

10.5 APPLICATION OF THE EXCLUSIONARY RULES OF EVIDENCE

As noted at the beginning of this chapter, administrative hearings are not governed by the stringent rules that determine the admissibility of evidence in court trials. The Minnesota Supreme Court has recognized that an agency may receive evidence that would not be admitted in a judicial proceeding and that receipt of “incompetent evidence is not fatal to its determination.”¹ Rather, when all the evidence received by the agency is considered, it is sufficient that there be some proper quantity of legally competent evidence in the hearing record to support the agency's decision.²

Nevertheless, there are necessarily certain limitations on the evidence an agency may receive. The APA provides:

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. They *shall* give effect to the rules of privilege recognized by law. They *may* exclude incompetent, irrelevant, immaterial and repetitious evidence.³

Under the APA, the only requirements for admission of evidence are that it is probative and is the kind of evidence that “reasonable prudent persons” would accept as credible in conducting their own serious matters. Agencies are required to observe the rules of privilege and have the option to exclude evidence that is repetitious or not probative.

The above-quoted APA standard permits admission of all evidence, including hearsay. Evidence may be received and considered by the agency if it reasonably tends to prove a fact at issue. The OAH rules expressly state that “all evidence which possesses probative value, including hearsay,” may be admitted by the ALJ.⁴ The focus in administrative hearings, then, is not on the formal rules of evidence as they would be applied in a jury trial, but rather on whether the evidence offered reasonably tends to prove a fact, the proof of which would be helpful to a determination of an issue in the case.

Despite the generally relaxed evidentiary rules that apply to contested cases, the actual conduct of hearings, at least where the parties are represented by attorneys, tends to be reasonably formal. Hearings are conducted by ALJs who are themselves attorneys and are familiar with formal courtroom proceedings. Perhaps for this reason, formal evidentiary objections, which focus on formal rules of evidence, are commonplace in

¹ Hagen v. Civil Serv. Bd., 282 Minn. 296, 300, 164 N.W.2d 629, 632 (1969) (quoting Morey v. Sch. Bd. of Indep. Sch. Dist. No. 492, 271 Minn. 445, 448-49, 136 N.W.2d 105, 107-8 (1965)).

² See *supra* § 10.2 notes 1-9 and accompanying text (discussing residuum rule).

³ MINN. STAT. § 14.60, subd. 1 (2014) (emphasis added). This statute is restated, with modifications, in the rules of the OAH, MINN. R. 1400.7300, subp. 1 (2013). In particular, the rules appear to mandate the exclusion of incompetent, irrelevant, immaterial, or unduly repetitious evidence.

⁴ MINN. R.1400.7300, subp. 1 (2013). An interesting discussion of the application of the parole evidence rule to proof in administrative cases appears in *In re Minn. Power & Light Co.*, 435 N.W.2d 550 (Minn. Ct. App. 1989). The court observed that the parole evidence rule, although often labeled as a rule of evidence, is really a rule of contract interpretation, based on the doctrine that oral agreements are deemed integrated into final written agreements. *Minn. Power & Light*, 435 N.W.2d at 562-63, n. 3. The court, therefore, rejected an argument that since the agency was not bound by the formal rules of evidence, it was not required to apply the parole evidence rule. *Id.*

administrative hearings and tend to be well received by ALJs. Although the focus on admissibility may be a “reasonable prudent person” standard, the standard is not so easy to apply in practice. Therefore, while ALJs may tend to be somewhat more relaxed in the admission of evidence, being aware that they can always disregard evidence that they later conclude is not probative, formal evidentiary objections may help to persuade them that reasonable persons would not rely on a particular piece of evidence. Even if the objection is not sustained, an objection based on the formal rules will highlight the inherent weakness in the evidence and may result in it being given less weight in the decision-making process.⁵

⁵ In addition, failure to object may give the evidence additional probative value before a reviewing court. *See supra* § 10.2, notes 10-15 and accompanying text in this chapter.