

STATE OF MINNESOTA  
IN SUPREME COURT

ADM10-8051  
ADM09-8009  
ADM04-8001

**FILED**

September 20, 2012

**OFFICE OF  
APPELLATE COURTS**

ORDER EXTENDING PUBLIC COMMENT  
PERIOD ON PROPOSED AMENDMENTS TO THE  
RULES OF CIVIL PROCEDURE AND GENERAL  
RULES OF PRACTICE RELATING TO THE  
CIVIL JUSTICE REFORM TASK FORCE

In an order dated July 17, 2012, this Court ordered a hearing be held in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center on October 30, 2012 at 2:00 p.m., to consider proposed changes to the Rules of Civil Procedure and the General Rules of Practice for the District Courts aimed at facilitating more cost effective and efficient civil case processing. The proposed changes were included as part of the Civil Justice Reform Task Force reports to this Court dated December 23, 2011, and May 22, 2012. The portions of the reports that will be the subject of this hearing are annexed to this order. The full reports are on file with the Clerk of the Appellate Courts under file ADM10-8051 and are available online at:

<http://macsnc.courts.state.mn.us/ctrack/view/publicCaseMaintenance.do?csNameID=69632&csInstanceID=76536>

The July 17, 2012 order also solicited public comments through September 7, 2012. The Court is extending that comment period to and including October 22, 2012.

IT IS HEREBY ORDERED THAT:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Bridget Gernander, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, MN 55155, on or before October 22, 2012.
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and request shall be filed on or before October 22, 2012.

Dated: September 20, 2012

BY THE COURT:

/s/

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Lorie S. Gildea  
Chief Justice

**EXCERPTS FROM THE**  
**FINAL REPORT**  
**December 23, 2011**  
**AND THE**  
**SUPPLEMENTAL REPORT**  
**May 22, 2012**  
**of the**  
**Minnesota Supreme Court Civil Justice Reform Task Force**

Honorable Louise Dovre Bjorkman  
Chair

Honorable Christopher Dietzen  
Liaison Justice

Honorable Jerome Abrams  
Honorable Robert Awsumb  
Jeanette Bazis  
Kathryn Bergstrom  
Gregory Bulinski  
James Carey  
Professor Brad Clary  
Sue Dosal  
Dyan Ebert  
Meredith Erickson  
Katherine Flom  
Ernest Grumbles  
Mark Hallberg  
David Herr

Daniel Heuel  
Honorable Eric Hylden  
Anna Lamb  
Honorable Susan Miles  
Thomas Marshall  
Richard Pemberton  
Douglas R. Peterson  
Tim Pramas  
Honorable Denise Reilly  
Susan Segal  
Christopher Shaheen  
Clay Taylor  
Dorinda Wider

Michael Johnson, Staff Attorney

## Excerpts From Reports of the Civil Justice Task Force

### Introduction

In its December 23, 2011, and May 22, 2012, reports, the Civil Justice Reform Task Force recommended changes that will facilitate more effective and efficient case processing. For background discussion, please refer to the December report that is on file with the Clerk of the Appellate Courts at [www.mncourts.gov](http://www.mncourts.gov) (click on “Find a Court Case,” then click on “Access Supreme Court or Court of Appeals Case Cases” then click on the “Accept” button on the welcome page, and then type in the case number “ADM10-8051” in the Case Number box and then click the “SEARCH” button). The hearing to be held October 30, 2012 will consider only the following proposals:

1. **Appendix A:** Proposed changes to the Rules of Civil Procedure and the General Rules of Practice for the District Courts regarding:
  - a. Adopting A Proportionality Consideration Requirement for Discovery (R. Civ. P. 1, 26.01);
  - b. Continuing to Allow Commencement of Actions by Service, but with a One-Year Filing Requirement (R. Civ. P. 3.01, 5.04).
  - c. Adopting the Federal Court Automatic Disclosure Regime (R. Civ. P. 26.01);
  - d. Replace Informational Statement with New Civil Cover Sheet (Non-Family) (Gen. R. Prac. 104, 111.02, 111.03 and Form 104A);
  - e. Adopting an Expedited Procedure for Nondispositive Motions (Gen. R. Prac. 15.04);
2. **Appendix B:** Proposed changes to the General Rules of Practice for the District Courts regarding a Complex Case Program:
  - a. Complex Case Program Rules;
  - b. Complex Case Program Election Form; and
  - c. Complex Case Program Case Management Order.

1 **Appendices**

2 **Appendix A: Proposed changes to the Rules of Civil Procedure and the General**  
3 **Rules of Practice for the District Courts**  
4 **CIVIL JUSTICE REFORM TASK FORCE PROPOSALS**

5 **MINNESOTA RULES OF CIVIL PROCEDURE**

6 *[In the following proposed amendments, proposed deletions are indicated by a line drawn*  
7 *through the words and proposed additions are indicated by a line drawn under the words.]*  
8

9  
10 **RULE 1. SCOPE OF RULES**

11 These rules govern the procedure in the district courts of the State of Minnesota in all  
12 suits of a civil nature, with the exceptions stated in Rule 81. They shall be construed and  
13 administered to secure the just, speedy, and inexpensive determination of every action.

14 At all times, the court and the parties must address the action in ways designed to assure  
15 that the process and the costs are proportionate to the amount in controversy and the complexity  
16 and importance of the issues. The factors to be considered by the court in making a  
17 proportionality assessment include, without limitation: needs of the case, amount in controversy,  
18 parties' resources, and complexity and importance of the issues at stake in the litigation. This  
19 proportionality rule is fully applicable to all discovery, including the discovery of electronically  
20 stored information.

21 \* \* \*

22  
23 **RULE 3. COMMENCEMENT OF THE ACTION; SERVICE OF THE COMPLAINT**

24 **Rule 3.01. Commencement of the Action**

25 A civil action is commenced against each defendant:

26  
27 (a) when the summons is served upon that defendant, or

28  
29 (b) at the date of acknowledgement of service if service is made by mail, or  
30

31 (c) when the summons is delivered to the sheriff in the county where the  
32 defendant resides for service; but such delivery shall be ineffectual unless within 60 days  
33 thereafter the summons is actually served on that defendant or the first publication  
34 thereof is made.

35  
36 Filing requirements are set forth in rule 5.04, which requires filing with the court within  
37 one year after commencement.  
38

39 \* \* \*

40

41 **RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

42 \* \* \*

43 **Rule 5.04 Filing; Certificate of Service**

44 Any action that is not filed with the court within one year of commencement is deemed  
45 dismissed:

46 [alternative 1] with prejudice unless the parties within that year sign a stipulation to  
47 extend the filing period.

48 [alternative 2 ] without prejudice but filing with the court is required for  
49 reinstatement.

50 All papers after the complaint required to be served upon a party, together with a  
51 certificate of service, shall be filed with the court within a reasonable time after service, except  
52 expert disclosures and reports, depositions upon oral examination and interrogatories, requests  
53 for documents, requests for admission, and answers and responses thereto shall not be filed  
54 unless upon order of the court or for use in the proceeding.

55 The administrator shall not refuse to accept for filing any paper presented for that purpose  
56 solely because it is not presented in proper form as required by these rules or any local rules or  
57 practices.

