15.3 PROCEDURES FOR OBTAINING REVIEW

The vast majority of agency actions are subject to review in the court of appeals pursuant to the APA. Some matters continue to have different procedures specified by statute, including review in the district court. One must therefore examine the applicable agency statute carefully instead of assuming that APA review will apply. On occasion, it may also be necessary to utilize one of the extraordinary writs or declaratory or injunctive relief.

15.3.1 Review Under the Administrative Procedure Act

Review is obtained in the court of appeals by the issuance of a writ of certiorari. Detailed procedures are contained in both the APA (Minnesota Statutes sections 14.63 to 14.68) and Minnesota Rule of Civil Appellate Procedure 115. Rule 115.01 states that the appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.[1] Section 14.64 provides that once the petition is served and filed, "the matter shall proceed in the manner provided by the rules of civil appellate procedure." Both the statutes and the rule should therefore be reviewed in detail.

A petition for the writ must be filed with the court of appeals and served on all parties within thirty days after the party receives the final decision and order of the agency.[2] The petition must be served on the agency personally or by certified mail. Proof of service must be filed with the clerk of appellate courts. A copy of the petition must be provided to the attorney general at the time it is served on the parties.[3]

The prescribed forms for the petition for writ of certiorari and for the writ are set forth in the Minnesota Rules of Civil Appellate Procedure.[4] The proposed writ must be filed with the petition.[5] Filing fees are prescribed in the rules.[6] No cost bond needs to be filed unless it is required upon motion for good cause pursuant to Rule 107.[7]

If a request for reconsideration by the agency is made within ten days after its decision and order, the thirty-day period to petition for a writ does not begin to run until service of the order finally disposing of the request for reconsideration. It is not necessary to seek reconsideration in order to file a petition for writ of certiorari.[8]

1 Rule 115.01 was amended in 1999 to conform with the APA, thereby eliminating ambiguity about whether the rule or statute controlled the timing to secure the writ. Previously, under MINN. STAT. § 14.63 (1998), the *petition* for writ of certiorari must have been *filed* with the court of appeals and *served* on the agency not more than 30 days after *receipt* of the agency's final decision and order, while rule 115 (effective through 1998) required that the *writ* be *issued* within 30 days after the date of *mailing* notice of the agency decision.

2 MINN. STAT. § 14.63 (2014). *But see supra* § 15.2, note 42 (discussing statutory amendments leading to the current iteration of MINN. STAT. § 14.63). Also, service of the petition for the writ on only the attorney for the agency is not sufficient and is a jurisdictional defect, since the agency itself must be served. State v. Scientific Computers, 384 N.W.2d 560, 561 (Minn. Ct. App. 1986).

3 MINN. STAT. § 14.64 (2014); *In re* Risk Level Det. of J.M.T., 759 N.W.2d 406, 408 (Minn. 2009) (stating that first-class mail is ineffective service under MAPA).

4 MINN. R. CIV. APP. P. 115.03, apps. 115A-B.

5 *Id.* 115.02.

6 *Id.* 115.03, subd. 3.

7 *Id.*, subd. 2.

8 MINN. STAT. § 14.64 (2014).

When the petition is properly filed, the petitioner is entitled as a matter of right to the issuance of the writ by the clerk of appellate courts.[9] Once the writ is issued, copies must be served personally or by certified mail on all parties to the agency proceeding.[10] On request of the petitioner, the agency must certify the names and addresses of all parties as disclosed by the record, and that certification is conclusive.[11] Proof of service on the agency must be filed with the clerk of appellate courts within five days of service.[12] A copy of the writ must also be provided to the attorney general.[13]

Filing of the writ does not stay enforcement of the agency decision. It may be stayed, however, by the agency or by the court of appeals.[14] The request for a stay on a supersedeas bond must be first made to the agency, but the agency's decision is reviewable by the court of appeals.[15]

The agency must transmit to the court of appeals the original or a certified copy of its entire record within thirty days after service of the writ or at such later time as the court permits.[16] A stipulation by all parties to the review may serve to shorten the record, and any party unreasonably refusing to stipulate to limit the record may be taxed additional costs by the court.[17] Subsequent corrections or additions to the record may be required or permitted by the court.[18] The agency and all parties to the agency proceeding may participate in the review proceedings.[19]

