

IN THE SUPREME COURT OF IOWA

---

No. 20-0657  
POLK COUNTY NO. CVCV057831

---

ADAM KLEIN,  
Petitioner-Appellant,

vs.

IOWA PUBLIC INFORMATION BOARD,  
Respondent-Appellee.

---

APPEAL FROM THE IOWA DISTRICT COURT  
FOR POLK COUNTY, IOWA  
THE HONORABLE SAMANTHA J. GRONEWALD

---

FINAL BRIEF OF RESPONDENT-APPELLEE  
IOWA PUBLIC INFORMATION BOARD

---

THOMAS J. MILLER  
Attorney General of Iowa

EMILY WILLITS  
Assistant Attorney General  
Department of Justice  
Hoover State Office Building  
1305 E. Walnut St., 2nd Fl.  
Des Moines, Iowa 50319  
Ph: (515) 281-6403  
E-mail: [emily.willits@ag.iowa.gov](mailto:emily.willits@ag.iowa.gov)  
ATTORNEY FOR RESPONDENT-APPELLEE

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... 4

STATEMENT OF ISSUES PRESENTED FOR REVIEW ..... 7

ROUTING STATEMENT..... 10

STATEMENT OF THE CASE ..... 11

I. NATURE OF THE CASE. .... 11

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND..  
..... 11

    A. The Board’s Structural and Legal Framework. .... 11

    B. Complaints Filed with the Board About the Burlington  
    Incident. .... 13

    C. The Contested Case..... 14

STANDARD OF REVIEW ..... 15

ARGUMENT ..... 16

I. THE DISTRICT COURT DID NOT ERR WHEN IT DISMISSED  
THE PETITION FOR JUDICIAL REVIEW ON THE BASIS THAT  
MR. KLEIN FAILED TO EXHAUST ADMINISTRATIVE  
REMEDIES..... 16

    A. Preservation of Error..... 16

    B. Mr. Klein Failed to Exhaust Administrative Remedies  
    Because he was not a Party to the Contested Case  
    Proceeding and did not Seek to Intervene..... 16

II. MR. KLEIN LACKS STANDING..... 29

    A. Preservation of Error..... 29

    B. The Petitioner Has not Demonstrated a Specific, Personal,  
    and Legal Interest that has Been Adversely Affected by the  
    Board’s Decision. .... 29

III. THE DISTRICT COURT DID NOT ERR WHEN IT DISMISSED MR. KLEIN’S REQUESTS FOR DECLARATORY RELIEF. .... 32

    A. Preservation of Error..... 32

    B. A Request for Declaratory Relief Cannot be Combined with an Appeal of a Contested Case Decision. .... 32

CONCLUSION..... 34

REQUEST FOR ORAL ARGUMENT ..... 34

CERTIFICATE OF COMPLIANCE..... 36

CERTIFICATE OF FILING..... 36

PROOF OF SERVICE..... 36

## TABLE OF AUTHORITIES

### Cases

<i>Alons v. Iowa Dist. Ct. for Woodbury Cty.</i> , 698 N.W.2d 858 (Iowa 2005) .....	25
<i>Application of Bank of Rhame</i> , 231 N.W.2d 801 (N.D. 1975).....	20
<i>Black v. Univ. of Iowa</i> , 362 N.W.2d 459 (Iowa 1985) .....	33
<i>City of Des Moines v. Des Moines Police Barg. Unit Ass’n.</i> , 360 N.W.2d 729 (Iowa 1985).....	34
<i>Dickey v. Iowa Ethics and Campaign Disclosure Bd.</i> , 943 N.W.2d 34 (Iowa 2020).....	15, 29
<i>Filipelli v. Iowa Racing and Gaming Comm’n</i> , 899 N.W.2d 741 (Table), 2017 WL 1088101, at *3 (Iowa Ct. App. 2017).....	17, 24
<i>Fisher v. Iowa Bd. Of Optometry</i> , 476 N.W.2d 48 (Iowa 1991) .....	19, 20
<i>Greenwood Manor v. Iowa Dept. of Pub. Health</i> , 641 N.W.2d 823 (Iowa 2002).....	23
<i>IES Utilities, Inc. v. Iowa Dep’t of Revenue &amp; Fin.</i> , 545 N.W.2d 536 (Iowa 1996).....	32, 34
<i>Iowans for Tax Relief v. Campaign Fin. Disclosure Comm’n</i> , 331 N.W.2d 862 (Iowa 1983).....	33
<i>Keokuk Cty. v. H.B.</i> , 593 N.W.2d 118 (Iowa 1999) .....	16
<i>Lake Cty. Contractors Ass’n v. Pollution Control Bd.</i> , 54 Ill.2d 16, 294 N.E.2d 259 (Ill. 1973).....	23
<i>Meads v. Iowa Dept. of Soc. Servs.</i> , 366 N.W.2d 555 (Iowa 1985).....	27
<i>Meyer v. Iowa Util. Bd.</i> , 2000 WL 1421854 (Iowa Ct. App. 2000).....	24
<i>Public Employment Relations Bd. v. Stohr</i> , 279 N.W.2d 286 (Iowa 1979) .....	17

