

STATE OF MINNESOTA

OFFICE OF  
APPELLATE COURTS

IN SUPREME COURT

SEP 10 2009

CX-89-1863

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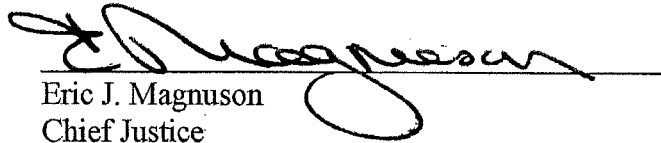
ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON  
PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF  
PRACTICE FOR THE DISTRICT COURTS

The Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has proposed changes to the General Rules of Practice. This Court will consider the proposed changes without a hearing after soliciting and reviewing comments on the proposed changes. A copy of the committee's report containing the proposed changes is annexed to this order.

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed changes shall submit twelve copies in writing addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, no later than *Monday*, November 9, 2009.

DATED: September 10, 2009

BY THE COURT:

  
Eric J. Magnuson  
Chief Justice

**CX-89-1863  
STATE OF MINNESOTA  
IN SUPREME COURT**

**In re:**

**Supreme Court Advisory Committee  
on General Rules of Practice**

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**Recommendations of Minnesota Supreme Court  
Advisory Committee on General Rules of Practice**

**Final Report  
August 31, 2009**

**Hon. Elizabeth Anne Hayden  
Chair**

**Hon. Lorie Skjerven Gildea  
Liaison Justice**

**Hon. Steven J. Cahill, Moorhead  
Hon. Joseph T. Carter, Hastings  
R. Scott Davies, Minneapolis  
Hon. Mel I. Dickstein, Minneapolis  
Francis Eggert, Winsted  
Jennifer L. Frisch, Minneapolis  
Karen E. Sullivan Hook, Rochester  
Hon. Lawrence R. Johnson, Anoka  
Hon. Kurt J. Marben, Thief River Falls**

**Hon. Kathryn D. Messerich, Hastings  
Hon. Rosanne Nathanson, Saint Paul  
Dan C. O'Connell, Saint Paul  
Linda M. Ojala, Edina  
Paul Reuvers, Bloomington  
Timothy Roberts, Foley  
Daniel Rogan, Minneapolis  
Hon. Jon Stafsholt, Glenwood  
Erica Strohl, Minneapolis  
Hon. Robert D. Walker, Fairmont**

**Michael B. Johnson, Saint Paul  
Staff Attorney**

**David F. Herr, Minneapolis  
Reporter**

## **Introduction**

This report recommends the amendment of several rules of the Minnesota General Rules of Practice, and also provides the court a status report on its efforts on the issues relating to cameras in courtrooms.

## **Summary of Committee Recommendations**

The Committee's specific recommendations are briefly summarized as follows:

1. Form 5 should be removed from the rules and maintained as a form on the court's website.
2. Forms 11.1 and 11.2 should be removed from the rules and maintained as a form on the court's website.
3. Rule 12, adopted in 2009, should be amended to clarify that it does not require filing of pleadings earlier than heretofore required and does not override the 21-day "safe harbor" provision in Minn. R. Civ. P. 11.
4. A new Rule 13 should be adopted to require parties and counsel to provide a current address to the parties and court administrator.
5. Rule 111 should be amended to exclude consumer credit contract cases and mechanics' lien actions from the requirement for filing an information statement.
6. Rule 304.02 should be amended to include reference to the requirement for disclosure to the court of the need for interpreter services.
7. Rule 309 should be amended to permit contempt proceedings to be commenced either by motion or by order to show cause.
8. Rule 503(c) should be amended to confirm its time computation rules to mechanism in the Rules of Civil Procedure.
9. Rule 517 should be amended to modify the procedure for payment of conciliation court judgments into court.
10. Rule 518 should be amended to remove the 30-day stay requirement.

11. The forms appended to the conciliation court rules should be removed from the rules and maintained by the State Court Administrator's Office on the Court's website.
12. Rule 707 should be amended to clarify how stenographic notes and transcription of grand jury proceedings are handled.
13. Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended.

### **Effective Date**

The committee believes the rule amendments in this report should not be controversial, and could probably be considered fairly and fully with a public comment period and adopted to take effect on January 1, 2010, or on an earlier date if desired.

### **Status of Cameras in Courtroom Issue**

The advisory committee is moving forward with the design of a pilot project to implement this Court's February 11, 2009, Order on the use of cameras and audio recording equipment in Minnesota courtrooms. We believe we are making adequate progress towards having a report to the Court in January 2010.

### **Amendment of Timing Rules**

Pursuant to the May 15, 2009, Memorandum from Justice Dietzen to several advisory committees, the committee has considered the issue of whether the Minnesota rules should be amended to follow the changes made in the federal court rules regarding the calculation of time and deadlines. The committee recommends generally that the federal amendments are sensible and that there is significant advantage to having time counted by the same means in state and federal court. The

committee further recommends that if the federal timing changes are adopted, they should be adopted uniformly across all court rules, and that appropriate review of Minnesota Statutes should be conducted to identify deadlines imposed by statute that should be adjusted at the same time the rules are amended.

The committee will submit a detailed report of recommended rule changes not later than October 1, 2009, and will recommend that the effective date of the timing rule amendments should probably be not earlier than July 1, 2010, in order that the Minnesota Legislature can address any legislative issues that should be addressed in conjunction with the rule changes.

### **Recommendation for Referral to Other Committees**

The committee has addressed one issue that it believes should be considered by either the advisory committee on rules of evidence or criminal rules advisory committee. The committee continued its consideration of concerns initially expressed about a Ninth Judicial District Policy requiring transcription of audio/visual recordings submitted as exhibits. (This issue was reported on in the advisory committee's September 25, 2008, Report as an issue receiving ongoing study.)

