6.2 INTERVENTION

6.2.1 Petition

In addition to the persons named as parties in the agency's notice of and order for hearing, other persons may become parties by filing a timely petition for intervention.[1] The petition must contain factual allegations showing that intervention is proper. Mere conclusions will not suffice.[2] A proper showing is one that demonstrates that the petitioner is entitled to intervene. Under the intervention rule, a petition must show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case and that the petitioner may be directly affected or that intervention is authorized by statute, rule, or court decision. Also, the petition must cite the statute authorizing intervention, if any, and the grounds and purposes for which intervention is sought. Thus, if the petitioner's rights, duties, and privileges will not be directly affected by the contested case, intervention is allowable only if authorized by statute, rule, or court decision. Whether a person's interest is legally sufficient to require intervention is a question of law.[3]

The language of the contested case intervention rule is different from the language of the civil rule governing intervention as a right. The civil rule does not base standing to intervene on a person's legal rights, duties, or privileges. Instead, it authorizes intervention by a person claiming an interest in the property or transaction that is the subject of the action, if the person's ability to protect that interest may be impeded or impaired if intervention is not permitted.[4] However, both rules require a timely application for intervention and condition the right to intervene on the absence of adequate representation by existing parties. Moreover, neither rule requires a showing that the applicant will necessarily gain or lose if intervention is not permitted.[5] Although the civil rule does not require that the interest asserted may be directly affected, some courts require such a showing in civil actions.[6] Since one's interests frequently involve one's rights, duties, and privileges, and since the two rules are similar in other respects, case law under rule 24.01 will be instructive in resolving some issues arising under the contested case rule.[7]

The criteria for standing to intervene in a contested case are different from the criteria for standing to appeal a final agency decision under Minnesota Statutes section 14.63. The

1 MINN. R. 1400.6200, subp. 1 (2013).

2 Noble v. City of Lincoln, 158 Neb. 457, 471, 63 N.W.2d 475, 484 (1954); Sewerage Comm'n v. State Dep't of Natural Res., 104 Wis. 2d 182, 187, 311 N.W.2d 677, 680 (1981).

3 Mankato Aglime & Rock Co. v. City of Mankato, 434 N.W.2d 490, 492 (Minn. Ct. App. 1989) (stating that a person has standing to intervene "if they can show an interest arguably among those intended to be protected by the applicable statute"); State *ex rel.* Bilder v. Twp. of Delavan, 112 Wis. 2d 539, 545, 334 N.W.2d 252, 256 (1983).

4 MINN. R. CIV. P. 24.01; *see, e.g.*, Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 207 (Minn. 1986); Miller v. Astleford Equip., 332 N.W.2d 653, 655 (Minn. 1983); Jerome Faribo Farms. v. Cnty. of Dodge, 464 N.W.2d 568, 570 (Minn. Ct. App. 1990); *see also* Mausolf v. Babbitt, 85 F.3d 1295, 1299 (8th Cir. 1996).

5 Avery v. Campbell, 279 Minn. 383, 389, 157 N.W.2d 42, 46 (1968); *see also* MINN. R. CIV. P. 24.01 advisory comm. n.1.

6 *See, e.g.*, Colman v. Colman Found., 199 Neb. 263, 265, 258 N.W.2d 128, 129 (1977).

7 For example, the courts have held that an intervenor having another remedy may still have a right to intervene. *Avery*, 279 Minn. at 389, 157 N.W.2d at 46. That rule should also apply in contested cases.

statute permits any "person aggrieved" by a final decision to appeal. However, the criteria for standing to intervene in a contested case are similar to the criteria used to determine a person's standing to challenge the validity of a rule under Minnesota Statutes section 14.44 (2014). That statute grants standing to persons whose legal rights or privileges may be interfered with or impaired by the challenged rule. Standing to challenge a rule is accorded to persons who are "injured in fact," absent a discernible legislative intent to the contrary in a given case.[8] Applying the injury-in-fact standard, nonprofit consumer advocate corporations alleging economic injury to their individual members as a result of an agency ban on prescription drug price advertising have standing to challenge a rule in court.[9] In addition, a taxpayer has standing to challenge a rule under which tax monies are expended on the grounds that it was improperly promulgated.[10]

The injury-in-fact test adopted under section 14.44 is consistent with the construction of similar language by courts of other states. A Wisconsin statute granting standing to appeal a final agency decision if it directly affects a person's rights, duties, or privileges was construed in *Wisconsin Environmental Decade v. Public Service Commission*[11] to require two showings: (1) direct injury to the person's interest, and (2) an interest that is protected by law. In that case, the court noted that its test is similar to that adopted in *Data Processing Service Organizations v. Camp.*[12] In effect, the court equated a legal right with a legally recognized interest. Since the law of standing to intervene is closely related to the law of standing to appeal,[13] such cases are instructive on the issue of the nature of the legal rights, duties, and privileges that should be recognized in determining a person's standing (right) to intervene in a contested case.

6.2.2 Objections and Hearing

The petition for intervention must be served on all parties and the agency. Within seven days, those parties objecting to the petition must file a notice of their objection that states the reasons for their objection. The objection must be served on all parties, the petitioner, and the agency. If there is insufficient time to file written objections before the hearing commences, oral objections may be made at the hearing.[14] A hearing on the petition is required only if the ALJ determines that a full record is needed to decide if intervention is appropriate or to determine the permissible scope of intervention.[15] If no hearing is held, these matters are determined on the basis of the filings submitted. In determining whether

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

9 *Id.* The court also held that the district court should have allowed the corporations to intervene.

10 McKee v. Likins, 261 N.W.2d 566, 570 (Minn. 1977); *see* Citizens for Rule of Law v. Senate Comm'n on Rules & Admin., 770 N.W.2d 169, 175 (Minn. Ct. App. 2009) (citing *McKee*, 261 N.W.2d at 570).

11 69 Wis. 2d 1, 10, 230 N.W.2d 243, 248 (1975).

12 397 U.S. 150, 152-53 (1970). In that case, the United States Supreme Court held that standing requires a showing of injury in fact to an interest arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.

13 *See infra* notes 57 and 58 and accompanying text. Some courts have held that the interests are the same. *See, e.g.*, E. Me. Elec. Co-op. v. Me. Yankee Atomic Power Co., 225 A.2d 414, 415 (Me. 1967).

