24.3 PETITION FOR DECLARATORY JUDGMENT

A preenforcement rule challenge under the APA is initiated by a "petition for a declaratory judgment … addressed to the Court of Appeals."[1] The legislature, by a 1984 amendment, directed that the petition be addressed to the court of appeals instead of, as before, to the district court.[2] In this context, the "petition for a declaratory judgment" should be considered in the nature of a writ, somewhat analogous to a petition for a writ of certiorari, whereby the agency's action is brought before the court of appeals for judicial review.[3]

Ordinarily, a preenforcement rule challenge presumes the existence of a rule. Instances may arise where a party claims that an agency pronouncement is a rule and is invalid because the agency, believing its pronouncement was not a rule, did not follow the statutory rulemaking procedures.[4] Consequently, there will be no rulemaking record. The Minnesota Court of Appeals has held that only formally adopted rules may be challenged by a petition for a declaratory judgment and that an unadopted rule should be challenged in a contested case enforcement action.[5] Mandamus relief, requested to compel an agency to promulgate rules, has been denied when the adoption of rules by the agency was discretionary and the commissioner of the agency had exercised his discretion not to adopt a rule.[6] The Minnesota Supreme Court has adopted rules setting out what the "petition for a declaratory judgment" for a preenforcement rule challenge must contain.[7] The petition is to describe the specific rule to be reviewed and the errors claimed by petitioner. Review of the validity of the administrative rule is on the record made in the agency rulemaking process.[8]

The APA does not prescribe any time limits for the bringing of a preenforcement rule challenge. The particular statute under which the agency has adopted its rule should be checked, however, to see if there are any time limits.[9] Neither is there any "exhaustion of remedies" requirement, as the statute expressly provides that a declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass on

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1 MINN. STAT. § 14.44 (2014); MINN. R. CIV. APP. P. 114.

2 1984 Minn. Laws ch. 640, § 26, at 1793; *see also* MINN. STAT. § 480A.06, subd. 4 (2014).

3 Manufactured Hous. Inst. v. Pettersen, 347 N.W.2d 238, 247 (Minn. 1984) (quoting Honn v. City of Coon Rapids, 313 N.W.2d 409, 416 n.5 (Minn.1981)) (stating declaratory judgment action "has become, in many ways, 'an all-purpose writ.'"); *see also* MINN. STAT. § 480A.06, subd. 3 (2014) ("The Court of Appeals shall have jurisdiction to issue writs of certiorari to all agencies"); *cf.* MINN. STAT. § 14.63 (2014) (judicial review in contested cases is by certiorari).

4 *See* ch. 16.

5 Minn. Ass'n of Homes for the Aging v. Dep't of Human Serv., 385 N.W.2d 65, 67-68 (Minn. Ct. App. 1986); *see also* Minn. Educ. Ass'n v. Minn. State Bd. of Educ., 499 N.W.2d 846, 848-49 (Minn. Ct. App. 1993) (holding that a declaratory judgment petition was not the proper method to review a proposed interpretation of an adopted rule when the proposed interpretation is not part of the adopted rule). The legislature added another means of challenging an unadopted rule in 2001. *See* § 16.6 (discussing administrative challenge to improper rulemaking).

6 Friends of Animals & Their Env't v. Nichols, 350 N.W.2d 489, 491 (Minn. Ct. App. 1984).

7 MINN. R. CIV. APP. P. 114.02, form 114.

8 *Id.* 114.03, subd. 1.

9 Some federal acts set time limits for judicial review of rulemaking. *See, e.g.*, Adamo Wrecking Co. v. United States, 434 U.S. 275, 278-79 (1978) (reviewing standards issued under Clean Air Act).

the validity of the rule, and whether or not the agency has commenced an enforcement action against the petitioner.[10] Since review became available in the court of appeals, there have been a number of cases where the validity of a rule has been challenged through declaratory judgment.[11]

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[10] MINN. STAT. § 14.44 (2014); Duncan Baird, *Remedies by Judicial Review of Agency Action in Minnesota*, 4 WM. MITCHELL L. REV. 277, 279-85 (1978) (dealing generally with ripeness, exhaustion, and primary jurisdiction). *But cf.* Coalition of Greater Minn. Cities v. Pollution Control Agency, 765 N.W.2d 159, 163-64 (Minn. Ct. App. 2009) ("There must be a showing that the rule is or is about to be applied to the petitioner's disadvantage. A mere possibility of an injury or mere interest in a problem does not render the petitioner aggrieved or adversely affected so that standing exists."(citation omitted)); Minn. Educ. Ass'n v. Minn. State Bd. of Educ., 499 N.W.2d 846, 849 (Minn. Ct. App. 1993) (distinguishing between "threatened application" and "proposed interpretation" of a rule and denying standing where "Board's proposed interpretation of the word 'comparable' was not made part of the promulgated rule").

[11] *E.g.*, Ctr. for Biological Diversity v. Minn. Dep't of Natural Res., No. A12-1680, 2013 WL 2301951, at *2-3 (Minn. Ct. App. May 28, 2013) (citing MINN. STAT. §§ 14.44-.45) (denying statutory standing where petitioners failed to identify "any harm uniquely attributable to the challenged rules"); *Coalition of Greater Minn. Cities*, 765 N.W.2d at 163-64 (finding standing to contest "the effects that an overbroad application [or threatened application] of the [pollution control] rule would have on its municipalities"); Rocco Altobelli v. Dept. of Commerce, 524 N.W.2d 30, 34-35, 38 (Minn. Ct. App. 1994) (assessing petitioner's standing to invoke the court's original jurisdiction to determine validity of agency's rules under §§ 14.44-.45); *Minn. Educ. Ass'n*, 499 N.W.2d at 849 (denying standing where "Board's proposed interpretation of the word 'comparable' was not made part of the promulgated rule"); Stasny by Stasny v. Minn. Dep't of Commerce, 474 N.W.2d 195, 198 (Minn. Ct. App. 1991) (finding rule invalid where Commerce Department exceeded its statutory authority in adopting rule); Minn. Chamber of Commerce v. Minn. Pollution Control Agency, 469 N.W.2d 100, 102 (Minn. Ct. App. 1991) (finding original jurisdiction to determine validity of agency's rules, including amendments); City of Morton v. Minn. Pollution Control Agency, 437 N.W.2d 741, 745-46 (Minn. Ct. App. 1989) (discussing scope of review under §§ 14.44-.45 as to contested pollution control rules); Christian Nursing Ctr. v. Dep't of Human Servs., 419 N.W.2d 86, 89-90 (Minn. Ct. App. 1988) (finding standing for declaratory judgment action challenging validity of rule consolidated with appeal from order in contested case); Ellingson & Assoc. v. Keefe, 410 N.W.2d 857, 861 (Minn. Ct. App. 1987) (finding original jurisdiction for pre-enforcement determination of the validity of rules governing comprehensive rehabilitation services); Handle With Care v. Dep't of Human Servs., 406 N.W.2d 518, 519-20 (Minn. Ct. App. 1987) (weighing §§ 14.44-.45 pre-enforcement challenge to group family day care rules); Minn. Ass'n of Homes for the Aging v. Dep't of Human Servs., 385 N.W.2d 65, 69 (Minn. Ct. App. 1986) (denying standing under §§ 14.44-.45 and allowing "Relator's claim that [the department's] practice is an unpromulgated rule [to] be made in a contested case hearing"); *cf.* L.K. v. Gregg, 380 N.W.2d 145,149 (Minn. Ct. App. 1986) (finding declaratory judgment action premature because no rule yet adopted).