Chapter 12. Collateral Estoppel, Res Judicata, Stare Decisis, and the Equitable Defenses

Original Author: Andrew Tourville
Revised 2014 by Allan Klein

12.1 Res Judicata and Collateral Estoppel

The related doctrines of res judicata and collateral estoppel embody the fundamental rule that a "'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . .'"[1] Collateral estoppel, also known as issue preclusion, provides that the determination of an issue by a prior court is "conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation."[2] Res judicata, or claim preclusion, provides that a final judgment on the merits bars a second suit for the same claim by parties or their privies.[3] Both doctrines may be applied to give finality to administrative decisions if the decisionmaker acted in a judicial or quasi-judicial manner[4] and no overriding public policy prevents their application.[5] A handful of state cases have discussed these doctrines in the context of administrative proceedings,[6] and some have actually applied the doctrines to foreclose changing the outcome of the administrative proceeding.[7]

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[1] *Kaiser v. N. States Power Co.*, 353 N.W.2d 899, 902 (Minn. 1984) (quoting *Montana v. United States*, 440 U.S. 147, 153 (1979)) (other quotation omitted).

[2] *Id.*; *see also Bulbitz v. Comm'r of Revenue*, 545 N.W.2d 382, 385 (Minn. 1996).

[3] *Kaiser*, 353 N.W.2d at 902; *Hauser v. Mealey*, 263 N.W.2d 803, 806-07 (Minn. 1978); *Surf & Sand, Inc. v. Gardebring*, 457 N.W.2d 782, 787-88 (Minn. Ct. App. 1990) (holding that res judicata applied to the nursing home's contract claim as it involved the same issue and evidence presented in prior medical assistance rate contested case proceeding).

[4] *AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984); *McKee v. Ramsey Cnty.*, 310 Minn. 192, 194-95, 245 N.W.2d 460, 462 (1976); *Souden v. Hopkins Motor Sales*, 289 Minn. 138, 146, 182 N.W.2d 668, 672-73 (1971); *State ex rel. Turnbladh v. Dist. Court*, 259 Minn. 228, 240, 107 N.W.2d 307, 315 (1960); *In re Murphy Motor Freight Lines*, 428 N.W.2d 467, 470 (Minn. Ct. App. 1988).

[5] *AFSCME Council 96*, 356 N.W.2d at 299; *see also Johnson v. Consol. Freightways, Inc.*, 420 N.W.2d 608, 613-14 (Minn. 1988) (noting that when applying either doctrine, focus is on whether application would work an injustice on the party to be estopped).

[6] *Bulbitz*, 545 N.W.2d at 385; *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 115-16 (Minn. 1991); *see also Ellis v. Minneapolis Comm'n on Civil Rights*, 319 N.W.2d 702, 703-04 (Minn. 1982); *Lumpkin v. N. Cent. Airlines*, 296 Minn. 456, 462-63, 209 N.W.2d 397, 402 (1973); *Surf & Sand*, 457 N.W.2d at 787; *In re Peoples Natural Gas Co.*, 358 N.W.2d 684, 689 (Minn. Ct. App. 1984)); *supra* note 4 (listing related Minnesota cases).

[7] *Falgren v. Minn. Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996); *Graham,* 472 N.W.2d at 115-16; *Brix v. Gen. Accident & Assur. Corp.*, 254 Minn. 21, 25-26, 93 N.W.2d 542, 545-46 (1958); *Zander v. State*, 703 N.W.2d 845, 854 (Minn. Ct. App. 2005) (holding landowners were collaterally estopped from challenging a wetland replacement plan in an action under the Minnesota Environmental Rights Act because the plan had been previously approved by the Board of Soil and Water Resources (BSWR). The landowners had already challenged the plan before the BSWR and unsuccessfully appealed the Board's approval to the

Collateral estoppel prevents identical parties or those in privity with them from relitigating identical issues in a subsequent, distinct proceeding.[8] In *Graham v. Special School Dist. No. 1*,[9] the Minnesota Supreme Court held that the doctrine of collateral estoppel may be applied, in appropriate instances, to agency decisions. In order for a court to apply collateral estoppel to an agency decision, five factors must be met:

> (1) the issue to be precluded must be identical to the issue raised in the prior agency adjudication; (2) the issue must have been necessary to the agency adjudication and properly before the agency; (3) the agency determination must be a final adjudication subject to judicial review; (4) the estopped party was a party or in privity with a party to the prior agency determination; and (5) the estopped party was given a full and fair opportunity to be heard on the adjudicated issues.[10]

In *Falgren v. Minnesota Board of Teaching*,[11] the Minnesota Supreme Court determined that when a teacher was terminated for engaging in immoral conduct based on the factual finding that the teacher had engaged in nonconsensual sexual contact, collateral estoppel prohibited the teacher from relitigating the nonconsensual sexual contact issue in the Board's license revocation hearing. The court found that the issue sought to be precluded in the agency hearing was identical to the issue decided in the termination proceeding for collateral estoppel purposes.[12] Moreover, the court held that the termination proceeding satisfied due process because the teacher elected to have his discharge hearing before an arbitrator with a narrow scope of review, thereby waiving his rights to broader judicial review. The court noted,

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court of appeals); *Harford v. Univ. of Minn.*, 494 N.W.2d 903, 906 (Minn. Ct. App. 1993); *Surf & Sand*, 457 N.W.2d at 789; *Hough Transit Ltd. v. Harig*, 373 N.W.2d 327, 332 (Minn. Ct. App. 1985) (citing *United States v. Utah Constr. & Mining Co.*, 384 U.S. 394, 422 (1966)).