14 MINN. R. 1400.6200, subp. 2 (2013).

15 *Id.*, subp. 2a.

intervention is permissible, the petitioner is not required to prove his allegations. In the absence of sham or frivolity, the allegations in the petition will be accepted as true.[16]

6.2.3 Adequacy of Existing Representation

If the requisite grounds for intervention exist, the petition must be granted unless the petitioner's interests are adequately represented by an existing party.[17] Generally, the petitioner must show that existing parties do not adequately represent his or her interests.[18] However, the showing required is minimal,[19] and where the intervenor's interest is similar to, but not identical with, a party's interest, intervention should not be denied unless it is determined that representation by existing parties will, in fact, be adequate.[20] A party's representation generally is considered to be adequate to protect the proposed intervenor's interest if there is no showing of collusion between the representative and the opposing party, if the representative does not represent an interest adverse to that of the petitioner, and if the representative does not fail in the fulfillment of its duty.[21]

Historically, courts have been reluctant to permit taxpayers or other interested persons to intervene in matters involving the public interest when those matters are prosecuted or defended by the proper governmental authority.[22] Where an agency represents the public interest, a strong showing of inadequate representation must be made; it must be shown that collusion, adversities of interest, possible nonfeasance, or incompetence is involved.[23] However, in administrative proceedings, the courts have recognized that agencies may not adequately represent the public interest in all cases[24] and that members of the public should be allowed to intervene in some cases as private

16 Costley v. Caromin House, 313 N.W.2d 21, 28 (Minn. 1981); Snyder's Drug Stores v. Minn. State Bd. of Pharmacy, 301 Minn. 28, 31, 221 N.W.2d 162, 164 (1974).

17 MINN. R. 1400.6200, subp. 3 (2013).

18 State v. Erickson, 285 N.W.2d 84, 87 (Minn. 1979); Sewerage Comm'n v. State Dep't of Natural Res., 104 Wis. 2d 182, 187, 311 N.W.2d 677, 680 (1981). *Contra In re* Vt. Pub. Power Supply Auth., 140 Vt. 424, 432-33, 440 A.2d 140, 143 (1981).

19 Citizens Coordinating Comm. on Friendship Heights v. TKU Assocs., 276 Md. 705, 713, 351 A.2d 133, 138-39 (1976) (stating that the applicant need only show a serious possibility that his or her interests may not be adequately represented); *see also* Dudkin v. Mich. Civil Serv. Comm'n, 127 Mich. App. 397, 404, 339 N.W.2d 190, 194 (1983), *superseded on other grounds by statute as stated in* Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Green, 302 Mich. App. 246, 268-69 n.3, 839 N.W.2d 1, 12-13 n.3 (2013).

20 Costley v. Caromin House, 313 N.W.2d 21, 28 (Minn. 1981). This principle is consistent with the spirit of the civil rules. The courts have repeatedly stated that MINN. R. CIV. P. 24.01 should be liberally applied to encourage all legitimate interventions. *E.g.,* Gruman v. Hendrickson, 416 N.W.2d 497, 500 (Minn. Ct. App. 1987).

21 Sewerage Comm'n v. State Dep't of Natural Res., 104 Wis. 2d 182, 187, 311 N.W.2d 677, 680 (1981).

22 Mankato Aglime & Rock Co. v. City of Mankato, 434 N.W.2d 490, 493 (Minn. Ct. App. 1989) (holding that a construction company does not have standing to challenge an agency order staying a competitor's debarment on the grounds that it is a taxpayer and has a right to challenge illegal conduct by a public official; therefore, the company's request that the agency be ordered to hold a contested case hearing so that it could intervene is denied); *see also* Denver Chapter of Colo. Motel Ass'n v. City & Cnty. of Denver, 150 Colo. 524, 527, 374 P.2d 494, 496 (1962); Noble v. City of Lincoln, 158 Neb. 457, 470, 63 N.W.2d 475, 484 (1954); Williamson v. Bethlehem Steel Corp., Civ-1971-487, 1978 WL 13955, at *1-2 (W.D.N.Y. Sep. 12, 1978).

23 *Williamson*, 1978 WL 13955, at *2.

24 Scenic Hudson Pres. Conf. v. FPC, 354 F.2d 608, 624 (2d Cir. 1965).

attorneys general to vindicate broad public interests. Thus, in *Office of Communication of United Church of Christ v. Federal Communications Commission,*[25] the court granted intervention to members of the listening public in a license renewal proceeding noting, in part, that the agency was unable to monitor thousands of broadcasters to evaluate their service. It is clear that an agency may be unable to adequately represent the public interest for other reasons, such as lack of staff, money, or commitment. Furthermore, there may be no single public interest to represent, but competing public interests that cannot be effectively represented by the agency alone.[26] A private citizen may also have standing to assert broad public rights if the state has adopted a public trust doctrine[27] or if such a standing is authorized by statute. For example, in Minnesota citizens have standing to intervene in all administrative proceedings having an adverse environmental impact.[28]

6.2.4 Intervention as a Right or Privilege

Most rules of civil procedure recognize two types of intervention: intervention of right and permissive intervention that is discretionary with the court.[29] A person allowed to intervene under either alternative becomes a party to the case with nearly all the rights of an original party.[30] The intervention rule for contested cases is structured in a different fashion. In contested cases, the ALJ does not have discretionary authority to allow permissive intervention as a party. If a proper showing is not made, permissive intervention is not available under the rule. Instead, the ALJ may permit the unsuccessful applicant to engage in limited participation at the hearing.[31] Such "permissive participation," which is available to any person, is discretionary with the ALJ and is limited to entering an appearance, presenting testimony and exhibits, and questioning witnesses.[32] Persons who are allowed limited participation in the hearing do not become parties to the contested case and do not enjoy the rights available to parties.[33]

Although permissive intervention as a party is not available under the contested case rule, such permissive intervention may be available under a statute, a court decision, or a

25 359 F.2d 994, 1003 (D.C. Cir. 1966).

26 3 KENNETH C. DAVIS, ADMINISTRATIVE LAW TREATISE § 16.11, at 68 (3d ed. 1994)

27 *See, e.g.*, Muench v. Pub. Serv. Comm'n, 261 Wis. 492, 514, 53 N.W.2d 514, 524 (1952) (recognizing the legal right of citizens to enjoy navigable streams for recreational purposes, including scenic beauty, hunting, and fishing, under public trust doctrine).

