7.4 MOTIONS AND SUBPOENAS

7.4.1 Motions

Before an ALJ is assigned to a contested case, any motions regarding the matter must be made to the agency responsible for commencing the contested case. The motions allowable at the preassignment stage will be governed by the procedural rules of the agency or the *ad hoc* procedures it is willing to adopt. However, after a judge is assigned to the matter,[1] all motions must be made to the judge, and motions to the agency are unauthorized.[2] The judge's exclusive jurisdiction to hear and decide motions normally continues until the judge's report is issued. When the judge's report consists of a nonbinding recommendation to the agency, the judge loses jurisdiction to hear and rule on motions when the report is issued.[3] Likewise, when a recommendation is involved, the rules provide that the judge may not amend the report after it is issued except to correct clerical or mathematical errors.[4] Therefore, for nonbinding reports, petitions for rehearing or reconsideration must be made to the agency once the judge's report is issued.[5]

When the judge's decision is binding on the agency, the judge's jurisdiction to hear and rule on motions continues after the decision is issued. Therefore, in such cases, motions for rehearing or reconsideration must be filed with the judge, and not with the agency.[6] However, once the judge's report or the agency's decision is appealed to the courts, the jurisdiction of the judge or the agency over the matter ends, absent a remand order by the court.[7]

All motions filed with the judge must comply with the requirements of the contested case rules. Those rules require that all applications to a judge for an order must be made by motion.[8] However, not every request for an order is a motion. Some orders must be requested from the chief ALJ. They include requests for mediation services, requests for settlement conferences, and requests for orders imposing sanctions for frivolous delays in precomplaint proceedings under the Minnesota Human Rights Act.[9] In addition, affidavits of prejudice requesting the removal of a judge from a contested case must be filed with the chief judge.[10]

1 The assignment of judges is governed by MINN. R. 1400.5400 (2013).

2 MINN. STAT. § 14.58 (2014); MINN. R. 1400.7600 (2013).

3 MINN. R. 1400.8300 (2013).

4 *Id.*

5 *Id.*

6 *Id.*

7 *See* Anchor Cas. Co. v. Bongards Co-op Creamery Ass'n, 253 Minn. 101, 106, 91 N.W.2d 122, 126 (1958). However, for regulatory purposes, the agency retains jurisdiction to act unless a stay is issued under Minn. Stat. § 14.65 (2014). *See* Rock Island Motor Trans. Co. v. Murphy Motor Freight Lines, 239 Minn. 284, 293, 58 N.W.2d 723, 729 (1953); Stearns-Hotzfield v. Farmers Ins. Exchange, 360 N.W.2d 384, 389 (Minn. Ct. App. 1985) (agency's right to reverse an earlier erroneous adjudication lasts until jurisdiction is lost by appeal or until a reasonable time has run that would be at least co-extensive with the time required for review).

8 MINN. R. 1400.6600 (2013).

9 *Id.* 1400.5950, subp. 3, .6550, subp. 2, .7050, subp. 1.

10 *Id*. 1400.6400.

Oral motions are only permitted during a hearing or a prehearing proceeding.[11] All other motions must be in writing and must be served on all parties, the judge, and the agency, even if the agency is not a party. Written motions must set forth the relief or order sought, and the grounds for the relief requested must be stated "with particularity."[12] The memorandum of law filed with the motion may not exceed 25 pages in length, without permission from the judge.[13]. When the relief sought depends on facts not in the record, the motion should be supported with necessary affidavits, as in civil practice. Since the judge may not schedule a hearing on the motion, affidavits may be essential for establishing one's entitlement to relief. Affidavits can also be used to reduce a party's costs and to avoid delays. An affidavit containing necessary factual information may make a hearing unnecessary or may persuade other parties not to file objections that might otherwise be filed.