<i>Richards v. Iowa Dept. of Rev. and Finance</i> , 454 N.W.2d 573 (Iowa 1990) .....	29
<i>Riley v. Boxa</i> , 542 N.W.2d 519 (Iowa 1996).....	16
<i>Salsbury Labs. v. Iowa Dept. of Envtl. Qual.</i> , 276 N.W.2d 830 (Iowa 1979) .....	16
<i>Shors v. Johnson</i> , 581 N.W.2d 648 (Iowa 1998).....	16
<i>Sierra Club v. Iowa Dept. of Transp.</i> , 832 N.W. 2d 636 (Iowa 2013)...	16, 34
<i>Steele, et al. v. City of Burlington</i> , Case No. 3:16-cv-105, docket entry # 5 (S.D. Iowa 12/27/2016) .....	31
<i>Stohr</i> , 279 N.W.2d at 290-91 .....	21, 23, 33
<i>Strickland v. Iowa Bd. of Medicine</i> , 764 N.W.2d 559 (Iowa 2009) .....	18, 21
<i>Tredway v. Sioux City &amp; P.R. Co.</i> , 39 Iowa 663 (Iowa 1874) .....	25
<i>Wylie Bros. Contracting Co. v. Albuquerque-Bernalillo Cty. Air Quality Control Bd.</i> , 80 N.M. 633, 459 P.2d 159 (N.M. 1969) .....	24

**Statutes**

Iowa Code § 17A.19 .....	passim
Iowa Code § 17A.19(1) .....	14, 15, 16
Iowa Code § 17A.19(6) .....	11
Iowa Code § 17A.2(5) .....	17, 20
Iowa Code § 17A.2(8) .....	19
Iowa Code § 21.6 .....	10
Iowa Code § 22.10 .....	10, 29
Iowa Code § 23.1 .....	10
Iowa Code § 23.10(3) .....	passim
Iowa Code § 23.10(3)(a) .....	10, 16, 17

Iowa Code § 23.5 .....	10, 15, 16
Iowa Code § 23.6 .....	16
Iowa Code § 23.6(4) .....	10, 17
Iowa Code chapter 17A .....	10, 27
Iowa Code chapter 21 .....	10
Iowa Code chapter 22 .....	10, 15, 28

**Other Authorities**

Iowa Admin. Code r. 481—10.19 .....	16
Iowa Admin. Code r. 497—2.1(2).....	10, 16
Iowa Admin. Code r. 497—4.18 .....	11
Iowa Admin. Code r. 497—4.19(5).....	19
Iowa Administrative Procedure Act .....	19

**Rules**

Iowa R. Civ. P. 1.407.....	23
Iowa R. of App. P. 6.1101(3)(a) .....	8

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

### **I. Whether an individual may seek judicial review of an agency's final decision in a contested case proceeding where the individual was not a party to the contested case.**

#### **Authorities**

Iowa Code § 17A.19  
Iowa Code § 17A.19(1)  
*Riley v. Boxa*, 542 N.W.2d 519 (Iowa 1996)  
*Salsbury Labs. v. Iowa Dept. of Env'tl. Qual.*, 276 N.W.2d 830 (Iowa 1979)  
*Keokuk Cty. v. H.B.*, 593 N.W.2d 118 (Iowa 1999)  
*Shors v. Johnson*, 581 N.W.2d 648 (Iowa 1998)  
*Public Employment Relations Bd. v. Stohr*, 279 N.W.2d 286 (Iowa 1979)  
*Filipelli v. Iowa Racing and Gaming Comm'n*, 899 N.W.2d 741 (Table),  
2017 WL 1088101, at \*3 (Iowa Ct. App. 2017) (unpublished opinion)  
Iowa Code chapter 22  
Iowa Code § 23.5(1)-(2)  
Iowa Code § 23.5  
Iowa Code chapter 17A  
Iowa Code § 23.6  
Iowa Code § 23.10(3)(a)  
Iowa Admin. Code r. 497—4.18  
Iowa Admin. Code r. 481—10.19  
Iowa Code § 17A.2(5)  
*Strickland v. Iowa Bd. of Medicine*, 764 N.W.2d 559 (Iowa 2009)  
Iowa Code § 23.6(4)  
Iowa Code § 23.10(3)  
Iowa Code § 23.2(8)  
Iowa Code § 23.10(3)(a)  
*Fisher v. Iowa Bd. of Optometry*, 476 N.W.2d 48 (Iowa 1991)  
*Application of Bank of Rhame*, 231 N.W.2d 801 (N.D. 1975)  
Iowa Code chapter 23  
Iowa Code § 23.2(3)  
Iowa Administrative Procedures Act  
Iowa Code § 17A.2(8)  
Iowa Code § 17A.12(4)  
Iowa Code § 17A.14  
Iowa Admin. Code r. 497—4.19(5)  
Iowa Code § 17A.10(2)

Iowa Code § 17A.11  
Iowa Code § 17A.12  
Iowa Code § 17A.16(2)  
Iowa Code § 17A.7(1)  
Iowa Code § 17A.8(6)  
Iowa Code § 17A.9A  
*Greenwood Manor v. Iowa Dept. of Pub. Health*, 641 N.W.2d 823 (Iowa 2002)  
*Lake Cty. Contractors Ass'n v. Pollution Control Bd.*, 54 Ill.2d 16, 294 N.E.2d 259 (Ill. 1973)  
*Wylie Bros. Contracting Co. v. Albuquerque-Bernalillo Cty. Air Quality Control Bd.*, 80 N.M. 633, 459 P.2d 159 (N.M. 1969)  
*Meyer v. Iowa Util. Bd.*, 2000 WL 1421854 (Iowa Ct. App. 2000)  
*Tredway v. Sioux City & P.R. Co.*, 39 Iowa 663 (Iowa 1874)  
*Alons v. Iowa Dist. Ct. for Woodbury Cty.*, 698 N.W.2d 858 (Iowa 2005)  
Iowa R. Civ. P. 1.407  
*Meads v. Iowa Dept. of Soc. Servs.*, 366 N.W.2d 555 (Iowa 1985)  
Iowa Code § 17A.16