28 Minnesota Environmental Rights Law, MINN. STAT. § 116B.09 (2014). The right to intervene in administrative proceedings has been described as the most valuable right conferred by the act. David P. Bryden, *Environmental Rights in Theory and Practice,* 62 MINN. L. REV. 163, 218 n.379 (1978).

29 *See, e.g.*, MINN. R. CIV. P. 24.01, .02.

30 Thus, a limited intervenor has been held to have the right to appeal issues on which intervention was not permitted. *In re* Portland Gen. Elec. Co., 277 Or. 447, 454, 561 P.2d 154, 160 (1977).

31 MINN. R. 1400.6200, subp. 3 (2013).

32 *Id.*, subp. 5.

33 *Id*.

rule of the agency that orders the hearing. Some agency statutes[34] and rules[35] specifically address intervention in contested cases.

6.2.5 Time for Intervention

Intervention is available after a contested case has been initiated by the agency's service of the notice of and order for hearing. There is; however, no provision for intervention at an earlier time, even though the agency may be engaged in negotiations with a potential party. Intervention is not available in informal negotiations undertaken by an agency before the commencement of a contested case proceeding.[36]

Once a contested case is initiated, there are no stated time limitations for filing intervention petitions in contested cases. Where good reasons exist; however, an agency may specify the final date for the submission of such petitions in its notice of and order for hearing, if it obtains the prior approval of the ALJ.[37] In addition, the ALJ may set intervention deadlines in a prehearing order. In all other cases, timeliness is determined by the ALJ based on the circumstances at the time of filing.[38] The criteria for determining the timeliness of intervention petitions in the courts are applicable in contested cases.[39] They include how far the case has progressed at the time the intervention petition is filed, the reasons for the delay, and the possible prejudice to existing parties caused by the delay.[40] In addition, the purpose of the intervention should be considered.[41] Where the right to intervene is otherwise

[34] MINN. STAT. §§ 72A.22, .25 (intervention by any person in contested case hearings regarding unfair competition and unfair or deceptive insurance acts or practices), 116B.09 (intervention in administrative hearings by any person residing in state asserting environmental impairment or pollution), 182.661, subd. 3 (employee intervention in occupational safety and health hearings) (2014); *see also id.* § 47.54 (regarding appearances by persons protesting bank's application for detached facility).

[35] MINN. R. 7000.1750, subp. 4 (Pollution Control Agency), 7829.0800 (Public Utilities Commission) (2013).

[36] Action on Safety & Health v. FTC, 498 F.2d 757, 762 (D.C. Cir. 1974) (holding that intervention is not available in precomplaint consent negotiations). Even when a proceeding has commenced, the courts have denied intervenors the right to participate in settlement negotiations. Nat'l Welfare Rights Org. v. Finch, 429 F.2d 725, 739 (D.C. Cir. 1970). In that case, the intervenor was denied participation in informal conferences between a federal agency and a state that were held after a conformity hearing commenced. Moreover, an intervenor is not necessarily entitled to insist on a hearing on issues other parties have resolved. Citizens for Allegan County v. FPC, 414 F.2d 1125, 1134 (D.C. Cir. 1969). Thus, employees have no standing to object to the withdrawal of an OSHA citation or elect party status to prosecute a citation the agency has withdrawn. Marshall v. Occupational Safety & Health Review Comm'n, 635 F.2d 544, 547-48 (6th Cir. 1980). However, they may object to the reasonableness of the abatement period for the correction of violations agreed to by the agency and the employer. Donovan v. Allied Indus. Workers, 760 F.2d 783, 784 (7th Cir. 1985). Under MINN. STAT. § 182.661 (2014), the permissible scope of an employee's participation in contested cases regarding occupational safety and health violations is much broader than the permissible scope of an employee's participation in occupational safety and health cases under federal law.

[37] MINN. R. 1400.6200, subp. 1 (2013).

[38] *Id.* This is the rule generally followed by the courts. SST, Inc. v. City of Minneapolis, 288 N.W.2d 225, 230 (Minn. 1979).

[39] *In re* Union Carbide Corp., 308 N.W.2d 753, 759 (S.D. 1981).

[40] *SST*, 288 N.W.2d at 230; Engelrup v. Potter, 302 Minn. 157, 165, 224 N.W.2d 484, 489 (1974).

[41] Natural Res. Def. Council v. Costle, 561 F.2d 904, 907 (D.C. Cir. 1977); Sewerage Comm'n v. State Dep't of Natural Res., 104 Wis. 2d 182, 192-93, 311 N.W.2d 677, 682 (1981) (Bablitch, J., concurring in part, dissenting in part).

proper, that right cannot be impaired. Therefore, an intervenor's rights cannot be prejudiced by an agency's settlement procedures,[42] and if a late-filed petition for intervention is caused by a defective or inadequate notice, the petition must be granted.[43] Likewise, if the denial of an intervenor's request for a continuance would effectively preclude the right to intervene, a continuance must be granted.[44] Where the intervenor fails to show diligence in seeking to intervene, his or her petition may be denied,[45] and his or her requests for a continuance may be refused.[46] Any order denying intervention as a right is appealable.[47]

Once the ALJ has issued a report, the ALJ loses jurisdiction is over the contested case, unless the agency that ordered the hearing is bound by ALJ's decision.[48] Therefore, where recommended decisions are involved, no intervention petitions should be filed with the ALJ after the judge's report is issued. They should be filed instead with the agency having final decision-making authority. If the judge's report is binding on the agency, any petition filed after it is issued should be filed with the ALJ.

As a general rule, however, the courts are reluctant to permit intervention after a case has been decided[49] unless the petitioner's only concern is in the remedial aspects of a case.[50] Thus, where the proposed intervenor failed to participate in the administrative hearing or in the initial appeal from the agency's decision, intervention was denied in the subsequent appeal to the Minnesota Supreme Court and in administrative proceedings held pursuant to the court's remand order.[51]

[42] Brooks v. A.M.F., Inc., 278 N.W.2d 310, 313 (Minn. 1979) (applying this concept to workers' compensation).