[8] *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 467 n.6 (1982); *Nw. Nat'l Life Ins. Co. v. Cnty. of Hennepin*, 572 N.W.2d 51, 53 (Minn. 1998); *Kaiser v. N. States Power Co.*, 353 N.W.2d 899, 902 (Minn. 1984); *Ellis*, 319 N.W.2d at 703-04; *Green v. City of Coon Rapids*, 485 N.W.2d 712, 718 (Minn. Ct. App. 1992).

[9] 472 N.W.2d 114, 116 (Minn. 1991) (holding collateral estoppel precluded relitigation of defamation issue, but did not apply to retaliatory discharge and free speech claims); *see also Villarreal v. Indep. Sch. Dist. No. 659*, 520 N.W.2d 735, 739 (Minn. 1994) (finding teacher's discrimination claim barred by collateral estoppel where teacher was determined to be not qualified in prior termination hearing before independent hearing examiner).

[10] *Graham*, 472 N.W.2d at 116 (citations omitted). The fifth factor, whether an estopped party was given a full and fair opportunity to be heard, was at issue in a recent court of appeals case. In the administrative context, a full and fair opportunity to be heard requires that the hearing provide adequate procedural safeguards and that the tribunal not be impermissibly biased. *State by Friends of the Riverfront v. City of Minneapolis*, 751 N.W.2d 586, 589-90 (Minn. Ct. App. 2008). The court found that because the plaintiffs had been able to present written argument and evidence to the city council, and because the purpose of the hearing was to determine whether a development was historically appropriate, written argument was sufficient. The court also determined that the council was not impermissibly biased and therefore the claim was barred by collateral estoppel. *Id.* at 591; *see also Stepnes v. Ritschel*, 771 F. Supp. 2d 1019, 1036-37 (D. Minn. 2011) (applying Minnesota law, holding that collateral estoppel did not apply because the prior proceeding was an emergency hearing which did not allow for a full and fair opportunity to litigate the issue).

[11] 545 N.W.2d at 908.

[12] *Id*.

however, that although collateral estoppel precluded the issue of whether the teacher engaged in nonconsensual sexual contact, the ALJ was still required to consider any additional evidence the teacher wished to present concerning the alleged immorality of his conduct and whether the ALJ should recommend discipline based exclusively on immoral conduct.[13]

The doctrine of res judicata, on the other hand, focuses on previous judgments between the parties and prevents them from relitigating their causes of action.[14] The same general criteria used to determine if res judicata applies also are used for collateral estoppel.[15] If res judicata is applied, it not only prevents relitigation of facts and law previously decided but also prevents raising issues that could have been raised earlier but were not.[16]

The most important factor influencing whether the agency decision is entitled to res judicata or collateral estoppel effect, and one which runs through all of the conditions for their application, is whether the agency previously acted in a judicial or quasi-judicial capacity.[17] If so, the courts have indicated they would be willing to consider applying the doctrines to preclude subsequent litigation.[18] To allow application in an administrative context, the appropriate construction of "judicial remedy" must include either administrative determinations or access to a state appellate court.[19]

Application of the doctrines has the effect of estopping the subsequent court or agency from modifying the previous decision but does not deprive it from assuming jurisdiction.[20] Other factors that affect the application of res judicata or collateral estoppel include whether judicial review is available[21] and whether there is an overriding public policy that would prevent its application.[22] No res judicata or collateral estoppel effect will be given to an agency decision

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[13] *Id.*; *see also Harford v. Univ. of Minn.*, 494 N.W.2d 903, 908 (Minn. Ct. App. 1993) (finding university Board of Regents' determination on appeal by faculty member, who alleged his resignation was constructive discharge, of university president's decision constituted "final adjudication" subject to judicial review, for purposes of collateral estoppel).

[14] *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 467 n.6 (1982); WILLIAM J. KEPPEL & DAYTON GILBERT, MINNESOTA ADMINISTRATIVE PRACTICE AND PROCEDURE, § 624 (1982); *see also State ex rel. Turnbladh v. Dist. Court*, 259 Minn. 228, 237, 107 N.W.2d 307, 313 (1960); *Surf & Sand, Inc. v. Gardebring*, 457 N.W.2d 782, 789 (Minn. Ct. App. 1990); *Miller v. Nw. Nat'l Ins. Co.*, 354 N.W.2d 58, 61-62 (Minn. Ct. App. 1984).

[15] *Staples v. Zinn*, 302 Minn. 149, 152, 223 N.W. 2d 415, 417 (1974).

[16] *In re McDonough*, 296 N.W.2d 648, 700 (Minn. 1980).

[17] S*ee Surf & Sand*, 457 N.W.2d at 787; *Hough Transit Inc. v. Haring*, 373 N.W.2d 327, 332 (Minn. Ct. App. 1985); *supra* note 4 *(*listing related Minnesota cases).

[18] *McKee v. Ramsey Cnty.*, 310 Minn. 192, 194 n.1, 245 N.W.2d 460, 462 n.1 (1976*); Souden v. Hopkins Motor Sales*, 289 Minn. 138, 146, 182 N.W.2d 668, 672-73 (1971).