This issue relates to several local (*i.e.*, those of the Second, Fourth, Seventh, Eighth and Ninth Districts) "policies" relating to the transcription of recordings offered as evidence (and requiring the proponent of this evidence to pay for the transcription). The advisory committee believes it is appropriate to have a uniform, statewide rule on how these matters are handled. Unfortunately, the issues relate primarily to evidence in criminal cases, and the evidence, criminal, and civil appellate rules committees are probably better suited to answer the question of what form a uniform rule should take. The issue may also present concerns that might benefit profitably from review by appellate lawyers or judges on the appellate rules committee.

The diversity of approaches in the existing local policies makes the case for a uniform rule. The policies of the Second, Fourth, Seventh, Eighth and Ninth Districts are duplicated as an Appendix, at 7-8. Most require disclosure of the format of the recorded statement. *See* Second, Fourth, Eighth, and Ninth District policies. Some require transcription prior to trial and state that failure to comply “may” result in exclusion of the statement. *See* Second, Fourth, and Eighth District policies. One requires transcription at time the recorded exhibit is offered into evidence. *See* Seventh District policy. One requires transcription prior to trial when requested by the court, and at pretrial when requested by the court or an opposing party. *See* Ninth District policy. This evidence presents challenges to the court reporter when a case reaches trial, as it is quite difficult to transcribe 911 call recordings, “Scales” tapes, answering machine messages, child interview recordings, and similar events that are presented at trial as an audio recording. There may be significant differences between evidence presented at testimony and evidence presented in audio or audiovisual form but which is not essentially testimonial.

There is also an apparent inconsistency in the criminal rules, which can best be addressed by the criminal rules advisory committee. Minn. R. Crim. P. 11.02 and 12.04 indicate that if either party offers into evidence videotape or audiotape exhibit, they “may” also provide the court with a transcript. Minn. R. Crim. P. 28.02, subd. 9, relating to criminal appeals, provides that any videotape or audiotape exhibits submitted at trial or hearing shall, if not previously transcribed, be transcribed at the request of either the appellant or respondent unless the parties have already stipulated to the accuracy of a transcript of such exhibit previously made a part of the record. None of these rules directly answers the question of who pays for transcription. There is also lack of consistency in the rules as to when in case transcription is to be completed, and the cost of transcription provides good reason not to require transcription before the transcript is actually needed.

A related recommendation of the general rules advisory committee is that the criminal rule provisions in the Minnesota General Rules of Practice be relocated to

the criminal rules and incorporated into those rules at appropriate locations. This advisory committee believes there is no good principled reason to have those criminal provisions separate from the Rules of Criminal Procedure and believes they are much more likely to be located and adhered to if they are so relocated. The committee's reporter has raised this matter directly with the chair of the criminal rules advisory committee.

### **Recommendations Not Requiring Rule Amendments**

In addition to the recommendations for rule amendments, which are discussed in detail later in this report, the committee addressed one other subject where it concluded that no rule amendment is warranted at this time.

**Gen. R. Prac. 603.** The committee considered a suggestion that the housing court rules be amended to permit corporations to appear in district court eviction action without representation by a licensed attorney. The suggestion was made to the committee by the Minnesota Multi-Housing Association (MMHA), and was made in response to *Walnut Towers v. Schwan*, A07-1311 (Minn. Ct. App. Sept. 16, 2008) (unpublished)(no PFR filed), which held that the district court erred in allowing corporation to appear without counsel. Because of the decision of this issue in *Nicollet Restoration, Inc. v. Turnham*, 475 N.W.2d 508 (Minn. Ct. App. 1991), *aff'd* 486 N.W.2d 753 (Minn. 1992), the advisory committee does not arrogate to make any recommendation on this issue.

### **Recommendations for Further Study**

The committee is undertaking two projects that will require further study by the committee.

- 1. Juror Notification.** The committee considered a suggestion that would modify the jury management rules to permit notification of prospective jurors by postcard. The statewide postage savings from the proposal is

estimated at \$25,000 to \$30,000. The committee is concerned about confidentiality of the proposed communications, and is recommending to the state court administration that this issue receive further analysis.

2. **Jury Trials in Conciliation Court Appeals.** The committee considered a suggestion that the court rules be amended to remove the right to a jury trial in matters decided first in conciliation court and then removed to district court for trial de novo. Although the committee believes there may be value in a conciliation court process that would either decide cases without a jury in conciliation court or effect the early removal of cases to district court for a single trial there, because this would probably require statutory amendments and would not fundamentally be a rules issue, the committee believes it should be reviewed by the Court, the Judicial Council, or the State Court Administrator for further action.
3. **Family Court Rules.** The advisory committee is aware of an ongoing review of the family court rules being conducted by members of the American Academy of Matrimonial Lawyers, culminating in extensive discussions of these rules at its annual “Divorce Camp” in October 2009. The advisory committee’s Reporter and Staff have been invited to participate in this meeting, as have judges from each judicial district and representative district administrators. The committee has deferred consideration of several issues relating to the family court rules until the AAML process is completed.

### **Style of Report**

The specific recommendation is reprinted in traditional legislative format, with new wording underscoring and deleted words ~~struck through~~. Because the advisory



committee comments are entirely new for these recommendations, underscoring is omitted for the comments.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY  
COMMITTEE ON GENERAL RULES OF  
PRACTICE

## APPENDIX OF LOCAL POLICIES

### Second District Policy

#### AUDIO/VIDEO TRANSCRIPTS

The party intending to introduce a recorded statement (video and/or audio)\* must, at the time the rules require disclosure of the statement, advise the opposing party of the format in which the statement is reserved (video, audio) and must, prior to trial timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with either requirement may result in exclusion of the recorded statement at trial.

\* This order applies to, but is not limited to 911 calls, answering machine messages, Scales tapes, child interviews, crime scene walk-throughs and depositions.

