

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

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, Babbitt,
Minnesota.

Court File Number: 62-CV-19-4626

Honorable Judge John H. Guthmann

**MINNESOTA POLLUTION CONTROL AGENCY'S RESPONSE TO
RELATORS' MOTION TO ADMIT EVIDENCE PURSUANT TO THE
MINNESOTA ADMINISTRATIVE PROCEDURE ACT'S RULES OF
EVIDENCE**

Minnesota Pollution Control Agency ("MPCA") requests that the Court deny Relators' Motion to Admit Evidence Pursuant to the Minnesota Administrative Procedure Act's ("MAPA") Rules of Evidence.

INTRODUCTION

On December 27, 2019, Relators filed a motion *in limine* seeking to admit evidence pursuant to the Minnesota Administrative Procedure Act's Rules of Evidence, Minn. R. Evid. 1400.7300, instead of the Minnesota Rules of Evidence. Relators' objective is plain—to admit hearsay evidence that would be precluded by the Rules of Evidence. *Compare* Minn. R. 1400.7300 ("The [administrative law] judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs."), *with* Minn. R. Evid. 802 ("Hearsay is not admissible except" as provided by limited exceptions.). Relators' motion is a thinly veiled

request for the Court to reconsider its prior determination that no rules of evidence will be relaxed for this proceeding:

Every party offering a document is going to have to demonstrate the foundation for the admissibility of that document. And if a document is going to be inadmissible absent identification of a source that the Relators consider confidential, then they have a decision to make. How bad do I want the document to be received into evidence? None of the rules of evidence are going to be relaxed because someone wants to keep someone's identity confidential. So as long as that's clear, the parties can plan accordingly.

Sept. 16, 2019 Hr'g Tr. at 119:1-10.

Rather than “plan accordingly,” Relators seek to replace the Rules of Evidence with MAPA's evidentiary rules, despite the fact that the latter are plainly inapplicable to the instant proceeding.

ARGUMENT

I. MAPA'S RULES OF EVIDENCE DO NOT APPLY TO THIS PROCEEDING.

MAPA's Rules of Evidence are set forth in Minnesota Rule 1400.7300. Notably, these rules apply only to contested case hearings before an administrative law judge. Minn. R. 1400.5010 (“The procedures in parts 1400.5010 to 1400.8400 govern all contested cases”); Minn. R. 1400.5100, subp. 1 (defining “administrative law judge or judge” as “the person assigned . . . to hear the contested case”); *see also* Minn. Stat. § 14.60 (“In 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.”).

The instant proceeding is not a contested case. *See* Minn. Stat. § 14.02, subd. 3 (defining “contested case” as a proceeding before an agency. . . .); *id.* at subd. 2 (defining “agency” as “any state officer, board, commission, bureau, division, department, or tribunal, *other than a judicial branch court* and the Tax Court, having a statewide jurisdiction. . . .”) (emphasis added); *id.* at § *Schumann v. State*, 367 N.W.2d 688, 690 (Minn. Ct. App. 1985) (observing that “*administrative*

agencies are not strictly bound by the rules of evidence”) (emphasis added). Rather, this is a judicial proceeding before the district court. As a result, Relators’ request that the Court apply MAPA’s evidentiary rules in the instant proceeding is a non-starter.

II. THE MINNESOTA RULES OF EVIDENCE APPLY TO THIS PROCEEDING.

The Minnesota Rules of Evidence “apply to all actions and proceedings in the courts of this state,” except for those proceedings described in Minnesota Rule of Evidence 1101(b). Minn. R. Evid. 1101(a); *see also* Minn. R. Evid. 101 (“These rules govern proceedings in the courts of this state, to the extent and with the exceptions stated in Rule 1101”). In turn, Minnesota Rule of Evidence 1101(b) lists several specific proceedings in courts of this State to which the Rules of Evidence do not apply:

(1) *Preliminary questions of fact*. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) *Grand jury*. Proceedings before grand juries.

(3) *Miscellaneous proceedings*. Proceedings 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.

(4) Contempt proceedings in which the court may act summarily.

Minn. R. Evid. 1101(b). The instant proceeding is plainly a “proceeding[] in the courts of this state,” Minn. R. Evid. 1101(a), and none of the exceptions in Rule 1101(b) apply. Thus, the Rules of Evidence apply to this proceeding.

Indeed, Minnesota courts have strictly construed Rule 1101(b)’s list of exceptions and applied the Rules of Evidence to all proceedings not expressly exempted. *See State v. Willis*, 898 N.W.2d 642, 645 (Minn. 2017) (“In short, the Rules of Evidence apply to all cases and proceedings

unless the rules provide otherwise.”); *Keim v. Comm’r of Pub. Safety*, No. A13-1816, 2014 WL 4175860, at *2 (Minn. Ct. App. Aug. 25, 2014) (“The Minnesota Rules of Evidence apply to all actions and proceedings unless excluded by the rules or a statute.”).