58 \* \* \*

59

60 **RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING**  
61 **DISCOVERY**

62 **26.01. ~~Discovery Methods~~Required Disclosures**

63 ~~Parties may obtain discovery by one or more of the following methods: depositions by oral~~  
64 ~~examination or written questions; written interrogatories; production of documents or things or~~

65 ~~permission to enter upon land or other property; for inspection and other purposes; physical (including~~  
66 ~~blood) and mental examinations; and requests for admission.~~

67 **(a) Initial Disclosure.**

68 (1) In General. Except as exempted by Rule 26.01(a)(2) or as otherwise  
69 stipulated or ordered by the court, a party must, without awaiting a discovery request,  
70 provide to the other parties:

71 (A) the name and, if known, the address and telephone number of each  
72 individual likely to have discoverable information—along with the subjects of  
73 that information—that the disclosing party may use to support its claims or  
74 defenses, unless the use would be solely for impeachment;

75 (B) a copy—or a description by category and location—of all documents,  
76 electronically stored information, and tangible things that the disclosing party has  
77 in its possession, custody, or control and may use to support its claims or  
78 defenses, unless the use would be solely for impeachment;

79 (C) a computation of each category of damages claimed by the disclosing  
80 party—who must also make available for inspection and copying as under Rule  
81 34 the documents or other evidentiary material, unless privileged or protected  
82 from disclosure, on which each computation is based, including materials bearing  
83 on the nature and extent of injuries suffered; and

84 (D) for inspection and copying as under Rule 34, any insurance agreement  
85 under which an insurance business may be liable to satisfy all or part of a possible  
86 judgment in the action or to indemnify or reimburse for payments made to satisfy  
87 the judgment.

88 (2) Proceedings Exempt from Initial Disclosure. The following proceedings are  
89 exempt from initial disclosure:

90 (A) an action for review on an administrative record;

91 (B) a forfeiture action in rem arising from a state statute;

92 (C) a petition for habeas corpus or any other proceeding to challenge a  
93 criminal conviction or sentence;

94 (D) an action brought without an attorney by a person in the custody of the  
95 United States, a state, or a state subdivision;

96 (E) an action to enforce or quash an administrative summons or subpoena;

97 (F) a proceeding ancillary to a proceeding in another court;

98 (G) an action to enforce an arbitration award;

- 99                   (H) family court actions under Gen. R. Prac. 301 - 378;
- 100                   (I) Torrens actions;
- 101                   (J) conciliation court appeals;
- 102                   (K) forfeitures;
- 103                   (L) removals from housing court to district court;
- 104                   (M) harassment proceedings;
- 105                   (N) name change proceedings;
- 106                   (O) default judgments;
- 107                   (P) actions to either docket a foreign judgment or re-docket a judgment  
108                   within the district;
- 109                   (Q) appointment of trustee;
- 110                   (R) condemnation appeal;
- 111                   (S) confession of judgment;
- 112                   (T) implied consent;
- 113                   (U) restitution judgment; and
- 114                   (V) tax court filings.

115                   (3) Time for Initial Disclosures—In General. A party must make the initial  
116                   disclosures at or within 30 days after the original due date when an answer is required,  
117                   unless a different time is set by stipulation or court order, or unless a party objects during  
118                   the conference that initial disclosures are not appropriate in this action and states the  
119                   objection in the proposed discovery plan. In ruling on the objection, the court must  
120                   determine what disclosures, if any, are to be made and must set the time for disclosure.  
121                   In medical malpractice and other professional malpractice cases in which an expert  
122                   affidavit is required, a party must make initial disclosures within sixty (60) days of the  
123                   service of the expert affidavit.

124                   (4) Time for Initial Disclosures—For Parties Served or Joined Later. A party that  
125                   is first served or otherwise joined after the initial disclosures are due under rule  
126                   26.01(a)(3) must make the initial disclosures within 30 days after being served or joined,  
127                   unless a different time is set by stipulation or court order.

128                   (5) Basis for Initial Disclosure; Unacceptable Excuses. A party must make its  
129                   initial disclosures based on the information then reasonably available to it. A party is not  
130                   excused from making its disclosures because it has not fully investigated the case or

131 because it challenges the sufficiency of another party's disclosures or because another  
132 party has not made its disclosures.

133 **(b) Disclosure of Expert Testimony.**

134 (1) In General. In addition to the disclosures required by Rule 26.01(a), a party  
135 must disclose to the other parties the identity of any witness it may use at trial to present  
136 evidence under Minnesota Rule of Evidence 702, 703, or 705.

137 (2) Witnesses Who Must Provide a Written Report. Unless otherwise stipulated  
138 or ordered by the court, this disclosure must be accompanied by a written report—  
139 prepared and signed by the witness—if the witness is one retained or specially employed  
140 to provide expert testimony in the case or one whose duties as the party's employee  
141 regularly involve giving expert testimony. The report must contain:

142 (A) a complete statement of all opinions the witness will express and the  
143 basis and reasons for them;

144 (B) the facts or data considered by the witness in forming them;

145 (C) any exhibits that will be used to summarize or support them;

146 (D) the witness's qualifications, including a list of all publications  
147 authored in the previous 10 years;

148 (E) a list of all other cases in which, during the previous 4 years, the  
149 witness testified as an expert at trial or by deposition; and

150 (F) a statement of the compensation to be paid for the study and testimony  
151 in the case.

152 (3) Witnesses Who Do Not Provide a Written Report. Unless otherwise stipulated  
153 or ordered by the court, if the witness is not required to provide a written report, this  
154 disclosure must state:

155 (A) the subject matter on which the witness is expected to present  
156 evidence under Minnesota Rule of Evidence 702, 703, or 705; and

157 (B) a summary of the facts and opinions to which the witness is expected  
158 to testify.

159 (4) Time to Disclose Expert Testimony. A party must make these disclosures at  
160 the times and in the sequence that the court orders. Absent a stipulation or a court order,  
161 the disclosures must be made:

162 (A) at least 90 days before the date set for trial or for the case to be ready  
163 for trial; or

164 (B) if the evidence is intended solely to contradict or rebut evidence on the  
165 same subject matter identified by another party under Rule 26.01(a)(2) or (3),  
166 within 30 days after the other party's disclosure.

167 (5) Supplementing the Disclosure. The parties must supplement these disclosures  
168 when required under Rule 26.05.

169 **(c) Pretrial Disclosures.**

170 (1) In General. In addition to the disclosures required by Rule 26.01(a) and (b), a  
171 party must provide to the other parties and promptly file the following information about  
172 the evidence that it may present at trial other than solely for impeachment:

173 (A) the name and, if not previously provided, the address and telephone  
174 number of each witness—separately identifying those the party expects to present  
175 and those it may call if the need arises;

176 (B) the designation of those witnesses whose testimony the party expects  
177 to present by deposition and, if not taken stenographically, a transcript of the  
178 pertinent parts of the deposition; and

179 (C) an identification of each document or other exhibit, including  
180 summaries of other evidence—separately identifying those items the party  
181 expects to offer and those it may offer if the need arises.

182 (2) Time for Pretrial Disclosures; Objections. Unless the court orders otherwise,  
183 these disclosures must be made at least 30 days before trial. Within 14 days after they are  
184 made, unless the court sets a different time, a party may serve and promptly file a list of  
185 the following objections: any objections to the use under Rule 32.01 of a deposition  
186 designated by another party under Rule 26.01(c)(1)(B); and any objection, together with  
187 the grounds for it, that may be made to the admissibility of materials identified under  
188 Rule 26.01(c)(1)(C). An objection not so made—except for one under Minnesota Rule of  
189 Evidence 402 or 403—is waived unless excused by the court for good cause.

190 **(d) Form of Disclosures.** Unless the court orders otherwise, all disclosures under Rule  
191 26.01 must be in writing, signed, and served.

192 **26.02. Discovery Methods, Scope and Limits**

193 Unless otherwise limited by order of the court in accordance with these rules, the  
194 methods and scope of discovery is as follows:

195  
196 **(a) Methods.** Parties may obtain discovery by one or more of the following  
197 methods: depositions by oral examination or written questions; written interrogatories;  
198 production of documents or things or permission to enter upon land or other property; for  
199 inspection and other purposes; physical (including blood) and mental examinations; and  
200 requests for admission.

201

202 (b) In General Scope and Limits. Discovery must be limited to matters that  
203 would enable a party to prove or disprove a claim or defense or to impeach a witness and  
204 must comport with the factors of proportionality in rule 1, including the importance of the  
205 proposed discovery in resolving the issues, total costs and burdens of discovery compared  
206 to the amount in controversy, and total costs and burdens of discovery compared to the  
207 resources of each party. Subject to these limitations, Parties may obtain discovery  
208 regarding any matter, not privileged, that is relevant to a claim or defense of any party,  
209 including the existence, description, nature, custody, condition and location of any books,  
210 documents, or other tangible things and the identity and location of persons having  
211 knowledge of any discoverable matter. ~~Upon a showing of For~~ good cause and  
212 proportionality, the court may order discovery of any matter relevant to the subject matter  
213 involved in the action. Relevant information sought need not be admissible at the trial if  
214 discovery appears reasonably calculated to lead to the discovery of admissible evidence.

