# 6.1 PARTY STATUS

The rules governing contested case proceedings promulgated by the Minnesota Office of Administrative Hearings (OAH) define "party" as:

> each person named as a party by the agency in the notice of and order for hearing, or persons granted permission to intervene pursuant to part 1400.6200. The term "party" shall include the agency except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.[1]

The fact that a person receives a notice of hearing does not elevate that recipient to party status.[2] That is because the notice of a contested case hearing may be sent to persons who are not indispensable to the proceeding and whose interests in the case are unknown. Parties must be either named by the agency, allowed to intervene, or added by consolidation. The parties named by the agency are typically identified in the caption of the notice of and order for hearing or other authorized pleading. The contested case rules do not require that parties be identified in the caption, but rules of the agency commencing the contested case may have such a requirement.[3] Additional parties may be added or dropped by an agency's filing of an amended pleading.[4]

An agency is not a party to a contested case if it participates in a neutral or quasi-judicial capacity only. The Minnesota Supreme Court has enumerated the factors to consider when determining whether an agency's actions are quasi-judicial, rather than

[1] MINN. R. 1400.5100, subp. 7 (2013). This definition is consistent with definitions generally used in administrative law. *E.g.*, First Nat'l Bank v. Okla. Sav. & Loan Bd., 569 P.2d 993, 996 (Okla. 1977) ("A person is a party to an administrative proceeding either by being named as such, becoming a party by applicable statutory law, or if his interest therein is of constitutional proportions."); Commonwealth Ins. Dep't v. Pa. Coal Mining Ass'n, 25 Pa. Commw. 3, 358 A.2d 745, 748 (1976) (defining *party* as "one who appears in a proceeding before an administrative agency who has a direct interest in the subject matter"), *rev'd on other grounds*, 471 Pa. 437, 370 A.2d 685 (1977); REVISED MODEL STATE ADMIN. PROCEDURE ACT, art. 1, § 102(24) (2010) (defining *party* as "the agency taking action, the person against which the action is directed, any other person named as a party, or any person permitted to intervene and that does intervene").

[2] This is consistent with the usual holding. *See, e.g.*, Save the Bay v. Dep't of Pub. Utils., 366 Mass. 667, 674, 322 N.E.2d 742, 749 (1975). While receiving notice of a hearing may not be sufficient to grant party status, the Minnesota Court of Appeals has held that where the statutes or regulations defines "party" to include "a member of the public who requests a copy of the decision," such members of the public have party status and may participate in an appeal of the agency action. Hentges v. Minn. Bd. Water & Soil Res., 638 N.W.2d 441, 447 (Minn. Ct. App. 2002); *see also In re* Speed Limit for the Union Pac. R.R., 610 N.W.2d 677, 682 (Minn. Ct. App. 2000) (finding denial of a railroad's petition by the Department of Transportation to be a quasi-judicial action reviewable on a writ of certiorari, and as such the railroad company is an "aggrieved party").

[3] *See, e.g.*, MINN. R. 5215.1500, subp. 2 (2013) (requiring parties to an occupational safety and health hearing to be designated in the caption). In the absence of a specific rule, agencies still have a duty to clearly identify the parties to a contested case. Wis.'s Envtl. Decade v. Pub. Serv. Comm'n, 69 Wis. 2d 1, 16-17, 230 N.W.2d 243, 251 (1975). For the purposes of serving a writ of certiorari under MINN. STAT. § 14.64 (2014), agencies must certify to the petitioner the names and addresses of all parties as disclosed by its records.

[4] This is consistent with typical practice permitting agencies to drop or add parties at their convenience. 1 FRANK E. COOPER, STATE ADMINISTRATIVE LAW 323 (1965). Amended pleadings are permitted at any time before the close of the hearing under MINN. R. 1400.5600, subp. 5 (2013) ("Amendments sought after the start of the hearing must be approved by the judge.").