[43] S.C. Loveland Co. v. United States, 534 F.2d 958, 963 (D.C. Cir. 1976); *In re* Wilmarth Line of C U Project, 299 N.W.2d 731, 734-35 (Minn. 1980); Minn. Loan & Thrift v. Commerce Comm'n, 278 N.W.2d 522, 526-27 (Minn. 1979).

[44] *In re* St. Joseph Lead Co., 352 S.W.2d 656, 664 (Mo. 1961).

[45] Easton Util. Comm'n v. Atomic Energy Comm'n, 424 F.2d 847, 851-52 (D.C. Cir. 1970); *SST*, 288 N.W.2d at 230; State v. Erickson, 285 N.W.2d 84, 87 (Minn. 1979).

[46] First Nat'l Bank v. Okla. Sav. & Loan Bd., 569 P.2d 993, 997 (Okla. 1977) (holding due diligence to be required); s*ee also* Minn. Loan & Thrift v. Commerce Comm'n, 278 N.W.2d 522, 526 (Minn. 1979).

[47] Engelrup v. Potter, 302 Minn. 157, 159, 224 N.W.2d 484, 485-86 (1974). However, such orders cannot be certified to the agency if they involve the meaning of the contested case rules. MINN. R. 1400.7600 (2013) (stating appeals in such cases would have to be taken directly to court without prior agency consideration). Other cases hold that orders denying motions to intervene as of right are appealable. *E.g.*, Norman v. Refsland, 383 N.W.2d 673, 675-76 (Minn. 1986); Tierney v. Am. Group Benefit Servs. 406 N.W.2d 579, 580 (Minn. Ct. App. 1987); Koski v. Chicago & Nw. Transp. Co., 386 N.W.2d 282, 283-84 (Minn. Ct. App. 1986). Orders denying permissive intervention, on the other hand, are not appealable. Husfeldt v. Willmsen, 434 N.W.2d 480, 482 (Minn. Ct. App. 1989).

[48] MINN. R. 1400.8300 (2013).

[49] Sewerage Comm'n v. State Dep't of Natural Res., 104 Wis. 2d 182, 187, 311 N.W.2d 677, 680 (1981). *But see* Erickson v. Bennett, 409 N.W.2d 884, 888 (Minn. Ct. App. 1987) (ruling that default judgment does not preclude intervention by interested person whose interests were not represented).

[50] Hodgson v. United Mine Workers of Am., 473 F.2d 118, 129 (D.C. Cir. 1972); SST, Inc. v. City of Minneapolis, 288 N.W.2d 225, 231 (Minn. 1979) (discussing intervention to challenge proposed settlement agreement); State *ex rel.* Bilder v. Twp. of Delavan, 112 Wis. 2d 539, 546-47, 334 N.W.2d 252, 256-57 (1983) (discussing intervention to challenge proposed settlement agreement).

[51] People for Envtl. Enlightenment & Responsibility (PEER), Inc. v. Minn. Envtl. Quality Council, 266 N.W.2d 858, 875 (Minn. 1978).

6.2.6 Who May Intervene

The persons who may intervene in an agency proceeding are those specified in the relevant statutes and agency rules, those who would be injured in fact by an adverse agency decision, and other persons with a direct interest in the proceeding. Intervention in contested cases is closely related to the law of standing to challenge administrative action in court.[52] Agencies typically permit intervention by any person who would have standing to challenge their final decisions in court.[53] One rationale for permitting these persons to intervene is that an individual's right of judicial review is not effective unless he or she is permitted to participate in the agency hearing.[54] Based on a similar concept, a person with standing to bring a private damage action for anticompetitive practices has standing before an agency to object to such practices,[55] and the interest required for intervention is the same as that required to become a complainant.[56]

Under Minnesota Statutes section 14.63 (2014), any person "aggrieved" by the final decision in a contested case may seek judicial review in the court of appeals. For purposes of the statute, an aggrieved person is one who is "injured in fact" or whose interests are arguably within the zone of interests the statute was enacted to protect.[57] Otherwise stated, one is aggrieved or injuriously and adversely affected by an agency decision in a contested case when it operates on one's property rights or directly on one's personal interests.[58]

In a unanimous decision, the U.S. Supreme Court held that persons whose economic interests are affected by environmental restrictions placed on land and water use for the purposes of protecting endangered species have standing under the zone of interests test to seek judicial review of an agency's "biological opinion" under the Endangered Species

[52] Nat'l Welfare Rights Org. v. Finch, 429 F.2d 725, 732 (D.C. Cir. 1970); Office of Commc'n of United Church of Christ v. FCC, 359 F.2d 994, 1000 n.8 (D.C. Cir. 1966); *In re* Portland Gen. Elec. Co., 277 Or. 447, 456-57, 561 P.2d 154, 161 (1977); DAVIS, *supra* note **Error! Bookmark not defined.**6, § 16.10, at 65-67.

[53] DAVIS, *supra* note **Error! Bookmark not defined.**, § 16.11, at 67; *see also* Koniag v. Andrus, 580 F.2d 601, 605 (D.C. Cir. 1978); Nat'l Welfare Rights Org. v. Finch, 429 F.2d 725, 734-35 (D.C. Cir. 1970); Fort Pierce Util. Auth. v. Dep't of Energy, 503 F. Supp. 1014, 1022 (D. D.C. 1980).

[54] Am. Communications Ass'n v. United States, 298 F.2d 648, 650 (2d Cir. 1962). Professor Cooper supports this practice. 1 FRANK E. COOPER, STATE ADMINISTRATIVE LAW 327 (1965).

[55] Martin-Trigona v. Fed. Reserve Bd., 509 F.2d 363, 366 (D.C. Cir. 1974).

[56] State *ex rel*. Consumers Pub. Serv. Co. v. Pub. Serv. Comm'n, 352 Mo. 905, 920-21, 180 S.W.2d 40, 46 (1944).