215  
216 **(b) Limitations.**

217  
218 (1) Authority to Limit Frequency and Extent. The court may establish or  
219 alter the limits on the number of depositions and interrogatories and may also  
220 limit the length of depositions under Rule 30 and the number of requests under  
221 Rule 36. The court may act upon its own initiative after reasonable notice or  
222 pursuant to a motion under Rule 26.03.

223  
224 (2) Limits on Electronically Stored Evidence for Undue Burden or Cost.  
225 A party need not provide discovery of electronically stored information from  
226 sources that the party identifies as not reasonably accessible because of undue  
227 burden or cost. On motion to compel discovery or for a protective order, the party  
228 from whom discovery is sought must show that the information is not reasonably  
229 accessible because of undue burden or cost. If that showing is made, the court  
230 may nonetheless order discovery from such sources if the requesting party shows  
231 good cause and proportionality, considering the limitations of Rule 26.02(b)(3).  
232 The court may specify conditions for the discovery.

233  
234 (3) Limits Required When Cumulative; Duplicative; More Convenient  
235 Alternative; and Ample Prior Opportunity. The frequency or extent of use of the  
236 discovery methods otherwise permitted under these rules shall be limited by the  
237 court if it determines that: (i) the discovery sought is unreasonably cumulative or  
238 duplicative, or is obtainable from some other source that is more convenient, less  
239 burdensome, or less expensive; or (ii) the party seeking discovery has had ample  
240 opportunity by discovery in the action to obtain the information sought; ~~or (iii) the~~  
241 ~~burden or expense of the proposed discovery outweighs its likely benefit, taking~~  
242 ~~into account the needs of the case, the amount in controversy, the parties'~~  
243 ~~resources, the importance of the issues at stake in the litigation, and the~~  
244 ~~importance of the proposed discovery in resolving the issues.~~ The court may act  
245 upon its own initiative after reasonable notice or pursuant to a motion under Rule  
246 26.03.

248           **(c) Insurance Agreements.** In any action in which there is an insurance policy  
249 that may afford coverage, any party may require any other party to disclose the coverage  
250 and limits of such insurance and the amounts paid and payable thereunder and, pursuant  
251 to Rule 34, may obtain production of the insurance policy; provided, however, that this  
252 provision will not permit such disclosed information to be introduced into evidence  
253 unless admissible on other grounds.

254  
255           **(d) Trial Preparation: Materials.** Subject to the provisions of Rule 26.02(e) a  
256 party may obtain discovery of documents and tangible things otherwise discoverable  
257 pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for  
258 another party or by or for that other party's representative (including the other party's  
259 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the  
260 party seeking discovery has substantial need of the materials in the preparation of the  
261 party's case and that the party is unable without undue hardship to obtain the substantial  
262 equivalent of the materials by other means. In ordering discovery of such materials when  
263 the required showing has been made, the court shall protect against disclosure of the  
264 mental impressions, conclusions, opinions, or legal theories of an attorney or other  
265 representative of a party concerning the litigation.

266  
267           A party may obtain without the required showing a statement concerning the  
268 action or its subject matter previously made by that party. Upon request, a party or other  
269 person may obtain without the required showing a statement concerning the action or its  
270 subject matter previously made by that person who is not a party. If the request is  
271 refused, the person may move for a court order. The provisions of Rule 37.01(d) apply to  
272 the award of expenses incurred in relation to the motion. For purposes of this paragraph,  
273 a statement previously made is (1) a written statement signed or otherwise adopted or  
274 approved by the person making it, or (2) a stenographic, mechanical, electrical, or other  
275 recording, or a transcription thereof, that is a substantially verbatim recital of an oral  
276 statement by the person making it and contemporaneously recorded.

277  
278           **(e) Trial Preparation: Experts.** Discovery of facts known and opinions held by  
279 experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in  
280 anticipation of litigation or for trial, may be obtained only as follows:

281  
282           (1)(A) A party may through interrogatories require any other party to  
283 identify each person whom the other party expects to call as an expert witness at  
284 trial, to state the subject matter on which the expert is expected to testify, and to  
285 state the substance of the facts and opinions to which the expert is expected to  
286 testify and a summary of the grounds for each opinion. (B) Upon motion, the  
287 court may order further discovery by other means, subject to such restrictions as  
288 to scope and such provisions, pursuant to Rule 26.02 (e)(3), concerning fees and  
289 expenses, as the court may deem appropriate.

290  
291           (2) A party may discover facts known or opinions held by an expert who  
292 has been retained or specially employed by another party in anticipation of  
293 litigation or preparation for trial and who is not expected to be called as a witness

294 at trial, only as provided in Rule 35.02 or upon a showing of exceptional  
295 circumstances under which it is impracticable for the party seeking discovery to  
296 obtain facts or opinions on the same subject by other means.  
297

298 (3) Unless manifest injustice would result, (A) the court shall require the  
299 party seeking discovery to pay the expert a reasonable fee for time spent in  
300 responding to discovery pursuant to Rules 26.02(e)(1)(B) and 26.02(e)(2); and  
301 (B) with respect to discovery obtained pursuant to Rule 26.02(e)(1)(B), the court  
302 may require, and with respect to discovery obtained pursuant to Rule 26.02(e)(2)  
303 the court shall require, the party seeking discovery to pay the other party a fair  
304 portion of the fees and expenses reasonably incurred by the latter party in  
305 obtaining facts and opinions from the expert.  
306

307 **(f) Claims of Privilege or Protection of Trial Preparation Materials.**  
308

309 (1) When a party withholds information otherwise discoverable under  
310 these rules by claiming that it is privileged or subject to protection as trial  
311 preparation material, the party shall make the claim expressly and shall describe  
312 the nature of the documents, communications, or things not produced or disclosed  
313 in a manner that, without revealing information itself privileged or protected, will  
314 enable other parties to assess the applicability of the privilege or protection.  
315

316 (2) If information is produced in discovery that is subject to a claim of  
317 privilege or of protection as trial-preparation material, the party making the claim  
318 may notify any party that received the information of the claim and the basis for  
319 it. After being notified, a party must promptly return, sequester, or destroy the  
320 specified information and any copies it has and may not use or disclose the  
321 information until the claim is resolved. A receiving party may promptly present  
322 the information to the court under seal for a determination of the claim. If the  
323 receiving party disclosed the information before being notified, it must take  
324 reasonable steps to retrieve it. The producing party must preserve the information  
325 until the claim is resolved.  
326

327 **MINNESOTA GENERAL RULES OF PRACTICE**

328 **RULE 104. CIVIL COVER SHEET AND CERTIFICATE OF REPRESENTATION AND**  
329 **PARTIES**

330 Except as otherwise provided in these rules for specific types of cases and in cases where  
331 the action is commenced by filing by operation of statute, a party filing a civil case shall, at the  
332 time of filing, notify the court administrator in writing of:

333 (a) If the case is a family case or a civil case listed in rule 111.01 of this rule, the  
334 name, postal address, e-mail address, and telephone number of all counsel and unrepresented  
335 parties, if known, in a Certificate of Representation and Parties (see Form 104 promulgated by

336 the state court administrator and published on the website [www.mncourts.gov](http://www.mncourts.gov) appended to these  
337 rules) or

338  
339 (b) If the case is a non-family civil case other than those listed in rule 111.01, basic  
340 information about the case in a Civil Cover Sheet (see Form 104A promulgated by the state court  
341 administrator and published on the website [www.mncourts.gov](http://www.mncourts.gov)) which shall also include the  
342 information required in part (a) of this rule.