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administrative.[5] These decisions generally hold that an agency acts in a quasi-judicial capacity when it hears a case pending between adverse parties, applies the law to the facts and renders a judgment determining the rights of the parties,[6] or when the agency action involves the exercise of discretion and requires notice and hearing.[7] Under these holdings, an agency acts in a quasi-judicial capacity in most, if not all, contested cases. Although an agency is not a party if its participation is "only" neutral or quasi-judicial, even when acting in an administrative capacity, the agency will attain party status when acting for the public interest.[8] State agencies that represent the interest of the public are not considered neutral, and thus become parties to their contested case proceedings. To determine whether an agency acted in a quasi-judicial capacity only, courts will examine the nature and quality of the agency's acts,[9] the interests the agency was created to represent, and its power to act on its own initiative.[10]

Agencies are usually parties to their contested cases because of their adversarial position and the public interests the agencies are empowered to protect. Thus, when an agency seeks to deny or revoke a license or permit, to discharge an employee,[11] to impose a fine, or to deny a benefit, it is a party, even if the agency does not name itself as one. An agency's participation is neutral or quasi-judicial when it merely decides disputes between others. For example, the Department of Administration acts in a quasi-judicial capacity when resolving disputes between state agencies and members of the public concerning the accuracy and completeness of data maintained on individuals.[12] Likewise, the Department of Veterans Affairs acts in a quasi-judicial capacity when resolving disputes between public employers and employees concerning alleged violations of the Veterans Preference Act.[13] An agency acting only in a neutral or quasi-judicial capacity may nonetheless question witnesses, if permitted by the administrative law judge (ALJ) under Minnesota Rules part

[5] Minn. Bd. of Health v. Governor's Certificate of Need Appeal Bd., 304 Minn. 209, 214-15, 230 N.W.2d 176, 179 (1975); *In re* Getsug, 290 Minn. 110, 115-17, 186 N.W.2d 686, 690 (1971); Minn. Water Res. Bd. v. Traverse Cnty., 287 Minn. 130, 132-33, 177 N.W.2d 44, 46 (1970). All these cases pertain to an agency's standing as an "aggrieved" person or party to appeal agency decisions to the courts, and not to an agency's standing as a party to participate in administrative proceedings.

[6] *Getsug*, 290 Minn. at 113-17, 186 N.W.2d at 689-90.

[7] *Minn. Bd. of Health*, 304 Minn. at 213, 230 N.W.2d at 179.

[8] *Minn. Water Res. Bd.*, 287 Minn. at 133-34, 177 N.W.2d at 47-48. The courts have repeatedly recognized the fact that agencies have executive (administrative), legislative, and judicial powers. *See, e.g.*, Frisk v. Bd. of Educ., 246 Minn. 366, 380-82, 75 N.W.2d 504, 514 (1956).

[9] *Getsug*, 290 Minn. at 115-17, 186 N.W.2d at 690.

[10] *Minn. Water Res. Bd.*, 287 Minn. at 135, 177 N.W.2d at 48.

[11] Whaley v. Anoka-Hennepin Indep. Sch. Dist., 325 N.W.2d 128, 130 (Minn. 1982); State v. Police Civil Serv. Comm'n, 253 Minn. 62, 63-64, 91 N.W.2d 154, 155-56 (1958). If an agency does not oppose the granting of a license or permit and is holding a hearing on the protest or objection of an interested third party, its participation may be quasi-judicial. For example, if the agency does not take an active part in a hearing to consider the protest to a bank's application to a detached facility under MINN. STAT. § 47.54, subds. 3-4 (2014), the agency should not be considered to be a party. In addition, an agency may be acting in a quasi-judicial capacity in some license revocation proceedings instituted by the complaint of a third party. Getsug, 290 Minn. at 112 186 N.W.2d at 688.

[12] MINN. STAT. § 13.04, subd. 4 (2014).

[13] *Id.* § 197.481.