The judge will schedule a motion hearing only if it is necessary to develop a full and complete record in order to make a proper decision.[14] Thus, if disputed fact issues must be resolved to decide the motion, a motion hearing will usually be held. On the other hand, if the motion raises purely legal issues, a hearing will not usually be scheduled. Since the judge has discretion in determining whether a hearing will be ordered, the parties are required to state their desire for a hearing at the time their motion or response is filed.[15] Although not required by the rule, any request should state the reasons why a hearing is necessary. When a hearing is necessary, it may be held in the presence of the parties or, if only oral argument is involved, by telephone.

The written motion must advise other parties that if they wish to contest the motion, they must file a written response with the judge and serve copies of the response on all other parties within ten working days after the motion is received.[16] The response must set forth the nonmoving party's objection to the relief or order requested. The parties to contested cases frequently desire prompt resolution of a particular motion. In such cases, they may, with the judge's consent, arrange expedited procedures. In motion practice, like other prehearing procedures, ALJs strive to create flexible procedures.

In ruling on motions, when the contested case rules are silent the judge is required to apply the Minnesota Rules of Civil Procedure for the District Courts if it is determined appropriate in order to promote a fair and expeditious proceeding.[17] This provision makes it possible for the parties and the judge to apply traditional and familiar concepts and precedents to a variety of issues the contested case rules do not address. Generally speaking, the same types of motions that arise in civil practice will arise in a contested case proceeding. Motions may be made to change the location of a hearing, to quash a subpoena, to limit discovery, or to exclude evidence. Motions may also be made to obtain summary disposition, dismissal on jurisdictional grounds, or a more definite statement of the issues or charges involved in a case.

11 *Id.* 1400.6600.
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 *Id.*

Summary disposition is the administrative equivalent to summary judgment. Summary disposition is appropriate where there is no genuine issue as to any material fact and one party is entitled to judgment as a matter of law.[18] The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.[19] However, motions for dismissal are seldom granted on the completion of the case-in-chief of the party with the initial burden of producing evidence. The traditional view has been that such a disposition is inappropriate in administrative proceedings and that a complete record should be obtained before a matter is decided.

The written orders issued by the judge are generally in the form of formal orders. All orders are binding on the parties in the absence of a timely objection.[20]

No motions may be made directly to an agency once a judge is assigned to the contested case, but an agency may decide a motion or may review a judge's order on a motion if the judge certifies the motion to the agency during the course of the proceeding.[21] Under the contested case rules, a party may request that a pending motion be certified to the agency, and after the judge has issued an order on a motion, any party adversely affected by the order may request that the motion and order be certified to the agency. When a party requests that a pending motion be certified, the judge may decide the motion before certification or may certify it without first considering the merits and issuing an order. In deciding whether to rule on a motion before certification, the judge will consider the same factors that must be considered in determining whether certification is appropriate. Especially weighty are considerations of timeliness, agency expertise, and the nature of the issue involved. Thus, if a prompt decision is necessary or agency expertise is involved, the likelihood of certification without prior consideration by the judge is greater than if a legal issue concerning which there is a substantial ground for a difference of opinion exists.

Motions regarding the admissibility of evidence and the application and interpretation of the contested case rules of the OAH cannot be certified, and certification is not permitted when the judge's report contains a decision that is binding on the agency.[22] For example, the judges' decisions in discrimination cases arising under the Minnesota Human Rights Act and in contested cases arising under the Minnesota Occupational Safety and Health Act are binding on the departments initiating those cases. Therefore, the certification of motions in contested cases arising under those statutes is not permissible. However, where the judge makes a recommendation to the agency, rather than a binding decision, the agency may review all orders on motions made during the course of the matter in its final order.[23]

Under Rule 103.03(h), Minnesota Rules of Civil Appellate Procedure, two types of interlocutory trial court orders may be appealed if the trial court certifies that the question presented is important and doubtful. The rule only applies to orders denying a motion to dismiss for failure to state a claim upon which relief can be granted and orders denying

18 MINN. R. CIV. P. 56.03; Sauter v. Sauter, 244 Minn. 482, 484, 70 N.W.2d 351, 353 (Minn. 1955); MINN. R. 1400.5500K (2013).

19 *See* MINN. R. 1400.6600 (2013).

20 *Id.* 1400.7100, subp. 3.