[57] McKee v. Likins, 261 N.W.2d 566, 570 (Minn. 1977) (describing "injury in fact"); Snyder's Drug Stores v. Minn. State Bd. of Pharmacy, 301 Minn. 28, 32, 221 N.W.2d 162, 165 (1974); *see also* Twin Ports Convalescent, Inc. v. State Bd. of Health, 257 N.W.2d 343, 346 (Minn. 1977) (reiterating view that basic purpose of standing doctrine is to guarantee that there is sufficient case or controversy between parties to assure competent and proper presentation of issues to court). Professor Davis is critical of the latter test. *See* DAVIS, *supra* note **Error! Bookmark not defined.**6, § 16.3, at 13. The "zone test" was established in *Ass'n of Data Processing Serv. Org. v. Camp,* 397 U.S. 150, 154 (1970) and *Barlow v. Collins,* 397 U.S. 159, 164 (1970). The zone test has been applied in determining whether a person is aggrieved. Bank of Belton v. State Banking Bd., 554 S.W.2d 451, 453 (Mo. Ct. App. 1977). One court held that *aggrieved* means more than being dissatisfied with an agency order but is distinct from being adversely affected by it and includes persons allowed to intervene. *In re* Portland Gen. Elec. Co., 277 Or. 447, 456-57, 561 P.2d 154, 161 (1977).

[58] *In re* Getsug, 290 Minn. 110, 114, 186 N.W.2d 686, 689 (1971). The law pertaining to a person's standing to appeal is discussed more fully in chapter 13.

Act.[59] In reinstating a lawsuit by a group of Oregon ranchers and irrigation districts seeking to block proposed environmental regulations limiting the release of water from an irrigation project, the Court stated that there was no basis for concluding that the citizen suit provision of the Endangered Species Act applied only to "under enforcement" by the government and not "over enforcement".

Although persons with standing to challenge an adverse agency decision usually are entitled to intervene, such standing is not required for intervention. The two doctrines standing in court and standing before an agency are similar, but different considerations are involved, and standing to intervene in agency proceedings is generally more liberally granted.[60]

The interest justifying intervention is often an economic one. Thus, as a general rule, competitors[61] or persons with a special economic interest are entitled to intervene in licensing proceedings or to challenge licenses issued in court.[62] An economic interest is sufficient if it involves only a potential competitor[63] or a potential applicant who desires to avoid an unfavorable legal precedent.[64] The economic interests of ratepayers normally have been regarded as sufficient to provide standing in proceedings to establish or challenge

[59] Bennet v. Spear, 520 U.S. 154, 166 (1997) (discussing 16 U.S.C. § 1533).

[60] DAVIS, *supra* note **Error! Bookmark not defined.**6, § 16.11, at 67; *see, e.g.*, Mausolf v. Babbitt, 85 F.3d 1295, 1300 (8th Cir. 1996) (stating that, to intervene in federal court, a party must satisfy the requirements of Rule 24 and have Article III case or controversy standing).

[61] Interstate Broad. Co. v. FCC, 285 F.2d 270, 272 (D.C. Cir. 1960); Kirkby v. Mich. Pub. Serv. Comm'n, 320 Mich. 608, 611 , 32 N.W.2d 1, 2 (1948); Minn. Loan & Thrift v. Commerce Comm'n, 278 N.W.2d 522, 527 (Minn. 1979); Nat'l Bank v. Patterson, 442 Pa. 289, 297-98, 275 A.2d 6, 10-11 (1971); Valley State Bank v. Farmers State Bank, 87 S.D. 614, 621, 213 N.W.2d 459, 463 (1973). *But see* Wis. Power & Light Co. v. Pub. Serv. Comm'n, 45 Wis. 2d 253, 259, 172 N.W.2d 639, 642 (1969) (finding that an electric supplier that had built facilities to provide emergency services to city had no legal right, duty, or privilege that was directly affected by city's decision to build its own facilities or enter into contract with another supplier); Milwaukee v. Pub. Serv. Comm'n, 11 Wis. 2d 111, 121-22, 104 N.W.2d 167, 173 (1960).

[62] FCC v. Nat'l Broad. Co., 319 U.S. 239, 263 (1943); FCC v. Sanders Bros. Radio Station, 309 U.S. 470, 471 (1940); Nat'l Welfare Rights Org. v. Finch, 429 F.2d 725, 736 (D.C. Cir. 1970) (holding that interest in welfare payments may give standing to seek review); *cf.* Lodi Tel. Co. v. Pub. Serv. Comm'n, 262 Wis. 416, 422, 55 N.W.2d 379, 382 (1952) (discussing a situation where a telephone company was aggrieved by users' petition for service by another telephone company).

[63] Marine Space Enclosures v. Fed. Mar. Comm'n, 420 F.2d 577, 590-91 (D.C. Cir. 1969) (discussing a situation where a potential competitor claimed undue restraint on competition).

[64] Nat'l Res. Def. Council v. U.S. Nuclear Regulatory Comm'n, 578 F.2d 1341, 1345 (10th Cir. 1978) (holding that a potential licensee can intervene in a proceeding to determine if a mining licensee must prepare an environmental impact statement).

utility rates,[65] utility programs,[66] transit rates,[67] insurance rates,[68] and minimum coal prices.[69] Ratepayers may be denied intervention if their interests are adequately represented by an agency[70] or if the court determines that intervention is discretionary with the agency.[71] Consumers other than rate payers also have been permitted to intervene if they vindicate broad public interests[72] or if their views would otherwise go without representation.[73] Yet, the interest or injury entitling a person to intervene in a contested case is not required to be economic. It also can be aesthetic, conservational, or recreational.[74]

[65] Tel. Users Ass'n v. FCC, 375 F.2d 923, 923 (1967) (regarding telephone rates); United States v. Pub. Util. Comm'n, 151 F.2d 609, 613-14 (D.C. Cir. 1945); *Ex parte* Ala. Textile Mfrs. Ass'n, 283 Ala. 228, 230, 215 So. 2d 443, 445 (1968) (regarding electric rates); *In re* Hawaiian Elec., 56 Haw. 260, 264, 535 P.2d 1102, 1105 (1975); Cent. Me. Power Co. v. Me. Pub. Util. Comm'n, 405 A.2d 153, 162 (Me. 1979); Nev. Power Co. v. Pub. Serv. Comm'n, 91 Nev. 816, 820-21, 544 P.2d 428, 432 (1975).

[66] *In re* Implementation of Util. Energy Conservation Improvement Programs, 368 N.W.2d 308, 313-14 (Minn. Ct. App. 1985) (holding that industrial utility customer has standing to appeal conservation improvement programs public utility commission ordered utility to adopt; fact that customer participated in administrative hearings was cited as relevant factor in determining customer's standing to appeal).

[67] Bebchick v. Pub. Util. Comm'n, 287 F.2d 337, 338 (D.C. Cir. 1961) (regarding public transit).

