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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
Case Type: Civil Other/Misc.

In the Matter of the Denial of Contested Case Hearing Requests and Issuance of National Pollutant Discharge Elimination System/State Disposal System Permit No. MN0071013 for the Proposed NorthMet Project St. Louis County Hoyt Lakes and Babbitt Minnesota

Case No. 62-CV-19-4626

The Honorable John H. Guthmann

POLY MET MINING, INC.'S MEMORANDUM IN OPPOSITION TO RELATORS' MOTION IN LIMINE TO ADMIT EVIDENCE PURSUANT TO THE MINNESOTA ADMINISTRATIVE PROTECTIVE [sic] ACT'S RULES OF EVIDENCE

INTRODUCTION

Relators' Motion in Limine to Admit Evidence Pursuant to the Minnesota Administrative Protective [sic] Act's Rules of Evidence ("Motion") should be denied. Their Motion ignores (and indeed fails to even cite) the plain language of the Minnesota Rules of Evidence. Relators instead hang their hat on this Court's words cherry-picked from a distinct context and invoke policy arguments revealing Relators' real goal of expanding the limited scope of issues before this Court. This Court should reaffirm what it and the Minnesota Court of Appeals already ordered—that this is a limited proceeding to determine alleged irregularities in procedure. As such, the Rules of Evidence, which apply to district-court proceedings, govern—not, as Relators claim, the evidentiary rules applicable to contested-case hearings before agencies and administrative law judges. Applying the Rules of Evidence is essential to keeping this proceeding focused, free of sideshows, and on schedule.

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BACKGROUND

In 2018, the Minnesota Pollution Control Agency ("MPCA") approved Poly Met Mining, Inc.'s ("PolyMet") request for a National Pollutant Discharge Elimination System ("NPDES") permit. Relators sought certiorari review of the permit from the Minnesota Court of Appeals. Before ruling on the merits of Relators' certiorari appeal, the Court of Appeals transferred the case to this Court under Minnesota Statutes § 14.68 based on Relators' allegations of irregularities in procedure.

Section 14.68, which is in the Minnesota Administrative Procedure Act, provides a mechanism by which "the court of appeals may transfer the case to the district court," which then "shall have jurisdiction to take testimony." This Court has explained that the Court of Appeals' transfer under Section 14.68 was for the limited purpose of an evidentiary hearing and determination of the alleged irregularities in procedure.[1] The five-to-ten-day evidentiary hearing is scheduled to begin on January 21, 2020.

At the initial case hearing, this Court recognized that its authority over this proceeding derived from the Court of Appeals' Transfer Order and Section 14.68.[2] The Court explained that the evidentiary hearing "is a proceeding under the Minnesota Administrative Procedure Act."[3] At the same time, since the Court was then considering the parties' arguments regarding the scope of the action and permissible discovery, the

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[1] Aug. 7, 2019 Hr'g Tr. at 93:17-23, 95:23-96:9; *see also* Transfer Order at 4 (June 25, 2019).

[2] Aug. 7, 2019 Hr'g Tr. at 22:14-17, 91:14-18.

[3] *Id.* at 34:13-15.

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Court explained that the evidentiary hearing is not "a civil action controlled by the Minnesota Rules of Civil Procedure."[4] A month later, responding to concerns that Relators were overapplying confidentiality protections, this Court instructed that "[e]very party offering a document is going to have to demonstrate the foundation for the admissibility of that document," and that "[n]one of the rules of evidence are going to be relaxed" in this proceeding.[5]

Invoking the Court's statement regarding the applicability of the Rules of Civil Procedure, Relators now argue that the completely separate Rules of Evidence should not apply to the evidentiary hearing before this Court. Relators' Motion should be denied.

ARGUMENT

The Rules of Evidence apply to this proceeding because it is an evidentiary hearing before a state court—not an administrative tribunal—and it does not fall within any of the textual exceptions to the Rules of Evidence's applicability. Relators' motion never cites the unambiguous text of the Rules of Evidence. Instead, Relators rely on irrelevant rules and dissimilar cases concerning contested-case hearings before administrative law judges. This is neither a contested case nor is this matter before an administrative law judge. As it usually does, this Court should follow the plain language of the Rules of Evidence, which govern trial court proceedings.