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1400.7900 (2013). If the agency desires more extensive participation than the ALJ will allow under that rule, the agency may seek to intervene as a party.[14]

Questions regarding an agency's standing to participate in a contested case as a party, unlike questions regarding an agency's standing to appeal final agency decisions, seldom arise, and the former have less significance. Even if an agency is denied party status in the contested case, agency representatives still may be permitted to ask questions at the hearing to clarify testimony or to develop a complete record. In addition, in cases in which the agency cannot become a party, the agency's staff, or a division of an agency, may be permitted to intervene. The fact that an agency with standing to participate in the contested case as a party may not have standing to appeal reflects the general rule that the interest required to obtain party status in a contested case is different from the interest needed to obtain standing to appeal to seek judicial review.[15] The courts have denied standing to appeal to parties despite their participation in contested cases.[16] On the other hand, participation in the contested case may create appeal rights.[17] Although a party to the contested case may or may not have standing to appeal depending on the circumstances, courts typically hold that a person who did not participate has no standing to appeal unless that opportunity is conferred by statute.[18]

When seeking judicial review of a final agency decision, the Administrative Procedures Act (APA) requires that the petition for a writ of certiorari for judicial review under sections 14.63 to 14.68 must be filed with the court of appeals and "served on all parties to the contested case"[19] not more than 30 days after the party receives the final decision and order of the agency.[20] If a person aggrieved by a final decision in a contested case is uncertain which participants are parties to the contested case, then upon request the agency shall certify to the petitioner the names and addresses of all parties as disclosed by its records.[21] The agency's certification "shall be conclusive."[22]

At the initiation of a contested case, the parties named by the agency should include those persons entitled to a hearing under the applicable statutes and rules or as a matter of

[14] MINN. R. 1400.6200, subp. 4 (2013).

[15] *See, e.g.*, Francis v. Minn. Bd. of Barber Exam'rs, 256 N.W.2d 521, 524 (Minn. 1977) (holding that the board may not appeal decision of its hearing examiner but may urge district court to affirm it or may urge supreme court to reinstate it); Minn. Dep't of Hwys. v. Minn. Dep't of Human Rights, 308 Minn. 158, 165-66, 241 N.W.2d 310, 315 (Minn. 1976).

[16] *See, e.g.*, Save the Bay v. Dep't of Pub. Utils., 366 Mass. 667, 677-78, 322 N.E.2d 742, 751 (1975); Comm. to Pres. Mill Creek v. Sec'y of Health, 3 Pa. Cmwlth. 200, 208, 281 A.2d 468, 472 (1971).

[17] *See, e.g.*, *Save the Bay*, 366 Mass. at 677-78, 322 N.E.2d at 751 (appeal to court); *In re* Preseault, 130 Vt. 343, 347, 292 A.2d 832, 834-35 (1972) (de novo administrative review); *cf. In re* Implementation of Util. Energy Conservation Improvement Programs, 368 N.W.2d 308, 312 (Minn. Ct. App. 1985).

[18] Nader v. Nuclear Regulatory Comm'n, 513 F.2d 1045, 1054 (D.C. Cir. 1970); *In re* Hawaiian Elec., 56 Haw. 260, 263, 535 P.2d 1102, 1105 (1975); Lake Cnty. Contractors' Ass'n v. Pollution Control Bd., 54 Ill. 2d 16, 21, 294 N.E.2d 259, 262 (1973); People for Envtl. Enlightenment & Responsibility (PEER), Inc. v. Minn. Envtl. Quality Council, 266 N.W.2d 858, 875 (Minn. 1978) (appeals to Supreme Court). *But see* Ramsey Cnty v. Minn. Pub. Utils. Comm'n, 345 N.W.2d 740, 744 (Minn. 1984) (appeals to appellate court by "aggrieved persons" under MINN. STAT. § 14.63).

[19] MINN. STAT. § 14.63 (2014).

[20] *Id.*

[21] *Id.* § 14.64.

[22] *Id.*

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due process of law.[23] This concept is reflected in the definition of a contested case as a "proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing."[24] Apart from constitutional considerations,[25] the right to a hearing may arise under state laws and rules or federal laws and regulations.