### Fourth District Policy

Policy Number: D.01  
Category: Case Related Policies: All Courts  
Title: Audio and Video Taped Evidence  
Effective Date: January 1, 2001  
Revision Date(s):  
(Supersedes: Policy effective January 1, 2000

#### Audio and Video Taped Evidence

The party intending to introduce a recorded statement (video and/or audio)<sup>(1)</sup> must, at the time the rules require disclosure of the statement, advise the opposing party of the format in which the statement is preserved (video, audio) and must, prior to the trial, timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with either requirement may result in exclusion of the recorded statement at trial.

<sup>(1)</sup> This order applies to, but is not limited to all 911 calls, answering machine message, Scales tapes, child interviews, crime scene walk-throughs and depositions.

### Seventh District Policy

#### ADMINISTRATIVE POLICY NO. 11.5

##### *Transcript of Videotapes and Audiotapes*

Any audiotape, videotape or other prerecorded evidence or testimony, whether an exhibit, deposition, interview, statement, or otherwise, offered by a party shall be accompanied by a written transcript thereof, which transcript, upon acceptance or redaction by the parties, shall constitute the record thereof for all purposes, including appeal.

Approved: December 2, 1998  
Recodified: May 31, 2002

**Eighth District Policy**

ADMINISTRATIVE POLICY 10

Video/Audio Statements

The party intending to introduce a recorded statement must, at the time the rules require disclosure of the statement, advise the opposing party of the form in which the statement is preserved and must, prior to trial, timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with either requirement may result in exclusion of the recorded statement at trial.

**Ninth District Policy**

Policy Regarding Transcripts of Audio/visual Recordings

A party intending to introduce an electronically or digitally recorded statement\* must, at the time the rules require disclosure of the statement, advise the opposing party of the format (audio or video tape, CD, DVD, etc.) in which the statement is preserved, and upon the request of the court must, prior to trial, timely prepare, serve and file a verbatim transcript of the recorded statement. The proponent of the recorded statement is responsible for its accurate transcription. Failure to comply with these requirements may result in exclusion of the recorded statement at trial.

If during a pre-trial hearing a party uses or offers as evidence an audio or video recording, and other parties wish to have a transcript of that hearing to assist in the preparation of memoranda of law to be filed with the court, the party submitting the recording will have a verbatim transcript of it prepared and provided in a timely fashion to the requesting party or parties, as well as to the court. The court may also order such transcript *sua sponte*.

In the event of an appeal, the offering party must produce and file a verbatim transcript of the recorded statement within 30 days of the filing of the notice of appeal, if such transcript was not previously provided to the court.

*\*This policy applies, but is not limited, to recordings of 911 calls, answering machine messages, scale tapes, child interviews, crime scene walk-throughs and depositions.*

**Recommendation 1: Form 5 should be removed from the rules and maintained as a form on the court's website.**

**Introduction**

Form 5, Motion for Admission Pro Hac Vice, is a form that can be maintained by the State Court Administrator's Office and is currently available on the Court's website. The form is not mentioned in either the rules or the advisory committee comments; it is merely appended to the rules. It is appropriate that this form simply be deleted from the rules by order of this Court.

**Specific Recommendation**

Form 5 should be deleted from the rules and maintained in the future on the court's website.

**Recommendation 2: Forms 11.1 and 11.2 should be removed from the rules and maintained as a form on the court's website.**

**Introduction**

Forms 11.1, Confidential Information Form, and 11.2, cover sheet designated “Sealed Financial Source Documents,” are also forms that can be maintained by the State Court Administrator’s Office and accessed through the Court’s website. Because they are specifically referenced in the rules as being appended to the rules, Rules 11.02 and 11.03 should be amended to reflect the deletion of the forms from the rules themselves.

**Specific Recommendation**

Rule 11 should be amended as follows:

1           **RULE 11. SUBMISSION OF CONFIDENTIAL INFORMATION**

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3           **Rule 11.02. Restricted Identifiers**

4           (a) Pleadings and Other Documents Submitted by a Party. No party shall  
5 submit restricted identifiers on any pleading or other document that is to be filed with  
6 the court except:

7                   (i) on a separate form entitled Confidential Information Form (see  
8                   Form 11.1 ~~appended to these rules~~ as published by the state court  
9                   administrator) filed with the pleading or other document; or

10                   (ii) on Sealed Financial Source Documents under Rule 11.03.

11 The parties are solely responsible for ensuring that restricted identifiers do not  
12 otherwise appear on the pleading or other document filed with the court. The court  
13 administrator will not review each pleading or document filed by a party for

14 compliance with this rule. The Confidential Information Form shall not be accessible  
15 to the public.

16 (b) Records Generated by the Court. Restricted identifiers maintained by  
17 the court in its register of actions (i.e., activity summary or similar information that  
18 lists the title, origination, activities, proceedings and filings in each case), calendars,  
19 indexes, and judgment docket shall not be accessible to the public. Courts shall not  
20 include restricted identifiers on judgments, orders, decisions, and notices except on  
21 the Confidential Information Form (Form 11.1), which shall not be accessible to the  
22 public.

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24 **Rule 11.03. Sealing Financial Source Documents**

25 Financial source documents shall be submitted to the court under a cover sheet  
26 designated “Sealed Financial Source Documents” and substantially in the form set  
27 forth as Form 11.2 ~~appended to these rules~~ as published by the state court  
28 administrator. Financial source documents submitted with the required cover sheet  
29 are not accessible to the public except to the extent that they are admitted into  
30 evidence in a testimonial hearing or trial or as provided in Rule 11.05 of these rules.  
31 The cover sheet or copy of it shall be accessible to the public. Financial source  
32 documents that are not submitted with the required cover sheet and that contain  
33 restricted identifiers are accessible to the public, but the court may, upon motion or on  
34 its own initiative, order that any such financial source document be sealed.