343 If that information is not then known to the filing party, it shall be provided to the court  
344 administrator in writing by the filing party within seven days of learning it. Any party  
345 impleading additional parties shall provide the same information to the court administrator. The  
346 court administrator shall, upon receipt of the completed certificate, notify all parties or their  
347 lawyers, if represented by counsel, of the date of filing the action and the file number assigned.

### 348 **Rule 111.02 The Party's Scheduling Input Informational Statement**

349 ~~If no sufficient civil cover sheet has been filed as required by Rule 104, the court may~~  
350 ~~direct that Within 60 days after an action has been filed, each party shall submit a civil cover~~  
351 ~~sheet, on a form to be available from the court (see Form 111.02 appended to these rules), the~~  
352 ~~information needed by the court to manage and schedule the case. The information provided~~  
353 ~~shall include:~~

354 ~~\_\_\_\_\_ (a) \_\_\_\_\_ The status of service of the action;~~

355 ~~\_\_\_\_\_ (b) \_\_\_\_\_ Whether the statement is jointly prepared;~~

356 ~~\_\_\_\_\_ (c) \_\_\_\_\_ Description of case;~~

357 ~~\_\_\_\_\_ (d) \_\_\_\_\_ Whether a jury trial is requested or waived;~~

358 ~~\_\_\_\_\_ (e) \_\_\_\_\_ Discovery contemplated and estimated completion date;~~

359 ~~\_\_\_\_\_ (f) \_\_\_\_\_ Whether assignment to an expedited, standard, or complex track is~~  
360 ~~requested;~~

361 ~~\_\_\_\_\_ (g) \_\_\_\_\_ The estimated trial time;~~

362 ~~\_\_\_\_\_ (h) \_\_\_\_\_ Any proposals for adding additional parties;~~

363 ~~\_\_\_\_\_ (i) \_\_\_\_\_ Other pertinent or unusual information that may affect the scheduling or~~  
364 ~~completion of pretrial proceedings;~~

365 ~~\_\_\_\_\_ (j) \_\_\_\_\_ Recommended alternative dispute resolution process, the timing of the~~  
366 ~~process, the identity of the neutral selected by the parties or, if the neutral has not yet been~~  
367 ~~selected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a~~  
368 ~~description of the reasons supporting this conclusion;~~

369 ~~\_\_\_\_\_ (k) \_\_\_\_\_ A proposal for establishing any of the deadlines or dates to be included in a~~  
370 ~~scheduling order pursuant to Minn. Gen. R. Prac. 111.03; and~~

371 ~~\_\_\_\_\_ (l) \_\_\_\_\_ Identification of interpreter services (specifying language and, if known,~~  
372 ~~particular dialect) any party anticipates will be required for any witness or party.~~

373 **Rule 111.03 Scheduling Order**

374 **(a) When issued.** No sooner than the due date of a civil cover sheet  
375 under rules 104 and 111.02, ~~60 days~~ and no longer than 90 days after an action has been  
376 filed, the court shall enter its scheduling order. The court may issue the order after either  
377 a telephone or in-court conference, or without a conference or hearing if none is needed.

378 \* \* \*

379 **RULE 115. MOTION PRACTICE**

380 \* \* \*

381 **Rule 115.04. Non-Dispositive Motions**

382 (a) No motion shall be heard until the moving party pays any required motion filing fee,  
383 serves a copy of the following documents on the other party or parties and files the original with  
384 the court administrator at least 14 days prior to the hearing:

385 (1) Notice of motion and motion;

386 (2) Proposed order;

387 (3) Any affidavits and exhibits to be submitted in conjunction with the motion;  
388 and

389 (4) Any memorandum of law the party intends to submit.

390 (b) The party responding to the motion shall serve a copy of the following documents on  
391 the moving party and other interested parties and shall file the original with the court  
392 administrator at least 7 days prior to the hearing:

393 (1) Any memorandum of law the party intends to submit; and

394 (2) Any relevant affidavits and exhibits.

395 (c) **Reply Memoranda.** The moving party may submit a reply memorandum, limited to  
396 new legal or factual matters raised by an opposing party's response to a motion, by serving a  
397 copy on opposing counsel and filing the original with the court administrator at least 3 days  
398 before the hearing.

399           (d) Expedited, Informal Non-Dispositive Motion Process. The moving party is  
400 encouraged to consider whether the motion can be informally resolved through a telephone  
401 conference with the judge. The moving party may invoke this informal resolution process by  
402 written notice to the other party and to the court. The moving party shall also contact the  
403 appropriate court administrative or judicial staff to schedule a phone conference. The parties may  
404 (but are not required to) submit short letters, with or without a limited number of documents  
405 attached (no briefs, declarations or sworn affidavits are to be filed), prior to the conference to set  
406 forth their respective positions. The Court will read the written submissions of the parties before  
407 the phone conference, hear arguments of counsel and unrepresented parties at the conference,  
408 and issue its decision at the conclusion of the phone conference or shortly after the conference.  
409 Depending on the nature of the dispute, the Court may or may not issue a written order. The  
410 court may also determine that the dispute must be presented to the Court via formal motion and  
411 hearing. Telephone conferences will not be recorded or transcribed.

412  
413                   [NOTE: advisory comments should note that Gen. R. Prac. 115.01 indicates that  
414 this rule does not apply to family law cases.]

415  
416

417  
418 [NOTE: this form and form 104 would not be placed in the rules but would be  
419 promulgated by the state court administrator and posted on the main state court website  
420 ([www.mncourts.gov](http://www.mncourts.gov)). This form 104A is entirely new; underlining to show new  
421 language will be omitted throughout this form]  
422

423 **FORM 104A CIVIL COVER SHEET (Non-FAMILY)**

---

424 STATE OF MINNESOTA  
425 COUNTY OF \_\_\_\_\_

DISTRICT COURT  
JUDICIAL DISTRICT  
CASE NO. \_\_\_\_\_

428  
429 **CIVIL COVER SHEET (NON-FAMILY)**

430  
431 **\*\* (UNLESS OTHERWISE ORDERED BY THE COURT, ONLY THE INITIAL FILING  
432 LAWYER/PARTY NEEDS TO COMPLETE THIS FORM) \*\***

433  
434 Date Case Filed: \_\_\_\_\_

435  
436 \_\_\_\_\_ vs. \_\_\_\_\_

437  
438 This sheet must be filed pursuant to Rule 104 of the General Rules of Practice for the  
439 District Courts, which states: "Except as otherwise provided in these rules for specific types of  
440 cases and in cases where the action is commenced by filing by operation of statute, a party filing  
441 a civil case shall, at the time of filing, notify the court administrator in writing of:

442  
443 (a) If the case is a family case or a civil case listed in rule 111.01 of this rule, the name,  
444 postal address, e-mail address, and telephone number of all counsel and unrepresented parties, if  
445 known, in a Certificate of Representation and Parties (see Form 104 promulgated by the state  
446 court administrator and published on the website [www.mncourts.gov](http://www.mncourts.gov) appended to these rules) or

447  
448 (b) If the case is a non-family civil case other than those listed in rule 111.01, basic  
449 information about the case in a Civil Cover Sheet (see Form 104A promulgated by the state court  
450 administrator and published on the website [www.mncourts.gov](http://www.mncourts.gov)) which shall also include the  
451 information required in part (a) of this rule.

452  
453 If that information is not then known to the filing party, it shall be provided to the court  
454 administrator in writing by the filing party within seven days of learning it. Any party  
455 impleading additional parties shall provide the same information to the court administrator. The  
456 court administrator shall, upon receipt of the completed certificate, notify all parties or their  
457 lawyers, if represented by counsel, of the date of filing the action and the file number assigned. ."

458  
459  
460 1. LIST ALL LAWYERS/PRO SE PARTIES INVOLVED IN THIS CASE.