Review by the court of appeals is confined to the record.[20] The matter may be referred by the court back to the agency for the taking of additional evidence if application is made, before the date set for hearing by the court, showing the need to present additional evidence. It must be shown to the satisfaction of the court that the additional evidence is material and that there are good reasons that it was not presented in the agency proceeding. After hearing the additional evidence, the agency may modify its findings and decision. It must file with the court of appeals the additional evidence and any modified findings or decision, which become part of the record for review.[21]

If it is alleged that there are irregularities in procedure that are not shown in the record, the court of appeals may transfer the case to the district court to take evidence and determine the alleged irregularities.[22] The transfer is to the district court for the county in

9 *Id.* § 606.06.

10 *Id.* § 14.64.

11 *Id.*

12 MINN. R. CIV. APP. P. 115.03, subd. 4.

13 *Id.*

14 MINN. STAT. § 14.65 (2014); *see* DRJ, Inc. v. City of St. Paul, 741 N.W.2d 141, 145-46 (Minn. Ct. App. 2007) (holding city council's refusal to stay a liquor license revocation pending appeal does not constitute an abuse of discretion when it is supported by findings that reflect bar's past failure to comply with license conditions and a balancing of the potential harm to bar owner against potential harm to public).

15 MINN. R. CIV. APP. P. 115.03, subd. 2(b).

16 MINN. STAT. § 14.66 (2014).

17 *Id.*

18 *Id.*

19 *Id.* § 14.64.

20 *Id.* § 14.68.

21 *Id.* § 14.67.

22 *Id.* § 14.68. *But see In re* Dakota Cnty. Mixed Mun. Solid Waste Incinerator, 483 N.W.2d 105, 106 (Minn. Ct. App. 1992) (finding transfer to district court for testimony and evidence on alleged procedural

which the agency has its principal office or the county in which the contested case hearing was held. The district court determination on procedural questions may be appealed to the court of appeals as in other civil cases.[23]

Costs and disbursements may be taxed by the prevailing party, but not for or against the agency whose decision is reviewed. The court may award double costs to the prevailing party if the writ was brought for the purpose of delay or vexation.[24] If the writ is issued improperly or not served as required, it may be discharged on the filing of an appropriate motion.[25]

The first review of an agency decision that is commenced must be decided before any subsequent appeals from the same decision involving the same subject matter may be heard.[26]

The court of appeals requires strict compliance with the filing deadlines and jurisdictional requirements. Jurisdiction of the court of appeals is exclusive, and a petition erroneously filed in the district court may not subsequently be filed in the court of appeals if the thirty-day filing deadline has passed.[27]

15.3.2 Non-APA Statutory Review Procedures

15.3.2(1) In the Court of Appeals

There are some situations in which review lies in the court of appeals without reference to the APA. In most of these cases, review is by certiorari,[28] with procedures governed by Minnesota Statutes chapter 606 and rule 115 of the Minnesota Rules of Civil Appellate Procedure.[29] Other statutes prescribe review by the court of appeals pursuant to a "notice of appeal" to be disposed of as in other civil cases,[30] a "petition,"[31] or simply "as in other civil cases."[32]

irregularities inappropriate where permit applicants failed to show that information became known only after agency proceedings).

23 MINN. STAT. § 14.68 (2014).

24 MINN. R. CIV. APP. P. 115.05.

25 *Id.* 115.06.

26 MINN. STAT. § 14.65 (2014).

27 Davis v. Minn. Dep't of Human Rights, 352 N.W.2d 852, 853-54 (Minn. Ct. App. 1984). Similarly, if a party asks an agency to reconsider its decision twice (when the second request is not authorized in statute or rule) and then files a certiorari appeal after the appeal period from the agency's final decision has expired, the appeals will be dismissed as untimely. The filing of the second request for reconsideration, and the agency's second denial of reconsideration, does not extend the appeal period from the original (and final) agency decision. Hickman v. Comm'r of Human Servs., 682 N.W.2d 697, 700-01 (Minn. Ct. App. 2004).

