

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

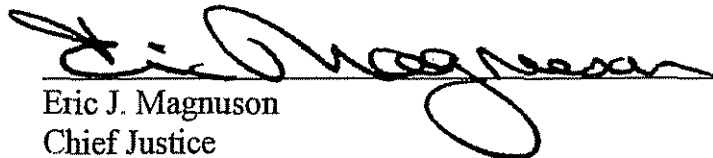
ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON
PROPOSED AMENDMENTS TO THE MINNESOTA GENERAL RULES OF
PRACTICE FOR THE DISTRICT COURTS

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 Wednesday, November 26, 2008.

DATED: October 23 2008

BY THE COURT:


Eric J. Magnuson
Chief Justice

OFFICE OF
APPELLATE COURTS

OCT 23 2008

FILED

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

In re:

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

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

**Final Report
September 25, 2008**

**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
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Timothy Roberts, Foley
Daniel Rogan, Robbinsdale
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

After completing separate reports on cameras in the courtroom (March 2008) and the expedited child support process (June 2008), the Court's Advisory Committee on General Rules of Practice met once in August 2008 to consider various other issues that had arisen over the past year. The committee believes several further amendments to the general rules should be made by the Court.

Summary of Committee Recommendations

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

1. The rules should be amended to require early identification of the need for interpreter services.
2. The Court should adopt a new Rule 12 to require parties to serve and file papers by comparable means.
3. Rules 119.05 and 702 should be amended to remove the forms associated with those rules from the rules.
4. The Court should adopt new Rules 131 and 708 to implement procedures for conducting interactive television ("ITV") proceedings. As part of this amendment, the Court should also amend Rule 114 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act to lengthen the notice period for scheduling a hearing by electronic means, including ITV.

Effective Date

The committee believes these rules 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, 2009.

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. 808(b)(5) Jury Exemption. The committee considered a suggestion that the age limit for opting out of jury service be reduced from age 70 to age 65. Although it is not uncommon for court administrators to receive requests by seniors under age 70 to be excused from jury service so that younger people can fill this role, the committee is concerned that reducing the opt-out age, coupled with recent changes expanding the exemption from repeated jury service from two to four years may negatively impact the ability of smaller jurisdictions to fill jury pools. Courts can and do address hardship situations through the current excuse and deferral provisions in Gen. R. Prac. 810.

Recommendations for Further Study

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

1. **Rule 517 Payment of Judgment to Court Administrator.** The committee considered whether rule 517 should be modified to reflect actual practice in many courts which either simply require the debtor to pay the creditor directly, or require prior attempts to pay and an affidavit certifying the same before accepting payment. The committee felt that it was not in a position to make a recommendation without gathering further input from court staff and having further discussion.
2. **“Local Rule” requiring transcription of audio/visual recordings.** The committee considered concerns expressed about a Ninth Judicial District Policy requiring transcription of audio/visual recordings submitted as

exhibits. There exists concern that this is a local rule requiring Supreme Court approval. The committee believes that this subject should be considered for a statewide rule but felt that it was not in a position to make a recommendation without gathering further input and having further discussion.

Style of Report

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

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY
COMMITTEE ON GENERAL RULES OF
PRACTICE

Recommendation 1: The Rules Should be Amended to Require Early Identification of the Need for Interpreter Services.

Introduction

The committee considered a recommendation from the Supreme Court Racial Fairness Committee and the Second Judicial District’s Equal Justice Committee relating to the use of interpreters. The recommendation from those committees has been modified slightly by this advisory committee, but essentially would amend the rules to provide in several places that the potential need for interpreter services be identified formally and earlier in the litigation process. The committee recommends that Minn. Gen. R. Prac. 8 (Interpreters) be amended to include a general provision for early notice, and that several other rules and forms be modified to incorporate this notice requirement:

Rule 111.02 & Form 111.02	Require disclosure of information on interpreter needs in Informational Statement
Rule 111.03	Require inclusion of information on interpreter needs in Scheduling Order
Rule 112.02 & Form 112.01	Require disclosure of information on interpreter needs in Joint Statement of the Case
Minnesota Civil Trialbook § 5	Update this provision on pre-trial conferences to specify that interpreter information be required at a pre-trial conference.
Minnesota Civil Trialbook § 11	Update this provision on interpreters to include reference to the early-disclosure requirements implemented by these amendments.

These amendments will not unduly burden litigants (they require virtually no attention except in cases where interpreters will be involved) but will significantly improve the process of *planning* for interpreter needs by court administrators.

The committee also recommends that the rule include an express requirement that the parties advise the court when it is clear that an interpreter will no longer be required. The purpose of this requirement is to permit the court to avoid incurring unnecessary interpreter costs.

Specific Recommendations

1. Rule 8 should be amended as follows:

RULE 8. INTERPRETERS

* * *

Rule 8.13. Requirement for Notice of Anticipated Need for Interpreter

In order to permit the court to make arrangements for the availability of required interpreter services, parties shall in the Informational Statement or Joint Statement of the Case, and as may otherwise be required by court rule or order, advise the court of that need in advance of the hearing or trial where services are required.