461 LAWYER FOR PLAINTIFF(S)

LAWYER FOR DEFENDANT(S)

463 (if not known, name party and address)

464 \_\_\_\_\_ Name of Party \_\_\_\_\_ Name of Party

465 \_\_\_\_\_  
466 \_\_\_\_\_  
467 Atty Name(Not firm name) \_\_\_\_\_ Atty Name \_\_\_\_\_ (Not firm name)

468 \_\_\_\_\_  
469 \_\_\_\_\_  
470 Postal Address \_\_\_\_\_ Postal Address

471 \_\_\_\_\_  
472 \_\_\_\_\_

473 \_\_\_\_\_  
474 E-mail Address \_\_\_\_\_ E-mail Address

475 \_\_\_\_\_  
476 Phone Number \_\_\_\_\_ Phone Number

477 \_\_\_\_\_  
478 MN Atty ID No. \_\_\_\_\_ MN Atty ID No.

479  
480 (Attach additional sheet for additional lawyers/parties).

481  
482 2. Concise statement of the case including facts and legal basis:  
483 \_\_\_\_\_  
484 \_\_\_\_\_  
485 \_\_\_\_\_

486 3. For ELT (Expedited Litigation Track\*) Pilot Courts only:

487 \$ \_\_\_\_\_ amount in controversy  
488  ELT does not apply  ELT applies (\*See Special Rules for Pilot ELT)

489  
490 4. Estimated discovery completion within \_\_\_\_ months from the date of this form.

491  
492 5. Proposed trial start date: \_\_\_\_\_

493  
494 6. Estimated trial time: \_\_\_\_ days \_\_\_\_ hours (estimates less than a day must be stated in hours).

495  
496 7. Jury trial is: () waived by consent of \_\_\_\_\_ pursuant to R. Civ. P. 38.02.  
497 (specify party)  
498 () requested by \_\_\_\_\_. (NOTE: Applicable fee must be  
499 enclosed.)  
500 (specify party)

501 8. Independent physical examination pursuant to R. Civ. P. 35 required? No Yes

502  
503 9. Identify any party or witness who will require interpreter services, and describe the services  
504 (specifying language and, if known, particular dialect) needed.  
505 \_\_\_\_\_  
506 \_\_\_\_\_

507 10. Issues in dispute: \_\_\_\_\_.

508

509 11. Case Type/Category: \_\_\_\_\_ (NOTE: select case type from Form 23,  
510 Subject Matter Index for Civil Cases, appended to the Minnesota Rules of Civil Procedure).

511

512 12. Recommended Alternative Dispute Resolution (ADR) mechanism\*: \_\_\_\_\_

513 \*Note: select from list of ADR processes set forth in Minn. Gen. R. Prac.

514 114.02(a)

515 Recommended ADR provider (known as a "neutral"): \_\_\_\_\_

516

517 Recommended ADR completion date: \_\_\_\_\_

518

519 If applicable, reasons why ADR not appropriate for this case: \_\_\_\_\_

520

521 By signing below, the attorney or party submitting this form certifies that the above information  
522 is true and correct.

523

524 Submitted by: \_\_\_\_\_

525 Attorney Reg. #: \_\_\_\_\_

526 Firm: \_\_\_\_\_

527 Address: \_\_\_\_\_

528 Telephone: \_\_\_\_\_

529 Date: \_\_\_\_\_

530

531

532

533

## Appendix B: Special Rules for a Complex Case

534 *[Because these proposed rules would be codified as a new series in General Rules of Practice*  
535 *for the District Courts, underlining to show new language has been omitted]*

536

537

### Preface<sup>1</sup>

538 The purposes of the Complex Case Program (“CCP”) are to promote effective and efficient  
539 judicial management of complex cases in the district courts, avoid unnecessary burdens on the  
540 court, keep costs reasonable for the litigants and to promote effective decision making by the  
541 court, the parties and counsel.

542 The core principles that support the establishment of a mandatory CCP include:

- 543 1. Early and consistent judicial management promotes efficiency;
- 544 2. Mandatory disclosure of relevant information, rigorously enforced by the court, will  
545 result in disclosure of facts and information necessary to avoid unnecessary litigation  
546 procedures and discovery;
- 547 3. Blocking complex cases to a single judge from the inception of the case results in the  
548 best case management.
- 549 4. Firm trial dates result in better case management and more effective use of the parties  
550 resources, with continuances granted only for good cause.
- 551 5. Education and training for both judges and court staff will assist with the  
552 management of complex cases.

553

### **RULE 1 DEFINITION OF A COMPLEX CASE**

554

#### **(a) Definition**

555

556 A “complex case” is an action that requires exceptional judicial management to avoid  
557 placing unnecessary burdens on the court or the litigants and to expedite the case, keep  
558 costs reasonable, and promote effective decision making by the court, the parties, and  
559 counsel.  
560  
561

562

#### **(b) Factors**

563 In deciding whether an action is a complex case under (a), the court must consider,  
564 among other things, whether the action is likely to involve:  
565  
566

---

<sup>1</sup> This proposal includes options that are set forth in brackets and are designed to provide flexibility to the pilot districts.

- 567 (1) Numerous hearings, pretrial and dispositive motions raising difficult or novel legal  
568 issues that will be time-consuming to resolve;  
569
- 570 (2) Management of a large number of witnesses or a substantial amount of documentary  
571 evidence;
- 572 (3) Management of a large number of separately represented parties;
- 573 (4) Multiple expert witnesses;
- 574 (5) Coordination with related actions pending in one or more courts in other counties,  
575 states, or countries, or in a federal court;
- 576 (6) Substantial post judgment judicial supervision; or
- 577 (7) Legal or technical issues of complexity.

578 **(c) Provisional designation**

579 An action is provisionally a complex case if it involves one or more of the following  
580 types of claims:

- 581 (1) Antitrust or trade regulation claims;
- 582 (2) Intellectual property matters, such as trade secrets, copyrights, patents, etc.;
- 583 (3) Construction defect claims involving many parties or structures;
- 584 (3) Securities claims or investment losses involving many parties;
- 585 (4) Environmental or toxic tort claims involving many parties;
- 586 (5) Product liability claims;
- 587 (6) Claims involving mass torts;
- 588 (7) Claims involving class actions;
- 589 (8) Ownership or control of business claims; or
- 590 (9) Insurance coverage claims arising out of any of the claims listed in (c)(1) through  
591 (c)(8).

592 **(d) Parties' designation**

593  
594 In any action not enumerated above, the parties can voluntarily agree to be governed by  
595 the Special CCP Rules by filing a "CCP Election," in a form to be developed by the state

596 court administrator and posted on the main state court website, to be filed along with the  
597 initial pleading.

598

599 **(e) Motion to Exclude Complex Case Designation**

600

601 A party objecting to the provisional assignment of a matter to the CCP must serve and  
602 file a motion setting forth the reasons that the matter should be removed from the CCP.  
603 Said motion papers must be served and filed within [20 days] of the date the moving  
604 party is served with the CCP Designation. The motion shall be heard during the Case  
605 Management Conference [or at said other time as determined by the court]. The factors  
606 that should be considered by the court in ruling on said motion include the factors set  
607 forth in Rule 1 (b) and (c) above.

608

609 **RULE 2 SINGLE JUDGE BLOCKED TO COMPLEX CASES**

610

611 A single judge shall be assigned to all designated complex cases within [30] [45] days of filing in  
612 accordance with Rule 113 of the General Rules of Practice. In making the assignment the  
613 assigning judge should consider, among other factors, the needs of the court, the judge's ability,  
614 interest, training, experience (including experience with complex cases) and willingness to  
615 participate in educational programs related to the management of complex cases.

616

617 **RULE 3 MANDATORY CASE MANAGEMENT CONFERENCES**

618

619 **(a)** Within [30] [45] days of assignment, the judge assigned to a complex case shall hold a  
620 mandatory case management conference. Counsel for all parties and pro se parties shall  
621 attend the conference. At the conference, the court will discuss all aspects of the case as  
622 contemplated by Minn. R. Civ. P. 16.01.

623

624 **(b)** The Court will hold a Second Case Management conference [half way through] [at the  
625 close of] fact discovery;

626 **(c)** The Court will schedule a Pretrial Conference at the [close expert discovery] [after all  
627 motions have been heard].