28 MINN. STAT. §§ 268.105, subd. 7 (appeals from unemployment insurance determinations), 480A.06, subd. 3 (court of appeals jurisdiction) (2014); Zahler v. Dep't of Human Servs., 624 N.W.2d 297, 300-01 (Minn. Ct. App. 2001) (reviewing maltreatment decision by the Commissioner, governed by MINN. STAT. § 256.045, under MINN. STAT. § 14.69 of the APA; finding the hearing, before a human services referee, was not an APA hearing).

29 Rodne v. Comm'r of Human Servs., 547 N.W.2d 440, 444 (Minn. Ct. App. 1996) (finding commissioner's determination on reconsideration of license disqualification was final decision reviewable by court of appeals by writ of certiorari).

30 MINN. STAT. § 270C.925 (2014) (commissioner of revenue).

31 *Id.* § 273.16 (commissioner of revenue).

32 *Id.* §§ 253B.19, subd. 5, .23, subd. 7 (proceedings under Commitment Act).

15.3.2(2) In the District Court

There are still several instances in which review is obtained in the district court rather than the court of appeals. District court review has been retained in those instances in which the existing statute provides for a de novo review.[33] This has been based on the rationale that appellate type review of agency actions should lie in the court of appeals, while de novo proceedings should remain in the district court where fact-finding functions are traditionally performed.[34] The Minnesota Supreme Court, however, has viewed with disfavor statutes which specify trials de novo and which attempt to confer original jurisdiction on trial courts over policy matters which are the responsibility of the legislative and executive branches.[35] Constitutional principles of separate governmental powers require that the judiciary refrain from de novo review of administrative decisions.[36] Through certiorari, constitutional guarantees are protected when a reviewing court exercises only limited jurisdiction over the decisions of administrative agencies.[37]

There are nevertheless situations in which review is obtained on the record in the district court pursuant to specific statutes that were not changed to require review in the court of appeals.[38] Some statutes prescribe district court review without reference to the manner or scope of review.[39]

The Minnesota court of appeals has held that evidence not contained in the administrative record and submitted for the first time to the district court on review may be considered for limited purposes only.[40] The court may consider evidence outside the

[33] *Id.* §§ 3.737, subd. 4(c) (commissioner of agriculture, compensation for destroyed livestock), 49.18 (commissioner of commerce, assessments against stockholders), 116.072 (commissioner of pollution control agency, administrative penalties), 116B.10 (commissioner of pollution control agency, environmental rights civil actions), 53C.03 (commissioner of transportation, motor vehicle sales finance licenses), 246.55 (commissioner of human services, patient care charges in state hospitals).

[34] Samuel L. Hanson, *The Court of Appeals and Judicial Review of Agency Action*, 10 WM. MITCHELL L. REV. 645, 658-59 (1984); *see* Arrowhead Concrete Works, Inc. v. Williams, 550 N.W.2d 883, 886-87 (Minn. Ct. App. 1996) (holding that the district court erred when it applied deferential arbitrary and capricious standard of review to Commissioner's decision instead of de novo review as required by MINN. STAT. § 116.072, subd. 7(b)).

[35] Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 824 (Minn. 1977); *see also* Dokmo v. Indep. Sch. Dist. No. 11, 459 N.W.2d 671, 674 (Minn. 1990); Zuehlke v. Indep. Sch. Dist. No. 316, 538 N.W.2d 721, 725 (Minn. Ct. App. 1995).

[36] *Dokmo*, 459 N.W.2d at 674 (reiterating that the only method of appealing school board decisions on teacher related matters is by writ of certiorari); *see, e.g.*, Tischer v. Hous. & Redev. Auth. of Cambridge, 693 N.W.2d 426, 429-31 (Minn. 2005) (holding that the sole remedy for a claim of wrongful discharge of a public employee is to the court of appeals by certiorari; noting that *de novo* review in district court would not allow appropriate deference to the administrative decision).

[37] *Dokmo*, 459 N.W.2d at 674; *see also* Dietz v. Dodge Cnty., 487 N.W.2d 237, 239 (Minn. 1992); Mowry v. Young, 565 N.W.2d 717, 720 (Minn. Ct. App. 1997); *Zuehlke*, 538 N.W.2d at 725.