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[4] *Id.* at 92:11-13.

[5] Sept. 16, 2019 Hr'g Tr. at 119:1-3, 7-8.

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I. The Rules of Evidence apply to all proceedings before state courts, including the evidentiary hearing in this matter.

The text of the Rules of Evidence sets forth the Rules' applicability: "these rules apply to all actions and proceedings in the courts of this state." Minn. R. Evid. 1101(a). "When interpreting the Rules of Evidence," courts must "first look at the plain language of the rule." *State v. Willis*, 898 N.W.2d 642, 645 (Minn. 2017). During this review, "[w]ords and phrases are construed according to the rules of grammar and their common and approved usage." *Id.* When "the plain language of a rule is unambiguous, [courts] must apply it." *Id*.

The Rules of Evidence unambiguously apply in proceedings before trial courts such as this Court, including in those proceedings that arise under the Minnesota Administrative Procedure Act. Whereas the Rules of Civil Procedure limit their scope to "the procedure in the district courts of the State of Minnesota in all suits of a *civil* nature," Minn. R. Civ. P. 1 (emphasis added), the Rules of Evidence "govern proceedings in the courts of this state," civil or otherwise, Minn. R. Evid. 101. Rule 1101 reiterates the applicability of the Rules of Evidence to all proceedings in Minnesota state courts, providing that "[e]xcept as otherwise provided in subdivisions (b) and (c), these rules apply to *all actions and proceedings in the courts of this state*." Minn. R. Evid. 1101(a) (emphasis added). Consistent with this unambiguous text, the Minnesota Supreme Court has held that the Rules of Evidence "apply to all cases and proceedings unless the rules provide otherwise." *Willis*, 898 N.W.2d at 648.

The evidentiary hearing before this Court is a "proceeding[] in [a] court[] of this state" subject to the Rules. Minn. R. Evid. 101. "Proceeding" is a broad term, defined in

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relevant part as "[a]ny procedural means for seeking redress from a tribunal or agency." Black's Law Dictionary (11th ed. 2019) (defining "Proceeding"). Here, although initially a certiorari matter before the Court of Appeals, this matter is now a limited proceeding before the district court. Upon Relators' request, the Court of Appeals transferred this matter to this Court under Minnesota Statute § 14.68, which vests in the "*district court* . . . jurisdiction to take testimony and to hear and determine the alleged irregularities in procedure." Minn. Stat. § 14.68 (emphasis added). The Minnesota Rules of Evidence accordingly apply to this proceeding, which is before a state court, because "the rules [do not] provide otherwise." *Willis*, 898 N.W.2d at 648.

None of the textual exceptions to the applicability of the Rules of Evidence apply here—and Relators have not even attempted to argue otherwise. Subdivisions (b) and (c) of Rule 1101 list the sole exceptions to the Rules' applicability. Under those subdivisions, the Rules of Evidence "do not apply" to certain "[p]reliminary questions of fact," "[p]roceedings before grand juries," certain "[c]ontempt proceedings," "restitution hearings," and certain "[m]iscellaneous proceedings." The list of "[m]iscellaneous proceedings" exempted from the Rules' applicability is closed, and consists of:

> [p]roceedings for extradition or rendition; probable cause hearings; sentencing, or granting or revoking probation; issuance of warrants for arrest, criminal summonses, and search warrants; proceedings with respect to release on bail or otherwise; and criminal expungement proceedings.

Minn. R. Evid. 1101(b)(3).

Evidentiary hearings held under Section 14.68 are not included in the list of proceedings exempted from the applicability of the Rules of Evidence. Since such an evidentiary hearing is not a grand jury, contempt, or restitution proceeding, the *only*

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potential basis for exemption could be if it were one of the "[m]iscellaneous proceedings" listed in Rule 1101(b)(3). But Rule 1101(b)(3) does not mention evidentiary hearings held under Section 14.68. The Minnesota Supreme Court has "interpreted similar silence to mean that the Rules of Evidence apply to any unlisted proceedings." *Willis*, 898 N.W.2d at 646. In other words, because evidentiary "hearings are not expressly excluded under Minn. R. Evid. 1101(b)(3), the plain language of Rule 1101 dictates that the Rules of Evidence apply in those proceedings." *See id.* (reaching same conclusion with respect to restitution hearings, before Rule 1101 was amended to explicitly exempt restitution hearings from the Rules' applicability).