[68] State *ex rel.* Comm'r of Ins. v. N.C. Rate Bureau, 300 N.C. 460, 468, 269 S.E.2d 538, 543-44 (1980); Okla. State AFL-CIO v. State Bd. for Prop. & Cas. Rates, 463 P.2d 693, 694 (Okla. 1970).

[69] Associated Indus. v. Ickes, 134 F.2d 694, 704 (2d Cir. 1943) (noting parties were acting as private attorneys general), *vacated*, 320 U.S. 707 (1943).

[70] Stuyvesant Town Corp. v. Impelliteri, 280 A.D. 788, 788, 113 N.Y.S.2d 593, 593 (1952) (rent-fixing proceeding).

[71] *Compare* Smith v. Pub. Serv. Comm'n, 336 S.W.2d 491, 495 (Mo. 1960), *with* State *ex rel.* Dyer v. Pub. Serv. Comm'n, 341 S.W.2d 795, 797 (Mo. 1960) (leaving intervention by rate payers to agency discretion because interest alleged by intervenors was no different from that of general public).

[72] Office of Commc'n of United Church of Christ v. FCC, 359 F.2d 994, 1006 (1966). The status of the listeners was held to be that of private attorneys general who represented public interests, and not personal ones.

[73] Snyder's Drug Stores v. Minn. State Bd. of Pharmacy, 301 Minn. 28, 36, 221 N.W.2d 162, 166-67 (1974).

[74] United States v. SCRAP, 412 U.S. 669, 686-87 (1973); Ass'n of Data Processing Serv. Org. v. Camp, 397 U.S. 150, 153-54 (1970); Scenic Hudson Pres. Conference v. FPC, 354 F.2d 608, 615 (2d Cir. 1965); *cf.* Wis. Envtl. Decade v. Pub. Serv. Comm'n, 69 Wis. 2d 1, 10, 230 N.W.2d 243, 248 (1975). Persons alleging environmental damage have broad rights of intervention in administrative proceedings under MINN. STAT. § 116B.09 (2014).

The interest may be one relating to health,[75] housing,[76] employment,[77] liberty,[78] or property.[79]

However, there is little precedent for permitting intervention in enforcement proceedings, license revocations, and other similar adjudications involving a respondent's violation of settled law and policy.[80] In such cases, the agency may adequately represent the public interest, or the intervenor may not be considered to have a sufficient interest.[81] Some agency rules; however, permit intervention by specific parties in enforcement proceedings.[82]

In the absence of a statute or rule providing otherwise, intervention usually rests within the reasonable discretion of the ALJ.[83] That discretion must be exercised consistently with the rights and interests of the proposed intervenor and the plain language and intent of the underlying statutes and rules. Thus, if only one of two adverse interests is a party to the

[75] *Cf.* Minn. Pub. Interest Research Grp. v. Minn. Dep't of Labor & Indus., 311 Minn. 65, 68-69, 249 N.W.2d 437, 439 (1976) (standard-making proceeding); Minn. State Bd. of Health v. City of Brainerd, 308 Minn. 24, 37 , 241 N.W.2d 624, 631 (1976) (statutory challenge).

[76] *Cf.* Costley v. Caromin House, 313 N.W.2d 21, 28 (Minn. 1981).

[77] Pirrotta v. Indep. Sch. Dist. No. 347, 396 N.W.2d 20, 22 (Minn. 1986) (finding in a school district proceeding held to lay off its least senior teacher who asserts greater seniority than another teacher, the other teacher may intervene); Underwood v. State, No. 78 Civ. 4382-CSH, 1979 WL 271, at *1 (S.D.N.Y. July 9, 1979) (intervention by persons receiving provisional appointments from eligibility list challenged as discriminatory); Vulcan Soc'y v. Fire Dep't White Plains, 79 F.R.D. 437, 441 (S.D.N.Y. 1978) (union intervention in discrimination case against employer).

[78] Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197, 207 (Minn. 1986) (intervention by newspaper to challenge order sealing portions of a court file pertaining to settlement); State *ex rel.* Bilder v. Twp. of Delavan, 112 Wis. 2d 539, 546, 334 N.W.2d 252, 256 (1983) (intervention by newspaper to challenge settlement agreement that called for sealing of records of case).

[79] No Power Line, Inc. v. Minn. Envtl. Quality Council, 311 Minn. 330, 334, 250 N.W.2d 158, 160 (1976); Comm. to Pres. Mill Creek v. Secr'y of Health, 3 Pa. Cmwlth. 200, 207, 281 A.2d 468, 472 (1971); *cf.* Ashwaubenon v. State Hwy. Comm'n, 17 Wis. 2d 120, 128, 115 N.W.2d 498, 502-03 (1962) (city affected by change in location of highway has standing to appeal).

[80] *See* Joachim J. Volhard, *Intervention in Agency Adjudications*, 58 Va. L. Rev. 230 (1972) (discussing intervention problems in Federal Trade Commission proceedings); *see also* John P. Luddington, *Intervention in Federal Trade Commission Adjudicative Proceedings*, 19 A.L.R. Fed. 696 (1974 & Supp. 1997).

[81] *See, e.g.*, Baltimore Bldg. & Constr. Trade Council v. Barnes, 290 Md. 9, 10 , 427 A.2d 979, 980 (Md. Ct. App. 1981) (holding labor union council did not have sufficient interest in prevailing wage complaint proceeding against nonunion contractor who allegedly violated wage rates required to be paid on public works projects). *But see* W.J. Dillner Transfer Co. v. Pennsylvania Pub. Util. Comm'n, 175 Pa. Super. 461, 470-71, 107 A.2d 159, 164 (1954) (allowing carrier to intervene on question of whether competitor was carrying goods in excess of authority); Wood v. Metro. Nashville & Davidson Cnty. Gov't, 196 S.W. 3d 152, 159 (Tenn. Ct. App. 2005).

[82] In enforcement proceedings under the Minnesota Occupational Safety and Health Act, employees may intervene. MINN. STAT. § 182.661, subd. 3 (2014); MINN. R. 5215.0200, subp. 16, .1400 (2013).