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**Advisory Committee Comment—2009 Amendment**

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Rule 11 is amended to remove Forms 11.1 and 11.2 from the rules and to  
39 correct the reference to the forms in the rule. This amendment will allow for the  
40 maintenance and publication of the form by the state court administrator. The form,  
41 together with other court forms, can be found at <http://www.mncourts.gov/>.

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Forms 11.1 and 11.2 should be deleted from the rules and maintained in the  
43 future on the court’s website.

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**Recommendation 3: Rule 12, adopted in 2009, should be amended to clarify that it does not require filing of pleadings earlier than heretofore required and does not override the 21-day “safe harbor” provision in Minn. R. Civ. P. 11.**

### **Introduction**

This court adopted Rule 12 of the general rules by its order dated December 22, 2008. Following its adoption, the committee became aware of two situations where the rule was not intended to apply. The amendment recommended explicitly exempts those two situations from the rule. As is well known, Minnesota is one of a small number of states that allow for “hip-pocket” service—deeming actions commenced by service and not requiring filing of pleadings unless one of the parties files the action, in which case every party is required to file pleadings promptly after service. Similarly, Rule 11 of the rules of civil procedure contains a 21-day “safe harbor” provision, requiring service of a motion for sanctions but prohibiting filing of the motion for 21 days. The amendment to Rule 12 of the general rules was not intended to modify that important provision.

### **Specific Recommendation**

Rule 12 should be amended as follows:

44       **RULE 12. REQUIREMENT FOR COMPARABLE MEANS OF SERVICE**

45           In all cases, a party serving a paper on a party and filing the same paper with  
46 the court must select comparable means of service and filing so that the papers are  
47 delivered substantially contemporaneously. This rule does not apply to service of a  
48 summons or a subpoena. Pleadings and other papers need not be filed until required  
49 by Minn. R. Civ. P. 5.05 and motions for sanctions may not be filed before the time  
50 allowed by Minn. R. Civ. P. 11.03(a).

51           In emergency situations, where compliance with this rule is not possible, the  
52 facts of attempted compliance must be provided by affidavit.

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**Advisory Committee Comment—2009 Amendment**

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Rule 12 is amended to add the last sentence of the first paragraph. The amendment is intended to clarify that the rule does not modify two facets of practice established before its adoption. It does not require that pleadings be filed before the time allowed under Rule 5.05, which generally makes it unnecessary to file pleadings until after a party files a pleading, thereby opening a court file. This rule is a part of Minnesota’s “hip-pocket” service regime as established by Minn. R. Civ. P. 3. Rule 11 of the Minnesota Rules of Civil Procedure contains a 21-day “safe harbor” provision, requiring service of a motion for sanctions but prohibiting filing of the motion for 21 days. The amendment to Rule 12 of the general rules was not intended to modify that important provision.





73 **Rule 13.02. Elimination of Requirement to Provide Notice to Lapsed Address**

74 In the event notices, pleadings or other papers are returned by the postal  
75 service after the court administrator's mailing to a party or attorney's address of  
76 record on two separate mailings, the administrator should make reasonable efforts to  
77 obtain a valid, current address. If those efforts are not successful, the administrator  
78 may omit making further mailings in that action, and shall place appropriate notice in  
79 the court file or docket indicating that notices are not being mailed to all parties.

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81 **Advisory Committee Comment—2009 Amendment**

82 Rule 13 is a new rule intended to make explicit what has heretofore been  
83 expected of parties and their counsel: to keep the court apprised of a current address  
84 for mailing notices, orders, and other papers routinely mailed by the administrator to  
85 all parties. Where the court does not have a valid address, evidenced by two  
86 returned mailings, and cannot readily determine the correct address, the rule makes  
87 it unnecessary for the administrator to continue the futile mailing of additional  
88 papers until the party or attorney provides a current address.

89 The purpose of this rule is to require meaningful notice. If a party is a  
90 participant in the Secretary of State's address confidentiality program, there is no  
91 reason not to permit the use of that address to satisfy the requirement of this rule.  
92 See MINN. STAT. §§ 5B.01-.09 (2008).

**Recommendation 5:**      **Rule 111 should be amended to exclude consumer credit contract cases and mechanics' lien actions from the requirement for filing an information statement.**

**Introduction**

Rule 111 contains numerous exceptions from the scheduling requirements of the rule. The advisory committee considered suggestions that two categories of cases also be exempted from the normal case scheduling requirements, and concluded that these suggestions were well-taken. The committee therefore recommends that consumer credit contract actions and mechanics lien actions be added to the list of actions exempted from the rule.

Consumer credit contract actions are a distinct case type under Form 23 of the Minnesota Rules of Civil Procedure (see Minn. R. Civ. P. 10.01 requiring case type indicator to be included in caption of every pleading). These cases have historically generally been handled as default matters, and though they must now be filed pursuant to an agreement between the attorney general and certain health care providers, they retain their nature of being likely to be default matters. Normal case scheduling procedures for contested cases to not make sense for these cases.

Mechanics lien actions are commenced by filing and often involve numerous parties who are not served with process at the same time. The result is that these cases are often not ready for case scheduling at the same time other civil actions would be. The proposed amendment simply exempts these cases from Rule 111, recognizing that the court may then establish scheduling guidelines by order in a particular case, or can make a particular case subject to the normal Rule 111 procedures pursuant to the last sentence of Rule 111.01.

