12.1 RES JUDICATA AND COLLATERAL ESTOPPEL

The related doctrines of res judicata and collateral estoppel embody the fundamental rule that a "'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . .'"[1] Collateral estoppel, also known as issue preclusion, provides that the determination of an issue by a prior court is "conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation."[2] Res judicata, or claim preclusion, provides that a final judgment on the merits bars a second suit for the same claim by parties or their privies.[3] Both doctrines may be applied to give finality to administrative decisions if the decisionmaker acted in a judicial or quasi-judicial manner[4] and no overriding public policy prevents their application.[5] A handful of state cases have discussed these doctrines in the context of administrative proceedings,[6] and some have actually applied the doctrines to foreclose changing the outcome of the administrative proceeding.[7]

Collateral estoppel prevents identical parties or those in privity with them from relitigating identical issues in a subsequent, distinct proceeding.[8] In *Graham v. Special*

[1] Kaiser v. N. States Power Co., 353 N.W.2d 899, 902 (Minn. 1984) (quoting Montana v. United States, 440 U.S. 147, 153 (1979)) (other quotation omitted).

[2] *Id.*; *see also* Bulbitz v. Comm'r of Revenue, 545 N.W.2d 382, 385 (Minn. 1996).

[3] *Kaiser*, 353 N.W.2d at 902; Hauser v. Mealey, 263 N.W.2d 803, 806-07 (Minn. 1978); Surf & Sand, Inc. v. Gardebring, 457 N.W.2d 782, 787-88 (Minn. Ct. App. 1990) (holding that res judicata applied to the nursing home's contract claim as it involved the same issue and evidence presented in prior medical assistance rate contested case proceeding).

[4] AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd., 356 N.W.2d 295, 299 (Minn. 1984); McKee v. Ramsey Cnty., 310 Minn. 192, 194-95, 245 N.W.2d 460, 462 (1976); Souden v. Hopkins Motor Sales, 289 Minn. 138, 146, 182 N.W.2d 668, 672-73 (1971); State *ex rel.* Turnbladh v. Dist. Court, 259 Minn. 228, 240, 107 N.W.2d 307, 315 (1960); *In re* Murphy Motor Freight Lines, 428 N.W.2d 467, 470 (Minn. Ct. App. 1988).

[5] *AFSCME Council 96*, 356 N.W.2d at 299; *see also* Johnson v. Consol. Freightways, Inc., 420 N.W.2d 608, 613-14 (Minn. 1988) (noting that when applying either doctrine, focus is on whether application would work an injustice on the party to be estopped).

[6] *Bulbitz*, 545 N.W.2d at 385; Graham v. Special Sch. Dist. No. 1, 472 N.W.2d 114, 115-16 (Minn. 1991); *see also* Ellis v. Minneapolis Comm'n on Civil Rights, 319 N.W.2d 702, 703-04 (Minn. 1982); Lumpkin v. N. Cent. Airlines, 296 Minn. 456, 462-63, 209 N.W.2d 397, 402 (1973); *Surf & Sand*, 457 N.W.2d at 787; *In re* Peoples Natural Gas Co., 358 N.W.2d 684, 689 (Minn. Ct. App. 1984)); *supra* note 4 (listing related Minnesota cases).

[7] Falgren v. Minn. Bd. of Teaching, 545 N.W.2d 901, 905 (Minn. 1996); *Graham*, 472 N.W.2d at 115-16; Brix v. Gen. Accident & Assur. Corp., 254 Minn. 21, 25-26, 93 N.W.2d 542, 545-46 (1958); Zander v. State, 703 N.W.2d 845, 854 (Minn. Ct. App. 2005) (holding landowners were collaterally estopped from challenging a wetland replacement plan in an action under the Minnesota Environmental Rights Act because the plan had been previously approved by the Board of Soil and Water Resources (BSWR). The landowners had already challenged the plan before the BSWR and unsuccessfully appealed the Board's approval to the court of appeals); Harford v. Univ. of Minn., 494 N.W.2d 903, 906 (Minn. Ct. App. 1993); *Surf & Sand*, 457 N.W.2d at 789; Hough Transit Ltd. v. Harig, 373 N.W.2d 327, 332 (Minn. Ct. App. 1985) (citing United States v. Utah Constr. & Mining Co., 384 U.S. 394, 422 (1966)).