[38] MINN. STAT. § 44.09, subd. 3 (2014) (municipal personnel boards, suspension or discharge of employees).

[39] *Id.* § 237.20 (public utilities commission); *see* City of Chaska v. Chaska Twp., 271 Minn. 139, 141, 135 N.W.2d 195, 197 (Minn. 1965).

[40] White v. Minn. Dep't of Natural Res., 567 N.W.2d 724, 734-35 (Minn. Ct. App. 1997) (finding evidence submitted outside the administrative record did not establish a material question of fact regarding whether the DNR clearly failed in its responsibility to prepare an environmental assessment worksheet); *see also* Nat'l Audubon Soc. v. Minn. Pollution Control Agency, 569 N.W.2d 211, 216 (Minn. Ct. App. 1997).

administrative record when (1) the agency's failure to explain its action frustrates judicial review; (2) additional evidence is necessary to explain technical terms or complex subject matter involved in the agency action; (3) the agency failed to consider information relevant to making its decision; or (4) plaintiffs make a showing that the agency acted in bad faith.[41] If the evidence submitted outside the administrative record demonstrates that the agency's effort was clearly inadequate or that the agency failed to set forth widely shared scientific views, the court's proper function is to remand to the agency for correction of the agency's errors.[42]

15.3.3 Extraordinary Writs

The writs of certiorari, mandamus, prohibition, and quo warranto are governed by statutes, by the rules of civil procedure, and by the rules of civil appellate procedure.[43] The writ most likely to be used for purposes of reviewing an agency action already taken is the writ of certiorari.

15.3.3(1) Certiorari

Review under the APA, as discussed in § 15.3.1, is accomplished by writ of certiorari to the court of appeals, and other statutes prescribe certiorari review by the court of appeals for particular cases. Certiorari is also the usual method for reviewing the action of an agency that has acted in a judicial or quasi-judicial capacity when no other avenue of review is prescribed.[44] However, the Minnesota Supreme Court decided that the Metropolitan

41 *White*, 567 N.W.2d at 735.

42 *Id.* (citing Reserve Mining Co. v. Minn. Pollution Control Agency, 267 N.W.2d 720, 723 (Minn. 1978)).

43 Extraordinary writs are discussed exhaustively in Stefan A. Riesenfeld, John A. Bauman & Richard C. Maxwell, *Judicial Control of Administrative Actions by Means of the Extraordinary Remedies in Minnesota*, 33 MIN. L. REV. 569 (1949), 36 MINN. L. REV. 435 (1952), and 37 MINN. L. REV. 1 (1952); and in Duncan H. Baird, *Judicial Review of Administrative Procedures in Minnesota*, 46 MINN. L. REV. 451 (1962).

44 *See* Willis v. Cnty. of Sherburne, 555 N.W.2d 277, 282-83 (Minn. 1996) (finding, absent statutory authority for different process, county employee may contest discharge only by certiorari; but finding defamation and disability discrimination claims not limited to review by certiorari); City of Shorewood v. Metro. Waste Control Comm'n, 533 N.W.2d 402, 404 (Minn. 1995) (holding writ of certiorari exclusive mechanism for obtaining judicial review of methodology used to calculate sewage disposal costs); Dietz v. Dodge Cnty., 487 N.W.2d 237, 239 (Minn. 1992) (concluding review by certiorari appropriate in wrongful discharge of county employee); *In re* Haymes, 444 N.W.2d 257, 259 (Minn. 1989) (concluding Racing Commission, aggrieved by binding decision of ALJ, could obtain review by certiorari; but dismissing, finding petition for *discretionary* review was unauthorized); W. Area Bus. & Civic Club v. Duluth Sch. Bd., 324 N.W.2d 361, 364 (Minn. 1982); Mahnerd v. Canfield, 297 Minn. 148, 152, 211 N.W.2d 177, 179 (1973); Univ. of Minn. v. Woolley, 659 N.W.2d 300, 303-04 (Minn. Ct. App. 2003) (determining discharged University employee lost right to review by certiorari by moving from a step 3 panel decision (the final administrative decision) to a step 4 arbitration); State v. Tokheim, 611 N.W.2d 375, 378 (Minn. Ct. App. 2000) (holding decision of Commissioner of Public Safety to not indemnify or provide a legal defense to two state troopers in a civil suit was a quasi-judicial decision appealable only by writ of certiorari; finding district court lacked jurisdiction to hear a declaratory judgment action challenging the Commissioner's decision); Lund v. MNSCU, 615 N.W.2d 420, 423-24 (Minn. Ct. App. 2000) (holding district court lacked authority to issue a writ of mandamus to a teacher denied a license by MNSCU since the decision was quasi-judicial in nature and therefore reviewable only by certiorari to the court of appeals); Mowry v.

