

15.2 PREREQUISITES TO JUDICIAL REVIEW

Jurisdiction to review an agency action will not be exercised if certain requirements of reviewability have not been satisfied. These include finality of the agency decision, exhaustion of administrative remedies, exercise of primary jurisdiction by the agency, ripeness of the decision for review, and standing of the party seeking review.

15.2.1 Finality

Judicial review is available under the APA of “a final decision in a contested case.”¹ A proposed agency decision is not reviewable, nor are the findings and conclusions of an administrative law judge (ALJ), unless the ALJ's decision is final without further agency action.²

Under the APA, an application for reconsideration of the agency's action is not necessary in order that the action be final for purposes of review. If reconsideration is sought, however, the thirty-day period for commencing review proceedings does not begin to run until service of the order “finally disposing of the application for reconsideration.”³ If the agency's statute requires a petition for reconsideration as a precondition for judicial review, that provision supersedes the APA and the agency action is not final and not reviewable until reconsideration has been sought and acted upon.⁴

A final decision is also required in cases not subject to the APA.⁵ The finality doctrine essentially assures that a court will not interfere with actions yet to be taken by the agency with the requisite expertise. The agency must first take some action that will affect the rights and obligations of the parties. The test of finality is not the name assigned by the agency to its action but is the “legal force or practical effect”⁶ of the agency decision or the agency's expectation of compliance by those affected by its action.⁷

¹ MINN. STAT. § 14.63 (2014).

² *Zizak v. Despatch Indus. Inc.*, 427 N.W.2d 755, 756 (Minn. Ct. App. 1988); *see, e.g.*, MINN. STAT. § 363A.29, subd. 7 (2014) (making final the ALJ's order in favor of respondent in Human Rights Act proceeding); *see also* *Bennett v. Spear*, 520 U.S. 154, 177-79 (1997) (holding that Fish and Wildlife Service's “biological opinion” constitutes final agency action for APA purposes in citizen suit under Endangered Species Act). *See also* MINN. R. 1400.8300 (2013).

³ MINN. STAT. § 14.64 (2014); *see* *Little v. Arrowhead Reg'l Corr.*, 773 N.W.2d 344, 345-46 (Minn. Ct. App. 2009) (finding agency loses jurisdiction over a petition for reconsideration if, before the agency has issued a written decision on the petition, a timely certiorari appeal is taken and perfected pursuant to MINN. STAT. § 14.64 and the court of appeals acquires jurisdiction; however court of appeals may remand matter on which a petition for reconsideration is pending to reestablish the agency's jurisdiction over the petition for reconsideration); *Rodne v. Comm'r of Human Servs.*, 547 N.W.2d 440, 444 (Minn. Ct. App. 1996) (finding determination by Commissioner on reconsideration was final, and agency decision reviewable by court of appeals by writ of certiorari). Interlocutory review of discovery rulings by writ of prohibition is discussed in § 8.5.3 of this text.

⁴ *Fusion Coatings, Inc. v. N. States Power*, 447 N.W.2d 614, 614 (Minn. Ct. App. 1989) (finding MINN. STAT. § 216B.27 requires petition for reconsideration of Public Utilities Commission action).

⁵ *Thomas v. Ramberg*, 240 Minn. 1, 5-6, 60 N.W.2d 18, 20 (1953).

⁶ *FTC v. Standard Oil Co.*, 449 U.S. 232, 243 (1980).

⁷ *Abbott Labs. v. Gardner*, 387 U.S. 136, 150 (1967).

An agency's decision to assume jurisdiction of a case is not reviewable unless the entity seeking review can demonstrate irreparable injury flowing from the assertion of jurisdiction itself. The possibility of an adverse result or the cost of a hearing is not sufficient to demonstrate such injury.⁸

15.2.2 Exhaustion of Administrative Remedies

Available administrative remedies must be exhausted before judicial review is commenced. This issue may arise when judicial relief is sought either before the agency takes any action or after some initial decision is made but before all intra-agency proceedings have been completed.⁹