628 **RULE 4 CASE MANAGEMENT ORDER AND SCHEDULING ORDER**

629 In all complex cases, the Judge assigned to the case shall enter a Case Management Order and a  
630 Scheduling Order (together or separately) addressing the matters set forth in Minn. R. Civ. P.  
631 16.02 and 16.03, and including without limitation the following:

632

633 **(a)** The dates for subsequent Case Management Conferences in the case;

634

635 **(b)** the deadline for the parties to meet and confer regarding discovery needs;

636

637 **(c)** the deadline for joining other parties;

638

639 **(d)** the deadline for amending the pleadings;

- 640  
641 (e) the deadline by which fact discovery will close and provisions for disclosure or discovery  
642 of electronically stored information;  
643  
644 (f) the deadlines by which parties will make expert witness disclosures and deadline for  
645 expert witness depositions;  
646  
647 (g) the deadlines for non-dispositive and dispositive motions;  
648  
649 (h) any modifications to the extent of discovery, such as, among other things, limits on:  
650  
651 (i) the number of fact depositions each party may take;  
652  
653 (ii) the number of interrogatories each party may serve;  
654  
655 (iii) the number of expert witnesses each party may call at trial;  
656  
657 (iv) the number of expert witnesses each party may depose; and  
658  
659 (i) a date certain for trial subject to continuation for good cause only, and a statement of  
660 whether the case will be tried to a jury or the bench and an estimate of the trial's duration.

661

## 662 **RULE 5 AUTOMATIC DISCLOSURES**

663 Each party shall prepare, serve and file an Automatic Disclosure of Information within [30] [45]  
664 days after the CCP Provisional Designation or Election has been filed. The Automatic  
665 Disclosure of Information shall include the following:

- 666 (a) A statement summarizing each contention in support of every claim or defense which a  
667 party will present at trial and a brief statement of the facts upon which the contentions are  
668 based.
- 669 (b) The name, address and telephone number of each individual likely to have discoverable  
670 information – along with the subjects of that information and any statement from such  
671 individual – that the disclosing party may use to support its claims or defenses. However,  
672 no party shall be required to furnish any statement (written or taped) protected by the  
673 attorney/client privilege or work-product rule.
- 674 (c) A copy – or description, by category and location – of all documents, electronically  
675 stored information, and tangible things that the disclosing party has in its possession,  
676 custody, or control and may use to support its claims or defenses.
- 677 (d) If a claim for damages is being made, a description of the precise damages being sought  
678 by the party and the method for calculation of said damages. If the party has any liability  
679 insurance coverage providing coverage for the claims being made by another party, the  
680 name of the insurance company, the limits of coverage and the existence of any issue that  
681 could affect the availability of coverage.

- 682 (e) The number and type of expert witnesses each party expects to call at trial.
- 683 (f) An estimate of the number of trial days that it will take to complete trial of the matter.
- 684

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**Complex Case Program Election Form**

STATE OF MINNESOTA  
COUNTY OF \_\_\_\_\_

DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT

CASE TYPE: \_\_\_\_\_

\_\_\_\_\_, Plaintiff

File Number: \_\_\_\_\_

v.

**CCP Election**

\_\_\_\_\_, Defendant

Each party who has signed this document has read and understands the Special Rules for a Complex Case Program (CCP Rules”), and agrees that this case may be governed by the CCP Rules.

\_\_\_\_\_  
Name of Party

\_\_\_\_\_  
Name of Party

\_\_\_\_\_  
Atty Name (Not firm name)

\_\_\_\_\_  
Atty Name (Not firm name)

\_\_\_\_\_  
Postal Address

\_\_\_\_\_  
Postal Address

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
MN Atty ID No.

\_\_\_\_\_  
MN Atty ID No.

(Add additional signature blocks for additional lawyers/parties).

716  
717  
718  
719  
720  
721  
722

**Complex Case Program Sample Case Management Order**

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ JUDICIAL DISTRICT

CASE TYPE: \_\_\_\_\_

\_\_\_\_\_

FILE NUMBER: \_\_\_\_\_

Judge \_\_\_\_\_

Plaintiff,

v.

**CASE MANAGEMENT  
ORDER**

\_\_\_\_\_

Defendant.

723

\_\_\_\_\_

724

725 **WHEREAS**, the Court has determined that this Case Management Order (“CMO”) is  
726 appropriate and will be of assistance in the efficient management of this litigation:

727 **IT IS HEREBY ORDERED**, that this CMO is hereby entered as follows:

728 **1. Case Designation.** Every filing shall contain, in its caption, the Court File Number  
729 \_\_\_\_\_.

730 **2. Applicability of Order.** This CMO applies to all pretrial, trial, and post trial  
731 proceedings.

732 **3. Filing and Service of Papers**

733 **a. Master Service List.** Except as otherwise provided for herein, all papers or  
734 pleadings filed with the Court or served upon a party shall be served as described  
735 in this CMO on counsel for all parties to this action in accordance with the Master  
736 Service List, attached hereto as Exhibit A. For the purposes of economy it shall  
737 be sufficient to state in a certificate of service that the relevant document was  
738 served on counsel for all parties listed on the Master Service List current as of that  
739 date. The Master Service List may be incorporated by reference with express  
740 reference to the revised date thereof, and need not be attached to the certificate of  
741 service. The document served must be addressed to the individual attorney(s) on  
742 the Master Service List.

743 **b. Method and Timing of Service.** Service of all pleadings, motions, deposition  
744 notices, requests for discovery and other papers required to be served upon  
745 counsel for the parties (collectively “papers”) shall be effected upon the parties  
746 according to the Minnesota Rules of Civil Procedure. Parties may opt for pdf  
747 service of all pleadings.

748 **c. Filings.** The original of every pleading and motion shall be filed with this Court  
749 along with proof of service on all counsel, in accordance with the e-filing system  
750 or other system in the venued Court. No fax filings will be permitted. [Where  
751 desired by the court: A courtesy copy of every pleading, motion, or letter shall be  
752 clearly marked ‘courtesy copy’ and directed to Judge \_\_\_\_\_,  
753 C/O \_\_\_\_\_, Judicial Law Clerk.] The filing of discovery materials with  
754 this Court shall be governed by the Minnesota Rules of Civil Procedure, except  
755 that the original of all such papers which are not filed with this Court under such

756 rules shall be kept in the offices of counsel responsible for generating such  
757 pleading, motion or discovery.

758 **d. Correspondence.** All materials, such as correspondence, which are not due **to be**  
759 **docketed, shall be** sent directly to the chambers of Judge \_\_\_\_\_.

760 Correspondence and other materials will only be accepted if they are in regards to  
761 general administrative matters. The corresponding party shall contemporaneously  
762 forward a copy of all correspondence and other materials sent to Judge  
763 \_\_\_\_\_ to all counsel by electronic mail or regular mail, as may be  
764 necessary.

765 **e. Motions Requesting Emergency Relief.** Notwithstanding the foregoing, any  
766 motion genuinely requiring emergency relief may be filed with the Court via  
767 facsimile.

768 **4. Discovery**

769 **a. Document Requests.** The parties shall work diligently to abide by the terms of  
770 the scheduling order. Short extensions of time to respond to discovery between  
771 counsel shall not be unreasonably refused if reasonably required due to the  
772 voluminous number of documents being produced or other necessity associate  
773 with their document production.

774 **i. *Place of Production and Procedures.*** Unless otherwise agreed by the  
775 parties, parties shall produce documents for inspection and copying, to the  
776 extent practicable, in the form and manner in which the documents have  
777 been maintained in the ordinary course of business or in which they  
778 previously have been maintained for production in litigation. To  
779 distinguish effectively among the documents designated for copying by  
780 the parties, each page of each document copied by any party shall bear a  
781 unique document identification number, with a unique prefix which  
782 identifies the party producing the document (“Bates Stamps” or “Bates  
783 Label”). Where documents or portions of documents are withheld, the  
784 parties shall, either through the numbering system or as otherwise

785 provided in this Order, to the extent reasonably practicable, identify the  
786 number of pages withheld in a manner sufficient to indicate their location  
787 in the file being produced. Where part of a page is redacted, both the fact  
788 and location of the redaction, and the size or extent of the redaction shall  
789 be made clear on the face of the document.

