24.7 DISCOVERY PROCEDURES

A rare instance may occur where the petitioner, seeking to establish procedural irregularities in the agency's rulemaking process, needs to develop evidence outside the record. The Minnesota Supreme Court has, in a contested case setting, authorized a very limited form of discovery.[1] Conceivably, a similar use of discovery might be applicable in a preenforcement challenge proceeding, although this is unclear. At least in a contested case, it appears that limited written interrogatories may be directed to agency officials, but agency officials cannot be deposed orally, nor may their mental processes be explored.[2]

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[1] *In re* Lecy, 304 N.W.2d 894, 899-900 (Minn. 1981) (allowing for some discovery but expressing "deep concern over the inordinate length of time this matter has been in the court system . . . occasioned by an inappropriate application of the rule [allowing discovery]"); Mampel v. Eastern Heights State Bank, 254 N.W.2d 375, 378 (Minn. 1977) (permitting limited discovery "of the mental processes by which an administrative decision is made," including inquiry into procedural matters and agency adherence to statutory rulemaking requirements); *see also* United States v. Morgan, 313 U.S. 409, 421-22 (1941) (finding inappropriate the extensive discovery and questioning of the Secretary of Agriculture in dispute over validity of the Secretary's order).

[2] *Lecy*, 304 N.W.2d at 900 (setting forth precise questions that may be submitted to agency official in written interrogatory form).