21 *Id.* 1400.7600.

22 *Id.*

23 *Id.; see also* Surf & Sand Nursing Home v. Dep't of Human Servs., 422 N.W.2d 513, 519 (Minn. Ct. App. 1988) (citing this rule and holding that an ALJ's decision on procedural matters is not final as to the agency).

summary judgment. Although a "trial court" is defined as "the court or agency whose decision is sought to be reviewed"[24] an ALJ's order - even when the ALJ is making a final decision - apparently is not appealable under the rule.[25]

When a motion is certifiable, the judge must consider six specific criteria in deciding whether to certify it:

1. whether the motion involves a controlling question of law concerning which there is substantial ground for a difference of opinion;
2. whether a final determination by the agency on the motion would materially advance the ultimate termination of the hearing;
3. whether the delay between the ruling and the motion to certify would adversely affect the prevailing party;
4. whether to wait until after the hearing would render the matter moot and render it impossible for the agency to reverse or for a reversal to have any meaning;
5. whether it is necessary to promote the development of the full record and avoid remanding; and
6. whether the issues are solely within the expertise of the agency.[26]

7.4.2 Subpoenas

In contested case proceedings, there are several sources of subpoena power. The primary source is the APA. It authorizes the chief judge to issue subpoenas "for the attendance of a witness or the production of books, papers, records or other documents as are material to any matter being heard."[27] There is an important difference between administrative subpoena practice and district court practice. The contested case rule implementing this subpoena power permits subpoenas to be issued only on written request to the judge assigned to the case and with a written justification.[28] The rule does not expressly limit the right to request a subpoena to only hearing participants. However, the statute permits subpoenas only on the initiative of the chief judge or on the written request of an "interested party."[29] The statutory language suggests that subpoenas cannot be issued on the written request of a participant that does not have party status. Moreover, the contested case rule governing the rights of such a participant does not include the right to obtain subpoenas.[30] Nonetheless, a good policy argument can be made that persons who have a statutory right to participate in a contested case or persons who are permitted to

24 MINN. R. CIV. APP. P. 101.02, subd. 4 .

25 In *State, by Johnson v. Hibbing Taconite Co.*, No. C6-89-2041, C8-89-2042 Minn. App. Dec. 12, 1989), the court refused to review an ALJ's interlocutory order denying reconsideration of a motion for summary judgment. The court apparently concluded that Rule 103.03 does not apply to agency orders in the absence of a statutory authorization for a party to seek review. In the context of discovery, however, the court has granted discretionary review of an ALJ's discovery order. *See In re* Parkway Manor Healthcare Ctr., 448 N.W.2d 116, 118 (Minn. Ct. App. 1989).

26 MINN. R. 1400.7600 (2013).

27 MINN. STAT. § 14.51 (2014).

28 MINN. R. 1400.7000, subp. 1 (2013).

29 MINN. STAT. § 14.51 (2014).

30 *See* MINN. R. 1400.6200, subp. 5 (2013).

participate under the rule should be able to obtain subpoenas in an appropriate case. Without subpoenas, their right to participate may be impaired and important evidence may not be presented. In fact, the failure to issue subpoenas requested by a party will require reversal, at least where the record does not disclose why the witnesses did not appear.[31]

The written request for a subpoena must contain a brief statement demonstrating the potential relevance of the evidence or testimony sought. The request must also specifically describe any documents sought and must state the full name and the home or business address of all persons to be summoned. If known, the date, time, and place for responding to the subpoena must also be included in the request.[32] Failure to comply with the requirements in the rule will result in the denial of subpoena requests. Discovery subpoenas to non-parties generally cannot be issued without notice to the litigants.[33]

If it is determined that the subpoena request should be approved, the judge recommends issuance to the chief judge who has final authority to grant the request under the statute. If a subpoena is authorized by the chief judge, it is prepared at the OAH and mailed to the person who requested it. More expeditious handling can be arranged when appropriate.