This motion aside, Relators apparently understand that the Rules of Evidence control here because *their own motions in limine turn on the Rules of Evidence*.[6] If Relators really believed that the Minnesota Administrative Procedure Act rules applied, they would have moved under those rules. Instead, appreciating that this is a district court proceeding, governed by the Rules of Evidence designed for district courts, Relators' motions cite to the Rules of Evidence and cases applying those rules.[7] Dropping a footnote that Relators' other motions "do not waive their argument that this . . . proceeding should be governed by . . . the Minnesota Administrative Procedures Act" does not change that conclusion.[8] Relators' motion reveals what their supersized exhibit

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[6] *See* Relators' Motion in Limine to Limit the Use of and Exclude Certain Evidence (Dec. 27, 2019).

[7] *See id.*

[8] *Id.* at 2.

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and witness lists already suggested: invoking the Minnesota Administrative Procedure Act's rules of evidence is a moonshot intended to circumvent "the Minnesota Rules of Evidence's strict hearsay and foundation requirements."[9] Relators should not be allowed to use the Minnesota Administrative Procedure Act's rules to bring in unreliable evidence with shaky foundation.

In sum, under the plain language of Rules 101 and 1101—text that Relators neither cite nor mention—the Rules of Evidence apply to the evidentiary hearing being held before this Court.

II. The rules applicable to contested-case hearings do not override the Rules of Evidence's plain language.

Relators argue that instead of applying the Rules of Evidence, the Court should apply the evidentiary rules that apply to contested-case hearings before administrative law judges. *See* Minn. Stat. § 14.60; Minn. Rules 1400.7300. Neither the text of these rules nor the cases cited by Relators support application of the rules governing contested-case hearings to the proceeding before this Court.

The plain language of the rules cited by Relators limit their application to contested-case hearings before administrative law judges. Minnesota Statutes Section 14.60 provides that "[i]n contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs." (Emphasis added). Minnesota Rules 1400.7300,

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[9] Relators' Motion in Limine to Admit Evidence Pursuant to the Minnesota Administrative Protective [sic] Act's Rules of Evidence at 4 (Dec. 27, 2019).

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subpart 1, similarly provides that the "judge may admit all evidence which possesses probative value." "[J]udge" is defined to mean "the person or persons assigned by the chief administrative law judge pursuant to Minnesota Statutes, section 14.50, to hear the contested case." Minn. R. 1400.5100, subp. 1. This Court is not an agency, this proceeding is not a contested case, and an administrative law judge is not presiding in the courtroom. The plain language of the rules that Relators cite do not support their application here.

Unsurprisingly, given the plain language of the Rules of Evidence and the Minnesota Administrative Procedure Act, Relators are unable to direct the Court to a single decision that applies the evidentiary rules found in Minnesota Rule 1400.7300 to a district-court proceeding. Rather, Relators' motion relies on appellate cases that arise from contested-case hearings before administrative law judges. *See In re Resident Agency License of NW Title Agency, Inc.*, No. A13-1643, 2014 WL 2013436, at *3 (Minn. Ct. App. May 19, 2014) ("Relators assert that the administrative law judge erred by admitting inadmissible evidence at the [contested case] hearing."); *In re Dudley*, No. A07-1795, 2008 WL 2888951 (Minn. Ct. App. July 29, 2008) (explaining that the court of appeals was "reviewing an agency decision in a contested case"); *Padilla v. Minn. State Bd. of Med. Examiners*, 382 N.W.2d 876, 880 (Minn. Ct. App. 1986) ("A hearing was held before an administrative law judge."). But these cases stand for no more than the unremarkable proposition that the evidentiary standard in Rule 1400.7300 governs contested-case hearing before agencies.