**Specific Recommendation**

Rule 111.01 should be amended as follows:

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## RULE 111. SCHEDULING OF CASES

### 94 Rule 111.01. Scope

95 The purpose of this rule is to provide a uniform system for scheduling matters  
96 for disposition and trial in civil cases, excluding only the following:

97 (a) Conciliation court actions and conciliation court appeals where no jury  
98 trial is demanded;

99 (b) Family court matters governed by Minn. Gen. R. Prac. 301 through 312;

100 (c) Public assistance appeals under Minnesota Statutes, section 256.045,  
101 subdivision 7;

102 (d) Unlawful detainer actions pursuant to Minnesota Statutes, sections  
103 504B.281, et seq.;

104 (e) Implied consent proceedings pursuant to Minnesota Statutes, section  
105 169.123;

106 (f) Juvenile court proceedings;

107 (g) Civil commitment proceedings subject to the Special Rules of Procedure  
108 Governing Proceedings Under the Minnesota Commitment Act of 1982;

109 (h) Probate court proceedings;

110 (i) Periodic trust accountings pursuant to Minn. Gen. R. Prac. 417;

111 (j) Proceedings under Minnesota Statutes, section 609.748 relating to  
112 harassment restraining orders;

113 (k) Proceedings for registration of land titles pursuant to Minnesota Statutes,  
114 chapter 508;

115 (l) Election contests pursuant to Minnesota Statutes, chapter 209; ~~and~~

116 (m) Applications to compel or stay arbitration under Minnesota Statutes,  
117 chapter 572-;

118 (n) consumer credit contract actions (see Case Type 3A, Minn. R. Civ. P.  
119 Form 23); and

120 (o) mechanics' lien actions.

121           The court may invoke the procedures of this rule in any action where not  
122 otherwise required.

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**Advisory Committee Comment—2009 Amendment**

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Rule 112.01 is amended to exempt consumer credit contract actions and mechanics lien actions from the case scheduling regime generally followed in civil proceedings. These changes are made because these cases are required to be filed but are often either not ready for case scheduling or are unlikely ever to require it.

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“Consumer credit contract actions” refer to those cases properly carrying the case type identifier “3A. Consumer Credit Contracts,” which as specified in Form 23 of the Minnesota Rules of Civil Procedure requires three things: (1) that the plaintiff is a corporation or other business organization, not an individual; (2) that the defendant is an individual; and (3) that the contract amount does not exceed \$20,000.

**Recommendation 6:**      **Rule 304.02 should be amended to include reference to the requirement for disclosure to the court of the need for interpreter services.**

**Introduction**

As part of the amendments adopted to the general rules by order dated December 22, 2008, the Court required modification of several rules to provide for the identification of the need for interpreter services in case handling documents. The committee believes it is appropriate that that requirement be extended to the parties' informational statement filed in family court matters, and the recommended amendment to Rule 304.02 accomplishes that single purpose.

**Specific Recommendation**

Rule 304.02 should be amended as follows:

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**RULE 304. SCHEDULING OF CASES**

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**Rule 304.02. The Party's Informational Statement**

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(a) **Timing.** Within 60 days after filing an action or, if a temporary hearing is scheduled within 60 days of the filing of the action, then within 60 days after a temporary hearing is initially scheduled to occur, whichever is later, each party shall submit, on a form to be available from the court and developed by the state court administrator, the information needed by the court to manage and schedule the case.

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(b) **Content.** The information provided shall include:

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(1) Whether minor children are involved, and if so:

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(i) Whether custody is in dispute; and

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(ii) Whether the case involves any issues seriously affecting

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the welfare of the children;

- 147 (2) Whether the case involves complex evaluation issues, and/or  
148 marital and nonmarital property issues;
- 149 (3) Whether the case needs to be expedited, and if so, the specific  
150 supporting facts;
- 151 (4) Whether the case is complex, and if so, the specific supporting  
152 facts;
- 153 (5) Specific facts about the case which will affect readiness for trial;
- 154 (6) Recommended alternative dispute resolution process, the timing  
155 of the process, the identity of the neutral selected by the parties or, if the  
156 neutral has not yet been selected, the deadline for selection of the neutral. If  
157 ADR is believed to be inappropriate, a description of the reasons supporting  
158 this conclusion; ~~and~~
- 159 (7) Identification of interpreter services (specifying language and, if  
160 known, particular dialect) any party anticipates will be required for any witness  
161 or party; and
- 162 (78) A proposal for establishing any of the deadlines or dates to be  
163 included in a scheduling order pursuant to this rule.

164 (c) **Unrepresented Parties.** Parties not represented by a lawyer may use  
165 forms developed specially by the state court administrator for unrepresented parties.

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**Advisory Committee Comment—2009 Amendment**  
Rule 304.02 is amended to include section (b)(7) adopted to implement the  
gathering of information about the potential need for interpreter services in a case,  
either for witnesses or for a party. See Minn. Gen. R. Prac. 8.13.

**Recommendation 7: Rule 309 should be amended to permit contempt proceedings to be commenced either by motion or by order to show cause.**

### **Introduction**

Rule 309 presently contemplates commencement of contempt proceedings only by order to show cause. Minnesota Statutes allows the court to impose contempt sanctions upon either notice or order to show cause. *See* Minn. Stat. § 588.04. Because of the increased expense involved in obtaining and serving an order to show cause, including the burden it places on the court for issuance of the order, and because an order to show cause is no longer required by statute, the committee believes Rule 309 should be amended similarly to allow contempt to be sought either by motion or order to show cause.

### **Specific Recommendation**

A new Rule 309.01 should be adopted as follows:

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## **RULE 309. CONTEMPT**

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### **Rule 309.01. Initiation**

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**(a) Moving Papers-Service; Notice.** Contempt proceedings ~~shall~~ may be initiated by notice of motion and motion or by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct the alleged contemnor to appear and show cause why he or she should not be held in contempt of court and why the moving party should not be granted the relief requested by the motion. If proceeding by notice of motion and motion, the motion may seek that relief directly.



181           The notice of motion, motion, or order to show cause shall contain at least the  
182 following:

- 183                     (1) a reference to the specific order of the court alleged to have been  
184 violated and date of entry of the order;  
185                     (2) a quotation of the specific applicable provisions ordered; and  
186                     (3) the alleged failures to comply.