Council's approval of a bridge project was not a quasi-judicial decision and was therefore not reviewable by writ of certiorari. The Court summarized the three indicia of quasi-judicial actions as follows: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to a prescribed standard; and (3) a binding decision regarding the disputed claim.[45] Certiorari is not available to review legislative or purely ministerial acts of administrative agencies or officers.[46] And it is not a choice that is available when another method of appeal is provided[47] unless the statute makes optional the procedure to be followed in obtaining review.[48]

Review by certiorari is limited to the record of the proceeding before the agency.[49] Unless otherwise prescribed by statute or appellate rule, the writ must be issued and served within sixty days after receipt of notice of the action to be reviewed.[50] "Due notice" under Minnesota Statutes section 606.01 requires, at a minimum, written notice that is reasonably calculated to reach the person affected.[51] The prevailing party on a writ of certiorari shall be

Young, 565 N.W.2d 717, 720 (Minn. Ct. App. 1997) (finding writ of certiorari the exclusive method to obtain judicial review of police reserve member's termination); Naegele Outdoor Adver., Inc. v. Minneapolis Cmty. Dev. Agency, 551 N.W.2d 235, 236-37 (Minn. Ct. App. 1996) (finding, in absence of "bright line" authority for review of agency's quasi-judicial decision in district court, party's sole remedy is to appeal by writ of certiorari); Micius v. St. Paul City Council, 524 N.W.2d 521, 522-23 (Minn. Ct. App. 1994) (finding writ of certiorari only available method to obtain judicial review of city council's liquor license denial); Bahr v. City of Litchfield, 404 N.W.2d 381, 384 (Minn. Ct. App. 1987) (reviewing certiorari action of city police civil service commission; holding while the writ is discretionary, it should issue when the proceedings to be reviewed are strictly legal in nature and when no other avenue of appeal is available).

45 Minn. Ctr. for Envtl. Advocacy v. Metro. Council, 587 N.W.2d 838, 842 (Minn. 1999); *see also* Anderson v. Cnty. of Lyon, 784 N.W.2d 77, 81 (Minn. Ct. App. 2010) (finding County Board's decision was not quasi-judicial); Cnty. of Martin v. Minn. Cntys. Ins. Trust, 658 N.W.2d 598, 602 (Minn. Ct. App. 2003) (finding joint powers board formed to provide self-insurance to counties was not an executive body whose decisions are subject to review by certiorari).

46 *Mahnerd*, 297 Minn. at 152, 211 N.W.2d at 179; Minn. Chapter of Associated Builders & Contractors, Inc. v. Bd. of Educ. of Minnetonka Indep. Sch. Dist. No. 276, 567 N.W.2d 761, 762-63 (Minn. Ct. App. 1997) (finding certiorari not available to review school board's decision to require construction contractors to be bound by project labor agreement where decision was not quasi-judicial); Press v. City of Minneapolis, 553 N.W.2d 80, 84-85 (Minn. Ct. App. 1996) (finding district court had jurisdiction to consider landowners' challenges to city inspection department's work orders and interpretation of ordinance); *see* Handicraft Block, Ltd. v. City of Minneapolis, 611 N.W.2d 16, 20 (Minn. 2000) (finding Heritage Preservation Commission decision was not legislative but was quasi-judicial and therefore reviewable by writ of certiorari); *cf.* Dead Lake Ass'n, Inc. v. Otter Tail Cnty., 695 N.W.2d 129, 134-35 (Minn. 2005) (finding court lacked jurisdiction to hear attack on validity of zoning ordinance by writ of certiorari because zoning decisions are legislative in nature and therefore must first be litigated in district court by a declaratory judgment action).