790 Within a reasonable time before production, the producing party  
791 shall advise the inspecting party of the approximate volume of the  
792 documents and a general description of the types of files or other materials  
793 involved. Each party shall produce its documents at its option: (a) by  
794 production of originals as they are kept in the ordinary course of business;  
795 (b) by production of as legible as possible photocopies in the same format;  
796 or (c) by electronic means or other computerized storage.

797 Notwithstanding these provisions, any party may request to inspect the  
798 original of any document, communication, or thing produced and the  
799 parties shall make arrangements for such inspection within ten (10) days  
800 of the request.

801 The location of the production shall be at the place where the  
802 documents are kept in the ordinary course of business, at the office of the  
803 producing attorney, or as otherwise agreed by the parties.

804 ii. *Privilege Log.* If a party determines that a document responsive to a  
805 document request is subject to attorney/client privilege, attorney work  
806 product protection, or any other form of privileges or protection, the  
807 following method of handling the privileged or protected writing shall be  
808 followed. The producing party may withhold the privileged or protected  
809 document and must identify the withheld document on a privilege log  
810 which shall be provided to the requesting party and all other parties as  
811 soon as practicable, but no more than thirty (30) days following the date  
812 on which the producing party is due to commence physical production of  
813 the requested documents. If after completion of production pursuant to a  
814 particular demand for inspection the producing party discovers additional

815 responsive documents and determines any of them to be subject to  
816 attorney/client privilege, attorney work product protection, or any other  
817 form of privilege or protection, the producing party may withhold any  
818 such privileged or protected document and must identify the withheld  
819 document on a privilege log which shall be provided to the requesting  
820 party as soon as practicable, but in no case more than thirty (30) days after  
821 the documents are discovered. Likewise, to the extent any material within  
822 a document otherwise producible contains privileged or protected  
823 information, the document shall be produced subject to redaction of the  
824 subject privileged and protected material and shall be listed on the  
825 privilege log. All privilege logs shall identify each privileged document or  
826 work product by providing the Bates Label range, date, author(s),  
827 recipient(s), the subject matter of the document withheld or information  
828 redacted and the nature of the privilege or work product protection  
829 asserted. Nothing in this section shall preclude a party from challenging a  
830 claim of privilege.

831 **b. Stipulated Confidentiality Order.** All documents and other discovery materials  
832 and testimony produced or provided in this action maybe subject to the terms and  
833 provisions of a Stipulated Confidentiality Order, if requested and agreed by the  
834 parties or ordered by the Court.

835 **c. Inadvertent Production of Privileged Information.** If a party inadvertently  
836 produces information or documents that it considers privileged or protected  
837 material, in whole or in part, or learns of the production of its privileged or  
838 protected material by a third-party, the party may retrieve such information or  
839 documents or parts thereof memoranda and other material as follows:

840 (1) Any assertion of inadvertent production shall be made as soon as  
841 practicable, but in any case within ten (10) days of the date the party  
842 discovers that it, its agents or attorneys, or a third-party has inadvertently  
843 produced the privileged document. The party asserting inadvertent  
844 production must provide written notice to all parties on the Master Service

845 List that the party claims the document, in whole or in part, to be  
846 privileged or protected material; in addition, such notice must state the  
847 nature of the privilege or protection and the factual basis for asserting it.  
848 No assertion of inadvertent production will be made less than thirty (30)  
849 days before trial or fourteen (14) days after service of a trial exhibit list,  
850 whichever comes later.

851 (2) Upon receipt of such notice, all parties who have received copies of the  
852 document shall, within five (5) days thereafter, confer with the producing  
853 party and discuss how to resolve the issue. If no agreement is reached, the  
854 producing party may request reasonable relief from the Court, including  
855 an order that all copies of inadvertently produced documents shall be  
856 returned to the producing party, destroyed or otherwise be made available  
857 for procurement by the requesting party. Parties who received copies of  
858 inadvertently produced documents may oppose the granting of such relief  
859 on any permissible basis, including requesting an order that the  
860 inadvertently produced documents are not privileged and do not constitute  
861 protected attorney work product.

862 (3) In the event that only part of a document is claimed to be privileged or  
863 protected, the party asserting inadvertent production shall furnish to all  
864 parties redacted copies of such document, removing only the part(s)  
865 thereof claimed to be privileged or protected, together with such written  
866 notice.

867 **d. Mutual Use of Discovery.** To help avoid redundancy, all interrogatories,  
868 document requests and requests to admit served by any party inure to the benefit  
869 of and are enforceable by any other party. The settlement, release or dismissal by  
870 any means of any party propounding such discovery will not in any way limit or  
871 extinguish any other party's obligation to comply with the discovery.

872 **e. Contention Interrogatories.** No party is precluded from asking so-called  
873 contention interrogatories which seek a responding party's contentions as to facts

874 or law but responding parties may reserve all rights to render objections and/or  
875 seek leave for protection from the Court.

876 **5. Master Exhibit Book.** The parties shall work together to create a Master Exhibit Book  
877 and submit a copy to the Court when appropriate. A party seeking to reference an exhibit  
878 found in the Master Exhibit Book shall reference the exhibit number. The parties shall  
879 not attach the exhibit to their submission if it is already in the Master Exhibit Book.

880 **6. Motion Practice.** Except as otherwise provided by the Court, pretrial motions in this  
881 litigation shall be governed by the Minnesota Rules of Civil Procedure and by the  
882 General Rules of Practice for the District Courts, provided that these rules are modified  
883 procedurally as follows:

884 (1) Motion hearing dates under Rule 115.02 shall be obtained directly from  
885 \_\_\_\_\_ Judicial Law Clerk, at (\_\_\_\_) \_\_\_\_-.\_\_\_\_. The Court expects the  
886 parties to promptly provide notice of the motion hearing date to all other parties as  
887 directed by Rule 115.02;

888 (2) Proposed orders for dispositive motions under Rule 115.03 shall not be submitted  
889 unless specifically requested by the Court;

890 (3) The moving party's certification under Rule 115.10 shall be in writing and shall  
891 be filed separately at least two (2) days prior to the hearing date.

892 Counsel shall attempt to coordinate a hearing date and the notice of motions for  
893 hearing on a date obtained from \_\_\_\_\_, Judicial Law Clerk.

894 Nothing shall restrict any party's right to apply to the Court for an order  
895 shortening or extending time or page limitations on a motion upon a showing of good  
896 cause, but only after making good faith efforts to resolve the issue among counsel.

897 **7. Coordination Amongst Parties.** The Court expects cooperation among the parties to  
898 coordinate motion practice, discovery, trial, or otherwise to minimize the expense in this  
899 litigation. The parties shall, to the maximum extent practicable, avoid duplicative  
900 motions, briefs and discovery ("filings") consistent with each party's individual interests.

901 Since many parties have a commonality of interest as to many issues in the actions, they  
902 may serve joint discovery and file joint submissions with the Court and/or adopt, join in  
903 or support any motion made or discovery propounded by another party simply by so  
904 noting in writing. If all Plaintiffs or all Defendants file joint submissions, the page  
905 limitations contained in Minnesota Rule of General Practice 115.05 will be extended by  
906 15 pages, to a total of 50 pages.

907 **8. Depositions**

908 **a. Cooperation.** The parties shall use reasonable efforts to schedule depositions by  
909 agreement. Unless otherwise agreed, formal notice of depositions scheduled is  
910 required. Unless exigent circumstances exist, the parties will be advised of a  
911 deposition at least ten (10) calendar days before a deposition is scheduled to  
912 commence,

913 **b. Non-Party Depositions.** Counsel shall attempt to resolve with any non-party  
914 deponent the identification for production and subsequent production of any  
915 documents being subpoenaed. Whenever possible, this process shall be  
916 completed no later than seven (7) days before the date on which the deposition  
917 has been scheduled. All counsel shall be given notice of any documents identified  
918 for production pursuant to subpoena and shall have the right to inspect and copy,  
919 at each inspecting party's expense, whatever documents are produced by a non-  
920 party in response to a subpoena. Upon request, a party shall conduct a search of  
921 all records that may disclose the present address of any former employee and shall  
922 provide such information to the requesting party as soon as practicable. Nothing  
923 in this Order shall preclude any party, if it so chooses, from obtaining the  
924 attendance of any former employee or officer of another party for deposition by  
925 subpoena in the first instance.