[8] Kremer v. Chem. Constr. Corp., 456 U.S. 461, 467 n.6 (1982); Nw. Nat'l Life Ins. Co. v. Cnty. of Hennepin, 572 N.W.2d 51, 53 (Minn. 1998); Kaiser v. N. States Power Co., 353 N.W.2d 899, 902 (Minn. 1984); *Ellis*, 319 N.W.2d at 703-04; Green v. City of Coon Rapids, 485 N.W.2d 712, 718 (Minn. Ct. App. 1992).

School Dist. No. 1,[9] the Minnesota Supreme Court held that the doctrine of collateral estoppel may be applied, in appropriate instances, to agency decisions. In order for a court to apply collateral estoppel to an agency decision, five factors must be met:

> (1) the issue to be precluded must be identical to the issue raised in the prior agency adjudication; (2) the issue must have been necessary to the agency adjudication and properly before the agency; (3) the agency determination must be a final adjudication subject to judicial review; (4) the estopped party was a party or in privity with a party to the prior agency determination; and (5) the estopped party was given a full and fair opportunity to be heard on the adjudicated issues.[10]

In *Falgren v. Minnesota Board of Teaching*,[11] the Minnesota Supreme Court determined that when a teacher was terminated for engaging in immoral conduct based on the factual finding that the teacher had engaged in nonconsensual sexual contact, collateral estoppel prohibited the teacher from relitigating the nonconsensual sexual contact issue in the Board's license revocation hearing. The court found that the issue sought to be precluded in the agency hearing was identical to the issue decided in the termination proceeding for collateral estoppel purposes.[12] Moreover, the court held that the termination proceeding satisfied due process because the teacher elected to have his discharge hearing before an arbitrator with a narrow scope of review, thereby waiving his rights to broader judicial review. The court noted, however, that although collateral estoppel precluded the issue of whether the teacher engaged in nonconsensual sexual contact, the ALJ was still required to consider any additional evidence the teacher wished to present concerning the alleged immorality of his conduct and whether the ALJ should recommend discipline based exclusively on immoral conduct.[13]

9 472 N.W.2d 114, 116 (Minn. 1991) (holding collateral estoppel precluded relitigation of defamation issue, but did not apply to retaliatory discharge and free speech claims); *see also* Villarreal v. Indep. Sch. Dist. No. 659, 520 N.W.2d 735, 739 (Minn. 1994) (finding teacher's discrimination claim barred by collateral estoppel where teacher was determined to be not qualified in prior termination hearing before independent hearing examiner).

10 *Graham*, 472 N.W.2d at 116 (citations omitted). The fifth factor, whether an estopped party was given a full and fair opportunity to be heard, was at issue in a recent court of appeals case. In the administrative context, a full and fair opportunity to be heard requires that the hearing provide adequate procedural safeguards and that the tribunal not be impermissibly biased. State by Friends of the Riverfront v. City of Minneapolis, 751 N.W.2d 586, 589-90 (Minn. Ct. App. 2008). The court found that because the plaintiffs had been able to present written argument and evidence to the city council, and because the purpose of the hearing was to determine whether a development was historically appropriate, written argument was sufficient. The court also determined that the council was not impermissibly biased and therefore the claim was barred by collateral estoppel. *Id.* at 591; *see also* Stepnes v. Ritschel, 771 F. Supp. 2d 1019, 1036-37 (D. Minn. 2011) (applying Minnesota law, holding that collateral estoppel did not apply because the prior proceeding was an emergency hearing which did not allow for a full and fair opportunity to litigate the issue).

11 545 N.W.2d at 908.

12 *Id*.

13 *Id.*; *see also* Harford v. Univ. of Minn., 494 N.W.2d 903, 908 (Minn. Ct. App. 1993) (finding university Board of Regents' determination on appeal by faculty member, who alleged his resignation was constructive discharge, of university president's decision constituted "final adjudication" subject to judicial review, for purposes of collateral estoppel).