187           **(b) Affidavits.** The supportive affidavit of the moving party shall set forth  
188 each alleged violation of the order with particularity. Where the alleged violation is a  
189 failure to pay sums of money, the affidavit shall state the kind of payments in default  
190 and shall specifically set forth the payment dates and the amounts due, paid and  
191 unpaid for each failure.

192           The responsive affidavit shall set forth with particularity any defenses the  
193 alleged contemnor will present to the court. Where the alleged violation is a failure to  
194 pay sums of money, the affidavit shall set forth the nature, dates and amount of  
195 payments, if any.

196           The supportive affidavit and the responsive affidavit shall contain numbered  
197 paragraphs which shall be numbered to correspond to the paragraphs of the motion  
198 where possible.

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**Advisory Committee Comment—2009 Amendment**

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Rule 309.01 is amended in 2009 to remove an apparent requirement that any contempt proceeding be commenced by order to show cause. Although an order to show cause is an available mechanism for initiating contempt proceedings, the authorizing statute also recognizes that these proceedings may be commenced by motion accompanied by appropriate notice. *See* MINN. STAT. § 588.04. The amendment to Rule 309.01 is intended simply to recognize that both mechanisms are available. In many situations, proceeding by order to show cause is preferable. Use of an order to show cause, which is court process served with the same formality as a summons, permits the court to impose sanctions directly upon failure to comply. *See* MINN. STAT. § 588.04. It is the preferred means to commence a contempt proceeding if there is significant risk that the alleged contemnor is likely not to appear in response to a notice of motion.

**Recommendation 8: Rule 503(c) should be amended to conform its time computation rules to mechanism in the Rules of Civil Procedure.**

**Introduction**

The committee previously recommended to the Court that Rule 6.01 of the Rules of Civil Procedure be amended to reflect the Court’s holding in *Commandeur, LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508 (Minn. 2006). The committee did not recommend modification of the conciliation court rules at that time. It does appear appropriate, however, that Rule 503 of the conciliation court rules be modified also to reflect this development in Minnesota law.

**Specific Recommendation**

Rule 503 should be amended as follows:

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**RULE 503. COMPUTATION OF TIME**

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**(a) General.** All time periods shall be measured by starting to count on the first day after any event happens which by these rules starts the running of a time period. If the last day of the time period is anything other than a working week day, then the last day is the next working week day.

**(b) Time Periods Less Than Seven Days.** When the time period is less than seven days, only working week days shall be counted.

**(c) Working Week Day.** A “working week day” means a day which is not a Saturday, Sunday or legal holiday. For purposes of this rule, a legal holiday includes all state level judicial branch holidays established pursuant to law and any other day on which county offices in the county in which the conciliation court is held are closed pursuant to law- or court order. With respect to service or filing by U. S. Mail, a day that the United States Mail does not operate is not a “working week day.”

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**Advisory Committee Comment—2009 Amendment**

Rule 503(c) is amended to clarify that for service or filing by mail, if U. S. Postal Service offices are closed on a particular day, that day is not deemed a “working week day” for the purpose of the rule, effectively permitting the mailing to be made on the next day that is a “working week day.” This change conforms the rule to the time calculation provision of Minn. R. Civ. P. 6.01, which in turn was amended in 2008 to conform the rule to the Minnesota Supreme Court decision in *Commandeur LLC v. Howard Hartry, Inc.*, 724 N.W.2d 508 (Minn. 2006)(holding that where the last day of a time period occurred on Columbus Day, service by mail permitted by the rules was timely if mailed on the following day on which mail service was available).

**Recommendation 9: Rule 517 should be amended to modify the procedure for payment of conciliation court judgments into court.**

**Introduction**

The conciliation court rules presently allow the losing party in a conciliation court proceeding simply to pay the judgment into court. Although there may be circumstances where this is necessary, in many cases it would be easier for the parties and less burdensome for the court to allow payment directly to the prevailing party. The proposed amendment to Rule 517 accomplishes that result by requiring that more direct process, but retaining the payment-of-the-court option if those efforts are either unsuccessful or the prevailing party refuses to accept tendered payment.

**Specific Recommendation**

Rule 517 should be amended as follows:

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**RULE 517. PAYMENT OF JUDGMENT**

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**Rule 517. Payment of Judgment**

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A nonprevailing party must make arrangements to pay the judgment directly to the prevailing party. In the event good faith efforts to pay the judgment are not successful or the prevailing party refuses to accept tendered payment, the nonprevailing party may bring a motion to allow payment into court. Upon order of the court, ~~the nonprevailing party may then~~ pay all or any part of the judgment to the court administrator for benefit of the prevailing party, ~~or may pay the prevailing party directly.~~

The court administrator shall enter on the court's records any payment made to the administrator or to the prevailing party directly when satisfied that the direct payments have been made.

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**Advisory Committee Comment—2009 Amendment**

Rule 517 is amended to modify the procedure for payment of a conciliation court judgment directly to the court administrator. As amended, the rule requires that payment be made directly by the nonprevailing party to the prevailing party, and permits payment into court only if reasonable attempts to make that payment are not successful or the prevailing party will not accept payment, in which case the nonprevailing party must bring a motion to allow payment into court.

**Recommendation 10: Rule 518 should be amended to remove the thirty-day stay requirement.**

**Introduction**

The conciliation court rules currently provide for an automatic thirty-day stay following docketing of a judgment in district court and the commencement of discovery regarding the judgment. The thirty-day stay does not serve a useful purpose in court administration, and simply results in a thirty-day delay in resolution of these matters. Accordingly, the committee recommends that it be removed from Rule 518. This change also makes the rule consistent with statute. See MINN. STAT. § 491A.02, subd. 9.