The purposes of this doctrine are to prevent premature interference with agency processes, to allow the agency to function efficiently and have a chance to correct its own errors, to afford the parties and courts the benefits of the agency's expertise, and to compile a record that is adequate for judicial review.¹⁰ It also conserves judicial time by obviating review before the agency has had a chance to grant the relief sought.¹¹

The doctrine of exhaustion is a flexible one that will be applied only when the purposes served by it outweigh the interests of the parties in obtaining immediate judicial relief.¹² A challenge to agency standards for issuing a permit may proceed, for example, without first applying for the permit and having it rejected.¹³

There are important exceptions to the exhaustion rule. Exhaustion is not required if it would be futile, that is, when nothing can be accomplished by resort to the administrative remedies.¹⁴ This may occur when the agency is biased, has predetermined the issue,¹⁵ or lacks the power to provide adequate relief.¹⁶ If irreparable harm will result from pursuit of an administrative remedy and the agency proceeding is challenged on constitutional or

⁸ *Thomas*, 240 Minn. at 7, 60 N.W.2d at 21-22.

⁹ *S. Minn. Constr. Co. v. Minn. Dep't of Transp.*, 637 N.W.2d 339, 344 (Minn. Ct. App. 2002) (requiring contractor to allow agency to complete administrative enforcement of prevailing wage statute before appeal to court, even though enforcement by county attorney was also statutorily authorized); *Cntys. of Blue Earth v. Minn. Dep't of Labor & Indus.*, 489 N.W.2d 265, 269 (Minn. Ct. App. 1992) (concluding counties were required to exhaust administrative remedies prior to bringing action to enjoin enforcement of prevailing wage rate.); *Dodge v. Cedar-Riverside Project Area Comm.*, 443 N.W.2d 844, 847 (Minn. Ct. App. 1989).

¹⁰ *Weinberger v. Salfi*, 422 U.S. 749, 765-66 (1975).

¹¹ *Minnesota v. O'Neal*, 472 F.Supp. 905, 907 (D. Minn. 1979).

¹² *Jacobson v. Bureau of Mediation Servs.*, 508 F.Supp. 715, 717-18 (D. Minn. 1981).

¹³ *N. Suburban Sanitary Sewer Dist. v. Water Pollution Control Comm'n*, 281 Minn. 524, 535, 162 N.W.2d 249, 256 (1968).

¹⁴ *Starkweather v. Blair*, 245 Minn. 371, 395, 71 N.W.2d 869, 884 (1955); *Builders Assoc. of Minn.*, 819 N.W.2d 172, 177-78 (Minn. Ct. App. 2012) (holding that exhaustion is not required when there are no adequate administrative remedies); *Uckun v. State Bd. of Med. Practice*, 733 N.W.2d 778, 785-86 (Minn. Ct. App. 2007) (holding that the board decision to temporarily suspend physician did not make permanent suspension hearing futile); *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 74 (Minn. Ct. App. 2002) (finding landowner was required to exhaust his administrative remedy and produce a record before judicial review, despite landowner's claim that the agency administrative process was futile due to adverse agency policy).

¹⁵ *See Gibson v. Berryhill*, 411 U.S. 564, 575 (1973).

¹⁶ *See McShane v. City of Faribault*, 292 N.W.2d 253, 256 (Minn. 1980).

jurisdictional grounds, exhaustion may not be required.¹⁷ Speculative damages, however, such as the “apprehension that the final outcome of the administrative proceedings will be prejudicial,” or that expense will be incurred in trying the matter before the agency,¹⁸ will not suffice. The injury must be substantial in the sense that relief will be effectively denied if review is not granted, even if the injured party should successfully pursue the administrative remedy.¹⁹ The United States Supreme Court has held that the exhaustion of administrative remedies doctrine will not defeat a declaratory judgment action in federal court where the only question presented is the constitutionality of a statute, which the agency could have no power to decide.²⁰

A party does not have a right to a jury trial on the issue of exhaustion of administrative remedies, because exhaustion is a legal issue for the court.²¹

15.2.3 Primary Jurisdiction

The doctrine of primary jurisdiction is another impediment to obtaining judicial relief without waiting for agency action. It applies when an agency and a court have concurrent jurisdiction. If the issue is one that has “been placed within the special competence of an administrative body,” the court may defer to the agency for an initial decision.²²