The doctrine of res judicata, on the other hand, focuses on previous judgments between the parties and prevents them from relitigating their causes of action.[14] The same general criteria used to determine if res judicata applies also are used for collateral estoppel.[15] If res judicata is applied, it not only prevents relitigation of facts and law previously decided but also prevents raising issues that could have been raised earlier but were not.[16]

The most important factor influencing whether the agency decision is entitled to res judicata or collateral estoppel effect, and one which runs through all of the conditions for their application, is whether the agency previously acted in a judicial or quasi-judicial capacity.[17] If so, the courts have indicated they would be willing to consider applying the doctrines to preclude subsequent litigation.[18] To allow application in an administrative context, the appropriate construction of "judicial remedy" must include either administrative determinations or access to a state appellate court.[19]

Application of the doctrines has the effect of estopping the subsequent court or agency from modifying the previous decision but does not deprive it from assuming jurisdiction.[20] Other factors that affect the application of res judicata or collateral estoppel include whether judicial review is available[21] and whether there is an overriding public policy that would prevent its application.[22] No res judicata or collateral estoppel effect will be given to an agency decision that is outside the scope of the agency's authority or jurisdiction,[23] to claims that were not raised before the agency,[24] or to agency action that is administrative in nature.[25] A determination under one statute is not given automatic res judicata or collateral

[14] Kremer v. Chem. Constr. Corp., 456 U.S. 461, 467 n.6 (1982); WILLIAM J. KEPPEL & DAYTON GILBERT, MINNESOTA ADMINISTRATIVE PRACTICE AND PROCEDURE, § 624 (1982); *see also* State *ex rel.* Turnbladh v. Dist. Court, 259 Minn. 228, 237, 107 N.W.2d 307, 313 (1960); Surf & Sand, Inc. v. Gardebring, 457 N.W.2d 782, 789 (Minn. Ct. App. 1990); Miller v. Nw. Nat'l Ins. Co., 354 N.W.2d 58, 61-62 (Minn. Ct. App. 1984).

[15] Staples v. Zinn, 302 Minn. 149, 152, 223 N.W. 2d 415, 417 (1974).

[16] *In re* McDonough, 296 N.W.2d 648, 700 (Minn. 1980).

[17] S*ee Surf & Sand*, 457 N.W.2d at 787; Hough Transit Inc. v. Haring, 373 N.W.2d 327, 332 (Minn. Ct. App. 1985); *supra* note 4 *(*listing related Minnesota cases).

[18] McKee v. Ramsey Cnty., 310 Minn. 192, 194 n.1, 245 N.W.2d 460, 462 n.1 (1976); Souden v. Hopkins Motor Sales, 289 Minn. 138, 146, 182 N.W.2d 668, 672-73 (1971).

[19] *Surf & Sand*, 457 N.W.2d at 787; *see also* D.H. Blattner & Sons, Inc. v. Firemen's Ins. Co. of Newark, 535 N.W.2d 671, 674 (Minn. Ct. App. 1995) (finding decision of Arkansas Claims Commission not entitled to res judicata effect where outcome of proceeding was determined by legislative body constrained by political process and decision was not subject to judicial review).

[20] State *ex rel.* Turnbladh v. Dist. Court, 259 Minn. 228, 237-38, 107 N.W.2d 307, 313-14 (1960).

[21] *McKee*, 310 Minn. at 194, 245 N.W.2d at 462.

[22] AFSCME Council 96 v. Arrowhead Reg'l Corrections Bd., 356 N.W.2d 295, 299 (Minn. 1984); Cent. Baptist Theological Seminary v. City of New Brighton, 487 N.W.2d 528, 532 (Minn. Ct. App. 1992); *In re* N. States Power Co., 440 N.W.2d 138, 142 (Minn. Ct. App. 1989) (balancing factors such as the public importance of the issue involved, fairness and equity are bases for relaxing the application of both doctrines in administrative hearings).

[23] Heath v. John Morrell & Co., 768 F.2d 245, 248 (8th Cir. 1985); Jackson v. Red Owl Stores, 375 N.W.2d 13, 18-19 (Minn. 1985); *McKee,* 310 Minn. at 195, 245 N.W.2d at 462.