[19] *Surf & Sand*, 457 N.W.2d at 787; *see also D.H. Blattner & Sons, Inc. v. Firemen's Ins. Co. of Newark*, 535 N.W.2d 671, 674 (Minn. Ct. App. 1995) (finding decision of Arkansas Claims Commission not entitled to res judicata effect where outcome of proceeding was determined by legislative body constrained by political process and decision was not subject to judicial review).

[20] *State ex rel. Turnbladh v. Dist. Court*, 259 Minn. 228, 237-38, 107 N.W.2d 307, 313-14 (1960).

[21] *McKee*, 310 Minn. at 194, 245 N.W.2d at 462.

[22] *AFSCME Council 96 v. Arrowhead Reg'l Corrections Bd.*, 356 N.W.2d 295, 299 (Minn. 1984); *Cent. Baptist Theological Seminary v. City of New Brighton*, 487 N.W.2d 528, 532 (Minn. Ct. App. 1992); *In re N. States Power Co.*, 440 N.W.2d 138, 142 (Minn. Ct. App. 1989) (balancing factors such as the public importance of the issue involved, fairness and equity are bases for relaxing the application of both doctrines in administrative hearings).

that is outside the scope of the agency's authority or jurisdiction,[23] to claims that were not raised before the agency,[24] or to agency action that is administrative in nature.[25] A determination under one statute is not given automatic res judicata or collateral estoppel effect when a similar question arises under another statute — for example, employment termination proceedings involving veterans preference and arbitration hearings.[26]

Res judicata has sometimes been urged against an agency as a bar to the agency's subsequent modification or amendment of its order. An agency generally may modify its earlier decision until jurisdiction is lost because of the filing of an appeal or the lapse of time.[27] An agency does have power, however, on proper notice, to reverse previous decisions that were erroneous for reasons such as fraud, mistake, or misconception of facts.[28] In a 1971 decision, the Minnesota Supreme Court did not find the earlier decision to be res judicata of subsequent proceedings; but the court strongly criticized the agency "in the interests of consistency and fairness" for attempting to substitute a different set of factual findings for those made four years previously.[29] In addition, statutes may give the agency the right or duty to reopen a case or amend a previous order on its own motion. Such statutes alter customary res judicata application.[30]

Res judicata and collateral estoppel should not be applied rigidly to administrative proceedings and should be qualified or rejected "when their application would contravene an overriding public policy."[31] Accordingly, the Minnesota Supreme Court has refused to apply

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[23] Heath v. John Morrell & Co., 768 F.2d 245, 248 (8th Cir. 1985); Jackson v. Red Owl Stores, 375 N.W.2d 13, 18-19 (Minn. 1985); *McKee,* 310 Minn. at 195, 245 N.W.2d at 462.

[24] *McKee,* 310 Minn. at 195, 245 N.W.2d at 462. *But see In re* McDonough, 296 N.W.2d 648, 700 (Minn. 1980).

[25] *Turnbladh*, 259 Minn. at 240, 107 N.W.2d at 315 (reviewing proceedings to remove public employees from office); L.K. v. Gregg, 380 N.W.2d 145, 149 n.1 (Minn. Ct. App. 1986) (finding results of an "independent review" by an ad hoc committee were not entitled to res judicata effect when respondents ought to have been afforded a contested case hearing before an ALJ).

[26] *AFSCME Council 96*, 356 N.W.2d at 299; *see also* State v. Minneapolis & St. Louis Ry., 257 Minn. 124, 135, 100 N.W.2d 669, 677 (1960) (determination by one agency on particular question does not necessarily bind another agency to decide same question same way); Ress v. Abbott-Nw. Hosp., Inc., 438 N.W.2d 727, 731 (Minn. Ct. App. 1989), *rev'd on other grounds*, 448 N.W. 519 (Minn. 1989) (finding unemployment compensation decision on misconduct not bound by professional licensing decision by different agency).

[27] *Turnbladh*, 259 Minn. at 239-40, 107 N.W.2d at 315; *see* § 14.4 (discussing hearing and reconsideration).

[28] *Anchor Cas. Co. v. Bongards Co-op. Creamery Ass'n*, 253 Minn. 101, 106, 91 N.W.2d 122, 126 (1958).

[29] *Souden v. Hopkins Motor Sales*, 289 Minn. 138, 146, 182 N.W.2d 668, 672-73 (1971).

[30] *Wangen v. Comm'r of Pub. Safety*, 437 N.W.2d 120, 123 (Minn. Ct. App. 1989) (res judicata is inapplicable to situations when the statute envisions that a party may petition for relief more than once); *In re Peoples Natural Gas Co.*, 358 N.W.2d 684, 689-90 (Minn. Ct. App. 1984); *see* § 12.1.