## **II. Whether the Petitioner-Appellant has standing.**

### **Authorities**

Iowa Code § 17A.19  
*Richards v. Iowa Dept. of Rev. and Finance*, 454 N.W.2d 573 (Iowa 1990)  
Iowa Code chapter 17A  
*Dickey v. Iowa Ethics and Campaign Disclosure Bd.*, 943 N.W.2d 34 (Iowa 2020)  
Iowa Code chapter 22  
Iowa Code § 23.6(8)  
Iowa Code § 22.10(3)(b)  
*Steele, et al. v. City of Burlington*, Case No. 3:16-cv-105, docket entry # 5 (S.D. Iowa 12/27/2016)  
Iowa Code § 22.2(1)

**III. Whether a petitioner may seek declaratory relief in a judicial review of an agency's final decision in a contested case proceeding.**

**Authorities**

Iowa Code § 17A.19

*IES Utilities, Inc. v. Iowa Dep't of Revenue & Fin.*, 545 N.W.2d 536, 539 (Iowa 1996)

*Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985)

*Iowans for Tax Relief v. Campaign Fin. Disclosure Comm'n*, 331 N.W.2d 862, 864 (Iowa 1983)

*Public Employment Relations Bd. v. Stohr*, 279 N.W.2d 286, 291 (Iowa 1979)

*Sierra Club v. Iowa Dept. of Transp.*, 832 N.W. 2d 636 (Iowa 2013)

*City of Des Moines v. Des Moines Police Barg. Unit Ass'n.*, 360 N.W.2d 729, 732 (Iowa 1985)

## **ROUTING STATEMENT**

This case presents the application of existing legal principles and should be transferred to the Iowa Court of Appeals pursuant to Iowa Rule of Appellate Procedure 6.1101(3)(a).

## **STATEMENT OF THE CASE**

### **I. NATURE OF THE CASE.**

Petitioner-Appellant, a private attorney, appeals the district court's determination that he failed to exhaust administrative remedies and therefore cannot seek judicial review of the Iowa Public Information Board's final decision in a contested case proceeding. Petitioner-Appellant further appeals the district court's determination that his petition for judicial review improperly combined a request for declaratory relief with an appeal of a contested case decision. Because Mr. Klein was not a party to the contested case proceeding, did not seek to intervene, lacks standing, and his petition for judicial review improperly combines a request for declaratory relief with an appeal of a contested case decision, this Court should affirm the district court's decision.

### **II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND.**

#### **A. The Board's Structural and Legal Framework.**

The Iowa legislature created the Iowa Public Information Board ("Board" or "IPIB") "to provide an alternative means by which to secure compliance with and enforcement of the requirements of chapters 21 and 22 through the provision by the Iowa Public Information Board to all interested parties of an efficient, informal, and cost-effective process for resolving

disputes.” Iowa Code § 23.1. Any person seeking to enforce the provisions of Iowa Code chapter 21 or 22 may seek: (1) judicial review pursuant to Iowa Code § 17A.19 (in cases in which a state agency is alleged to have taken action in violation of the open meetings or open records laws); (2) judicial enforcement in district court pursuant to Iowa Code section 21.6 (open meetings) or section 22.10 (open records); or, (3) in the alternative, file a timely complaint with the Board. Iowa Code § 23.5(1).

If an individual elects to file a complaint with the Board, the Board must first determine whether the complaint is within the Board’s jurisdiction, appears legally sufficient, and could have merit. Iowa Code § 23.10(3)(a); Iowa Admin. Code r. 497—2.1(2). If the complaint satisfies these jurisdictional criteria, the Board’s staff conducts an investigation and the Board must determine whether there is probable cause to believe a violation of chapter 21 or 22 has occurred. Iowa Code § 23.6(4); 23.10(3)(a); 497 Iowa Admin. Code r. 497—2.2. If the Board concludes there is probable cause to believe a violation of chapter 21 or 22 has occurred, and the complaint cannot be resolved informally, the Board issues a statement of charges commencing a contested case under Iowa Code chapter 17A. Iowa Code § 23.6(4); 23.10(3)(a); Iowa Admin. Code 497—2.2(4).

The executive director of the Board or an attorney designated by the executive director serves as the prosecutor in the contested case proceeding. Iowa Code § 23.10(3)(a). The contested case is conducted according to Iowa Code chapter 17A and the Board’s administrative rules. The original complainant is not a party to the contested case, although interested parties, including the original complainant, may move to intervene in the contested case proceeding. Iowa Admin. Code r. 497—4.18. If the Board concludes, following the contested case proceeding, that a violation of chapter 22 has occurred, the Board may issue an order requiring the respondent to pay a civil penalty, produce the records in question, or take additional remedial action deemed appropriate by the Board. Iowa Code § 23.10(3)(b).