926 **c. Stipulations.** Unless otherwise noted on the record, the following stipulations  
927 shall apply to all depositions in these actions:

928 (1) Any objection by a single party shall be deemed an objection by each and  
929 every similarly situated party;

930 (2) Corrections to a deposition transcript shall be listed on an errata sheet,  
931 copies of which shall be served on all parties by counsel for the deponent  
932 or the deponent, within thirty (30) days following receipt of the deposition  
933 transcript;

934 (3) To the extent practicable, exhibits shall be attached to the original  
935 transcript. Where the form or volume of exhibits makes attachment to the  
936 transcript impractical, the custody of such exhibits shall be maintained at  
937 the office of the attorney taking the deposition or the court reporter and  
938 such exhibits shall, after reasonable notice, be subject to inspection and  
939 copying by any party during normal business hours or by appointment;

940 (4) The parties shall strive to select and retain court reporters that can produce  
941 transcripts in manuscript and computer-readable format and any other  
942 agreed format. The parties may stipulate to maintain an online repository  
943 for all depositions taken in these cases subject to limitations on  
944 accessibility as may be determined by the parties.

945 **d. Deposition Schedule.** With respect to aged or infirm witnesses, counsel shall  
946 abide by the reasonable request of such witnesses with regard to timing and  
947 availability for deposition testimony. The parties will undertake all reasonable  
948 efforts to conduct depositions in an efficient, cost-effective and expedited manner.

949 **e. Attendance and Interrogation.** All parties shall be entitled to be represented at  
950 every deposition and to inquire of a deponent through their counsel. A former  
951 employee or officer may be represented at his or her deposition by counsel for the  
952 former employer. In order to facilitate necessary arrangements for attending  
953 counsel, not less than two (2) days prior to the commencement date of a  
954 deposition, any counsel intending to attend the deposition shall use its best efforts  
955 to notify the noticing party and counsel for the deponent.

956 **f. Time and Location of Depositions.** Depositions may be held Monday through  
957 Friday, and shall commence no earlier than 9:00 a.m., and conclude no later than  
958 5:00 p.m. local time, unless otherwise agreed between counsel or ordered by the

959 Court. No deposition shall be scheduled for more than two (2) consecutive days  
960 absent agreement by the parties or order of the Court. A deposition may,  
961 however, proceed for a third consecutive day without agreement of the parties or  
962 order of the Court if there is at least eighteen (18) hours between the end of the  
963 second deposition day and the commencement of the third. To save expense and  
964 travel time, all sessions of the deposition of a single deponent shall, to the extent  
965 consistent with the witnesses' schedule and health and the deposition schedule,  
966 and unless otherwise agreed, proceed on successive weekdays and for the full  
967 deposition day until completion. Except as the parties may agree, no deposition  
968 shall be scheduled on the following dates: Court hearing dates, Martin Luther  
969 King, Jr.'s Birthday, President's Day, Good Friday, Passover (the first two days),  
970 Memorial Day, Independence Day (including the preceding Monday if it falls on  
971 a Tuesday or the following Friday if it falls on a Thursday), Labor Day, Rosh  
972 Hashanah (two days), Yom Kippur (two days), Columbus Day, Veterans Day,  
973 Thanksgiving (Wednesday, Thursday and Friday) Eid Ul Fitr (one day), and Eid  
974 Ul Adha (one day). Depositions of witnesses residing outside the United States  
975 shall not be scheduled on national holidays in the witness' home country. In  
976 addition, no depositions shall be scheduled between December 19 and January 3,  
977 except upon agreement of the parties.

978 **g. Exhibits.** To the extent practicable, all parties intending to question a witness at a  
979 deposition with respect to documents shall provide a reasonable number of copies  
980 of such documents for the use of the other parties in attendance at the deposition.  
981 Exhibit numbering shall be in accordance with Minn. Gen. R. Prac. 130.

982 **h. Objections.** The only objections that shall be raised at the deposition are those  
983 involving a privilege or other protection against disclosure or some matter that  
984 may be remedied at the time, such as to the form of the question, that the question  
985 has previously been asked and clearly answered, or the responsiveness of the  
986 answers. Objections on any other grounds shall be avoided and are not waived  
987 but preserved until trial. All objections shall be concise and must not suggest  
988 answers to the deponent. So called "speaking objections" are not permitted.

989 Except as to an objection on grounds of privilege, any objection made by one  
990 party reserves that objection for all other parties and duplicate objections shall not  
991 be made.

992 **i. Directions to Deponent Not to Answer.** Directions to a deponent not to answer  
993 are improper except on the grounds of privilege, confidentiality, or other  
994 protection, or to enable the party or deponent to present a motion to the Court for  
995 termination of the deposition or protection under Minnesota Rule of Civil  
996 Procedure 26.03. When privilege, confidentiality or other protection is claimed,  
997 the witness shall nevertheless answer questions relevant to the existence, extent or  
998 waiver of the privilege, confidentiality, or other protection.

999 **j. Immediate Presentation of Deposition Disputes.** Consistent with discovery  
1000 concepts and objectives set forth above, if disputes arise during a deposition  
1001 which the attorneys cannot resolve by agreement and which, if not promptly  
1002 decided, will critically disrupt the discovery program or court-imposed schedules,  
1003 the parties may submit the matter orally by telephone to the undersigned if  
1004 available.

1005 **9. Avoidance of Unnecessary Duplication.** Cooperation and communication among  
1006 parties as ordered herein shall not constitute the waiver of any applicable privilege or be  
1007 construed as evidence of wrongful conduct. In the event that any party is in genuine  
1008 doubt about the legal effect of the communication and cooperation ordered herein, such  
1009 party may seek the Court's clarification of the party's responsibilities before proceeding.

1010 **10. No Waiver of Privilege Due to Joint Efforts.** Communications in connection with this  
1011 case between and amongst counsel, including the exchange of documents and  
1012 information, shall be deemed subject to the attorney/client privilege, work product  
1013 protection, and any other applicable privilege or protection to the same extent as if the  
1014 communication had taken place within one law firm or between one law firm and one  
1015 client represented by that firm. Protection afforded by this Order will survive the  
1016 conclusion of this litigation and the dismissal of any party from this action. If a party  
1017 withdraws from any cooperative litigation efforts with other parties, previous

1018 communications among the withdrawing party and such other parties and all work  
1019 product shared by or with the withdrawing party with respect to this action, will remain  
1020 subject to any attorney/client privilege, work product protection, or other privilege that  
1021 attached at the time the communications were made or the work product was shared.  
1022 Any such withdrawing party is under a duty not to reveal information obtained through  
1023 such cooperative efforts.

1024 **11. Rules and Procedures.** This CMO supersedes any provision of the Minnesota Rules of  
1025 Civil Procedure and General Rules of Practice for the District Court to the extent they are  
1026 in conflict with the provisions of this CMO.

1027 **12. CMO Binding on Subsequently Added Parties.** Any party adding a new party to this  
1028 action after the date the CMO is entered shall serve that new party with a copy of this  
1029 CMO and any subsequent case management orders. Any such new party will be bound  
1030 by this CMO and all other case management orders unless it files a motion for relief with  
1031 the Court within ten (10) days after service of this CMO and any other case management  
1032 order upon it. Upon the addition of any party to this action, the party adding the new  
1033 party shall serve a copy of this CMO on counsel for the new party within five (5) days of  
1034 the date of receiving notice of the identity of the new party's counsel.

1035 BY THE COURT

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1038 Dated: \_\_\_\_\_

1039 Judge of District Court

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