[31] *AFSCME Council 96*, 356 N.W.2d at 299; *see also Brinker v. Weinberger*, 522 F.2d 13, 15 (8th Cir. 1975); *Wangen*, 437 N.W.2d at 123 (citing KEPPEL & GILBERT, *supra* note 14, § 624 at 119-20) (noting that fundamental differences between court decisions and agency decisions may diminish the applicability of the doctrines to administrative agencies). Even courts need not apply the doctrine of collateral estoppel rigidly. Courts should focus on "whether its application would work an injustice on the party against whom estoppel is urged." *State v. Lemmer*, 716 N.W. 2d 657, 663 (Minn. Ct. App. 2006) (quoting *Falgren v. State Bd. of Teaching*, 545 N.W.2d 901, 905 (Minn. 1996)).

either doctrine to simultaneous proceedings before a Veteran's Preference Board and an arbitrator regarding "just cause" termination of an employee who was a veteran.[32]

Res judicata and collateral estoppel apply only to final decisions. Thus, the recommended decision of an administrative law judge is not entitled to res judicata or collateral estoppel application if the agency departs from the report. However, it may be arbitrary and capricious decisionmaking for the agency to depart in its decision from the ALJ's report without explaining its reasons for doing so.[33]

The federal courts do not give preclusive effect to unreviewed state agency determinations in title VII employment discrimination cases.[34] However, if such an agency decision has been reviewed by the state courts, the state court decision is entitled to full faith and credit, and res judicata and collateral estoppel may be applied.[35]

A dismissal of an action is res judicata only in regard to the issues actually addressed by the dismissal and is not a judgment on the merits.[36] In situations where there is first a criminal proceeding resulting in an acquittal and then a civil proceeding involving the same issues, res judicata or estoppel may not apply because of the different standards of proof.[37] However, application of the doctrines is not precluded in every case.[38] Agency enforcement action is not precluded because of previous litigation on an issue necessary to the enforcement action.[39] In fact, agency enforcement may be specifically based on prior criminal or civil judgments as, for example, where professionals' licenses may be revoked for conviction of crime or other reasons.[40]

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[32] *AFSCME Council 96,* 356 N.W.2d at 299.

[33] *Beaty v. Minn. Bd. of Teaching*, 354 N.W.2d 466, 471 (Minn. Ct. App. 1984); *see also Brinks v. Minn. Pub. Utils. Comm'n*, 355 N.W.2d 446, 452 (Minn. Ct. App. 1984); § 11.5 (discussing the ALJ's recommended decision).

[34] *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 470 n.7 (1982); *Heath v. John Morrell & Co.*, 768 F.2d 245, 248 (8th Cir. 1985); *Hickman v. Elec. Keyboarding*, 741 F.2d 230, 233-34 (8th Cir. 1984).

[35] *Kremer*, 456 U.S. at 478, 485.

[36] *Fischer v. E. Air Lines, Inc.*, 414 N.W.2d 403, 405-06 (Minn. 1987) (finding dismissal of an agency action on procedural grounds does not preclude a subsequent civil action because there was no decision on the merits); *In re Minneapolis Cmty. Dev. Agency*, 359 N.W.2d 687, 690 (Minn. Ct. App. 1984).

[37] *In re Congdon's Estate*, 309 N.W.2d 261, 270 (Minn. 1981); *see also In re Kaldahl*, 418 N.W.2d 532, 535-36 (Minn. Ct. App. 1988) (addressing double jeopardy considerations when a criminal proceeding is followed by an administrative action).

[38] *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 568 (1951).

[39] *McMenomy v. Ryden*, 276 Minn. 55, 65-66, 148 N.W.2d 804, 811 (1967) (dictum); *In re Murphy Motor Freight Lines*, 428 N.W.2d 467, 470 (Minn. Ct. App. 1988).

[40] *See, e.g.*, MINN. STAT. §§ 147.091, subd. 1 (doctors), 326.111, subd. 4 (architects), .3381, subd. 3 (private detectives), 326A.08, subd. 5 (accountants) (2014); Minn. R. Law. Prof. Resp. Bd. 17, 19 (attorneys); , 758 N. W. 2d 875, 878-79 (Minn. Ct. App. 2008) (finding, where nurse was convicted of assault and Department refused to reconsider his disqualification or grant him a requested fair hearing, that nurse was afforded his "full panoply of rights" in prior criminal proceeding, that nurse had not shown the conviction was in any way erroneous, and that the government had an interest in avoiding duplicative evidentiary hearings).

One type of proceeding in which the res judicata doctrine is firm is public ditch proceedings. Once the public ditch is established, it is a judgment in rem and cannot be collaterally attacked.[41]

12.2 Stare Decisis

Despite the proliferation of administrative decisions, it is still the general rule that agencies are not bound by their previous decisions. "An administrative agency concerned with furtherance of the public interest is not bound to rigid adherence to precedent."[42] However, there has been some erosion from this principle to the extent that an agency may have to explain satisfactorily why it is departing from past decisions in order to escape judicial reversal.[43] In *In re Whitehead*,[44] the Minnesota Court of Appeals explained that although an administrative agency is not bound to rigid adherence to precedent, that does not mean that an agency may abandon its own precedent without reason or explanation. The court stated that "[f]ailure to explain such a departure indicates that the agency's action is arbitrary and capricious."[45]

Where there are successive administrative proceedings, such as in unemployment compensation proceedings, the initial determination may become the law of the case and be given precedential effect.[46] Stare decisis does not apply to administrative orders that conflict with express statutory law.[47] Future development in this area of administrative law will likely mean less ad hoc decisionmaking and greater reliance on precedents.[48]

12.3 Equitable Estoppel

Estoppel is an equitable doctrine addressed to the court's discretion and is intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict

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[41] *Slosser v. Great N. Ry.*, 218 Minn. 327, 331, 76 N.W.2d 47, 49 (1944); *Lupkes v. Town of Clifton*, 157 Minn. 493, 497, 196 N.W. 666, 668 (1924); *Garrett v. Skorstad*, 143 Minn. 256, 259-60, 173 N.W. 406, 408 (1919).