**B. Complaints Filed with the Board About the Burlington Incident.**

On April 15, 2015, the managing editor of the Burlington Hawk Eye submitted a complaint to the Board regarding records the Hawk Eye sought from the Burlington Police Department (“Burlington”), the Des Moines County Attorney’s Office (“Des Moines County”), and the Iowa Department of Criminal Investigation (“DCI”) related to an officer-involved shooting in Burlington. (App. 0561, CR 1-2) On May 15, 2015, the Petitioner-Appellant in this judicial review proceeding, Adam Klein, also submitted a complaint to the Board about records he sought from the same three entities about the

shooting. (App. 0567-0598, CR 7-38) After extensive preliminary proceedings, the Board issued a probable cause determination and commenced a contested case proceeding on October 27, 2016, naming Burlington, DCI, and Des Moines County as respondents. (App. 1278-79, CR 718-19) The Board appointed a special prosecutor for the Board and transmitted the complaint to the Iowa Department of Inspections and Appeals for assignment of an Administrative Law Judge (“ALJ”) to hear the contested case. (App. 1015, 1280-85, CR 455, 720) The Board settled with Des Moines County in early 2017. (App. 1369, CR 809)

### **C. The Contested Case.**

After extensive prehearing proceedings, the ALJ presided over a contested case hearing on July 20, 2018. The ALJ issued a proposed decision in the case on October 5, 2018. (App. 2037-60, CR 1477) The Respondents appealed the ALJ’s proposed decision to the Board, which adopted the ALJ’s procedural history, statement of the facts, rulings on prehearing motions, and statement of applicable statutory provisions in whole. (App. 2130-2150, CR 1572) The Board reached a different legal conclusion, however, and provided its own legal analysis and conclusions in its final decision. The Board concluded that DCI and Burlington did not violate chapter 22 when they declined to produce DCI’s investigative file

because they produced bodycam footage of the shooting and a letter from the county attorney explaining the immediate facts and circumstances of the incident. (App. 2149, CR 1589)

Mr. Klein filed this petition for judicial review. DCI and Burlington intervened. On July 15, 2019, the District Court partially granted the Board's motion to dismiss because Mr. Klein's petition for judicial review improperly combined a petition for judicial review with an original action for declaratory relief. 7/15/2019 Order on Mot. to Dismiss. (App. 211-219) On March 23, 2020, following briefing and a hearing on the merits, the district court dismissed Mr. Klein's petition for judicial review in its entirety because Mr. Klein did not intervene in the contested case proceeding and therefore failed to exhaust his administrative remedies. 3/23/2020 Ruling on Judicial Review. (App. 437-60) Mr. Klein now appeals that determination.

### **STANDARD OF REVIEW**

Judicial review of a final action of the Iowa Public Information Board is governed by Iowa Code sections 23.10(3)(d), 17A.19 and 17A.20. A district court's determination on judicial review that a party is not properly before the court is reviewed for errors at law. *Dickey v. Iowa Ethics and Campaign Disclosure Bd.*, 943 N.W.2d 34, 37 (Iowa 2020). A district court's grant of a motion to dismiss in a judicial review proceeding is also

reviewed for correction of errors at law. *Sierra Club v. Iowa Dept. of Transp.*, 832 N.W.2d 636, 640 (Iowa 2013).

## ARGUMENT

### **I. THE DISTRICT COURT DID NOT ERR WHEN IT DISMISSED THE PETITION FOR JUDICIAL REVIEW ON THE BASIS THAT MR. KLEIN FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.**

#### **A. Preservation of Error.**

This issue has been preserved for appeal.

#### **B. Mr. Klein Failed to Exhaust Administrative Remedies Because he was not a Party to the Contested Case Proceeding and did not Seek to Intervene.**

A party must exhaust all available administrative remedies before seeking judicial review under Iowa Code section 17A.19. Iowa Code § 17A.19(1); *Riley v. Boxa*, 542 N.W.2d 519, 521 (Iowa 1996); *Salsbury Labs. v. Iowa Dept. of Env'tl. Qual.*, 276 N.W.2d 830, 837 (Iowa 1979). The district court lacks authority to review the case if administrative remedies are not exhausted. *Keokuk Cty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999); *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998).

Two conditions must be satisfied before the exhaustion doctrine may be applied: (1) an adequate administrative remedy must exist for the claimed wrong, and (2) the governing statutes must expressly or impliedly require the remedy to be exhausted before allowing judicial review. *Riley*, 542 N.W.2d

at 521. A person who is not a party to the challenged agency proceeding has not exhausted administrative remedies and therefore cannot seek judicial review. *Public Employment Relations Bd. v. Stohr*, 279 N.W.2d 286, 291 (Iowa 1979) ; *see also Filipelli v. Iowa Racing and Gaming Comm’n*, 899 N.W.2d 741 (Table), 2017 WL 1088101, at \*3 (Iowa Ct. App. 2017) (unpublished opinion) (observing that the petitioner “was never a party to the underlying proceedings and thus clearly did not ‘exhaust[] all adequate administrative remedies.’” (quoting Iowa Code § 17A.19(1))).

Here, the two conditions for requiring exhaustion are easily satisfied. First, there is an express statutory provision requiring exhaustion before seeking judicial review under Iowa Code section 17A.19(1)). A person alleging a violation of Iowa Code chapter 22 may file *either* an original action in district court *or* a complaint with the Board. Iowa Code § 23.5(1) - (2).<sup>1</sup> If an individual elects to file an original action in district court, that individual does not need to exhaust any administrative remedies before the

---

<sup>1</sup> The statute also allows an individual to seek judicial review under Iowa Code section 17A.19 of an agency action taken in contravention of Iowa’s sunshine laws. Iowa Code § 23.5. For instance, if an agency takes an action without holding a required public meeting, an aggrieved individual could potentially seek judicial review of that agency action pursuant to Iowa Code §§ 23.5 and 17A.19.

Board. However, if an individual elects to file a complaint with the Board, and the Board commences a contested case following investigation of the complaint, the contested case must be conducted pursuant to the provisions in chapter 17A. Iowa Code §§ 23.6(4); 23.10(3)(a). The exhaustion requirements of chapter 17A apply, including the explicit statutory requirement to exhaust administrative remedies before seeking judicial review. Iowa Code § 17A.19(1).