The parties to a contested case generally include the real party in interest and all adverse parties.[26] Parties must be affected by a proposed action on individual grounds and in a different manner than other members of the public.[27] This is implicit in the reference to "specific parties" in the definition of a contested case.[28] Where a person is affected in the same manner as other members of the public, that person is not generally entitled to be named as a party in a contested case.[29] Parties must be affected on individual grounds

[23] If a person's interest is protected by due process, that person generally is entitled to a full hearing if disputed adjudicative facts are involved. 2 KENNETH C. DAVIS, ADMINISTRATIVE LAW TREATISE § 9.5, at 43 (3d ed. 1994); *see also* ch. 4. If only the proper interpretation of a statute or rule is in dispute, and not the facts, no formal hearing is required. Codd v. Velger, 429 U.S. 624, 627 (1977); Jones v. Minn. State Bd. of Health, 301 Minn. 481, 483-84, 221 N.W.2d 132, 134-35 (1974). In such a case, however, a person is entitled to present argument, either verbally or in writing. Mothers' & Childrens' Rights Org. v. Sterrett, 467 F.2d 797, 800 (7th Cir. 1972) (holding that a reasonable opportunity for argument must be provided even if no facts are in dispute); *see also* State Dep't of Pub. Welfare v. Dep't of Hous., Educ., Welfare, Social & Rehab. Servs., 448 F.2d 209, 212 (2d Cir. 1971).

[24] MINN. STAT. § 14.02, subd. 3 (2014).

[25] If the governing statute does not afford a hearing, the court of appeals will require the agency to commence a hearing if the person's property interests, good name, reputation, and honor are placed at stake by the agency's action. Fosselman v. Comm'r of Human Servs., 612 N.W.2d 456, 461 (Minn. Ct. App. 2000)

[26] Reliance Ins. Co. v. Pub. Serv. Comm'n., 250 N.W.2d 918, 926 (N.D. 1977). Determining the real party in interest is a fact question. Minn. Educ. Ass'n v. Indep. Sch. Dist. No. 404, 287 N.W.2d 666, 668 (Minn. 1980). It is sometimes held that an unincorporated association cannot become a party, Save the Bay v. Dep't of Pub. Utils., 366 Mass. 667, 675, 322 N.E.2d 742, 750 (1975), or that the unincorporated association must sue in the names of their individual members, Zak v. Gypsy, 279 N.W.2d 60, 63 (Minn. 1979). However, organizations can get standing by asserting the interests of their members. *E.g.*, No Power Line v. Minn. Envtl. Quality Council, 311 Minn. 330, 334, 250 N.W.2d 158, 160 (1976); Okla. State AFL-CIO v. State Bd. for Prop. and Cas. Rates, 463 P.2d 693, 694-95 (Okla. 1970).

[27] Bragg v. Weaver, 251 U.S. 57, 58 (1919); Londoner v. City & Cnty. of Denver, 210 U.S. 373, 380 (1908); Auclair v. Vt. Elec. Power Co., 133 Vt. 22, 26, 329 A.2d 641, 644 (1974). This principle is codified in some rules. *See, e.g.*, MINN. R. 7829.0800, subp. 2 (2013). If a person has no real interest in a proceeding, he or she has no right to a hearing. Walsh v. City of Brewer, 315 A.2d 200, 208 (Me. 1974). At least one state has held that participation as a commenter in an agency permitting process differentiates an entity's interests from the interests of members of the general public. Bd. Cnty. Comm'rs of Sumner Cnty. V. Bremby, 189 P.3d 494, 505 (Kan. 2008); *see* Indianapolis Downs, LLC v. Ind. Horse Racing Comm'n, 827 N.E.2d 162, 170 (Ind. Ct. App. 2005) ("By virtue of the invitation to comment and acceptance of that invitation by submission of a position statement, we find that Indiana Downs was a party to the agency proceedings that led to the agency action."). Courts in other states have held to the contrary. *E.g.*, Wood v. Metro. Nashville & Davidson Cnty. Gov't, 196 S.W.3d 152, 159 (Tenn. Ct. App. 2005) (stating that an individual's attendance and advocacy at public meetings regarding an agency action was insufficient to grant him standing to intervene as a party in the agency's action).