[24] *McKee,* 310 Minn. at 195, 245 N.W.2d at 462. *But see In re* McDonough, 296 N.W.2d 648, 700 (Minn. 1980).

[25] *Turnbladh*, 259 Minn. at 240, 107 N.W.2d at 315 (reviewing proceedings to remove public employees from office); L.K. v. Gregg, 380 N.W.2d 145, 149 n.1 (Minn. Ct. App. 1986) (finding results of an

estoppel effect when a similar question arises under another statute — for example, employment termination proceedings involving veterans preference and arbitration hearings.[26]

Res judicata has sometimes been urged against an agency as a bar to the agency's subsequent modification or amendment of its order. An agency generally may modify its earlier decision until jurisdiction is lost because of the filing of an appeal or the lapse of time.[27] An agency does have power, however, on proper notice, to reverse previous decisions that were erroneous for reasons such as fraud, mistake, or misconception of facts.[28] In a 1971 decision, the Minnesota Supreme Court did not find the earlier decision to be res judicata of subsequent proceedings; but the court strongly criticized the agency "in the interests of consistency and fairness" for attempting to substitute a different set of factual findings for those made four years previously.[29] In addition, statutes may give the agency the right or duty to reopen a case or amend a previous order on its own motion. Such statutes alter customary res judicata application.[30]

Res judicata and collateral estoppel should not be applied rigidly to administrative proceedings and should be qualified or rejected "when their application would contravene an overriding public policy."[31] Accordingly, the Minnesota Supreme Court has refused to apply either doctrine to simultaneous proceedings before a Veteran's Preference Board and an arbitrator regarding "just cause" termination of an employee who was a veteran.[32]

Res judicata and collateral estoppel apply only to final decisions. Thus, the recommended decision of an administrative law judge is not entitled to res judicata or collateral estoppel application if the agency departs from the report. However, it may be

"independent review" by an ad hoc committee were not entitled to res judicata effect when respondents ought to have been afforded a contested case hearing before an ALJ).

[26] *AFSCME Council 96*, 356 N.W.2d at 299; *see also* State v. Minneapolis & St. Louis Ry., 257 Minn. 124, 135, 100 N.W.2d 669, 677 (1960) (determination by one agency on particular question does not necessarily bind another agency to decide same question same way); Ress v. Abbott-Nw. Hosp., Inc., 438 N.W.2d 727, 731 (Minn. Ct. App. 1989), *rev'd on other grounds*, 448 N.W. 519 (Minn. 1989) (finding unemployment compensation decision on misconduct not bound by professional licensing decision by different agency).

[27] *Turnbladh*, 259 Minn. at 239-40, 107 N.W.2d at 315; *see* § 14.4 (discussing hearing and reconsideration).

[28] Anchor Cas. Co. v. Bongards Co-op. Creamery Ass'n, 253 Minn. 101, 106, 91 N.W.2d 122, 126 (1958).

[29] Souden v. Hopkins Motor Sales, 289 Minn. 138, 146, 182 N.W.2d 668, 672-73 (1971).

[30] Wangen v. Comm'r of Pub. Safety, 437 N.W.2d 120, 123 (Minn. Ct. App. 1989) (res judicata is inapplicable to situations when the statute envisions that a party may petition for relief more than once); *In re* Peoples Natural Gas Co., 358 N.W.2d 684, 689-90 (Minn. Ct. App. 1984); *see* § 12.1.

[31] *AFSCME Council 96*, 356 N.W.2d at 299; *see also* Brinker v. Weinberger, 522 F.2d 13, 15 (8th Cir. 1975); *Wangen*, 437 N.W.2d at 123 (citing KEPPEL & GILBERT, *supra* note 14, § 624 at 119-20) (noting that fundamental differences between court decisions and agency decisions may diminish the applicability of the doctrines to administrative agencies). Even courts need not apply the doctrine of collateral estoppel rigidly. Courts should focus on "whether its application would work an injustice on the party against whom estoppel is urged." State v. Lemmer, 716 N.W. 2d 657, 663 (Minn. Ct. App. 2006) (quoting Falgren v. State Bd. of Teaching, 545 N.W.2d 901, 905 (Minn. 1996)).