47 Waters v. Putnam, 289 Minn. 165, 170, 183 N.W.2d 545, 549 (1971).

48 Bryan v. Cmty. State Bank of Bloomington, 285 Minn. 226, 230-31, 172 N.W.2d 771, 774 (1969).

49 *W. Area Bus. & Civic Club*, 324 N.W.2d at 365; *see also* Dokmo v. Indep. Sch. Dist. No. 11, 459 N.W.2d 671, 675-76 (Minn. 1990).

50 MINN. STAT. §§ 606.01-.02 (2014).

51 Bahr v. City of Litchfield, 420 N.W.2d 604, 607 (Minn. 1988) (finding posted notice sufficient when civil service candidates were told notice would be posted and the candidates actually read the posted notice); Sorenson v. Life Style, Inc., 674 N.W.2d 439, 441 (Minn. Ct. App. 2004) (finding, despite employer argument that service of a copy of writ petition on employer's attorney was ineffective because unemployment appeal statute required service on an "involved party," that service of the writ petition was

entitled to an award of costs against the adverse party, and the court of appeals may award double costs if the writ is brought for the purpose of "delay or vexation."[52] The writ may be dismissed, with costs and disbursements awarded, if it is issued contrary to the provisions of chapter 606 or not served within sixty days.[53] Writs of certiorari may be issued by the district courts,[54] the court of appeals,[55] and the supreme court.[56] The writ is rarely issued by the supreme court, except that certiorari review in the supreme court is prescribed for decisions of the workers' compensation court of appeals[57] and the tax court.[58] Rules 115 and 116 of the rules of civil appellate procedure govern certiorari proceedings in the court of appeals and supreme court, respectively, unless different procedures are prescribed by statute.

The question remains whether the district courts retain any certiorari jurisdiction. Historically, this writ was usually issued in the district courts rather than the supreme court, because the former were the courts of general jurisdiction.[59] This is no longer the case. Since the creation of the court of appeals, most statutes providing for on-the-record review of *state* agency actions have been amended to require certiorari review in the court of appeals. Moreover, the APA is now a catchall statute that requires court of appeals review of state agency actions for which no other statutory review procedure is prescribed.

In regard to *local* agencies, there was initially no legislative effort to direct review of their decisions to the court of appeals.In 1985, Minnesota Statutes section 480A.06, subdivision 3, was amended to provide for certiorari review in the court of appeals of decisions of all agencies and officials. Even before this amendment, however, the court of appeals asserted jurisdiction over local agency actions and deemed its jurisdiction to be exclusive.[60] Minnesota Statutes section 606.01 provides a 60-day deadline for issuance of the writ.[61]

15.3.3(2) Mandamus

The writ of mandamus may be used "to compel the performance of an act which the law specially enjoins as a duty."[62] It may require the agency "to exercise its judgment or

governed by MINN. R. CIV. APP. P. 125.02, which required service upon attorney where party was represented by counsel).

52 MINN. STAT. § 606.04 (2014).

53 *Id.* § 606.05.

54 *Id.* § 484.03.

55 *Id.* § 480A.06, subd. 3.

56 *Id.* § 480.04.

57 *Id.* § 176.471 (special provisions for this certiorari proceeding).

58 *Id.* § 271.10 (special provisions for this certiorari proceeding).

59 *See* Tierney v. Dodge, 9 Minn. 166, 166 (1864).

60 *See, e.g.*, Grinolds v. Indep. Sch. Dist. No. 597, 366 N.W.2d 667, 669 (Minn. Ct. App. 1985). *But see* Blanding v. Sports & Health Club, 373 N.W.2d 784, 793-96 (Minn. Ct. App. 1985) (Foley, J., dissenting) (arguing against asserting exclusive jurisdiction over review of local agency actions). Certiorari review of a local agency action occurred in the district court, however. *See* Bahr v. City of Litchfield, 404 N.W.2d 381, 383 (Minn. Ct. App. 1987), *rev'd*, 420 N.W.2d 604 (Minn. 1988); *see also* Lund v. MNSCU, 615 N.W.2d 420, 424 (Minn. Ct. App. 2000).