The party requesting the subpoena is responsible for its service. Under the rules, the subpoena must be served in the manner provided by the Rules of Civil Procedure for the District Courts, unless the statutes applicable to the case provide otherwise.[34] so service of the subpoena can generally be made by any person not a party to the contested case.[35] The cost of service and the fees and expenses of any subpoenaed witness must be paid by the party at whose request the witness appears. The costs and fees are generally regulated by statute.[36] In most cases, the party causing a subpoena to be served is not required to file the subpoena and a proof of service with the judge. However, proof of service will be required if a party files a motion for an order imposing sanctions for the failure to comply with any subpoena issued by the chief judge.[37]

Under the contested case rules, any person served with a subpoena issued by the judge or the chief judge may object to it by filing an objection with the judge. Objections must be filed promptly and cannot be filed after the time specified for compliance in the subpoena. The objection must be in the form of a motion to the judge requesting that the subpoena be canceled or modified.[38] The rule does not recognize challenges by third persons. Consequently, the question of whether a subpoena may be challenged by a person other than the person to whom it is issued will depend on the subject matter involved and the interest asserted. The usual rule is that an administrative subpoena cannot be challenged by a person other than the person to whom it is directed absent a showing of a proprietary right to the information sought, the existence of a privilege, or a constitutional,

31 *See* Ntamere v. DecisionOne Corp., 673 N.W.2d 179, 181-82 (Minn. Ct. App. 2003); Thompson v. Cnty. of Hennepin, 660 N.W.2d 157, 160-61 (Minn. Ct. App. 2003).

32 MINN. R. 1400.7000, subp. 1 (2013).

33 *See* Sandberg v. Comm'r of Revenue, 383 N.W.2d 277, 281-82 (Minn. 1986).

34 MINN. R. 1400.7000, subp. 2 (2013).

35 MINN. R. CIV. P. 45.02.

36 The controlling statute in most cases is MINN. STAT. § 357.22 (2014).

37 MINN. R. 1400.7000, subp. 2 (2013).

38 *Id.* , subp. 3.

statutory, or common-law right to suppress the information.[39] The person served with the subpoena may object to it on the grounds that it violates the rights of another person. Thus, it has been suggested that an employer may be able to assert that the constitutionally protected privacy rights of its employees precludes disclosure.[40]

The procedures followed in considering the objections to subpoenas are the same as those followed in deciding other motions. Based on the filings made or on the hearing held, the judge may cancel or modify the subpoena if it is unreasonable or oppressive. In making that determination, the judge must consider the issues and amounts in controversy in the case, the costs and burdens of compliance when compared with the value of the testimony or evidence sought to the party's case, and whether alternative methods of obtaining the desired testimony or evidence are available.[41] For example, a party's request to subpoena an agency head may be denied if the evidence to be elicited can be obtained from a lower-ranking staff member. A subpoena may also be limited if it goes to a matter that is outside the scope of the party's intervention or conflicts with the rights and privileges of the party.

If the subpoena requests trade secrets, proprietary information, or nonpublic data under the Minnesota Government Data Practices Act,[42] the judge may issue necessary protective orders. Moreover, the judge may require the requesting party to pay the reasonable costs incurred in producing any documents or other tangible things.

Unless authorized by a constitutional or statutory provision, administrative agencies and officials have no contempt powers.[43] Since ALJs, including the chief judge, have not been vested with such powers a person may not be held in administrative contempt and fined or jailed for failing to comply with a contested case subpoena. Nonetheless, when a party fails to comply with a contested case subpoena, it may be subject to other sanctions.[44] Some courts have recognized that sanctions may be imposed on a party that refuses to comply with a subpoena issued by an agency official in a quasi-judicial proceeding,[45] and the contested case rules suggest that sanctions may be imposed on a party in that situation. The subpoena rule alludes to the imposition of sanctions when a person fails to comply with a subpoena,[46] but no rule specifically authorizes sanctions for noncompliance with

39 *See In re* Selesnick, 115 Misc. 2d 993, 454 N.Y.S.2d 656, 658 (1982); *see also* Vogue Instrument Corp. v. Lem Instruments Corp., 41 F.R.D. 346, 348 (S.D.N.Y. 1967) (confidential trade secrets may be protected); In re Camperlengo v. Blum, 56 N.Y.2d 251, 253-56, 436 N.E.2d 1299, 1300-1301, 451 N.Y.S.2d 697, 698-99 (1982) (physician-patient privilege does not create absolute privilege protecting psychiatrists' patient records from agency subpoenas in investigation of billing practices).