Second, an adequate administrative remedy exists because the Board's administrative rules allow intervention in a contested case proceeding in order to achieve party status. Iowa Admin. Code. r. 497—4.18(4). The Department of Inspections and Appeals, which employs the ALJs who preside over contested cases for the Board, similarly has a rule allowing for intervention in contested cases conducted by its ALJs. Iowa Admin. Code r. 481—10.19. A contested case is a formal adjudicatory proceeding “in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.” Iowa Code § 17A.2(5); *see also Strickland v. Iowa Bd. of Medicine*, 764 N.W.2d 559, 561 (Iowa 2009). A contested case before the Board is prosecutorial in nature, with the Board's designated prosecutor serving in a civil enforcement role following a probable cause

determination. Iowa Code §§ 23.6(4); 23.10(3)). The enforcement action is brought on behalf of the Board, which is an agency of the state. It is not a private action on behalf of the original complainant, and the original complainant is not considered a party to the contested case. *See* Board's Final Decision at 1 (reciting parties) (App. 2130, CR 1570). The party whose legal duties are adjudicated in the enforcement proceeding is the respondent—the public body that is subject to the open records law or, in some cases, an individual government employee. *See* Iowa Code § 23.2(8); 23.10(3)(a). Among other remedies, the Board has the ability to issue civil penalties upon a finding that the law has been violated. Iowa Code § 23.6(4), (8)). Thus, the Board and the respondents are parties to the contested case. Anyone else wishing to become a party must seek to intervene pursuant to Iowa Admin. Code. 497—4.18.

Aside from the Board and the respondent, a person seeking party status in a contested case brought by a state board must take affirmative steps to become a party. *Fisher v. Iowa Bd. Of Optometry*, 476 N.W.2d 48, 51 (Iowa 1991). The Iowa Supreme Court discussed the question of who is a party in a contested case at length in *Fisher*. The Court explained that the question of who the parties are should be determined from the record, rather than by how the proceeding is captioned. *Id.* (citing *Application of Bank of*

*Rhame*, 231 N.W.2d 801, 808 (N.D. 1975)). The Court also explained that the would-be party (in *Fisher*, the state) must take affirmative action in order to obtain “party” status in the contested case. In *Fisher*, the state satisfied that requirement by filing an application for rehearing of the agency’s decision in the contested case and obtaining conflicts counsel to represent the medical board. *See id.*

Mr. Klein asserts that he *was* a party to the contested case because he filed a complaint with the Board. Klein Br. at 38-39. But filing a complaint with the Board does not automatically confer party status in the contested case. Iowa Code chapter 23 defines “complainant” as “a person who files a complaint with the board.” Iowa Code § 23.2(3). In contrast, the Iowa Administrative Procedures Act defines “party” as “each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.” Iowa Code § 17A.2(8); *Fisher*, 476 N.W.2d at 50. In contested cases, parties may do all of the things typically done by parties to litigation, such as conducting discovery; presenting opening and closing statements to the tribunal; presenting evidence through witnesses and exhibits, and cross-examining witnesses called by the opposing party. *See Fisher*, 476 N.W.2d at 50; *see also* Iowa Code §§ 17A.12(4); 17A.14); Iowa Admin. Code r. 497—4.19 . As a complainant who submitted a complaint to

the Board, but did not intervene in the contested case, Mr. Klein did not have the right to do these things. He was not named or admitted as a party and did not seek to become admitted as a party. *See* Iowa Code § 17A.2(8); *see also* Board Final Decision, at 1 (reciting parties and appearances) (App. 2130, CR 1570). Mr. Klein had ample time and opportunity to intervene, considering that the contested case was pending for well over a year before the evidentiary hearing in this matter occurred. However, Mr. Klein never filed a motion to intervene and therefore was not a party to the contested case. *Stohr*, 279 N.W.2d at 291.

Mr. Klein alleges that he was not required to become a party because Iowa Code section 17A.19 allows a “person or party” to seek judicial review. Klein Br. at 36-37. Reading the Iowa Administrative Procedure Act as a whole, it is clear that a person wishing to participate in a contested case must be a party, and only a party can seek judicial review of a contested case decision.

A contested case is defined as a proceeding “in which the legal rights, duties or privileges of a *party* are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing.” Iowa Code § 17A.2(5) (emphasis added); *Strickland*, 764 N.W.2d at 561. Throughout chapter 17A, the contested case provisions refer to a “party,” not

a “person.” *See, e.g.*, Iowa Code §§ 17A.10(2) (the “parties” to a contested case may stipulate to waive provisions); Iowa Code § 17A.11 (setting out processes by which a “party” may request disqualification); 17A.12 (all “parties” shall be afforded an opportunity for hearing after reasonable notice); 17A.16(2) (a “party” in a contested case may file an application for rehearing). Moreover, to participate in a judicial review proceeding in the district court, any “party of record” in the contested case proceeding must file an appearance in the judicial review proceeding. Iowa Code § 17A.19(2). In contrast, provisions of chapter 17A that do not involve contested case proceedings refer to “persons.” *See, e.g.*, Iowa Code § 17A.7(1) (an interested “person” may petition for rulemaking); 17A.8(6) (an interested “person” may be heard and present evidence at meetings of the Administrative Rules Review Committee); 17A.9A (any “person” may petition an agency for a waiver or variance from the requirements of a rule).

