10.1 RULES OF EVIDENCE IN ADMINISTRATIVE ADJUDICATION

Under the Administrative Procedure Act (APA), contested cases are not governed by the strict rules of evidence that apply to the trial of cases in Minnesota courts.[1] Rather, the APA provides that 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."[2] The rules of the Office of Administrative Hearings (OAH) echo this standard and specifically provide that admissible evidence may include "reliable" hearsay.[3] Under this relaxed standard of admissibility, courts will generally not disturb agency decisions that rest on evidence that is not admissible under the formal rules of evidence, including the hearsay rule, unless the evidence is "inherently unreliable" and the agency's use of the evidence constitutes an abuse of discretion.[4] In practice, however, APA contested cases are heard by administrative law judges (ALJs) and tried by attorneys trained in the formal rules of evidence. As a consequence, with the exception of admissible hearsay, most of the formal rules of evidence tend to be argued and applied to help distinguish evidence that does not possess "probative value." In addition, the rules of evidence are frequently a useful basis for arguing that a particular piece of evidence is "unreliable" and should be excluded from the hearing record.

The rules of the OAH provide that all parties to a contested case have the right to present evidence, including rebuttal evidence.[5] In receiving evidence, ALJs and agencies are required to "give effect to the rules of privilege recognized by law."[6] Presumably, agencies must recognize the constitutional privileges construed by case law,[7] as well as those established by statute.[8] In addition, evidence that is incompetent, irrelevant,

1 MINN. STAT. § 14.60, subd. 1 (2014). The Minnesota Court of Appeals has observed that "administrative agencies are not strictly bound by the rules of evidence." Schumann v. State, 367 N.W.2d 688, 690 (Minn. Ct. App. 1985) (refusing to apply MINN. R. EVID. 609(b) to driver's license revocation proceeding); *see also* Padilla v. Minn. Bd. of Med. Exam'rs, 382 N.W.2d 876, 881-82 (Minn. Ct. App. 1986) (stating that adherence to formal rules of evidence in administrative cases is not required to provide due process).

2 MINN. STAT. § 14.60, subd. 1 (2014).

3 MINN. R. 1400.7300, subp. 1 (2013). The OAH has also adopted specific rules of evidence for hearings involving worker's compensation (MINN. R. 1420.2900, subps. 3,6) (2013)); the Revenue Recapture Act (MINN. R.1400.8607 (2013)); and for certain hearings involving the Environmental Quality Board (MINN. R. 1405.1700 (2013)).

4 State *ex rel.* Indep. Sch. Dist. No. 276 v. Dep't of Educ., 256 N.W.2d 619, 627 (Minn. 1977). In the context of a professional licensing disciplinary proceeding the Minnesota Supreme Court reaffirmed its concern that hearsay evidence have "probative quality" and that the use of hearsay not violate notions of fair play. *In re* Wang, 441 N.W.2d 488, 495 n. 8, 9 (Minn. 1989) (citing with approval, Morey v. Indep. Sch. Dist. No. 492, 271 Minn. 445, 448-49, 136 N.W.2d 105, 107-08 (1965)). However, some courts hold that hearsay should not be admitted in administrative cases, over objection, where direct evidence is available. *E.g.*, Outgamie Cnty. v. Town of Brooklyn, 18 Wis. 2d 303, 309-12, 118 N.W.2d 201, 206 (1962).

5 MINN. R.. 1400.7100, subp. 1 (2013). In addition, the APA expressly recognizes the right to submit rebuttal evidence. MINN. STAT. § 14.60, subd. 3 (2014).

6 MINN. STAT. § 14.60, subd. 1 (2014); MINN. R. 1400.7300, subp. 1 (2013). *See generally* MINN. STAT § 8.3 (2014).

7 For example, agencies must recognize the privilege against self-incrimination.

8 *See, e.g.*, MINN. STAT. § 595.02 (2014) (testimonial privileges of witnesses).

immaterial, or unduly repetitious is to be excluded by the ALJ or by the agency.[9] Here again the formal rules of evidence form the framework for arguing that particular evidence or testimony should be excluded as prejudicial, confusing, or a waste of time.[10] ALJs are no more receptive to unnecessary or repetitive evidence than trial court judges and will generally sustain proper objections that serve to expedite hearings and maintain a clear record.

[9] MINN. STAT. § 14.60, subd. 1 (2014) provides that an agency *may* exclude incompetent, irrelevant, immaterial, and repetitious evidence. However, MINN. R. 1400.7300, subp. 1 (2013), requires the exclusion of such evidence, (stating evidence "shall be excluded"). As a practical matter, however, the determination of whether evidence is, for example, unduly repetitive remains in the sound discretion of the ALJ.

[10] *See* MINN. R. EVID. 403.