[42] *In re Peoples Natural Gas Co.*, 358 N.W.2d 684, 689-90 (Minn. Ct. App. 1984) (quoting *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 348, 352 (Minn. Ct. App. 1983)); *see also Petition of N. States Power Gas Util.*, 519 N.W.2d 921, 925 (Minn. Ct. App. 1994).

[43] In re Crestview Manor, 365 N.W.2d 387, 391 (Minn. Ct. App. 1985).

[44] 399 N.W.2d 226 (Minn. Ct. App. 1987).

[45] *Id*. at 229.

[46] *Brezinka v. Bystrom Bros., Inc.*, 403 N.W.2d 841, 843 (Minn. 1987) (finding, where intervening supreme court decision in an unrelated case was contrary to a legal decision by the workers' compensation court of appeals and the instant case was still pending on remand, compensation judges did not err in disregarding what otherwise would have been the law of the case by following the supreme court ruling); *In re N. States Power Co.*, 440 N.W.2d 138, 141 (Minn. Ct. App. 1989) ("The law of the case doctrine is applicable to successive appeals."); *Hough Transit Ltd. v. Harig*, 373 N.W.2d 327, 331-32 (Minn. Ct. App. 1985).

[47] *Murphy Motor Freight Lines v. Witte Transp. Co.*, 260 Minn. 440, 453, 110 N.W.2d 296, 305 (1961).

[48] *See, e.g.*, 2 F. COOPER, STATE ADMINISTRATIVE LAW 530-34 (1965); WILLIAM J. KEPPEL & DAYTON GILBERT, MINNESOTA ADMINISTRATIVE PRACTICE AND PROCEDURE, § 623 (1982).

legal rights.[49] A party attempting to assert equitable estoppel against a governmental entity bears a "heavy burden of proof."[50] The Minnesota Supreme Court does not "envision that estoppel will be freely applied against the government."[51]

To establish a claim of equitable estoppel against the government, a claimant must establish four elements:

1. there must be "wrongful conduct" on the part of an authorized government agent;
2. the party seeking equitable relief must reasonably rely on the wrongful conduct;
3. the party must incur a unique expenditure in reliance on the wrongful conduct; and
4. the balance of equities must weigh in favor of estoppel.[52]

The claimant must show that the government engaged in affirmative misconduct, rather than simple inadvertence, mistake or imperfect conduct.[53] Traditionally, the government could not be estopped in its sovereign capacity, only in its proprietary capacity.[54] However, the court abandoned this rule in 1977.[55]

The court will allow estoppel against the government if justice so requires considering "the public interest frustrated by the estoppel."[56] Application of estoppel against an agency acting in a sovereign capacity will be allowed only "if the equities advanced by the individual are sufficiently great."[57] In other words, the court will apply a balancing test in each specific case, weighing whether the public interest frustrated by the estoppel is greater or lesser than the equities of the case.[58] For example, an agency's erroneous payments to a medical assistance provider who did not obtain prior authorization for treatment as required by the agency's rule

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[49] *Application of Q Petroleum*, 498 N.W.2d 772, 778 (Minn. Ct. App. 1993); *REM-Canby, Inc. v. Minn. Dep't of Human Servs.*, 494 N.W.2d 71, 74 (Minn. Ct. App. 1992).

[50] *Brown v. Minn. Dep't. of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985); *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980); *Stillwater Twp. v. Rivard*, 547 N.W.2d 906, 911 (Minn. Ct. App. 1996); *Stotts v. Wright Cnty.*, 478 N.W.2d 802, 804-05 (Minn. Ct. App. 1991).

[51] *Mesaba Aviation Div. v. Itasca Cnty.*, 258 N.W.2d 877, 880 (Minn. 1977).

[52] *City of N. Oaks v. Sarpal*, 797 N.W. 2d 18, 25 (Minn. 2011); *accord Nelson v. Comm'r of Revenue*, 822 N.W. 2d 654 (Minn. 2012).

[53] *City of N. Oaks*, 797 N.W.2d at 25-26 (reiterating that a simple mistake is not wrongful conduct); *Shetka v. Aitkin Cnty.*, 541 N.W.2d 349, 353 (Minn. Ct. App. 1995); *see also Stillwater Twp. v. Rivard*, 547 N.W.2d 906, 911 (Minn. Ct. App. 1996) (holding that mere government inaction is not enough to meet the heavy burden of proof); *In re Westling Mfg., Inc.*, 442 N.W.2d 328, 332 (Minn. Ct. App. 1989) (holding fault alone is not a basis for estoppel separate from wrongful conduct); *Dep't of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 117 (Minn. Ct. App. 1989) (holding that invoking estoppel to gain government benefits justifies less restrictive application of doctrine).

[54] *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 473, 124 N.W.2d 328, 344 (1963); *Bd.of Educ. v. Sand*, 227 Minn. 202, 211, 34 N.W.2d 689, 695 (1948); *see also* Note, *Equitable Estoppel of the Government*, 79 COLUM L. REV. 551 (1979); Raoul Berger, *Estoppel Against the Government*, 21 U. CHI. L. REV. 680 (1954).

