

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A25-0259**

In the Matter of the Denial of the Application of Kathleen Smith for MSRS General Employees Retirement Plan Total and Permanent Disability Benefits.

**Filed April 28, 2025  
Appeal to proceed  
Frisch, Chief Judge**

Minnesota State Retirement System  
File No. 5161365308

Denise Y. Tataryn, Nolan, Thompson, Leighton & Tataryn, PLC, Hopkins, Minnesota  
(for relator Kathleen Smith)

Keith Ellison, Attorney General, Frank Langan, Assistant Attorney General, St. Paul,  
Minnesota (for respondent Minnesota State Retirement System)

Considered and decided by Frisch, Chief Judge; Reyes, Judge; and Harris, Judge.

**SYLLABUS**

1. Because the 60-day deadline to appeal the decision of a governing board under Minn. Stat. § 356.96, subd. 13 (2024), runs from the day the board mails its decision, Minn. R. Civ. P. 6.01(e)—which is incorporated into Minn. R. Civ. App. P. 126.01—applies to add three days to the appeal deadline.

2. To invoke the certiorari jurisdiction of the court of appeals, a petitioner may effectuate service on “the adverse party,” as required by Minn. Stat. § 606.02 (2024), by serving the party with the issued writ of certiorari directly, regardless of whether the party is represented by counsel.

## **SPECIAL TERM OPINION**

**FRISCH**, Chief Judge

In this certiorari appeal, relator Kathleen Smith seeks review of a December 20, 2024 decision issued by respondent Board of Directors of the Minnesota State Retirement System determining that relator is not entitled to certain disability benefits. On February 19, 2025, the clerk of the appellate courts issued a writ of certiorari. On February 20, 2025, relator filed a certificate of service, which provided that, on February 19, 2025, relator served the issued writ of certiorari on respondent's president and general counsel by mail.

We questioned whether the time to obtain and serve a writ of certiorari expired before this appeal was filed, and if so, whether we must dismiss this appeal as untimely. The parties filed informal memoranda. In an order filed on March 26, 2025, we accepted jurisdiction over the appeal, with an opinion to follow. We now explain that relator properly invoked our certiorari jurisdiction because relator obtained a writ of certiorari within 63 days of the board's mailing of the decision and served the issued writ on respondent within that appeal period.

## **DECISION**

Respondent is the governing board of the Minnesota State Retirement System. *See* Minn. Stat. § 356.96, subd. 1(d) (2024) (defining “governing board”). Appeals from respondent's decisions regarding a person's eligibility, benefits, or other rights under a covered pension plan are governed by Minn. Stat. § 356.96, subd. 13. *See id.*, subds. 2 (stating that a person “may appeal a decision by the staff of a covered pension plan regarding the person's eligibility, benefits, or other rights under the plan to the executive

director of the plan”), 5 (allowing for appeal of executive director’s decision to governing board) (2024). That statute provides that, “[n]o later than 60 days *after the date of the mailing* of the notice of the governing board’s decision, the petitioner may appeal the decision by filing a writ of certiorari with the court of appeals under section 606.01 and Rule 115 of the Minnesota Rules of Civil Appellate Procedure.” *Id.*, subd. 13 (emphasis added). The writ of certiorari “must also be served upon the adverse party” within the appeal period. Minn. Stat. § 606.02.

Respondent states that it mailed its decision to relator on the same day it issued that decision, December 20, 2024. And the parties agree that the time for relator to obtain and serve a writ of certiorari expired on February 21, 2025, or 63 days after the date of mailing of the decision. In agreeing that a 63-day appeal period applies, the parties rely on *Soyka v. Commissioner of Revenue*, in which the supreme court held that, when the commissioner of revenue serves notice of an order by mail, three days are added to the 60-day statutory deadline to appeal that order under Minn. R. Civ. P. 6.05. 842 N.W.2d 682, 682 (Minn. 2014). The supreme court reasoned that, “when a deadline runs from ‘written notice,’ ‘mailing notice,’ or ‘mail[ing] to [a] party notice’ and notice is served by United States mail, Rule 6.05 extends the deadline by 3 days.” *Id.* at 686 (alterations in original).