The purpose of the rule is to ensure uniformity of interpretation of laws administered by agencies and to take full advantage of an agency's expertise.²³ Its application is not automatic, however. The court may decline to defer to the agency if the agency's determination would not necessarily aid the court²⁴ or if the question to be decided by the court differs from that which would be decided by the agency.²⁵

Even if an agency has special expertise in a particular area, that may not preclude other non-judicial officers from exercising jurisdiction. The court of appeals held that the Commissioner of Commerce did not have exclusive jurisdiction over the insurance industry because the Attorney General also has broad common law and statutory authority to bring lawsuits to protect Minnesota citizens.²⁶

¹⁷ *State ex rel. Sheehan v. Dist. Court*, 253 Minn. 462, 466, 93 N.W.2d 1, 4 (1958); *Thomas v. Ramberg*, 240 Minn. 1, 4-5, 60 N.W.2d 18, 20 (1953).

¹⁸ *Thomas*, 240 Minn. at 5, 60 N.W.2d at 20.

¹⁹ *Id.*

²⁰ *Public Utils. Comm'n v. United States*, 355 U.S. 534, 540 (1958).

²¹ *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 73-74 (Minn. Ct. App. 2002).

²² *United States v. W. Pac. R.R.*, 352 U.S. 59, 64 (1956). *But see State of Minn. ex rel Swan Lake Wildlife Assoc. v. Nicollet Cnty. Bd. of Comm'rs*, 711 N.W.2d 522, 525 (Minn. Ct. App. 2006) (rejecting county's argument that district court lacked subject matter jurisdiction to hear claim under Minnesota Environmental Rights Act (MERA), because a claim could also be presented to the drainage authority under the administrative drainage procedures set out in statute; noting that MERA specifically stated it “shall be in addition to any administrative . . . rights and remedies now or hereafter available”).

²³ FRANK E. COOPER, *STATE ADMINISTRATIVE LAW* 574 (1965).

²⁴ *Int'l Travel Arrangers v. W. Airlines*, 623 F.2d 1255, 1259-60 (8th Cir).

²⁵ *Minn.-Iowa Television Co. v. Watonwan T.V. Improvement Ass'n*, 294 N.W.2d 297, 303 (Minn. 1980); *see Siewert v. N. State Power*, 793 N.W.2d 272, 285 (Minn. 2011) (holding MPUC does not have sole jurisdiction over all possible claims against NSP, including damages and injunctive relief from nuisance).

²⁶ *State v. Am. Family Mut. Ins. Co.*, 609 N.W.2d 1, 3 (Minn. Ct. App. 2000).

15.2.4 Ripeness

Generally an agency action is ripe for judicial review if it imposes an obligation, expects compliance, denies a right, fixes a legal relationship, attaches a sanction for noncompliance, threatens prosecution or seizure, or has other immediate impact.²⁷ Otherwise review is premature and will be denied.

The purpose of the ripeness rule 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 administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.”²⁸ The rule is most likely to be invoked when one seeks review of a rule, policy, or other legislative or discretionary decision that is not made in a judicial or quasi-judicial proceeding.

15.2.5 Standing

Even if the agency action is final, administrative remedies have been exhausted, primary jurisdiction has been exercised, and the issue is ripe for review, the party seeking review must have standing. The underlying purpose of the doctrine of standing and the various tests it has spawned is “to guarantee that there is a sufficient case or controversy between the parties so that the issue is properly and competently presented to the court.”²⁹ Consistent with the presumption in favor of reviewability of agency actions, the standing requirement is liberally construed.

Under the APA, review is available in contested cases to “any person aggrieved” by a final decision.³⁰ Thus, while a contested case is defined as one that determines the rights, duties, or privileges of “specific parties,”³¹ one need not be a party to obtain review of the agency decision.³²

For purposes of standing, an “aggrieved party” is one who “is injuriously or adversely affected by the judgment or decree when it operates on his rights of property or bears directly upon his personal interest.”³³ The word “aggrieved” refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.³⁴ This interpretation of “aggrieved” applies when seeking review of an

²⁷ See *In re Quantification of Env'tl. Costs*, 578 N.W.2d 794, 798-99 (Minn. Ct. App. 1998) (holding a matter involving PUC's setting of environmental cost values was ripe for review where there was extensive record and where utilities might suffer hardship); see also G. Joseph Vining, *Direct Judicial Review and the Doctrine of Ripeness in Administrative Law*, 69 MICH. L. REV. 1443 (1971).