Read in that context, it is clear that the judicial review provision in Iowa Code section 17A.19(1), which allows “persons or parties” to seek judicial review, is worded that way because an individual seeking judicial review may be a “person” or a “party,” depending on the nature of the challenged agency action. Judicial review under Iowa Code section 17A.19 is available to individuals seeking to challenge a wide range of agency

actions, including rulemaking, contested case decisions, or “other agency actions.” *Greenwood Manor v. Iowa Dept. of Pub. Health*, 641 N.W.2d 823, 833-34 (Iowa 2002). In judicial review actions other than appeals of declaratory orders or contested case decisions, the person seeking judicial review will *never* have been a party, because there is no such thing as party status in other types of agency proceedings. Therefore, a “person” may seek judicial review of a rulemaking action, waiver request, or “other agency action.” In contrast, in order to seek judicial review of a declaratory order or contested case proceeding, a person must have exhausted administrative remedies by participating as a “party.” *Stohr*, 279 N.W.2d at 291.

In *Stohr*, the Iowa Supreme Court considered whether a party that did not participate in a declaratory order proceeding at the agency level could file a petition for judicial review. The Court answered in the negative:

This issue is controlled by the section 17A.19(1) language which provides: ‘A person or party who has exhausted all adequate administrative remedies and who is aggrieved or adversely affected by any agency action is entitled to judicial review . . . .’ It is plain the individuals in question have not ‘exhausted all administrative remedies.’ Other courts have limited the right of judicial review to parties participating in the agency proceedings.

*Stohr*, 279 N.W.2d at 291 (citing *Lake Cty. Contractors Ass’n v. Pollution Control Bd.*, 54 Ill.2d 16, 18-20, 294 N.E.2d 259, 261 (Ill. 1973); *Wylie Bros. Contracting Co. v. Albuquerque-Bernalillo Cty. Air Quality Control*

*Bd.*, 80 N.M. 633, 640, 459 P.2d 159, 166 (N.M. 1969)); *see also Shors*, 581 N.W.2d at 653 (holding that neighbor affected by issuance of building permit failed to exhaust her administrative remedies because she did not file appeal with the board of adjustment before seeking judicial review); *Meyer v. Iowa Util. Bd.*, 2000 WL 1421854 (Iowa Ct. App. 2000) (unpublished opinion); *Filipelli*, 2017 WL 1088101 at \*3. Although the petitioners in *Stohr* sought judicial review from a declaratory order proceeding, if anything, the principle is even more important in judicial reviews of contested case proceedings, which are adjudicatory in nature and require parties to present evidence to the tribunal.

The requirement for a party to seek intervention is consistent with the Iowa Rules of Civil Procedure and longstanding principles of issue preservation. It is well-settled that a party who does not participate in an adjudication cannot subsequently appear and raise new issues:

In the absence of any showing or excuse for the failure to intervene, and thereby secure the right to defend the action by the railroad company against the county, we do not see how this plaintiff can now assert his right, even if he has any. . . . A party may not sit quietly by and allow an adjudication to be made between the proper parties, and after finding it adverse to his interest, demand that the court set aside its solemn judgment, and re-try the cause in order that he may assert the same claim in his own way.

*Tredway v. Sioux City & P.R. Co.*, 39 Iowa 663, 665 (Iowa 1874); *cf. Alons v. Iowa Dist. Ct. for Woodbury Cty.*, 698 N.W.2d 858, 863-64 (Iowa 2005) (explaining that non-parties lack standing to seek certiorari review of a district court's order); Iowa R. Civ. P. 1.407 (allowing for intervention in civil suits). Allowing non-parties to appeal and raise new issues not considered at the agency level would undercut longstanding principles of judicial review and deprive the appellate courts of a fully developed record on which to make their decisions.

In this case, Mr. Klein has filed a petition for judicial review seeking to access a set of records that is much broader than the set of records considered by the ALJ and the Board during the contested case hearing. Am. Pet. for Judicial Rev. ¶¶ 5, 7 & 46 (App. 422-34); Petitioner's Br. at pp. 23-27. The contested case petition filed by the Board's special prosecutor on November 4, 2016 described the public records as follows:

Among the public records that were requested but which Respondents have wrongfully refused to produce are the following: the recording and transcripts of 911 calls, bodycam videos taken by the officers, videos taken by dashboard cameras, records showing 'the date, time, specific location, and immediate circumstances surrounding the . . . incident,' and emails regarding the Autumn Steele homicide from and to representatives of the City of Burlington in correspondence with Autumn Steele's family members.

Special Prosecutor's Petition ¶ 16. (App. 1283, CR 723)

In a pre-hearing brief filed on July 16, 2018, the special prosecutor requested that the ALJ broaden the list of records allegedly withheld in violation of chapter 22 to include additional items in the DCI file, specifically: “witness interviews, an evidentiary inventory, chain of custody documents, body camera video footage (except 12 seconds of video footage), patrol car video footage, Burlington Police Department reports, autopsy information and laboratory reports.” Prosecutor’s Br. In Support of Order Requiring Disclosure of DCI File at 1. (App. 1913, CR 1353) The ALJ denied this request, observing:

The probable cause finding by the board alleged that Burlington and DCI violated chapter 22 by withholding public records such as the 911 call, the dashcam videos and the bodycam videos. Burlington and DCI have responded that the documents within a peace officer[']s investigative report are not public records because they are confidential under the exemption in section 22.7(5). This contested case has been limited to that issue throughout the proceedings and it would be unfair to expand the issues at the time of the hearing.

Proposed Decision at 13 (App. 2049, CR 1489) The special prosecutor did not seek reconsideration or appeal that decision, and the Board adopted the ruling in full in its Final Decision. Final Decision at 13. (App. 2142, CR 1582) Now, in this petition for judicial review, Mr. Klein seeks a much broader set of documents than were considered by the ALJ or the Board. Klein Amended Pet. ¶ 46.