Rule 6.05 was abrogated in 2020, and its text is now incorporated in Minn. R. Civ. P. 6.01(e). Minn. R. Civ. P. 6.05 2020 advisory comm. cmt. Pursuant to Minn. R. Civ. App. P. 126.01, the timing provisions set forth in rule 6.01 are incorporated into the rules of civil appellate procedure. Rule 6.01(e) provides that whenever a party must act “within a prescribed period after the service of a notice or other document upon the party, and the

notice or document is served upon the party by United States Mail, 3 days shall be added to the prescribed period.”

We therefore agree with the parties’ calculation of the appeal period. Because Minn. Stat. § 356.96, subd. 13, establishes a 60-day statutory deadline “after the date of the mailing of the notice of the governing board’s decision,” we hold that three days are added to extend the appeal deadline. The time to obtain and serve a writ of certiorari here therefore expired on February 21, 2025. Relator obtained a writ of certiorari from the clerk of the appellate courts on February 19, 2025. And respondent acknowledges that relator served respondent’s “Board chair and its general counsel” within the 63-day appeal period.

Respondent argues that we must nevertheless dismiss this appeal because relator failed to timely serve the issued writ of certiorari on the attorney general’s office. Respondent reasons that its “general counsel does not represent [respondent] for purposes of appeals under Section 356.96, subdivision 13” because Minn. Stat. § 352.03, subd. 11 (2024), establishes that “representation is assigned to the Attorney General.”<sup>1</sup> Respondent therefore argues that relator failed to timely perfect the appeal. We disagree.

The supreme court has addressed whether a party must serve counsel for an agency to invoke appellate jurisdiction under the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.001-.69 (2024). In that context, the supreme court held that a petitioner “may effectuate service on ‘parties to the contested case,’ Minn. Stat. § 14.63, and ‘parties to the proceeding before the agency,’ Minn. Stat. § 14.64, by serving those parties directly, whether or not they are represented by counsel.” *In re Issuance of Air Emissions Permit*

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<sup>1</sup> Minn. Stat. § 352.03, subd. 11, provides that, “[i]n actions brought by it or against it, the board shall be represented by the attorney general.”

*for PolyMet Mining Inc.*, 991 N.W.2d 867, 869 (Minn. 2023). The supreme court noted that the text of the relevant statutory appeal provisions mentioned service on the “parties” and explained that “[t]he ordinary meaning of ‘parties,’ in the legal context, is litigants.” *Id.* at 873. The supreme court reasoned that the term “parties” is “unambiguous and does not demonstrate a legislative intent to require service upon a party’s attorney.” *Id.*

The language at issue here is analogous to that set forth in Minn. Stat. §§ 14.63-.64 as discussed in *PolyMet*. Like Minn. Stat. §§ 14.63-.64, Minn. Stat. § 606.02 requires service of the issued writ of certiorari “upon the adverse party.” Because the plain language of section 606.02 requires service of the issued writ on the party—and not upon the party’s counsel—and because the supreme court confirmed in *PolyMet* that service on a “party” does not require service on a party’s counsel, we reach the same conclusion under section 606.02. We therefore hold that to invoke the certiorari jurisdiction of the court of appeals, a petitioner may effectuate service on “the adverse party,” as required by Minn. Stat. § 606.02, by serving the party with the issued writ of certiorari directly, regardless of whether the party is represented by counsel.

Relator’s certificate of service provides that relator served the issued writ of certiorari on respondent’s president and general counsel by mail on February 19, 2025. Because relator timely obtained a writ of certiorari and timely served the issued writ on respondent, we have jurisdiction over this appeal.

**Appeal to proceed.**