

3.7 COMBINATION OF INVESTIGATORY AND ADJUDICATIVE FUNCTIONS

After investigating an allegation of misconduct, an agency is not precluded from sitting in an adjudicative capacity to ultimately determine the truth of the allegations.¹ The combination of investigative and adjudicative functions does not necessarily create a risk of bias in an administrative agency sufficient to constitute a denial of due process. Unless a showing of actual bias has been made, administrative officials are presumed to be capable of deciding a contested case based on information presented at the hearing alone.² The Minnesota court of appeals has cautioned that participation, no matter how minimal, in the decision-making process of an agency by an attorney who was the agency's advocate in a contested case hearing creates an appearance of bias and is to be avoided.³ It is therefore common for one assistant attorney general to represent the agency staff in a licensing case while another will advise the Board or Commissioner in making the final decision.⁴

¹ *Withrow v. Larkin*, 421 U.S. 35, 58 (1975).

² *Id.* at 57-58; *see also, In re Kennedy v. L.D.*, 430 N.W.2d 833, 835 (Minn. 1988)

³ *Richview Nursing Home v. Minn. Dep't of Pub. Welfare*, 354 N.W.2d 445, 460 (Minn. Ct. App. 1984); *Schmidt v. Indep. Sch. Dist. No. 1*, 349 N.W.2d 563, 567-68 (Minn. Ct. App. 1984) (holding that an agency must keep its advocacy and decision-making functions separate in a contested case proceeding).

⁴ *See In re Sleepy Eye Care Ctr. v. Comm'r of Human Services*, 572 N.W.2d 766, 771-72 (Minn. Ct. App. 1998) (demonstrating that, absent any evidence of improper conduct on the part of the assistant attorney general or any actual bias on the part of the commissioner, the court declined to change the agency review process).