

## 8.1 INTRODUCTION

The hallmark of modern pretrial procedure in judicial proceedings has been the elimination of pleadings as the source of preparatory information with the focus shifting to pretrial discovery.<sup>1</sup> The primary purpose of discovery is to eliminate the element of surprise at trial or hearing by permitting a party to obtain in advance all relevant factual information necessary to the proper preparation of that party's case.<sup>2</sup> In addition, discovery helps to focus the issues actually in controversy, identifies admissible evidence, and assists in the preparation at various stages of the case.<sup>3</sup>

Generally, however, the same considerations of total prehearing disclosure have not been fully applied to administrative contested case hearings. Although virtually any relevant, nonprivileged information may be discovered as a matter of right in a judicial proceeding, the same full pretrial disclosure is generally not available in administrative contested case hearings. A number of reasons have been offered for the limitations on discovery in administrative cases. Among these are that the administrative process is supposed to be speedy and discovery will impede it, that discovery will unnecessarily complicate proceedings, and that discovery will provide an instrument of harassment.<sup>4</sup> Consistent with the practice of most states, the prehearing discovery available in a Minnesota contested case proceeding may be limited, and its parameters are within the sound discretion of the administrative law judge.

The rules of the Minnesota Office of Administrative Hearings (OAH)<sup>5</sup> govern the availability of prehearing discovery in a statutorily defined contested case proceeding.<sup>6</sup> These rules supersede the rules of an individual agency to the extent of any inconsistency.<sup>7</sup> Under the OAH rules, limited discovery is available as a matter of right.<sup>8</sup> Discretionary discovery potentially equal to that obtainable under the rules of civil procedure is available within the sound discretion of the administrative law judge (ALJ).<sup>9</sup> In *In re Parkway Manor Healthcare Center*, the court reviewed a discovery order of an administrative law judge made in a contested case proceeding.<sup>10</sup> Without specific analysis, it equated discovery available under Minnesota Rules part 1400.6700, subpart 2, with that authorized under Rule

<sup>1</sup> See MINN. R. CIV. P. 26-37. For a discussion of the change to notice pleading and pretrial discovery and the reason therefor, see 6 JAMES WM. MOORE ET. AL., MOORE'S FEDERAL PRACTICE § 26APP.05 (2015).

<sup>2</sup> Sandberg v. Comm'r of Revenue, 383 N.W.2d 277, 281-82 (Minn. 1986); Gebhard v. Niedzwiecki, 265 Minn. 471, 476, 122 N.W.2d 110, 114 (1963); Jeppesen v. Swanson, 243 Minn. 547, 560, 68 N.W.2d 649, 656-57 (1955); see also Buysse v. Baumann-Furrie & Co., 428 N.W.2d 419, 425-26 (Minn. Ct. App. 1988) (stating that the rules encourage broad discovery practices, subject to limitations contained in MINN. R. CIV. P. 26.02), *rev'd on other grounds*, 448 N.W.2d 865 (Minn. 1989).

<sup>3</sup> See, e.g., United States v. Proctor & Gamble Co., 356 U.S. 677, 682 (1958); Hickman v. Taylor, 329 U.S. 495, 500-01 (1947).

<sup>4</sup> See David Melnick, Paul Little & Minot Tripp, *Discovery Prior to Administrative Adjudications - A Statutory Proposal*, 52 Cal. L. Rev. 823 (1964).

<sup>5</sup> MINN. R. 1400.6700 (2013).

<sup>6</sup> MINN. STAT. § 14.02, subd. 3 (2014).

<sup>7</sup> *Id.* § 14.51.

<sup>8</sup> See MINN. R. 1400.6700-.6800 (2013).

<sup>9</sup> *Id.* 1400.6700, subp. 2.

<sup>10</sup> 448 N.W.2d 116, 118 (Minn. Ct. App. 1989).

26.02(a) of the Minnesota Rules of Civil Procedure.<sup>11</sup> The limitations on discretionary discovery contained in Minnesota Rules part 1400.6700, subpart 2, however, are typical of administrative discovery provisions. The Model Administrative Procedure Act makes the availability of discovery discretionary with the hearing officer.<sup>12</sup> This chapter will consider the availability of discovery in an administrative contested case proceeding, the forms of discovery available, the methods of obtaining discovery, and the sanctions that may be imposed for failure to make discovery.

<sup>11</sup> *Id.*

<sup>12</sup> MODEL STATE ADMIN. PROCEDURE ACT § 411(f) (2010).