In *Willis*, the Court examined whether the Rules of Evidence applied to restitution hearings. The Court explained that the only basis to exclude restitution hearings would be if they were one of the “[m]iscellaneous proceedings” listed in Minn. R. Evid. 1101(b)(3). 898 N.W.2d at 646. Because restitution hearings are not expressly excluded under Minn. R. Evid. 1101(b)(3), the Court of Appeals held that the plain language of Rule 1101 dictates that the Rules of Evidence apply in those proceedings. *Id*; see also *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 329-30 (Minn. 2016) (holding that the Rules of Evidence apply during a *Blakely* court trial because such proceedings are not mentioned in Rule 1101(b)(3)); *State v. Rodriguez*, 754 N.W.2d 672, 683-84 (Minn. 2008) (holding that because Minn. R. Evid. 1101(b)(3) does not reference jury sentencing trials, the Rules of Evidence apply to those proceedings); *Keim*, 2014 WL 4175860, at *2 (holding the Rules of Evidence apply to domestic abuse hearings because Minn. R. Evid. 1101(b)(3) does not specifically reference domestic abuse hearings and the Minnesota Domestic Abuse Act provides no exceptions). Likewise, transfer proceedings before the district court pursuant to Minn. Stat. § 14.68 are not exempt from the Minnesota Rules of Evidence.

Not only do the Rules’ text and the case law establish that the Rules of Evidence must apply to this proceeding; so too do the actions of the Legislature. As evidenced by Minn. Stat. § 14.60, the Legislature knows how to impose relaxed evidentiary standards when it so chooses—as in contested case hearings before an administrative law judge. Thus, it is telling that the Legislature has not expressed any intention to relax evidentiary standards in judicial proceedings before the district court pursuant to Minn. Stat. § 14.68.

III. THE RULES OF EVIDENCE APPLY EVEN THOUGH THE RULES OF CIVIL PROCEDURE DO NOT.

Relators contend that “it would make no sense to conduct an evidentiary hearing pursuant to MAPA, explicitly disclaim the Minnesota Rules of Civil Procedure, and still apply the Minnesota Rules of Evidence.” Relators’ Mot. at 3. In reality, this approach makes perfect sense, as it is plainly consistent with the terms of the Rules.

While the Minnesota Rules of Evidence apply to all proceedings that are not expressly exempted, the Minnesota Rules of Civil Procedure provide no authority for their application in this proceeding. Because this Court has limited jurisdiction under Minn. Stat § 14.68 and the Court of Appeals’ June 25, 2019 transfer order,¹ this Court recognized it needed specific authority to apply the Rules of Civil Procedure to these proceedings. *See* Aug. 7, 2019 Hr’g Tr. at 45:17-21. As this Court recognized, Rule of Civil Procedure 81 and Appendix A specifically exclude Writ of Certiorari proceedings from the application of the Rules of Civil Procedure. *Id.* at 93:1-4 (“[P]roceedings that follow from a writ of certiorari are not controlled by the Minnesota Rules of Civil Procedure, and there is no right to conduct Rule 26 discovery by virtue of Rule 81.01 in Appendix A.”). Likewise, Minn. Stat § 14.68 does not provide for application of the Rules of Civil Procedure. Instead, applicable case law and subsequent legislative history of Minn. Stat §14.68 indicate that the drafters clearly intended that the Rules of Civil Procedure would not apply.²

¹ Sept. 9, 2019 Order at 1 (transferring this matter to this Court “for the limited purpose of an evidentiary hearing and determination of the alleged irregularities in procedure” regarding the NorthMet Permit permitting process) (quoting Court of Appeals’ June 25, 2019 Order); Minn. Stat §14.68 (confining judicial review to the administrative record except for “alleged irregularities in procedure” that are not shown in the record).

² The statute used to specifically reference the Minnesota Rules of Civil Procedure, but that provision was repealed and removed from the statute in 1983, to exclude reference to the Rules of Civil Procedure following the Court’s decisions in *Mampel v. Eastern Heights State Bank of St. Paul*, 254 N.W.2d 375 (Minn. 1977), and *Application of Lecy*, 304 N.W.2d 894, 895 (Minn. 1981). *See* 1983 Minn. Laws, Ch. 247, Sec. 14.

Accordingly, the Court held that the Rules of Civil Procedure do not apply. *See* Aug. 7, 2019 Hr’g Tr. at 93:14–16 (“There is no express provision for discovery in the case of a transfer under Minn. Stat. § 14.68”). By contrast, the Minnesota Rules of Evidence’s plain language, which Minnesota courts have strictly construed, dictates that those rules govern this proceeding. Minn. R. Evid. 1101; Minn. R. Evid. 101.

CONCLUSION

For the foregoing reasons, MPCA respectfully requests that the Court deny Relators’ Motion to Admit Evidence Pursuant to the MAPA Rules of Evidence and that the Court apply the Minnesota Rules of Evidence at the evidentiary hearing commencing on January 21, 2020.

DATED: January 10, 2020.

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