²⁸ *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967).

²⁹ *Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977) (quoting *Minn. State Bd. of Health v. City of Brainerd*, 241 N.W.2d 624, 628 (Minn. 1976)) (finding operator of ambulance service had standing to challenge validity of competitor's license).

³⁰ MINN. STAT. § 14.63 (2014).

³¹ *Id.* § 14.02, subd. 3.

³² *Ramsey Cnty. v. Minn. Pub. Utils. Comm'n*, 345 N.W.2d 740, 744 (Minn. 1984).

³³ *In re Implementation of Util. Energy Conservation Improvement Programs*, 368 N.W.2d 308, 311 (Minn. Ct. App. 1985) (quoting *In re Getsug*, 290 Minn. 110, 114, 186 N.W.2d 686, 689 (1971)).

³⁴ *Getsug*, 290 Minn. at 114, 186 N.W.2d at 689. This case was decided under former provisions of the APA. The supreme court held that the agency was not an aggrieved party for purposes of appealing the

agency action, except that the aggrieved person does not have to be a party.³⁵ When an agency is acting pursuant to specific authority, a person has standing to challenge administrative procedure if they can show an interest arguably among those intended to be protected by the statute.³⁶ A mere “interest” in a problem considered in an agency proceeding does not confer standing on an individual or organization to seek review of the agency’s decision.³⁷

A liberal “injury-in-fact” test is applied in challenges to agency rule making.³⁸ To have standing in a declaratory judgment action to challenge an agency’s rule, a petitioner must have a “direct interest” in the validity of the rule that is different from the interest of the citizenry in general.³⁹ Liberal interpretations of standing are also followed in other agency contexts.⁴⁰ Because there is a presumption in favor of reviewability of agency actions,⁴¹ liberal standing determinations are likely in contested case appeals not governed by the APA.

Before the 1977 amendment to the APA, it was held that the agency was not “aggrieved” and did not have standing to appeal when it had acted in a quasi-judicial matter and its action had been reviewed by another agency or court.⁴² Thus, absent express

district court’s decision reversing the agency’s own action. *Id.* at 115, 186 N.W.2d at 689; *see also* *Mankato Aglime & Rock Co. v. City of Mankato*, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989) (“A person who is injuriously or adversely affected by a judgment when it operates on his rights of property or bears directly upon his personal interest, is ‘aggrieved’ for the purposes of an appeal.”).

³⁵ *Ramsey Cnty.*, 345 N.W.2d at 744 (allowing nonparties to appeal as aggrieved persons; accepting at face value nonparties’ assertion that they were aggrieved); *Implementation of Util. Energy Conservation*, 368 N.W.2d at 311.

³⁶ *In re Risk Level Determination of J.V.*, 741 N.W.2d 612, 614-615 (Minn. Ct. App. 2007) (finding relator not aggrieved by risk determination level where relator will suffer no harm arising out of the determination because community notification of his risk level is forbidden); *Mankato Aglime*, 434 N.W.2d at 492-93; *In re Minn. Joint Underwriting Ass’n*, 408 N.W.2d 599, 608 (Minn. Ct. App. 1987) (“Repeatedly throughout the statute, the words ‘any person or entity’ are used. This manifests an intent by the legislature to permit one class member to institute extended activation for the entire class.” (citations omitted)).

³⁷ *In re Sandy Pappas Senate Comm.*, 488 N.W.2d 795, 798 (Minn. 1992) (holding that a candidate in a primary election lacked standing to seek review of the Ethical Practices Board decision regarding opponent); *In re Application of Dakota Telecomm. Grp.*, 590 N.W.2d 644, 647-48 (Minn. Ct. App. 1999) (concluding incumbent non-exclusive cable franchise holder did not have a legally-cognizable injury and therefore lacked standing to challenge award of second cable franchise).