**Specific Recommendations**

Rule 518 should be amended as follows:

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**RULE 518. DOCKETING OF JUDGMENT IN DISTRICT COURT;  
ENFORCEMENT**

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**(a) Docketing.** Except as otherwise provided in Rule 519 with respect to installment judgments, when a judgment has become finally effective as defined in Rule 515 of these rules the judgment creditor may obtain a transcript of the judgment from the court administrator on payment of the applicable statutory fee and file it in district court. Once filed in district court the judgment becomes and is enforceable as a judgment of district court, and the judgment will be docketed by the court administrator upon presentation of an affidavit of identification. No writ of execution or garnishment summons shall be issued out of conciliation court.

**(b) Enforcement.** Unless the parties have otherwise agreed, if a conciliation court judgment has been docketed in district court ~~for a period of at least 30 days and~~ the judgment is not satisfied, the district court shall upon request of the judgment creditor order the judgment debtor to mail to the judgment creditor information as to

273 the nature, amount, identity, and location of all the debtor's assets, liabilities, and  
274 personal earnings. The information shall be provided on a form prescribed by the  
275 Supreme Court (see form UCF-22 ~~appended to these rules~~ as published by the state  
276 court administrator), and the information shall be sufficiently detailed to enable the  
277 judgment creditor to obtain satisfaction of the judgment by way of execution on  
278 nonexempt assets and earnings of the judgment debtor. The order shall contain a  
279 notice that failure to complete the form and mail it to the judgment creditor within ten  
280 days after service of the order may result in a citation for civil contempt of court.  
281 Cash bail posted as a result of being cited for civil contempt of court order under this  
282 rule may be ordered payable to the creditor to satisfy the judgment, either partially or  
283 fully.

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**Advisory Committee Comment—2009 Amendment**

Rule 518 is amended to modify the procedure for payment of a conciliation court judgment directly to the court administrator. As amended, the rule requires that payment be made directly by the nonprevailing party to the prevailing party, and permits payment into court only if that process is unavailing.

**Recommendation 11:**     **The forms appended to the conciliation court rules should be removed from the rules and maintained by the State Court Administrator’s Office on the Court’s website.**

**Introduction**

The committee believes the conciliation court forms are particularly suitable for removal from the rules and maintenance by the State Court Administrator on the Court’s website. These forms are particularly prone to amendment and improvement, and will function best on that site. Removal of the forms requires amendment of several of the conciliation court rules merely to modify how the forms are referred to in the rules.

**Specific Recommendations**

Rules 507, 508, and 518 should be amended as set forth below; and Forms UCF-8, UCF-9, UCF-10, UCF-22, and 508.1 should be deleted from the rules:

1.     Rule 507 should be amended as follows:

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**RULE 507. STATEMENT OF CLAIM AND COUNTERCLAIM;  
CONTENTS; VERIFICATION**

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(b) Uniform Statement of Claim or Counterclaim; Acceptance by Court. A statement of claim or counterclaim in the uniform form ~~prescribed in the appendix to these rules~~ as published by the state court administrator shall be accepted by any conciliation court administrator when properly completed and filed with the applicable fees, if any.



2. Rule 508 should be amended as follows:

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**RULE 508. SUMMONS; TRIAL DATE**

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(e) Proof of Service. Service by first class mail or certified mail shall be proven by an affidavit of service in form substantially similar to that ~~contained in Form 508.1~~ as published by the state court administrator. Service may be alternatively proven, when made by the court administrator, by any appropriate notation in the court record of the date, time, method, and address used by the administrator to effect service.

3. Rule 518 should be amended as set forth in Recommendation 10, on pages 28-29, above.

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The following forms should be deleted from the Rules and then be maintained by State Court Administration.

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1. Form UCF-8 Statement of Claim and Summons
2. Form UCF-9 Judgment and Notice of Judgment
3. Form UCF-10 Defendant's Counterclaim
4. Form UCF-22 Financial Disclosure Form
5. Form 508.1 Conciliation Court Affidavit of Service

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**Advisory Committee Comment—2009 Amendment**

Rules 507, 508, and 518 11 are amended to remove Forms UCF-8, UCF-9, UCF-10, UCF-22, and 508.1 from the rules and to correct the reference to the forms in the rule. This amendment will allow for the maintenance and publication of the form by the state court administrator. The form, together with other court forms, can be found at <http://www.mncourts.gov/>.

Forms UCF-8, UCF-9, UCF-10, UCF-22, and 508.1 should be deleted from the rules and maintained in the future on the court's website.

**Recommendation 12: Rule 707 should be amended to clarify how stenographic notes and transcription of grand jury proceedings are handled.**

### **Introduction**

Rule 707 deals with transcription of several criminal proceedings, but omits explicit reference to grand jury proceedings. Rule 18 of the Minnesota Rules of Criminal Procedure also addresses the right of access to grand jury transcripts. The committee believes it appropriate to amend Rule 707 to deal with some of the mechanical aspects of transcription of grand jury proceedings consistent with how those subjects are addressed for other phases of criminal proceedings currently addressed in Rule 707.

The issues leading to this recommendation are not fully resolved by the amendment set forth here. The committee understands that Rule 707 is not being consistently followed in practice, and that court reporters are reluctant to file their notes with the courts. This occurs for several reasons, but an underlying issue relates to the view that reporters' notes are their personal property. Rule 3, subd. 5, of the Rules of Public Access to Records of the Judicial Branch requires that court reporter notes "shall be available to the court" but does not expressly require that they uniformly be filed. Because many facets of grand jury proceedings are conducted under the authority of prosecutors and not directly under court supervision, this rule may also be of more limited impact that might be expected.