[55] *Mesaba Aviation Div. v. Itasca Cnty.*, 258 N.W.2d 877, 880 (Minn. 1977).

[56] *Id.*; *Shetka*, 541 N.W.2d at 353.

[57] *Mesaba*, 258 N.W.2d at 880.

[58] *Brown v. Minn. Dep't. of Pub. Welfare*, 368 N.W.2d 906, 910 (Minn. 1985); *Jasaka Co. v. City of St. Paul*, 309 N.W.2d 40, 44 (Minn. 1981); *In re Halberg Constr. & Supply*, 385 N.W.2d 381, 383 (Minn. Ct. App. 1986); *Beaty v. Minn. Bd. of Teaching*, 354 N.W.2d 466, 470 (Minn. Ct. App. 1984).

did not estop the government from seeking repayment because the payments did not constitute an inducement or justify reasonable reliance.[59] When an agency has discretion as to which of several parties it may choose to proceed against, it is not wrongful conduct triggering estoppel when it initially proceeds against one, but then later chooses to proceed against another.[60]

Estoppel is not appropriate if the person claiming the estoppel was not a party to the government's earlier transaction or proceeding or in privity with a party.[61] The facts that are presented to support the equitable estoppel claim "must be clear, positive and unequivocal in their implication."[62]

In an appropriate case, the agency itself must apply equitable estoppel to its own actions where, for example, it affirmatively prescribes a course of action and later seeks to deny the correctness of its advice.[63] However, if the agency was without authority to act, its action cannot be made effective via estoppel.[64] Incorrect statements of the law made by agency officials at administrative hearings will not constitute estoppel where there was no reliance.[65] A governmental entity is not estopped from denying the unlawful functions of its own officials.[66] An agency is not estopped from reopening settlement agreements, even after the passage of

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[59] *Brown*, 368 N.W.2d at 910-11; *see also Spaulding v. Bd. of Cnty. Comm'rs*, 306 Minn. 512, 515, 238 N.W.2d 602, 604 (1976) (holding county cannot be bound by estoppel to make unauthorized payments); *In re Application for PERA Ret. Benefits of McGuire*, 756 N.W.2d 517, 519-20 (Minn. Ct. App. 2008) (stating estoppel cannot be applied so as to cause an agency to make unauthorized payments and holding PERA Board cannot be estopped from rescinding erroneous payments where appellant concedes that payments he received were unauthorized); *In re Residential Alts. v. Minn. Dep't. of Human Servs.*, 387 N.W.2d 885, 890-91 (Minn. Ct. App. 1986).

[60] *Nelson v. Comm'r of Revenue*, 822 N.W. 2d 654, 661 (Minn. 2012).

[61] *State v. Minneapolis & St. Louis Ry.*, 257 Minn. 124, 135, 100 N.W.2d 669, 677 (1960).

[62] *Eliason v. Prod. Credit Ass'n*, 259 Minn. 134, 137, 106 N.W.2d 210, 213 (1960); *see also In re New Ulm Telecomm., Inc.*, 399 N.W.2d 111, 122-23 (Minn. Ct. App. 1987) (stating that silence or inaction may also give rise to estoppel when there is a duty to speak or when a person fails to assert a right).

[63] *Beaty*, 354 N.W.2d at 471; *see also Dep't of Human Servs. v. Muriel Humphrey Residences*, 436 N.W.2d 110, 118 (Minn. Ct. App. 1989) (finding facility relied upon erroneous advice from a department employee); *Halberg*, 385 N.W.2d at 384.

[64] *Axelson v. Minneapolis Teachers' Ret. Fund Ass'n*, 544 N.W.2d 297, 299-300 (Minn. 1996) (holding that the doctrine of promissory estoppel did not apply where a promise of the board of trustees of retirement fund association was made without authority); *Senior Citizens Coal. v. Minn. Pub. Utils. Comm'n*, 355 N.W.2d 295, 304 (Minn. 1984); *Bd. of Educ. v. Sand*, 227 Minn. 202, 212, 34 N.W.2d 689, 695 (1948); *In re Application for PERA Ret. Benefits of McGuire*, 756 N.W.2d 517, 519-20 (Minn. Ct. App. 2008) (discussing application of estoppel against the government); *New Ulm Telecom*, 399 N.W.2d at 122 (finding equitable estoppel does not permit an agency to expand its powers contrary to statutory limitations: agency may not act as a court of equity and exceed statutory limitations on its authority).

[65] *In re Westling Mfg., Inc.*, 442 N.W.2d 328, 333 (Minn. Ct. App. 1989) (finding reliance on contradictory interpretations from two different individuals at the same agency to be unreasonable, insufficient to support estoppel); *Muriel*, 436 N.W.2d at 118 (finding where there was reasonable reliance, incorrect statements may result in estoppel); *In re Residential Alts. v. Minn. Dep't. of Human Servs.*, 387 N.W.2d 885, 890-91 (Minn. Ct. App. 1986); *Dep't of Natural Res. v. Todd Cnty. Hearings Unit*, 356 N.W.2d 703, 707 (Minn. Ct. App. 1984) (finding no basis for estoppel where land owners had not detrimentally relied on the department's published notice).