40 S*ee* United States v. Allis-Chalmers Corp., 498 F. Supp. 1027, 1030-31 (E.D. Wis. 1980).

41 MINN. R. 1400.7000, subp. 3 (2013).

42 MINN. STAT. §§ 13.01-.90 (2014).

43 *See* ICC v. Brimson, 154 U.S. 447 (1894), *overruled on other grounds by* Bloom v. State of Ill., 391 U.S. 194, 199-200 (1968); State *ex rel.* Peers v. Fitzgerald, 131 Minn. 116, 119-21, 154 N.W. 750, 752 (1915); Wright v. Plaza Ford, 164 N.J. Super. 203, 215-16, 395 A.2d 1259, 1265-66 (1978) (legislature may not validly grant criminal contempt powers to administrative agency).

44 *See* § 8.7.

45 *See, e.g.*, NLRB v. C.H. Sprague & Son Co., 428 F.2d 938, 942 (1st Cir. 1970); General Motors Corp. v. Blair, 129 N.J. Super. 412, 423-24, 324 A.2d 52, 58 (1974). *But see* NLRB v. Int'l Medication Sys., 640 F.2d 1110, 1114-16 (9th Cir. 1981). *See generally* Robert L. Williams, *Authority of Federal Agencies to Impose Discovery Sanctions: The FTC - A Case in Point,* 65 GEO. L.J. 739, 756 (1977).

46 MINN. R. 1400.7000, subp. 2 (2013).

subpoenas, and the kinds of sanctions and the conditions for their imposition are not addressed. One would expect the discovery rules to address the issue. However, they permit sanctions only if a party fails to comply with a discovery order.[47] Since subpoenas are not obtained on notice and motion, a subpoena is not an order for purposes of that rule. It follows that sanctions may not be imposed on a party that refuses to comply with a subpoena unless an order directing compliance is obtained first, which requires a motion to the judge, consistent with the procedure alluded to in the subpoena rule. If a party fails to comply with the order for compliance, the sanctions available under the discovery rule are available. Alternatively, the party may be held in default.[48] If a person other than a party refuses to comply with a subpoena of the chief judge, no specific sanctions are available under the contested case rules. In that case, to obtain compliance with the subpoena, the party who requested it would be required to seek enforcement in the district court in the district in which the subpoena is issued, as permitted by statute.[49]

In addition to the subpoenas that are available under the APA and the contested case rules of the OAH, subpoenas may be available under other statutes and rules in contested cases. The statutes applicable to the contested cases of some agencies specifically authorize the judge to issue subpoenas. For example, the Minnesota Human Rights Act authorizes the ALJ to issue subpoenas after a complaint is filed.[50]

Many statutes authorize state agencies to issue investigatory subpoenas.[51] Occasionally, agencies have utilized their independent subpoena power in contested case proceedings instead of obtaining subpoenas under the contested case rules. Some courts have permitted that practice,[52] but the Minnesota courts have not had an opportunity to determine when it is permissible. Although an agency's subpoena power should not be unnecessarily impaired or diluted, once a contested case is commenced, an agency acting in an administrative capacity as a party should not be permitted to issue investigative subpoenas solely to obtain discovery in a contested case or to compel witnesses to appear at the contested case hearing. When the agency is a party to a contested case, it should be subject to the same procedural rules that apply to other parties. It is inequitable for it to gain any unfair advantage over another party by using its own subpoena power. Thus, it should not be permitted to use its subpoena power to obtain discovery that the judge has refused to allow. Also, an agency's use of its independent subpoena power as a surrogate for the subpoenas that are available under the contested case rules is inconsistent with the spirit and intent of the Minnesota APA. The act contemplates that all parties will be governed

47 *Id.* 1400.6700, subp. 3.