61 MINN. R. CIV. APP. P. 115.01 was amended in 1999, deleting a 30-day deadline so that the statute now clearly controls. *See supra* note 1 (discussing the 1999 amendment).

62 MINN. STAT. § 586.01 (2014).

proceed to the discharge of any of its functions," but it does not provide a means of controlling discretion or reviewing an action once it is taken.[63] The writ will not issue when there is an adequate remedy at law,[64] and the courts are hostile to its use as a "judicial short-cut."[65]

The district courts have exclusive jurisdiction over writs of mandamus except when the writ is to be directed to a district court or a judge thereof, or to the court of appeals or a judge thereof, in which case the writ must issue from the court of appeals or supreme court respectively.[66]

Statutory provisions governing the writ of mandamus are in Minnesota Statutes chapter 586. These provisions control over conflicting provisions in the rules of civil procedure.[67] Additional provisions governing mandamus from the court of appeals and supreme court are in rules 120 and 121 of the rules of civil appellate procedure.

15.3.3(3) Prohibition

The writ of prohibition may be used to restrain an agency from acting on a matter that is beyond its authority or in which it lacks jurisdiction. It is not a means of reviewing an agency action after it is taken.[68] The writ is available when the agency is taking or about to take judicial or quasi-judicial action, the agency is or will be exceeding its authority or jurisdiction, the petitioner has no other adequate remedy, and the petitioner will be irreparably injured.[69]

This writ is not among those listed in Minnesota Statutes section 484.03 as being within the jurisdiction of the district courts. It is within the jurisdiction of the supreme court.[70] Although it is not identified explicitly as being within the jurisdiction of the court of appeals,[71] appellate rule 120 contemplates the issuance of such writs by the court of appeals, at least with respect to actions of lower courts. It is consistent with the policies behind the creation of the court of appeals and the exercise by the court of appeals of its certiorari jurisdiction[72]

63 *Id.*; Pelican Grp. of Lakes Improvement Dist. v. MDNR, 589 N.W.2d 517, 519 (Minn. Ct. App. 1999) (denying writ of mandamus because DNR was not under a clear duty to require a permit for construction of a culvert designed to increase drainage from a lake); Northwoods Envtl. Inst. v. Minn. Pollution Control Agency, 370 N.W.2d 449, 451 (Minn. Ct. App. 1985); Friends of Animals & Their Env't v. Nichols, 350 N.W.2d 489, 491 (Minn. Ct. App. 1984) ("Mandamus will only issue to compel the performance of an act which the law specifically requires to be performed as a duty. It is not available to review an agency's exercise of discretion. It will, however, issue to set discretion in motion.").

64 MINN. STAT. § 586.02 (2014).

65 Waters v. Putnam, 289 Minn. 165, 172, 183 N.W.2d 545, 550 (1971).

66 MINN. STAT. § 586.11 (2014). The court of appeals has considered on its merits, however, a petition filed directly with it to compel action by a state agency. *Northwoods Envtl. Inst.*, 370 N.W.2d at 451.

67 MINN. R. CIV. P. 81.01(a).

68 *In re* Giblin, 304 Minn. 510, 510, 232 N.W.2d 214, 215 (Minn. 1975).

69 *Id.*; Richardson v. Sch. Bd. of Indep. Sch. Dist. No. 271, 297 Minn. 91, 93, 210 N.W.2d 911, 913 (1973); State *ex rel.* Adent v. Indus. Comm'n, 234 Minn. 567, 569, 48 N.W.2d 42, 43-44 (1951).

70 MINN. STAT. § 480.04 (2014).

71 *See id.* § 480A.06.

72 *See supra* § 15.3.3(1) in this chapter (discussing certiorari under the APA).

to anticipate that the court of appeals would issue writs of prohibition to government agencies and officials.[73]

15.3.3(4) Quo Warranto

This writ is designed "to correct the usurpation, misuser, or nonuser of a public office." It is intended to challenge an ongoing and unauthorized exercise of official or corporate power.[74] Although it is generally not available to review an agency action, it has been used to review an annexation proceeding.[75] It is not available if there is an adequate legal or equitable remedy.[76]

This writ is among those within the express jurisdiction of both the district courts[77] and the supreme court.[78] No specific mention is made of it in the statute defining the jurisdiction of the court of appeals.[79] Despite the statutory provisions, however, the writ has been abolished for purposes of the rules of civil procedure,[80] and there is no reference to it in the rules of civil appellate procedure.