[28] MINN. STAT. § 14.02, subd. 3 (2014).

[29] Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915); Albert v. Pub. Serv. Comm'n, 209 Md. 27, 38, 120 A.2d 346, 351 (1956). However, if a rate payer or other person becomes a party, he or she is entitled to appeal even though his or her interest is no different than other rate payers. *In re* Hawaiian Elec., 56 Haw. 260, 264, 535 P.2d 1102, 1105 (1975).

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because contested cases resolve adjudicative facts, and only specific facts about specific parties are appropriate for such trial type hearings.[30]

### 6.1.1 Indispensable, Necessary, and Proper Parties

The APA and the contested case rules do not define indispensable, necessary, and proper parties to contested cases. The APA merely requires that "all parties shall be afforded an opportunity for hearing after reasonable notice."[31] In many cases, the parties that must be named by the agency are obvious or are specified in the applicable statutes and rules. The failure to join parties specified by statute has resulted in the invalidation of agency action.[32] Likewise, the failure to join "indispensable parties" not specified in the governing statutes may invalidate agency action.[33] Agencies themselves can be necessary parties.[34]

[30] According to Professor Kenneth Culp Davis, contested cases (trial type hearings) are only appropriate to resolve disputed adjudicative facts--that is, facts relating to a particular person. Adjudicative facts are similar to the facts juries decide and pertain to who did what, when, where, how, and why. Davis believes that general facts, unrelated to specific parties, that help an agency decide questions of law, policy, or discretion--that is, legislative facts--are not appropriate for contested case or trial type hearings. *See* DAVIS, *supra* note 23, § 9. However, contested cases are sometimes required by statute even when such legislative facts are involved.

[31] MINN. STAT. § 14.58 (2014). The court of appeals reversed a state agency action when the agency failed to give notice of the opportunity for hearing. Central Care Ctr. v. Wynia, 448 N.W.2d 880, 883 (Minn. Ct. App. 1989).

[32] *See* Greyhound Corp. v. Mich. Pub. Serv. Comm'n, 360 Mich. 578, 583, 104 N.W.2d 395, 399 (1960); State by Beaulieu v. RSJ, Inc., 552 N.W.2d 695, 703 (Minn. 1996) (holding that the failure of an agency to specifically name the owner of restaurant as a respondent in human rights complaint pursuant to MINN. STAT. § 363.06, subd. 1, warranted dismissal of the claim despite owner's notice of charges and opportunity to participate in conciliation.); Burkhardt v. State, 77 N.D. 232, 234, 42 N.W.2d 670, 671(1950). Likewise, the failure to give adequate notice to potential participants has resulted in mandatory rehearings. Mohawk Airlines v. C.A.B., 412 F.2d 8, 16 (2d Cir. 1969) (holding that the carrier suffered substantial prejudice from lack of notice of what was in issue in administrative proceeding involving another carrier's route investigation); *In re* Wilmarth Line of C U Project, 299 N.W.2d 731, 736 (Minn. 1980); Cty. of Dakota v. Blackwell, 809 N.W. 2d 226, 230-31 (Minn. Ct. App. 2011) (reversing and remanding summary judgment for the county in a paternity action because the district court failed to add the presumptive father as a party as required by MINN. STAT. § 257.55). *But see* Asche v. Rosenfield, 405 Ill. 108, 115, 89 N.E. 885, 889 (1950); First Nat'l Bank v. Okla. Sav. & Loan Bd., 569 P.2d 993, 997 (Okla. 1977) (holding that potential intervenors have no right to notice of the proceeding).