On judicial review, the district court may review only those issues considered and decided by the agency. *Meads v. Iowa Dept. of Soc. Servs.*, 366 N.W.2d 555, 559-60 (Iowa 1985). Here, the agency considered only the records and issues adjudicated by the parties to the contested case proceeding. Mr. Klein, who was not a party, cannot subsequently file an appeal and attempt to broaden the case beyond what was considered at the agency level. *See id.* And, even if it is somehow permissible for a person who was not a party to seek review of an agency's contested case decision, that person still must exhaust administrative remedies, which Mr. Klein has not done because he did not raise or preserve *any* issues for appeal during the contested case proceeding. Nor did he seek reconsideration of the Board's final decision under Iowa Code section 17A.16 or make any other effort to become a party. *See Fisher*, 476 N.W.2d at 49 (holding that the state obtained party status by filing a motion to reconsider a final decision in a contested case proceeding); Iowa Code § 17A.16(2) (allowing any "party" to file an application for rehearing within twenty days after the issuance of a final contested case decision).

Finally, allowing a non-party to seek judicial review of a contested case proceeding would result in unintended consequences in other categories of enforcement proceedings brought by the state and its administrative agencies.

Mr. Klein's role in this case is similar to that of a patient who files a complaint about a doctor with the Iowa Board of Medical Examiners. The patient may be an important source of information for the board's investigation, and if the board finds probable cause to proceed with disciplinary action, the patient may be called as a witness, but the patient is not a party to the contested case or any subsequent judicial review. Allowing the patient to file an appeal as a non-party could undermine the board's interest in protecting *public* interests because the patient is likely to focus on her own, private interests. The same concern is present for any number of contested case proceedings brought by the state in its enforcement capacity, including professional licensing disciplinary cases, child abuse appeals, taxpayer appeals, and environmental enforcement cases. Allowing non-parties to step into the state's shoes and raise issues on appeal that were not adjudicated by the state in the underlying contested case proceeding would raise serious due process concerns and be contrary to the public interest.

Because Mr. Klein did not intervene in the contested case proceeding, he has not exhausted administrative remedies, and this Court should affirm district court's order dismissing the petition for judicial review.

## II. MR. KLEIN LACKS STANDING.

### A. Preservation of Error.

This issue has been preserved for appeal.

### B. The Petitioner has not Demonstrated a Specific, Personal, and Legal Interest that has been Adversely Affected by the Board's Decision.

Iowa Code section 17A.19 requires that a person be “aggrieved or adversely affected” by a final agency action in order to seek judicial review. Iowa Code § 17A.19(1). A petitioner seeking judicial review of an agency’s decision must exhaust administrative remedies *and* demonstrate standing. *Richards v. Iowa Dept. of Rev. and Finance*, 454 N.W.2d 573, 574 (Iowa 1990). To have standing to seek judicial review under Iowa Code chapter 17A, “the complaining party must (1) have a specific, personal, and legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question.” *Dickey*, 943 N.W.2d at 37-38 (internal quotations and citations omitted). A person may be a proper party to agency proceedings and still not have standing to obtain judicial review. *Richards*, 454 N.W.2d at 575.

“A ‘general interest’ in the proper enforcement of the law cannot support standing to obtain judicial review.” *Dickey*, 943 N.W.2d at 38. In *Dickey*, the petitioner sought a determination from the Iowa Ethics and Campaign Disclosure Board that the Governor’s candidate committee

violated Iowa's campaign disclosure law. This Court held that a generalized interest in proper enforcement of the law was not a specific, personal, and legal interest sufficient to confer standing. *Id.* The Court observed that the petitioner's interest in obtaining campaign reports was informational, and the Governor's filings with the state agency provided the petitioner with all the information he needed.

In the contested case at issue in this judicial review, the special prosecutor requested the following relief: (1) entry of an order finding Respondents violated Iowa Code chapter 22; (2) entry of an order ensuring Respondents' compliance with chapter 22; (3) statutory damages; and (4) a requirement for Respondents to produce the documents for examination and copying without cost. Special Prosecutor's Petition p. 5. (App. 1284, CR 724) The first and second requests, for an order finding that Respondents violated the law and order requiring compliance with the law, represent exactly the type of "general interest in proper enforcement of the law" that the *Dickey* court held cannot support standing in a judicial review proceeding. *Dickey*, 943 N.W.2d at 38. The same is true of the request for statutory damages, which are payable to the state of Iowa, not to any private individual. Iowa Code §§ 23.6(8); 22.10(3)(b).

The only remaining relief in which Mr. Klein could plausibly have a “specific, personal, and legal interest” is the request for an order requiring production or examination of the requested records. However, in this case, Mr. Klein cannot meet the second prong of the standing test because he cannot demonstrate that his specific interest is adversely affected by the Board’s final decision. *Dickey*, 943 N.W.2d at 37-38. This is true because the records that were the subject of the contested case—the 911 call, body camera videos, and dashcam footage, have *already* been made available to the public and/or produced to Mr. Klein. *See* Final Decision at 11-12; Klein Br. at 27. Specifically, the 911 call recordings and full body camera video have been made available to the public, and widely disseminated online, so there is no relief this Court can grant Mr. Klein with respect to those records. *See* District Court Order at 13. With respect to the dash camera footage, Mr. Klein obtained it in discovery in a wrongful death lawsuit in federal district court in which Mr. Klein was an attorney of record. *See Steele, et al. v. City of Burlington*, Case No. 3:16-cv-105, docket entry # 5 (S.D. Iowa 12/27/2016) (granting Mr. Klein’s motion for admission *pro hac vice*); *see also* Klein Br. at 27. Although the dash camera footage is subject to a protective order in the federal district court case, Mr. Klein has had the opportunity to review it. Thus, it is not clear what specific interest Mr. Klein has in relation to that

footage that is different from the public's general interest; in fact, if anything, as an attorney in the federal case he has had *more* access to the footage than the general public. And, although Mr. Klein asserts he has been deprived of the right to publish or disseminate the dash camera footage, the right to publish or disseminate a public record under Iowa Code § 22.2(1) is not personal or specific to Mr. Klein. It is a general right that any member of the public would have if the records were determined to be public.