15.3.4 Injunctive and Declaratory Relief

Injunctive relief is not ordinarily available to review actions already taken by administrative agencies. The right to review of the merits of an agency action under the APA or other certiorari or statutory proceedings is normally, though not always,[81] an adequate remedy that would preclude injunctive proceedings. If an injunction is sought before the completion of action by the agency, one will encounter the doctrines of finality and exhaustion of administrative remedies.[82]

[73] But the 1998 amendments to MINN. R. CIV. APP. P. 120 do not explicitly recognize its application to agencies.

[74] State *ex rel.* Danielson v. Vill. of Mound, 234 Minn. 531, 542, 48 N.W.2d 855, 863 (1951); State *ex rel* Sviggum v. Hanson, 732 N.W.2d 312, 320 (Minn. Ct. App. 2007) (concluding quo warranto proceedings are not available to test the constitutionality of a completed disbursement of public funds).

[75] *Danielson*, 234 Minn. at 542, 48 N.W.2d at 863.

[76] *Id.* at 539, 48 N.W.2d at 861.

[77] MINN. STAT. § 484.03 (2014).

[78] *Id.* § 480.04. Quo warranto proceedings were brought in the supreme court in *Latola v. Turk*, 310 Minn. 395, 396, 247 N.W.2d 598, 598 (1976), *State ex rel. Palmer v. Perpich*, 289 Minn. 149, 149, 182 N.W.2d 182, 182 (1971), and *Danielson*, 234 Minn. at 534, 48 N.W.2d at 858.

[79] *See* MINN. STAT. § 480A.06 (2014).

[80] MINN. R. CIV. P. 81.01(b) was abrogated by 1997 amendment. As the 1996 advisory committee stated, the rule was abrogated

> to reflect the decision of the Minnesota Supreme Court in *Rice v. Connolly*, 488 N.W.2d 241, 244 (Minn. 1992), in which the court held: "[W]e have determined that quo warranto jurisdiction as it once existed in the district court must be reinstated and that petitions for the writ of quo warranto and information in the nature of quo warranto shall be filed in the first instance in the district court." . . . The continued existence of a rule purporting to recognize a procedural remedy now expressly held to exist *can only prove misleading or confusing in future litigation*. Abrogation of the rule is appropriate to obviate any lack of clarity.

MINN. R. CIV. P. 81.01 advisory comm. cmt. – 1996 amend. (emphasis added).

[81] *See* Miller v. City of St. Paul, 363 N.W.2d 806, 810 (Minn. Ct. App. 1985).

[82] Thomas v. Ramberg, 240 Minn. 1, 6, 60 N.W.2d 18, 21 (1953).

A declaratory judgment is a broad and flexible remedy, not encumbered, for example, with the requirements that there be no other adequate remedy or that there be irreparable injury. The only substantial prerequisite is that there be a justiciable controversy. When there is an established statutory avenue of review for an agency action already taken, however, that avenue is exclusive, and declaratory judgment is not appropriate.[83] Declaratory judgment is useful, and perhaps even the prescribed procedure, when challenging agency actions other than those categorized as contested cases.[84]

All injunctive and declaratory judgment proceedings, except for judicial review of rules, must originate in the district court.[85]

[83] Town of Stillwater v. Minn. Mun. Comm'n, 300 Minn. 211, 218, 219 N.W.2d 82, 87 (1974).

[84] *See, e.g.*, ch. 24 (discussing Judicial Review of Rules); *see also* AAA Striping Serv. Co. v. MNDOT, 681 N.W.2d 706, 714-15 (Minn. 2004).

[85] *E.g.*, MINN. STAT. §§ 103G.2243, subd. 3 (review of wetland protection plans), 103D.537 (appeal of watershed district permit decisions) (2014)**;** *see also* Bd. of Chiropractic Exam'rs v. Cich, 788 N.W.2d 515, 520 (Minn. Ct. Ap. 2010) (holding that the district court lacked authority to grant injunction in excess of statute).