[66] *Jasaka Co. v. City of St. Paul*, 309 N.W.2d 40, 44 (Minn. 1981).

many years, if the agreements were contrary to public policy and there was no prejudice demonstrated by the parties alleging the estoppel.[67] Nor is an agency estopped from enforcement of its statute merely because of ineffective prior enforcement.[68]

12.4 Laches

Application of the doctrine of laches depends on a factual determination in each case. The basic question is "whether there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for."[69] The purpose of the doctrine is "to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay."[70] While evidence of prejudice is not always required, it is an important factor in determining whether a plaintiff's delay was reasonable.[71]

Traditionally, laches, like equitable estoppel, has been available against the state when acting in its proprietary capacity, but not when acting in its sovereign capacity.[72] Thus, by delaying eleven years before questioning the terms of a settlement in a case involving contracts for the sale of state timber, the state, as a proprietor, committed laches.[73] However, a thirteen-year delay by the state in bringing suit in an inheritance tax case was neither laches nor estoppel, since tax is a matter of sovereignty.[74]

Laches against the state itself has been specifically discussed in only a few cases.[75] However, other cases dealing with equitable estoppel against the state or its subdivisions either have been cited as support for the proposition that laches applies to state action in a

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[67] *Bhd. of Ry. & S.S. Clerks, Lodge 364 v. State Dep't. of Human Rights*, 303 Minn. 178, 193, 229 N.W.2d 3, 12 (1975).

[68] *Shakopee Mdewakanton Sioux Cmty. v. Minn. Campaign Fin. & Pub. Disclosure Bd.*, 586 N.W.2d 406, 409 (Minn. Ct. App. 1998).

[69] *Fetsch v. Holm*, 236 Minn. 158, 163, 52 N.W.2d 113, 115 (1952); *see also* Bhd. of Ry. & S.S. Clerks, *Lodge 364 v. State Dep't. of Human Rights*, 303 Minn. 178, 193, 229 N.W.2d 3, 12 (1975); *City of St. Paul v. Harding*, 356 N.W.2d 319, 322 (Minn. Ct. App. 1984); § 7.1.2.

[70] *Aronovitch v. Levy*, 238 Minn. 237, 242, 56 N.W.2d 570, 574 (1953).

[71] *Wheeler v. City of Wayzata*, 533 N.W.2d 405, 409 (Minn. 1996) (citing *Aronovitch*, 56 N.W.2d at 574); *Harr v. City of Edina*, 541 N.W.2d 603, 606 (Minn. Ct. App. 1996).

[72] *State v. Ill. Cent. R.R.*, 200 Minn. 583, 592, 274 N.W. 828, 831 (1937); *City of Staples v. Minn. Power & Light Co.*, 196 Minn. 303, 306, 265 N.W. 58, 60 (1936) (dictum) (citing *State v. Gardiner*, 181 Minn. 513, 233 N.W. 16 (1930); *State v. Horr*, 165 Minn. 1, 205 N.W. 444 (1925)) ("The doctrine of laches applies even to the state in its proprietary capacity."); *State v. Brooks*, 183 Minn. 251, 253-54, 236 N.W. 316, 317 (1931) (finding laches could not be invoked against state in action to enforce tax lien).

[73] *State v. Brooks-Scanlon Lumber Co.*, 122 Minn. 400, 403-04, 142 N.W. 717, 719 (1913). *But see State ex rel. City of Duluth v. Duluth Street Ry.*, 88 Minn. 158, 161, 92 N.W. 516, 517 (1902) (finding no laches where city took no action to enforce portions of street railway franchise until seven years after acquisition of right-of-way).

[74] *Brooks*, 183 Minn. at 253-54, 236 N.W at 317; *see also Ill. Cent. R.R.*, 200 Minn. at 592, 274 N.W. at 831.

[75] *Wheeler v. City of Wayzata*, 533 N.W.2d 405, 409 (Minn. 1996); *City of Staples*, 196 Minn. at 306, 265 N.W. at 60 (dictum); *Brooks*, 183 Minn. at 253-54, 236 N.W at 317; *Gardiner*, 181 Minn. at 515, 233 N.W. at 17; *Brooks-Scanlon Lumber Co.*, 122 Minn. at 253-54, 142 N.W. at 317.

proprietary capacity[76] or appear to involve factual situations similar to the few reported laches cases.[77] The connection between these two doctrines was aptly expressed by the Minnesota Supreme Court where the court, without separately discussing the doctrines, found "such laches and estoppel on the part of the state that it cannot now be permitted to come in and question . . . the . . . settlement."[78]

In 1977, the Minnesota Supreme Court abolished the sovereign versus proprietary distinction for equitable estoppel claims against the state.[79] The same holding has not been applied to the defense of laches. In *Leisure Hills of Grand Rapids, Inc. v. Minnesota Dept. of Human Services*,[80] the Minnesota Court of Appeals rejected the relator's argument that the holding in *Mesaba* eliminating the sovereign/proprietary distinction should be applied to laches cases. The court explained that laches and equitable estoppel are distinctly different concepts. "The emphasis in laches is on delay; the emphasis in estoppel is on misleading."[81] Because of these differences, the court found that elimination of the distinction between the government's sovereign and proprietary functions in the equitable estoppel context was not mandated in the laches context.[82] Consequently, as this matter involved the agency's sovereign function of running the Medical Assistance program, the court determined the doctrine of laches to be inapplicable.[83]

When the state seeks to revoke professionals' licenses, laches will seldom be found as a matter of public policy unless the licensee has been unduly prejudiced.[84] Thus, a four-year time lapse between the initiation of an investigation and the filing of charges did not constitute laches.[85] The same type of considerations may be found in environmental protection litigation.[86]

An alternative to asserting a laches defense is to argue that the case is barred by a statute of limitations. However, this argument has usually not been successful because the

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[76] *City of Staples*, 196 Minn. at 306, 265 N.W. at 60.