### **III. THE DISTRICT COURT DID NOT ERR WHEN IT DISMISSED MR. KLEIN'S REQUESTS FOR DECLARATORY RELIEF.**

#### **A. Preservation of Error.**

The Board agrees that error was preserved on this issue.

#### **B. A Request for Declaratory Relief Cannot be Combined with an Appeal of a Contested Case Decision.**

Mr. Klein's Amended Petition for Judicial Review sought declaratory relief from the district court. Klein Amended Pet. at ¶¶ 44-45. However, this judicial review is an appeal from a contested case proceeding, not a declaratory order proceeding. These claims are not compatible in a single action because they invoke the district court's original jurisdiction and appellate jurisdiction simultaneously.

District courts sit in an appellate capacity when considering cases on judicial review under Iowa Code section 17A.19. *IES Utilities, Inc. v. Iowa*

*Dep't of Revenue & Fin.*, 545 N.W.2d 536, 539 (Iowa 1996). When exercising its appellate jurisdiction during judicial review, a district court has no original jurisdiction over other matters. *Black v. Univ. of Iowa*, 362 N.W.2d 459, 462 (Iowa 1985); *Iowans for Tax Relief v. Campaign Fin. Disclosure Comm'n*, 331 N.W.2d 862, 864 (Iowa 1983) (citing *Stohr*, 279 N.W.2d at 290-91).

The rationale for not permitting judicial review proceedings to be combined with original actions is grounded in the significant differences between judicial review cases and original proceedings:

[O]ur joinder rules neither expressly nor by implication permit the bringing together in one lawsuit of a judicial review proceeding and an original law or equity action. Judicial review proceedings are fundamentally different from original actions commenced in the district court. Judicial review proceedings have a different jurisdictional base, proceed in a different manner toward disposition, and provide only those types of relief to the successful petitioner which chapter 17A specifically prescribes.

*Black*, 362 N.W.2d at 462. Thus, a petitioner may not “piggyback” a separate action invoking a district court’s original jurisdiction with an action for judicial review invoking the district court’s appellate jurisdiction. *Id.* at 463; *see also Iowans for Tax Relief*, 331 N.W.2d at 862-63.

In this case, the special prosecutor did not seek, and the Board did not consider, the requests for declaratory relief that Mr. Klein now includes in

his Petition for judicial review. Special Prosecutor’s Petition p. 5. (App. 1284, CR 724) Mr. Klein also did not separately seek a declaratory order from the Board under section 17A.9, and therefore has not exhausted administrative remedies on that issue. *Sierra Club*, 832 N.W.2d at 645; *IES Utilities*, 545 N.W.2d at 540; *City of Des Moines v. Des Moines Police Barg. Unit Ass’n.*, 360 N.W.2d 729, 732 (Iowa 1985). Mr. Klein asked the district court to consider his requests for declaratory relief for the first time, even though they were never requested at the agency level, essentially seeking to invoke the Court’s original jurisdiction on that issue. Because the Petition impermissibly seeks to invoke the district court’s original and appellate jurisdiction in the same action, the district court ruled correctly when it dismissed Mr. Klein’s requests for declaratory relief.

### **CONCLUSION**

For the reasons stated above, the Iowa Public Information Board respectfully requests that the Court affirm the district court’s dismissal of the petition for judicial review in this matter.

### **REQUEST FOR ORAL ARGUMENT**

Because this case presents well-settled principles of administrative law, oral argument is not necessary. If the Court grants oral argument in this case, the Respondent-Appellee requests to be heard.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

/s/ Emily Willits

---

EMILY WILLITS

Assistant Attorney General

1305 E. Walnut St., 2nd Fl.

Des Moines, Iowa 50319

Phone: (515) 281-6403

email: [Emily.willits@ag.iowa.gov](mailto:Emily.willits@ag.iowa.gov)

ATTORNEY FOR RESPONDENT-  
APPELLEE IOWA PUBLIC  
INFORMATION BOARD

**CERTIFICATE OF COMPLIANCE**

This Final Brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because it was prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 5,473 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

*/s/ Emily Willits*

\_\_\_\_\_  
Emily Willits

Assistant Attorney General

**CERTIFICATE OF FILING**

I, Emily Willits, hereby certify that on the 18th day of November, 2020, I, or a person acting on my behalf, filed Respondent-Appellee’s Final Brief with the Clerk of the Iowa Supreme Court by EDMS.

*/s/ Emily Willits*

\_\_\_\_\_  
Emily Willits

Assistant Attorney General

**PROOF OF SERVICE**

I, Emily Willits, hereby certify that on the 18th day of November, 2020, I, or a person acting on my behalf, did serve Respondent-Appellee’s Final Brief on all other parties to this appeal via EDMS as follows:

Rita Bettis Austen  
ACLU of Iowa Foundation Inc.

[rita.bettis@aclu-ia.org](mailto:rita.bettis@aclu-ia.org)

*/s/ Emily Willits*

---

Emily Willits

Assistant Attorney General