[83] Gary Transit v. Pub. Serv. Comm'n, 161 Ind. App. 7, 13, 314 N.E.2d 88, 91 (1974); Boston Edison Co. v. Dep't of Pub. Util., 375 Mass. 1, 45, 375 N.E.2d 305, 332 (1978); *In re* White, 171 N.J. Super. 493, 499, 410 A.2d 66, 69 (1979). *But see* St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n, 312 Minn. 250, 256-57, 251 N.W.2d 350, 355 (1977) (finding commercial and noncommercial users entitled to intervene in rate-making proceeding where rate structures discriminated against them); Snyder's Drug Stores v. Minn. State Bd. of Pharmacy, 301 Minn. 28, 34, 221 N.W.2d 162, 166 (1974) (finding public interest not represented).

proceeding, the other should be permitted to intervene.[84] If the number of potential parties is substantial, the ALJ may order a reduction in order to ease the obvious burdens involved.[85] Likewise, when several persons represent the same interests, the ALJ must exercise reasonable discretion in determining which of them should be allowed to intervene in order to represent that interest.[86]

A narrow construction of the contested case intervention rule would run counter to current administrative trends and court decisions on standing to challenge agency rules and decisions. Agencies normally have discretion to permit intervention by persons who do not have a specific legal right, duty, or privilege, and the courts routinely recognize that such persons have standing. Consequently, a narrow construction of the contested case rule should not be adopted in determining whether a petitioner has a legal right, duty, or privilege that may be directly affected by a contested case. Rather, the right to intervene should be determined by the nature of the interest claimed, the purpose for intervention, the policies of the underlying statutes and rules, and relevant court decisions.

No simple rule exists for determining whether intervention is proper. This is due in large part to the fact that agencies are not fungible for intervention purposes.[87] They are subject to different statutes and rules and are created for a wide variety of purposes. The contested cases they commence may have a substantial effect on the general public and matters of public interest or may affect only a few specific persons. In agency hearings, an agency may act quasi-judicially, quasi-legislatively, adversarially, or in some combination of these three capacities. Also, the effect of intervention will vary substantially from case to case, as will the interests of the public and other third parties. A contested case involving an employee's discharge is a substantially different matter than one held to fix a utility's rate, just as the licensure of a solid waste dump is different from an action to fine an employer for unsafe working conditions or an action to revoke a doctor's license. All these factors will impact on the propriety of intervention in a given case.

Although the contested case rule should be given a liberal and practical construction, intervention may be denied when the petitioner's interests are not directly affected by the contested case. Thus, although an insurer who erroneously paid a debtor's medical expenses can intervene in the debtor's workers' compensation hearing, a general creditor cannot;[88] a citizens' group concerned with flood plain preservation cannot intervene in a contested case held to approve a septic system for a swimming pool, but an adjacent

[84] *Snyder's Drug Stores*, 301 Minn. at 34, 221 N.W.2d at 166.

[85] City of San Antonio v. CAB, 374 F.2d 326, 332 (D.C. Cir. 1967) (upholding agency order reducing number of parties from seventy-two to twenty-five in view of burdens seventy-two parties would create; noting that interest required for participation is greater where so many parties are involved).

[86] *See* Office of Commc'n of United Church of Christ v. FCC, 359 F.2d 994, 1005 (D.C. Cir 1966) (discussing factors agency should consider in selecting intervenors from among members of listening public); League of Women Voters Minn. v. Ritchie, 819 N.W.2d 636, 642-43 (Minn. 2012) (denying motion by nonprofit social welfare corporation to intervene because the nonprofit's position is substantially the same as position advanced by other intervenors).

[87] Local 283, U.A.W. v. Scofield, 382 U.S. 205, 210 (1965).

[88] Lemmer v. Batzli Elec. Co., 267 Minn. 8, 12-13, 125 N.W.2d 434, 438 (1963). It has also been held that the owner of licensed premises used by a lessee as a liquor store has no right to intervene in a disciplinary action against the lessee's license. *In re* Franklin v. State Liquor Auth., 17 A.D.2d 1027, 1027, 235 N.Y.S.2d 273, 274 (1962); *accord* Commonwealth v. Penelope Club, 136 Pa. Super. 505, 513, 7 A.2d 558, 562 (1939) (surety on liquor licensee's bond).

landowner can;[89] and a utility's competitor cannot intervene in a rate case for the purpose of showing unfair competition,[90] but the same competitor can intervene in the rate case as a ratepayer for the purpose of challenging the utility's rates.[91] An injury that is remote in time or that will occur only as the end result of a sequence of events set in motion by an agency's action may be sufficiently direct to confer standing.[92] However, intervention may be denied when the purpose of intervention is unrelated to the purpose of the hearing or the agency's authority. Thus, intervention by creditors was denied in a Transportation Regulation Board proceeding regarding the requested transfer of a regular route common carrier certificate and courier services permit where the purpose of the Board's hearing was to provide the public with adequate transportation services and not to protect the interests of private creditors.[93] Likewise, intervention in a utility rate hearing for the purpose of inquiring into the utility's hiring practices may be denied,[94] and a borough cannot intervene in a contested case hearing on a utility's proposal to transfer land, for the purpose of showing environmental harm by the grantees' proposed use of the land, if the grantee is not subject to the agency's jurisdiction.[95]

6.2.7 Scope of Intervention

In the courts, there is conflicting authority regarding the right of one party to assert another's rights or interests.[96] However, in contested cases, intervenors acting as "private attorneys general" may raise issues not personal to them.[97] The scope of an intervenor's participation, however, may be limited to those issues on which timely intervention was sought,[98] to those issues involved in the underlying case,[99] or to those issues in which he or she has a sufficient interest. It follows that the procedural rights of the intervenor to cross-examine witnesses, to present evidence, to engage in discovery, or to exercise the other rights of a party may be limited[100] as long as the intervenor has a meaningful opportunity for a hearing[101] and a right to introduce testimony and other evidence on those issues affecting his substantial rights.[102] In each case, the extent of the intervention permitted should be

89 Comm. to Pres. Mill Creek v. Sec'y of Health, 3 Pa. Cmwlth. 200, 206, 281 A.2d 468, 471-42 (1971).

90 Cent. Me. Power Co. v. Me. Pub. Util. Comm'n, 382 A.2d 302, 312 (Me. 1978).

91 Cent. Me. Power Co. v. Me. Pub. Util. Comm'n, 405 A.2d 153, 162 (Me. 1979).

92 Wis. Envtl. Decade v. Pub. Serv. Comm'n, 69 Wis. 2d 1, 14, 230 N.W.2d 243, 250 (1975).

93 *In re* Rochester Exp. Limousine Serv., Inc., 508 N.W.2d 788, 790 (Minn. Ct. App. 1993).