[33] Transp.-Commc'n Emp. Union v. Union P. R.R., 385 U.S. 157, 159-60 (1966); Consol. Edison Co. v. NLRB, 305 U.S. 197, 226 (1938); Trellsite Foundry & Stamp Co. v. Enter. Foundry, 365 Mich. 209, 225-26, 112 N.W.2d 476, 484 (1961); Pirrotta v. Indep. Sch. Dist. No. 347, 396 N.W.2d 20, 23 (Minn. 1986) (holding that an interested person who is not given notice of a hearing and an opportunity to intervene will not be collaterally estopped by the agency's decision); Juster Bros. v. Christgau, 214 Minn. 108, 121-22, 7 N.W.2d 501, 509 (1943); N.J. Zinc Co. v. Bd. of Review, 25 N.J. 235, 240, 135 A.2d 496, 299 (1957). *But see* Ford Motor Co. v. ICC, 714 F.2d 1157, 1160-61 (D.C. Cir. 1983) (holding that failure to join an indispensable party is not jurisdictional).

[34] Unbank Co. v. Merwin Drug Co., 677 N.W.2d 105, 108 (Minn. Ct. App. 2004). This was a case in which a licensed currency exchange initiated a declaratory judgment action against a competitor seeking a declaration that the competitor could not be issued a license, and an injunction restraining it from operating a currency exchange. Unbank alleged that Merwin was located within one-half mile of it, contrary to statute. The court of appeals found that the commissioner of commerce, who was not joined, was a necessary party to the case.

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In cases in which the agency is a necessary party and has not been previously joined, the nature of the case may require agency participation to preserve the balance of power between the executive and judicial branches.[35] Once a person becomes a party, he or she is a necessary party to subsequent proceedings in the matter.[36] One court has held that general civil rules on indispensable, necessary, and proper parties apply to administrative adjudications.[37]

It should be noted that in the absence of statutory or constitutional restrictions, court-made rules of joinder play only a small role in administrative adjudications.[38] Thus, a California court held that an agency was not required to join all charges against a doctor in a single proceeding where separate and unrelated acts were involved.[39] However, where an agency proceeds against a violator in multiple proceedings, the election of remedies doctrine may apply.[40] Since an ALJ in Minnesota may apply the Rules of Civil Procedure for the District Courts,[41] joinder issues may become more important in Minnesota contested cases than they are in other states. It would be particularly appropriate to apply court-made joinder rules in contested cases that parallel state or federal proceedings, such as discrimination actions and occupational safety and health actions. The precedents set in such cases should be followed.[42]

### 6.1.2 Nonparty Participation

As mentioned above, when an agency participates in a contested case only in a quasi-judicial capacity, agency representatives may be permitted to examine witnesses even though the agency is not a party.[43] Such limited participation does not make the agency a party. A separate rule governs the participation of other nonparties.[44] Under that rule, the ALJ may permit nonparties to present testimony and exhibits and to question witnesses at the hearing. Any person permitted to participate in a contested case hearing in that fashion does not become a party. In administrative hearings that are not held under the rules of the OAH, however, a nonparty who appears and participates in a hearing may gain party status if he or she claims an interest in the subject matter of the proceeding.[45]

[35] *Id.* (observing that if judges undertook to decide administrative licensing issues without the participation of the licensing authority, the coequal branches of government would relinquish a necessary balance).

[36] Miss. Pub. Serv. Comm'n v. Chambers, 235 Miss. 133, 140-41, 108 So. 2d 550, 553 (1959).

[37] Anita Ditch Co. v. Turner, 389 P.2d 1018, 1021 (Wyo. 1964).

[38] COOPER, *supra* note 4, ch. XI, § 1, at 323.

[39] Petrucci v. Bd. of Med. Exam'rs, 45 Cal. App. 3d 83, 87-88, 117 Cal. Rptr. 735, 737 (1975).

[40] Commonwealth, Dep't of Envtl. Res. v. Leechburg Mining Co., 9 Pa. Commw. 297, 304, 305 A.2d 764, 768 (1973).

[41] MINN. R. 1400.6600 (2013).

[42] *See, e.g.,* Kolosky v. Anchor Hocking Corp., 33 F.E.P. 1185, 1185 (W.D. Pa. 1983); Simon v. Kelso Marine, 19 F.E.P. 344 (S.D. Tex. 1979) (discussing joinder of successor employers in discrimination cases).