[32] *AFSCME Council 96*, 356 N.W.2d at 299.

arbitrary and capricious decisionmaking for the agency to depart in its decision from the ALJ's report without explaining its reasons for doing so.[33]

The federal courts do not give preclusive effect to unreviewed state agency determinations in title VII employment discrimination cases.[34] However, if such an agency decision has been reviewed by the state courts, the state court decision is entitled to full faith and credit, and res judicata and collateral estoppel may be applied.[35]

A dismissal of an action is res judicata only in regard to the issues actually addressed by the dismissal and is not a judgment on the merits.[36] In situations where there is first a criminal proceeding resulting in an acquittal and then a civil proceeding involving the same issues, res judicata or estoppel may not apply because of the different standards of proof.[37] However, application of the doctrines is not precluded in every case.[38] Agency enforcement action is not precluded because of previous litigation on an issue necessary to the enforcement action.[39] In fact, agency enforcement may be specifically based on prior criminal or civil judgments as, for example, where professionals' licenses may be revoked for conviction of crime or other reasons.[40]

One type of proceeding in which the res judicata doctrine is firm is public ditch proceedings. Once the public ditch is established, it is a judgment in rem and cannot be collaterally attacked.[41]

[33] Beaty v. Minn. Bd. of Teaching, 354 N.W.2d 466, 471 (Minn. Ct. App. 1984); *see also* Brinks v. Minn. Pub. Utils. Comm'n, 355 N.W.2d 446, 452 (Minn. Ct. App. 1984); § 11.5 (discussing the ALJ's recommended decision).

[34] Kremer v. Chem. Const. Corp., 456 U.S. 461, 470 n.7 (1982); Heath v. John Morrell & Co., 768 F.2d 245, 248 (8th Cir. 1985); Hickman v. Elec. Keyboarding, 741 F.2d 230, 233-34 (8th Cir. 1984).

[35] *Kremer*, 456 U.S. at 478, 485.

[36] Fischer v. E. Air Lines, Inc., 414 N.W.2d 403, 405-06 (Minn. 1987) (finding dismissal of an agency action on procedural grounds does not preclude a subsequent civil action because there was no decision on the merits); *In re* Minneapolis Cmty. Dev. Agency, 359 N.W.2d 687, 690 (Minn. Ct. App. 1984).

[37] *In re* Congdon's Estate, 309 N.W.2d 261, 270 (Minn. 1981); *see also In re* Kaldahl, 418 N.W.2d 532, 535-36 (Minn. Ct. App. 1988) (addressing double jeopardy considerations when a criminal proceeding is followed by an administrative action).

[38] Emich Motors Corp. v. Gen. Motors Corp., 340 U.S. 558, 568 (1951).

[39] McMenomy v. Ryden, 276 Minn. 55, 65-66, 148 N.W.2d 804, 811 (1967) (dictum); *In re* Murphy Motor Freight Lines, 428 N.W.2d 467, 470 (Minn. Ct. App. 1988).

[40] *See, e.g.*, MINN. STAT. §§ 147.091, subd. 1 (doctors), 326.111, subd. 4 (architects), .3381, subd. 3 (private detectives), 326A.08, subd. 5 (accountants) (2014); MINN. R. LAW. PROF. RESP. BD. 17, 19 (attorneys); *see also* Obara v. Minn. Dep't of Health, 758 N. W. 2d 875, 878-79 (Minn. Ct. App. 2008) (finding, where nurse was convicted of assault and Department refused to reconsider his disqualification or grant him a requested fair hearing, that nurse was afforded his "full panoply of rights" in prior criminal proceeding, that nurse had not shown the conviction was in any way erroneous, and that the government had an interest in avoiding duplicative evidentiary hearings).

[41] Slosser v. Great N. Ry., 218 Minn. 327, 331, 76 N.W.2d 47, 49 (1944); Lupkes v. Town of Clifton, 157 Minn. 493, 497, 196 N.W. 666, 668 (1924); Garrett v. Skorstad, 143 Minn. 256, 259-60, 173 N.W. 406, 408 (1919).