³⁸ *Snyder’s Drug Stores v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 32, 221 N.W.2d 162, 165 (1974).

³⁹ *Rocco Altobelli, Inc. v. Dep’t of Commerce*, 524 N.W.2d 30, 34 (Minn. Ct. App. 1994) (citing *Arens v. Vill. of Rogers*, 240 Minn. 386, 390, 61 N.W.2d 508, 512 (1953)) (holding that a hair salon lacked standing to challenge the Department of Commerce’s rule providing tax exemptions to cosmetology chair leasing shops); *see* § 24.2 (discussing standing for judicial review).

⁴⁰ *See* *Minn. Pub. Interest Research Grp. v. Minn. Dep’t of Labor & Indus.*, 311 Minn. 65, 72-73, 249 N.W.2d 437, 441 (1976).

⁴¹ *Minn. Pub. Interest Research Grp. v. Minn. Envtl. Quality Council*, 306 Minn. 370, 377, 237 N.W.2d 375, 380 (1975).

⁴² *Minn. State Bd. of Health v. Governor’s Certificate of Need Appeal Bd.*, 304 Minn. 209, 217, 230 N.W.2d 176, 181 (1975); *In re Getsug*, 290 Minn. 110, 114, 186 N.W.2d 686, 689 (1971); *Town of Eagan v. Minn. Mun. Comm’n*, 269 Minn. 239, 240-41, 130 N.W.2d 525, 526 (1964).

The above cases were decided under MINN. STAT. § 15.0426 (1976), which provided, “An aggrieved party may secure a review of any final order or judgment of the district court under section 15.0424 or section 15.0425 by appeal to the supreme court.” In 1977, the statute was amended to include an agency as

statutory authority, an agency could not seek review or modification of the decision of its own hearing examiner in those situations where the hearing examiner, rather than the agency, made the final decision.⁴³ Currently, if a statute makes an ALJ's decision binding on an agency that is a party to the proceeding, the agency may obtain review by certiorari if it is aggrieved by the decision.⁴⁴

an aggrieved party. 1977 MINN. LAWS, ch. 443, § 5, at 1221. The revised statute, MINN. STAT. § 15.0426 (1978), provided, "An aggrieved party, including an agency which issued a decision or order in a contested case, may seek review . . . by appeal to the supreme court." (Emphasis added.) Section 15.0426 was subsequently renumbered as MINN. STAT. § 14.70.

When the renumbered statute was amended in 1983 with the creation of the court of appeals, the language of the statute omitted the reference to an agency as an aggrieved party. 1983 MINN. LAWS, ch. 247, §§ 9, at 856, 219, at 964. The revised statute, MINN. STAT. § 14.63 (1984), provided, "Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68." (Emphasis added.)

It is not clear whether the intention behind the 1983 amendment was to revert to pre-1977 law or simply to reflect that it was expected that in most cases there would be only one level of judicial appeal, with further appeal to the supreme court discretionary with that court.

⁴³ Francis v. Minn. Bd. of Barber Exam'rs, 256 N.W.2d 521, 524 (Minn. 1977); Dakota Cnty. Abstract Co. v. Richardson, 312 Minn. 353, 356, 252 N.W.2d 124, 126-27 (1977); Minn. Dep't of Hwys. v. Minn. Dep't of Human Rights, 308 Minn. 158, 164-65, 241 N.W.2d 310, 314 (1976). MINN. STAT. § 363.072 was amended in 1977 to permit appeals by the commissioner of human rights from adverse decisions of the ALJ (which are final under MINN. STAT. § 363A.29, subd. 7 (2014)), thus overcoming the decisions against prior appeal attempts in *Minn. Dep't of Hwys.*, 308 Minn. at 164-65, 241 N.W.2d at 314, and *Dakota Cnty. Abstract Co.*, 312 Minn. at 356, 252 N.W.2d at 126-27. See 1977 MINN. LAWS, ch. 408, § 5, at 956.

⁴⁴ *In re Haymes*, 444 N.W.2d 257, 259 (Minn. 1989) (finding Racing Commission aggrieved by ALJ decision on attorney's fees under Equal Access to Justice Act).