48 Under MINN. R. 1400.6000 (2013), a default occurs when a party fails to comply with any interlocutory order of the judge.

49 *See* MINN. STAT. § 14.51 (2014). If the relevant statute only permits an agency to seek enforcement, a private party must seek enforcement through an *ex relatione* proceeding. *See* Ex-Cell-O Corp. v. Little, 268 F. Supp. 755, 758 (S.D. Ind. 1966).

50 MINN. STAT. § 363A.29, subd. 10 (2014).

51 *See, e.g.,* MINN. STAT. §§ 15.08 (departments of management and budget and administration), 46.04, subd. 1 (department of commerce - banks), 144A.12 (department of health - nursing homes), 214.10, subd. 3 (licensing boards), 611A.56, subd. 2(1) (Crime Victims Reparations Board) (2014).

52 Mich. Dep't of Social Servs. v. Arden, 81 Mich. App. 210, 215-16, 265 N.W.2d 91, 93 (1978); *cf.* Nat'l Plate & Window Glass Co. v. United States, 254 F.2d 92, 93 (2d Cir. 1958); FCC v. Waltham Watch Co., 169 F. Supp. 614, 619-20 (S.D.N.Y. 1959); *In re* Carvel Corp. v. Lefkowitz, 77 A.D.2d 872, 875, 431 N.Y.S.2d 615, 618 (1980).

by a uniform set of procedural rules.[53] Therefore, it is likely that the courts will carefully review any agency action to enforce investigative subpoenas during the pendency of a contested case. If no investigation is in progress, or if the agency is attempting to gain an unfair advantage by the use of its own subpoenas, the courts will likely deny relief on the grounds that enforcement would be an abuse of judicial process.

Agencies have seldom exercised their subpoena powers in contested cases. When they have, the other parties have invariably objected to the use of those powers, and some have sought to have the subpoenas quashed on motion to the ALJ. However, it is doubtful that the judge has any authority to quash the subpoenas of state agencies. The judge may quash subpoenas issued under the contested case rules,[54] but the quashing of investigatory subpoenas, like their enforcement, is a judicial act.[55]

Most statutes granting subpoena power to agencies require judicial action for enforcement.[56] Consequently, where a party objects to the agency's use of its own subpoenas in a contested case proceeding, it must challenge the subpoena in court or refuse to comply and must force the agency to seek enforcement in the courts. Since the ALJ cannot enforce agency subpoenas, the judge will not impose sanctions on a party for noncompliance with them as a judge would in situations involving subpoenas issued by the judge or the chief judge. However, the party may be exposed to sanctions by the agency if it fails to comply with the agency's subpoena.[57] For that reason, a court challenge rather than noncompliance may be advisable.[58] Administrative subpoenas must be issued in a timely and proper fashion to be enforceable.[59] Moreover, the courts will not enforce agency subpoenas if enforcement would constitute an abuse of judicial process. Thus, the courts will not enforce agency subpoenas issued after a criminal prosecution is begun if they are issued so that the government can strengthen its case,[60] to harass a party to settle a collateral suit, or for some other improper purpose.[61]

Some of the quasi-judicial hearings held by judges of the OAH are not APA contested cases. For example, by statute, the OAH holds quasi-judicial personnel hearings for Hennepin County.[62] It may also hold a variety of other quasi-judicial hearings for municipalities and school districts under its statutory authority to contract with political

53 MINN. STAT. § 14.51 (2014) (providing that the contested case rules supersede all other conflicting agency rules).

54 MINN. R. 1400.7000, subp. 3 (2013).

55 *See, e.g.,* FTC v. Owens-Corning Fiberglas Corp., 626 F.2d 966, 973-74 (D.C. Cir. 1980).

56 *See, e.g.,* MINN. STAT. §§ 14.51, 15.08, 46.04, 144A.12 (2014).