94 NAACP v. Penn. Pub. Util. Comm'n, 5 Pa. Commw. 312, 326-27, 290 A.2d 704, 711-12 (1972).

95 Borough of Moosic v. Penn., 59 Pa. Commw. 338, 342-43, 429 A.2d 1237, 1240 (1981).

96 DAVIS, *supra* note 26, §§ 16.11, at 68, 16.13, at 74.

97 Associated Indus. v. Ickes, 134 F.2d 694, 705 (2d Cir. 1943), *vacated,* 320 U.S. 707 (1943).

98 Minn. Loan & Thrift v. Commerce Comm'n, 278 N.W.2d 522, 526-27 (Minn. 1979); *In re* Portland Gen. Elec. Co., 25 Or. App. 469, 475, 550 P.2d 465, 469 (1976).

99 An intervenor is generally not permitted to enlarge the issues in a case or to alter its nature. Vinson v. Wash. Gas Light Co., 321 U.S. 489, 494 (1944); Fireman Fund Ins. Co. v. Gerlach, 56 Cal. App. 3d 299, 302-03, 128 Cal. Rptr. 396, 398 (1976); Mondale v. Comm'r of Taxation, 263 Minn. 121, 125, 116 N.W.2d 82, 85 (1962); Marshfield Cmty, Bank v. State Banking Bd., 496 S.W.2d 17, 24 (Mo. Ct. App. 1973).

100 Nat'l Welfare Rights Org. v. Finch, 429 F.2d 725, 739 (D.C. Cir. 1970), *abrogated on other grounds as recognized in* Envirocare of Utah, Inc. v. Nuclear Regulatory Comm'n, 194 F.3d 72, 78-79 (D.C. Cir. 1999).

101 Citizens for Allegan Cnty. v. FPC, 414 F.2d 1125, 1128 (D.C. Cir. 1965).

102 Garner Pub. Sch. Dist. No. 10 v. Golden Valley Cmty. Comm. for Reorganization of Sch. Dist., 334 N.W.2d 665, 673 (N.D. 1983).

designed to balance the benefits of full intervention against the burdens created by prolonged cross-examination and the addition of new issues.[103] Particularly where public intervenors are involved, the scope of permitted intervention should depend on the extent to which they are affected by the proceeding (their stake in the outcome), the relevancy of their evidence to existing issues, and their ability to represent the interests they claim to represent.[104]

The contested case rule expressly authorizes the ALJ to specify the extent of participation permitted the intervenor in the order allowing intervention. The order must state the reasons for any limitations imposed. An intervenor may be allowed to file a written brief without acquiring the status of a party, to intervene as a party with all the rights of a party, or to intervene as a party but be limited to specific issues and to the means necessary to present and develop those issues.[105] Where more than one petitioner represents the same interests, the ALJ may determine which of them will be permitted to intervene or require their cooperation in the case.

If an agency is in a neutral, quasi-judicial position with respect to a contested case, agency staff may intervene.[106] However, in such a case, the administrator with final decision-making authority must take steps to ensure that he is not prejudiced by staff participation.[107]

6.2.8 Participation without Intervention

In the absence of a petition for intervention, interested persons may, without becoming parties, enter an appearance, offer testimony and exhibits, and question witnesses at a contested case hearing.[108] The extent of such participation is discretionary with the ALJ and is most commonly permitted when the proceeding involves questions of legislative fact and important policy issues. The parties normally are entitled to question any persons offering testimony or exhibits under this rule. If the agency is not a party to the contested case and is acting in a quasi-judicial capacity only, the ALJ may permit an agency representative to question witnesses.[109] This enables the agency staff to clarify or complete the record.

6.2.9 Failure to Intervene

[103] *See, e.g.*, Cent. Me. Power Co. v. Me. Pub. Util. Comm'n, 382 A.2d 302 (Me. 1978). Because of these problems, courts will examine and comment on intervention that agencies have permitted. Boston Edison Co. v. Dep't of Pub. Util., 375 Mass. 1, 35, 375 N.E.2d 305, 327 (1978) (criticizing allowance of individual to intervene in rate case); People for Envtl. Enlightenment & Responsibility (PEER), Inc. v. Minn. Envtl. Quality Council, 266 N.W.2d 858, 875 (Minn. 1978); McGinley v. Wheat Belt Pub. Power Dist., 214 Neb. 178, 182-83, 332 N.W.2d 915, 918 (1983).

[104] Bernard R. Adams, *State Administrative Procedure: The Rule of Intervention and Discovery in Adjudicatory Hearings,* 7 NW. U.L. REV. 854, 866-91 (1980). The Minnesota Supreme Court has considered a party's stake in the outcome as an important aspect of standing. *See, e.g.*, Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health, 257 N.W.2d 343, 346 (Minn. 1977).

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

[106] *Id.*, subp. 4.

[107] Urban Council on Mobility v. Minn. Dep't of Natural Res., 289 N.W.2d 729, 736 (Minn. 1980).

[108] MINN. R. 1400.6200, subp. 5 (2013).

[109] *Id.* 1400.7900.

A person who fails to intervene or who withdraws as a party to a contested case does not waive his or her right to testify and may be called as a witness by another party.[110]

6.2.10 Appeal from Denial of Intervention

An order denying intervention of right in a civil action is directly appealable because that order is final as to the attempted intervenor.[111] In contrast, the court of appeals has held that an order denying intervention in a contested case is not final as to the attempted intervenor, who may seek review of the decision if aggrieved by the final order of the contested case.[112]

110 N. Messenger, Inc. v. Airport Couriers, 359 N.W.2d 302, 304 (Minn. Ct. App. 1984).

111 Norman v. Refsland, 383 N.W.2d 673, 675 (Minn. 1986).

112 *In re* Application by the City of Rochester, 524 N.W.2d 540, 541-42 (Minn. Ct. App. 1994) (citing Cnty. of Ramsey v. Minn. Pub. Utils. Comm'n, 345 N.W.2d 740, 744 (Minn. 1984)).