[43] MINN. R. 1400.7900 (2013).

[44] *Id.* 1400.6200, subp. 5.

[45] Morris v. Howard Research & Dev. Corp., 278 Md. 417, 423, 365 A.2d 34, 37 (1976); City of Minneapolis v. Minneapolis Transit Co., 270 Minn. 133, 137-38, 133 N.W.2d 364, 368-69 (1965); Hentges v. Minn. Bd. Water & Soil Res., 638 N.W. 2d. 441, 447 (Minn. Ct. App. 2002); *see* Wood v. Metro. Nashville & Davidson Cnty. Gov't, 196 S.W.3d 152, 159 (Tenn. Ct. App. 2005) (leaving to agency discretion whether to permit intervention of individuals without standing).

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Although a person with standing to intervene may be permitted to file a written brief without becoming a party,[46] the contested case rules do not specifically permit briefs from persons having no standing to intervene. However, the ALJ may have the inherent authority to permit them.[47] Since the purposes and benefits of an amicus brief in contested cases would be essentially the same as in civil actions, such briefs should be permitted in an appropriate case, consistent with civil practice. The amicus brief filed by a person without standing to intervene undoubtedly would be more restrictive in scope than the brief from a person with standing. For example, the amicus brief would be limited to advice on doubtful matters of law and would not be permitted to raise issues not raised by the parties.[48] If an amicus brief were to be authorized, the person submitting it would not become a party.[49]

Many contested cases are commenced after the filing of a complaint. The general rule is that the complaining party at whose instigation a proceeding is instituted does not become a party to the proceeding or have any control over it.[50] Moreover, in the absence of a specific law providing otherwise, an agency may commence a contested case even if the person on whose complaint it acts is not, and cannot become, a party with legal standing.[51] If the complaining party's dispute with a licensee is settled, the agency may proceed with a case even if the complaint is withdrawn.[52] Conversely, a member of the public ordinarily cannot compel an agency to take disciplinary action[53] or appeal the disciplinary action imposed by the agency if deemed to be unsatisfactory.[54]

### 6.1.3 Class Actions

[46] MINN. R. 1400.6200, subp. 3(A) (2013).

[47] Ala.-Tenn. Natural Gas Co. v. FPC, 359 F.2d 318, 324 (5th Cir. 1966).

[48] State v. Finley, 242 Minn. 288, 294-95, 64 N.W.2d 769, 773 (1954); Blue Earth Cnty. Pork Producers, Inc. v. Cnty. of Blue Earth, 558 N.W.2d 25, 30 (Minn. Ct. App. 1997) (denying the motion to strike materials in amicus brief of environmental groups regarding description of feedlots and administrative history of MPCA feedlot rules.); *see In re* Universal Underwriters Life Ins. Co., 685 N.W.2d 44, 45 n.2 (Minn. Ct. App. 2004).

[49] Int'l Union, United Auto, Aerospace & Agric. Implement Workers, Local 238 v. Scofield, 382 U.S. 205, 215-16 (1965); Baird v. City of Williston, 58 N.D. 478, 490, 226 N.W. 608, 612 (1929); *In re* Petition for Referendum to Amend Home Rule Charter, 69 Pa. Commw. 292, 295, 450 A.2d 802, 803 (1982).

[50] Amalgamated Util. Workers v. Consol. Edison Co., 309 U.S. 261, 266 (1940). Thus, in prosecutorial cases, a complaint can be withdrawn or settled over the objection of a complaining party; *see, e.g.,* Donovan v. Allied Indus. Workers, 760 F.2d 783, 785 (7th Cir. 1985) (regarding a settlement agreement); Marshall v. Occupational Safety & Health Review Comm'n, 635 F.2d 544, 552 (6th Cir. 1980) (regarding the withdrawal of a citation); *see also* A. Everette MacIntyre & Joachim J. Volhard, *Intervention in Agency Adjudications,* 58 VA. L. REV. 230 (1972).

