**IN THE COURT OF APPEALS OF IOWA**

No. 9-677 / 08-0737
Filed October 7, 2009

**WAI CHENG,**
Petitioner-Appellant,

**vs.**

**JOHN STANLEY, JESSICA BRASE,**
**LANA HERTEEN and LISA WALTON,**
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Appellant appeals the district court's dismissal of her motion for a rule to show cause. **AFFIRMED.**

Wai Ling Cheng, West Des Moines, pro se.

Connie Diekema, Des Moines, for appellee Lana Herteen

David Brown, Des Moines, for appellee Lisa Walton.

Mark Schultheis of Nyemaster Law Firm, Des Moines, for appellees John Stanley and Jessica Brase.

Considered by Vogel, P.J., and Potterfield, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**VOGEL, P.J.**

Wai Cheng appeals the district court's ruling on judicial review dismissing her application for rule to show cause.

The Iowa Department of Inspections and Appeals (DIA) issued a subpoena duces tecum in a matter pending with the Department of Human Services brought upon the appeal of Cheng. Alleging noncompliance with the production requested, Cheng sought enforcement of the subpoena duces tecum through the DIA with an application for rule to show cause. An administrative law judge (ALJ) for the DIA, after citing Iowa Code section 17A.13 (2007), determined: "[w]hile the undersigned has authority to and is required to issue subpoenas upon the request of a party, any attempt to enforce those proceedings must be made through the district court." Cheng then filed a rule to show cause in a separate civil action in district court. After finding Cheng failed to exhaust her administrative remedies, the district court concluded it did not have subject matter jurisdiction and dismissed the application. Cheng appeals, asserting the district court had jurisdiction to issue a rule to show cause. We affirm.

Subpoenas can be utilized and issued by the agency, and are available to all parties in contested cases before an agency. Iowa Code § 17A.13(1). Any motion with regard to the requested discovery is handled within the agency. *See* Iowa Admin. Code r. 481-10.13(17A) ("Motions in regard to discovery shall be ruled on by the ALJ."). While an administrative proceeding is initially heard by an ALJ, the decisions of the ALJ are subject to review by the agencies for which they act as presiding officers. Iowa Code § 10A.801(3)(a), (10). When the ALJ

makes a proposed decision, that decision becomes the final decision of the agency unless there is an intra-agency appeal within the time provided by rule. Iowa Code § 17A.15(3). The agency, in this case the director, then has the power to administer and enforce the ALJ ruling, issuing a final agency decision. Iowa Code § 17A.15(3); *see also* Iowa Code § 10A.104(6), (9).

Not until a final agency decision is made can a party file a petition for judicial review. Iowa Code § 17A.19(1); *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998) ("It is well established that a party must exhaust any available administrative remedy before seeking relief in the courts. The exhaustion doctrine applies when (1) an adequate administrative remedy exists, and (2) the governing statute requires the remedy to be exhausted before allowing judicial review."). "We believe the legislature intended that discovery problems in administrative proceedings be settled before the agency whenever possible and, in any event, that judicial review ordinarily await final agency action." *See Christensen v. Iowa Civil Rights Comm'n*, 292 N.W.2d 429, 431 (Iowa 1980). Therefore, only upon final agency action, may the aggrieved party seek judicial review to enforce compliance with the subpoena. Iowa Code § 17A.19(1); *see also* Iowa Code § 10A.104(6) (stating the agency director "may enlist the assistance of a court of competent jurisdiction in requiring the person's compliance").

We acknowledge the Iowa Administrative Procedure Act lacks some clarity as to the path a litigant is required to take in seeking enforcement of a subpoena. *Compare* Iowa Code § 17A.13 ("[A]gency subpoenas shall be issued to a party on request. . . . In proceedings for enforcement, the court shall issue

an order requiring [the discovery requested] . . . under penalty of punishment for contempt in cases of willful failure to comply."), *with* Iowa Code § 10A.801(10) (providing ALJ decisions are subject to review by the agency) *and Christensen*, 292 N.W.2d at 431 ("Sections 17A.13 and 17A.19 do not give nonagency parties a right of immediate recourse to the courts. Discovery disputes are subject to review on the same terms as other agency action.").

Cheng's ability to follow the correct procedures was then complicated by a misleading finding of the ALJ, "[a]ny efforts by [Cheng] to enforce said subpoenas must be made in district court." The district court subsequently found Cheng had not exhausted her administrative remedies through the DIA. We understand Cheng's frustration and confusion. However, proceeding pro se, Cheng is nonetheless charged with following the administrative appeal procedures in accordance with the Iowa Administrative Procedure Act, as well as Iowa case law.[1] Iowa Code § 17A.19.[2] The ALJ's ruling on application to show cause was a proposed decision, and therefore subject to review by the DIA, the agency for which the ALJ acted as presiding officer. Iowa Code § 10A.801(10). Without a final agency decision, Cheng should have sought enforcement of her appeal through the DIA. *See Christensen*, 292 N.W.2d 429 at 431.

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[1] Our opinions are binding on Iowa's courts as soon as they are filed. *State v. Harris*, 741 N.W.2d 1, 9 (Iowa 2007).

[2] Cheng chose to represent herself pro se in this proceeding. We do not utilize a deferential standard when persons choose to represent themselves.

> The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.

*Metropolitan Jacobson Dev. Venture v. Bd. of Review,* 476 N.W.2d 726, 729 (Iowa Ct. App. 1991).

As the district court stated, "[Cheng] has not sought enforcement of the subpoena at issue through the appropriate administrative channels within the Department of Inspection and Appeals." Cheng failed to exhaust her administrative remedies, and therefore the district court did not have authority to hear Cheng's application. We affirm the decision of the district court.

**AFFIRMED.**