Statute

#### Minnesota Statutes sections:

- 179.742 - University of Minnesota; employee units
- 253B.19 - Mentally ill; judicial appeal panel
- 253B.23 - Review board; retention of commitment

- 268.06 - Economic security; employer contributions
- 268.10 - Economic security; benefits
- 270.23 - Tax equalization proceedings; commissioner of revenue
- 273.16 - Tax classification of iron deposits; commissioner of revenue
- 297.37 - Revenue
- 298.09 - Revenue