### **Specific Recommendation**

Rule 707 should be amended as follows:

322                   **RULE 707. TRANSCRIPTION OF PLEAS, SENTENCES,**  
323                   **AND REVOCATION HEARINGS IN FELONY,**  
324                   **GROSS MISDEMEANOR, AND EXTENDED JUVENILE**  
325                   **JURISDICTION PROCEEDINGS,**  
326                   **AND GRAND JURY PROCEEDINGS**

327           The following provisions relate to all pleas, sentences, and revocation hearings  
328 in all felony, gross misdemeanor, and extended juvenile jurisdiction proceedings, and  
329 all grand jury proceedings. Grand jury proceedings are secret as provided in Rule 18  
330 of the Minnesota Rules of Criminal Procedure and this rule must be construed to  
331 maintain secrecy in accordance with that rule.

332           (a) Court reporters and operators of electronic recording equipment shall file  
333 the stenographic notes or tape recordings of guilty plea, or sentencing and revocation  
334 hearings with the court administrator within 90 days of sentencing, and the  
335 stenographic notes or tape recordings of grand jury proceedings shall be filed with the  
336 court administrator and maintained in a non-public portion of the file at the  
337 conclusion of grand jury hearings. The reporter or operator may retrieve the notes or  
338 recordings if necessary. Minn. Stat. § 486.03 (2002) is superceded to the extent that it  
339 conflicts with this procedure.

340           (b) All original grand jury transcripts shall be filed within 60 days of request  
341 by the court or prosecutor or receipt of an order from the appropriate court directing  
342 transcription and shall be made available to parties other than the court or prosecutor  
343 only in accordance with that court order. The court administrator must file and  
344 maintain all grand jury transcripts in a non-public portion of the file. The court may  
345 allow extension of this 60-day deadline upon a showing of good cause.

346           (b~~c~~) No charge may be assessed for preparation of a transcript for the district  
347 court's own use; any other person ~~may ordering~~ a transcript as allowed under the  
348 rules shall be at the expense of that person. Transcripts ordered by the defendant or  
349 defense counsel shall be prepaid except when the defendant is represented by the  
350 public defender or assigned counsel, or when the defendant makes a sufficient

351 affidavit of an inability to pay and the court orders that the defendant be supplied with  
352 the transcript at the expense of the appropriate governmental unit.

353 (d) If no district court file exists with respect to a grand jury proceeding, the  
354 administrator shall open a grand jury file upon the request of the prosecutor.

355 (e) The maximum rate charged for the transcription of any proceeding shall  
356 be established, until July 1, 2005, by the Conference of Chief Judges, and thereafter  
357 by the Judicial Council. Minn. Stat. § 486.06 (2002) is superceded to the extent that it  
358 conflicts with this procedure.

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360 **Advisory Committee Comment—2009 Amendment**

361 Grand jury proceedings in Minnesota are secret. See Minn. R. Crim. P. 18.08.  
362 The court and prosecutors may obtain access to grand jury records and may order a  
363 transcript; any other transcription may occur only pursuant to Minn. R. Crim. P.  
364 1805, subd. 1. Rule 707 is amended to provide the rules for filing and maintaining  
365 transcripts of grand jury proceedings in the limited circumstances where the  
366 transcription is permitted or ordered. The court may also enter a protective order to  
367 prohibit further disclosure of the grand jury transcript. Minn. R. Crim. P. 18.05,  
368 subd. 2.

369 Rule 707(d) recognizes that there are circumstances where a grand jury is not  
370 separately convened for a particular case, and there is no separate file for that grand  
371 jury. This subdivision allows the prosecutor to request that a file be opened to serve  
372 as the repository for notes, records, or transcript from that proceeding.

**Recommendation 13: Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended.**

**Introduction**

The advisory committee recommended in 2008 that Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act be amended as part of the more extensive amendments implementing administrative procedures for use of interactive television (ITV). That amendment changed the notice requirement in Commitment Act Rule 14 from 24 hours to 7 days for all requests to appear by electronic means. The intent was only to recognize that setting up an ITV proceeding can take longer than that, whereas a telephone appearance, also authorized by Commitment Act Rule 14, does not. County attorneys who participate in such matters requested that the advisory committee reconsider the deadline and return it to 24 hours in all cases as the shorter notice period has not proven problematic. The advisory committee believes that it is appropriate to restore the 24-hour notice requirement in the rule.

**Specific Recommendation**

Rule 14 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended as follows:

373 **SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER**  
374 **THE MINNESOTA COMMITMENT AND TREATMENT ACT**

375 **RULE 14. LOCATION OF HEARING, RULES OF DECORUM,**  
376 **ALTERNATIVE METHODS OF PRESENTING EVIDENCE**

377 The judge or judicial officer shall assure the decorum and orderliness of any  
378 hearing held pursuant to Minn. Stat. ch. 253B. The judge or judicial officer shall

379 afford to respondent an opportunity to be dressed in conformity with the dignity of  
380 court appearances.

381 A hearing may be conducted or an attorney for a party, a party, or a witness  
382 may appear by telephone, audiovisual, or other electronic means if the party intending  
383 to use electronic means notifies the other party or parties at least ~~seven days~~ 24 hours  
384 in advance of the hearing and the court approves. If a witness will be testifying  
385 electronically, the notice must include the name, address, and telephone number  
386 where the witness may be reached in advance of the hearing. This rule does not  
387 supersede Minn. Stat. §§ 595.02 – 595.08 (competency and privilege). Respondent’s  
388 counsel will be physically present with the patient. The court shall insure that the  
389 respondent has adequate opportunity to speak privately with counsel, including, where  
390 appropriate, suspension of the audio recording or allowing counsel to leave the  
391 conference table to communicate with the client in private.

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**Advisory Committee Comment—2009 Amendment**

Rule 14 is amended to change the amount of notice required to be given by a litigant desiring to have a matter heard by electronic means, typically either telephone or interactive television. The 24 hours required by the rule represents the bare minimum of what may be necessary to allow for necessary electronic equipment to be made available. This deadline can be adjusted by the court if necessary.