[77] *State v. Ill. Cent. R.R.*, 200 Minn. at 592, 274 N.W. at 832.

[78] *Gardiner*, Minn. at 515, 233 N.W. at 17.

[79] *Mesaba Aviation Div. v. Cnty. of Itasca*, 258 N.W.2d 877, 800 (Minn. 1977).

[80] 480 N.W.2d 149, 151 (Minn. Ct. App. 1992).

[81] *Id*. (quoting MODERN AMERICAN REMEDIES 964 (Douglas Laycock ed. 1985)).

[82] *Id*. at 152.

[83] *Id*. *But see State v. St. Paul Fire & Marine Ins.*, 434 N.W.2d 6, 8-9 (Minn. Ct. App. 1989) (ignoring sovereign versus proprietary distinction in a case where the state's claim against an insurance company under the Unclaimed Property Act was dismissed for failure to prosecute when the suit had been pending for seven and one-half years). The court restated the traditional test for dismissing for failure to prosecute: "(1) the delay must have prejudiced the adverse party; and (2) the delay must have been unreasonable and inexcusable." *Id.* at 8. The court tempered that test, however, noting that "after many years of unnecessary delay, the need to search for concrete examples of prejudice diminishes." *Id.* at 9 (quoting *Belton v. City of Minneapolis*, 393 N.W.2d 244, 246 (Minn.Ct.Ap.1986)).

[84] *See, e.g., In re N.P.*, 361 N.W.2d 386, 392 (Minn. 1985); *Fisher v. Indep. Sch. Dist. No. 622*, 357 N.W.2d 152, 156 (Minn. Ct. App. 1984) (upholding elementary school principal's discharge for sexual misconduct based on events that did not come to light until 12 years later); *see also* Annotation, 51 A.L.R. 4th 1147 (1987 and Supp. 1997); Note, *The Application of the Doctrine of Laches in Public Interest Litigation,* 56 B.U.L. REV. 181 (1976).

[85] *N.P.*, 361 N.W.2d at 392-93.

[86] *Minn. Pub. Interest Research Grp. v. Butz*, 498 F.2d 1314, 1324 (8th Cir. 1974).

judicial statute of limitations applies to "actions"[87] and "action" is defined as "any proceeding in any court of this state."[88] The Minnesota Supreme Court declined to apply the statute of limitations to an arbitration hearing, noting that the statute is confined to judicial proceedings.[89] And the Department of Labor and Industry's attempt to recover underpayments due to prevailing wage violations was not barred by the two-year statute of limitations on the recovery of wages[90] because the Court of Appeals concluded that, by common law and statutory definition, the statute was intended to be confined to judicial proceedings.[91] The Court of Appeals has also held in a dentist license case that no statute of limitations applies to the licensing of the dental profession.[92] The exception to these cases appears to be the application of the six-year statute of limitations for actions upon a liability created by statute to administrative cases brought under the Veterans Preference Act.[93] Perhaps because these are proceedings to recover lost wages brought against a public employer, the Court of Appeals decided to apply the judicial policy against allowing stale claims.[94]

A final question involves situations where laches, a traditionally equitable defense, is claimed in a case in which there is a statute of limitations. Customarily, laches would not apply before the statute of limitations had run. "In actions at law, governed by express statutes of limitations, the doctrine of laches is seldom applied, has often been said to have no application at all, and that nothing short of the statutory limitation will bar the right of action."[95] Since the modern cases focus on whether the delay has caused prejudice, however, the old rule may no longer be valid.[96]

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[87] Minn. Stat. §§ 541.05, .07 (2014).

[88] *Id.* § 645.45(2).

[89] *Har Mar Inc. v. Thorson & Thorshov Inc.*, 300 Minn. 149, 153, 218 N.W.2d 751, 754 (1974).

[90] Minn. Stat. § 541.07(5) (2014).

[91] *In re Wage & Hour Violations of Holly Inn*, 386 N.W.2d 305, 308 (Minn. Ct. App. 1986).

[92] *In re Schultz*, 375 N.W.2d 509, 518 (Minn. Ct. App. 1985).

[93] Minn. Stat. §§ 197.46-.481 (2014).

[94] *Johnson v. Cnty. of Anoka*, 536 N.W.2d 336, 339 (Minn. Ct. App. 1995); *see also Oak Ridge Care Ctr. v. Dep't of Human Servs.*, 452 N.W.2d 703, 706-07 (Minn. Ct. App 1990) (enforcing two-year statute of limitations against dissolved corporations applied against DHS, but reversed by supreme court's holding that the department's "actions" were commenced timely), *rev'd in part*, 460 N.W.2d. 21 (Minn. 1990).

[95] *State v. Brooks-Scanlon Lumber Co.*, 122 Minn. 400, 404, 142 N.W. 717, 719 (1913)

[96] *See, e.g., In re N.P.*, 361 N.W.2d 386, 392-93 (Minn. 1985).