[51] Ins. Comm'rs v. Mutual Med. Ins., 251 Ind. 296, 301, 241 N.E.2d 56, 59 (1968), *superseded on other grounds by statute as stated in* Huffman v. Office of Environmental Adjudication, 811 N.E.2d 806 (Ind. 2004).

[52] Wyo. State Bd. of Accountancy v. Macalister, 493 P.2d 1268, 1271 (Wyo. 1972).

[53] Vick v. Bd. of Elec. Exam'rs, 626 P.2d 90, 95 (Alaska 1981); *cf.* Pub. Interest Research Grp. v. N. States Power Co., 360 N.W.2d 654, 657-58 (Minn. Ct. App. 1985) (holding that the public utilities commission's dismissal of a complaint alleging overcharges by utility without hearing was upheld where no contested case was required by law and the agency's decision was supported by substantial evidence).

[54] Eikelberger v. Nev. State Bd. of Accountancy, 91 Nev. 98, 99-100, 531 P.2d 853, 854 (1975).

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The APA does not specifically authorize class actions. In the absence of specific statutory authorization, it has been held that an agency may not authorize them.[55] Class actions are specifically authorized under the Minnesota Human Rights Act.[56] Whether class actions are permissible in other proceedings, by virtue of the ALJ's authority to apply the Rules of Civil Procedure for the District Courts in ruling on motions, is an open question.

The rules governing consolidation of contested cases do not limit the number of cases that may be combined by an agency or ALJ.[57] On occasion, an agency may combine contested cases with a common legal issue arising from multiple appeals filed by dozens of similarly situated appellants. The resulting effect is that the combined contested case is akin to a small class action with several dozen parties. Although there are no provisions in the OAH rules that expressly provide for class action representative party status, some degree of judicial efficiency may be achieved if all parties enter into a stipulation of facts and present the legal issue on cross-motions for summary disposition.

### 6.1.4 Prevailing Party for Attorneys' Fees

Under the Minnesota Equal Access to Justice Act (MEAJA)[58] if a prevailing party in a contested case proceeding demonstrates by application that the position of the state was not substantially justified, the ALJ "shall award "fees and other expenses to the party unless special circumstances make an award unjust."[59] Not all parties who successfully overturn an agency action in a contested case qualify as a "party" under MEAJA.

Under the MEAJA, a "party" means a person named or admitted as a party in a contested case proceeding or court action and who is "an unincorporated business, partnership, corporation, association, or organization, having not more than 500 employees"[60] and "whose annual revenues did not exceed $7,000,000 at the time the contested case proceeding was initiated."[61] The MEAJA limitations on parties make it clear that the parties entitled to recover fees and expenses are small businesses.[62]

The MEAJA excludes from its definition of "party" a "person providing services pursuant to licensure or reimbursement on a cost basis by the Department of Health or the Department of Human Services, when that person is named or admitted or seeking to be admitted as a party in a matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services."[63]

55 Rose v. City of Hayward, 126 Cal. App. 3d 926, 936-37, 179 Cal. Rptr. 287, 292 (1981); Freeport Area Sch. Dist. v. Commonwealth Human Relations Comm'n, 18 Pa. Commw. 400, 408-10, 335 A.2d 873, 878-79 (1975); *see also* State v. State Tax Comm'n, 651 S.W.2d 130, 133 (Mo. 1983) (holding the use of class actions to be discretionary where authorized).

56 MINN. STAT. § 363A.28, subd. 6(g) (2014).

57 MINN. R. 1400.6350 (2013); *see infra* § 6.3.

58 MINN. STAT. §§ 15.471-.474 (2014).

59 *Id.* § 15.472(a).

60 *Id.* § 15.471, subd. 6(a).

61 *Id.*

62 *See* Donovan Contracting of St. Cloud v. Minn. Dep't of Transp., 469 N.W.2d 718, 720 (Minn. Ct. App. 1991); McMains v. Comm'r of Pub. Safety, 409 N.W.2d 911, 914 (Minn. Ct. App. 1987).

63 MINN. STAT. § 15.471, subd. 6(c) (2014).

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