Relators appear to argue that because the jurisdictional basis for both contested-case hearings and the evidentiary hearing on procedural irregularities appear in the

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Minnesota Administrative Procedure Act, the standards governing the former must apply to the latter. To be sure, the procedural mechanism for this evidentiary hearing is found in Section 14.68, which is in the Minnesota Administrative Procedure Act. But it does not follow that the evidentiary rules governing contested case hearings—a separate proceeding provided for in a separate section of the Administrative Procedure Act—therefore apply in a district court. To the contrary, the Minnesota Administrative Procedure Act defines a "[c]ontested case" as a "proceeding before *an agency* in which the legal rights, duties, or privileges of specified parties are required by law or constitutional right to be determined after *an agency hearing*." Minn. Stat. § 14.02, subd. 3 (emphasis added). Section 14.68 vests jurisdiction in the district court, not the agency, so the proceeding is not the same as a contested-case hearing. The legislature intended this distinction between these two forums, since Section 14.67—the very statutory section preceding Section 14.68—provides a mechanism by which the court of appeals "may order that additional evidence be taken *before the agency*." Minn. Stat. § 14.67 (emphasis added). Relators chose to move for a transfer under Section 14.68 (not Section 14.67), knowing full well that they would be proceeding before a district court, not an agency. Relators chose the Rules of Evidence over the Minnesota Administrative Procedure Act alternative when they filed the motion to transfer to district court, and they cannot undo that choice two weeks before the hearing before the district court.

Since the text of neither the Rules of Evidence nor Rule 1400.7300 support Relators' argument, Relators are left with only policy arguments. Even these policy concerns, however, are unwarranted. Relators fail to explain how applying the Rules of

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Evidence would impede their ability "to develop facts for the appellate record."[10] But a primary purpose of the Minnesota Rules of Evidence is that "the truth . . . be ascertained and proceedings justly determined," all while eliminating "unjustifiable expense and delay." Minn. R. Evid. 102. What Relators' actually seem to want is to introduce documents and testimony that cannot meet the truth-seeking standards found in the Rules of Evidence. Relators' policy concerns also betray their interest in transforming the "limited" issue before this Court from questions of irregularities in procedure into one of the entire substantive merits of the NPDES permit.[11] Relators explain that they "seek to build an administrative record," and that the Court is "the fact finder developing the administrative record."[12] But the purpose of this hearing is not to build the administrative record. It is to determine whether there were any irregularities in procedure. This Court should not accept Relators' invitation to expand the issues and evidence properly before this Court, particularly since doing so is inconsistent with the plain language of the relevant statutes and rules.

CONCLUSION

Relators' Motion is inconsistent with the text of both the Minnesota Rules of Evidence and the Minnesota Administrative Procedure Act. And it is inconsistent with

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[10] Relators' Motion in Limine to Admit Evidence Pursuant to the Minnesota Administrative Protective [sic] Act's Rules of Evidence at 1 (Dec. 27, 2019).

[11] Transfer Order at 4 (June 25, 2019).

[12] Relators' Motion in Limine to Admit Evidence Pursuant to the Minnesota Administrative Protective [sic] Act's Rules of Evidence at 3-4 (Dec. 27, 2019).

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this Court's directive that "[n]one of the rules of evidence are going to be relaxed."[13] This Court should deny Relators' Motion and hold that the Rules of Evidence apply to the evidentiary hearing scheduled to begin on January 21, 2020.

[13] Sept. 16, 2019 Hearing Tr. at 119:7-8.

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Dated: January 10, 2020

GREENE ESPEL PLLP

/s/ Monte A. Mills

Monte A. Mills, Reg. No. 030458X
Caitlinrose H. Fisher, Reg. No. 0398358
Davida S. McGhee, Reg. No. 0400175
222 S. Ninth Street, Suite 2200
Minneapolis, MN 55402
mmills@greeneespel.com
cfisher@greeneespel.com
dwilliams@greeneespel.com
(612) 373-0830

VENABLE LLP

Kathryn A. Kusske Floyd, DC Reg. No. 411027
(admitted pro hac vice)
Jay C. Johnson, VA Reg. No. 47009
(admitted pro hac vice)
Kyle W. Robisch, DC Reg. No. 1046856
(admitted pro hac vice)
600 Massachusetts Avenue, NW
Washington, DC 20001
kkfloyd@venable.com
jcjohnson@venable.com
kwrobisch@venable.com
(202) 344-4000

Attorneys for Poly Met Mining, Inc.