57 It is doubtful whether an agency may take disciplinary action against a licensee that refuses to comply with an administrative subpoena and challenges it in court. *See* Silverman v. State Liquor Auth., 47 A.D.2d 226, 228-30, 366 N.Y.S.2d 449, 452-53 (1975).

58 But some courts have held that they do not have authority to quash an administrative subpoena. *See, e.g.,* Pa. Crime Comm'n v. Doty, 9 Pa. Commw. 328, 334-35, 305 A.2d 921, 924 (1973).

59 *See, e.g., In re* Commodity Futures Trading Comm'n v. First Nat'l Bullion Corp., 461 F. Supp. 659, 661 (S.D.N.Y. 1978), *aff'd*, 598 F.2d 609 (2d Cir. 1979); Wilson & Co. v. Oxberger, 252 N.W.2d 687, 689-90 (Iowa 1977).

60 *See* Dep't of Revenue v. Olympic Sav. & Loan Ass'n, 78 Ill. App. 3d 668, 674, 396 N.E.2d 1295, 1300 (1979); *cf.* United States v. Art Metal-U.S.A., Inc., 484 F. Supp. 884, 886-87 (D. N.J. 1980)..

61 United States v. Powell, 379 U.S. 48, 57-58 (1964); Kohn v. State, 336 N.W.2d 292, 297 (Minn. 1983).

62 MINN. STAT. § 383B.38 (2014).

subdivisions for hearing services.[63] In these types of quasi-judicial hearings, the availability of subpoenas will depend on the authority and the procedural rules of the body for whom the hearing is held. If that body has subpoena power, the practice has been for the chief judge to exercise it consistent with the statutes and rules applicable to the particular proceeding. The subpoena powers of the body are exercised by the chief judge on the theory that the subpoena powers of that body are delegated to her when that body contracts for hearing services.[64] If the agency or political subdivision has no subpoena power that the chief judge may exercise, the parties may obtain subpoenas from the clerk of district court under rule 45.[65] The rule permits the clerk to issue subpoenas for witnesses in cases before any board or other person authorized to examine witnesses. The civil rule has been successfully used to obtain subpoenas in proceedings held by judges under contracts with political subdivisions.

A subpoena commands a person to appear before a court or some other designated official and to present testimony or produce specific documents at a designated time and place. A subpoena is not the legal equivalent of a search warrant[66] and does not authorize the official before whom the appearance is to be made to conduct a search and seizure of any documents that are not produced as commanded. Generally speaking, an administrative search and seizure is permissible only under a search warrant authorized by a court of law.[67]

63 *See* MINN. STAT. § 14.55 (2014).

64 *Cf.* Whalen v. Minneapolis Special Sch. Dist. No. 1, 309 Minn. 292, 294-95, 298, 245 N.W.2d 440, 442, 444 (1976) (holding that board's right to administer oaths is delegated to its appointed hearing officer). It is usually held that an agency may delegate its subpoena power. *See* FTC v. Gibson, 460 F.2d 605, 607 (5th Cir. 1972). The delegations of power made by state agencies must follow the procedures specified in MINN. STAT. § 15.06, subd. 6 (2014).

65 MINN. R. CIV. P. 45. The supreme court held that a similar provision applied to administrative proceedings and to the production of documents. Wolf v. State Bd. of Med. Exam'rs, 109 Minn. 360, 362, 123 N.W. 1074, 1075 (1909); City of Minneapolis v. Wilkin, 30 Minn. 140, 143, 14 N.W. 581, 582 (1883).

66 Mancuzi v. DeForte, 392 U.S. 364, 370-72 (1968).

67 See v. City of Seattle, 387 U.S. 541, 544-45 (1967); State v. Hansen, 286 N.W.2d 163, 166-67 (Iowa 1979). In some cases, the court will permit warrantless administrative inspections of persons subject to extensive governmental regulation if permitted by law. United States v. Biswell, 406 U.S. 311, 315-16 (1972); Colonnade Catering Corp. v. United States, 397 U.S. 72, 77 (1970); State v. Wybierala, 305 Minn. 455, 459-60, 235 N.W.2d 197, 200 (1975). *See generally* chapter 3.