When it becomes apparent that previously-requested interpreter services will not be required, the parties must advise the court.

Advisory Committee Comment—2008 Amendment

Making a qualified interpreter available when needed in court often requires difficult prearrangement. Rule 8.13 is a simple rule drawing the attention of litigants to the likelihood they will encounter specific court rules or orders requiring identification of interpreter needs in advance of the need. See amendments to Rules 111.02, 111.03, 112.02, Forms 111.02 & 112.01, and Minnesota Civil Trialbook sections 5 & 11.

The second paragraph of the rule contains an obvious corollary: when it becomes clear that interpreter services will no longer be required, notice must be given to permit the court to avoid the expense that would otherwise be incurred. This notice would be required if a trial or hearing were obviated by settlement, and the requirement of notice is similar to that required by MINN. GEN. R. PRAC. 115.10 for the settlement of a motion, which would obviate a hearing and the court's preparation for it.

2. Rule 111 should be amended as follows:

27 **RULE 111. SCHEDULING OF CASES**

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29 **Rule 111.02. The Party's Informational Statement**

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31 Within sixty days after an action has been filed, each party shall submit, on a
32 form to be available from the court (see form 111.02 appended to these rules), the
33 information needed by the court to manage and schedule the case. The information
34 provided shall include:

- 35 (a) The status of service of the action;
- 36 (b) Whether the statement is jointly prepared;
- 37 (c) Description of case;
- 38 (d) Whether a jury trial is requested or waived;
- 39 (e) Discovery contemplated and estimated completion date;
- 40 (f) Whether assignment to an expedited, standard, or complex track is
41 requested;
- 42 (g) The estimated trial time;
- 43 (h) Any proposals for adding additional parties;
- 44 (i) Other pertinent or unusual information that may affect the scheduling or
45 completion of pretrial proceedings;
- 46 (j) Recommended alternative dispute resolution process, the timing of the
47 process, the identity of the neutral selected by the parties or, if the neutral has not yet
48 been selected, the deadline for selection of the neutral. If ADR is believed to be
49 inappropriate, a description of the reasons supporting this conclusion;
- 50 (k) A proposal for establishing any of the deadlines or dates to be included in a
51 scheduling order pursuant to Minn. Gen. R. Prac. 111.03-; and
- 52 (l) Identification of interpreter services (specifying language and, if known,
53 particular dialect) any party anticipates will be required for any witness or party.

55 **Rule 111.03. Scheduling Order**
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57 (a) **When Issued.** No sooner than sixty days and no longer than ninety days
58 after an action has been filed, the court shall enter its scheduling order. The court
59 may issue the order after either a telephone or in-court conference, or without a
60 conference or hearing if none is needed.

61 (b) **Contents.** The scheduling order shall provide for alternative dispute
62 resolution as required by Rule 114.04(c) and shall establish a date for completion of
63 discovery. The order may also establish any of the following:

- 64 (1) Deadlines for joining additional parties, whether by amendment
65 or third-party practice;
- 66 (2) Deadlines for bringing non-dispositive or dispositive motions;
- 67 (3) Deadlines or specific dates for submitting particular issues to the
68 court for consideration;
- 69 (4) A deadline for completing any independent physical, mental or
70 blood examination pursuant to Minn. R. Civ. P. 35;
- 71 (5) A date for a formal discovery conference pursuant to Minn. R.
72 Civ. P. 26.06, a *pretrial conference or conferences* pursuant to
73 Minn. R. Civ. P. 16, or a further scheduling conference.
- 74 (6) Deadlines for filing any pre-trial submissions, including
75 proposed instructions, verdicts, or findings of fact, witness lists,
76 exhibits lists, statements of the case or any similar documents;
- 77 (7) Whether the case is a jury trial, or court trial if a jury has been
78 waived by all parties; and
- 79 (8) Identification of interpreter services (specifying language and, if
80 known, particular dialect) any party anticipates will be required
81 for any witness or party;
- 82 (89) A date for submission of a Joint Statement of the Case pursuant to
83 Minn. Gen. R. Prac. 112; or

84 (910) A trial date.

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86 ~~Advisory Committee Comment—2008 Amendment~~

87 Rules 111.02(1) and 111.03(b)(8) are new provisions, adopted as part of
88 amendments designed to foster earlier gathering of information about the potential
89 need for interpreter services in a case, either for witnesses or for a party. See MINN.
90 GEN. R. PRAC 8.13.

3. Rule 112 should be amended as follows:

91 **RULE 112. JOINT STATEMENT OF THE CASE**

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93 * * *

94 **Rule 112.02. Contents**

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96 The Joint Statement of the Case shall contain the following information to the
97 extent applicable:

98 (a) a statement that all parties have been served, that the case is at issue, and
99 that all parties have joined in the filing of the Statement of the Case.

100 (b) an estimated trial time.

101 (c) whether a jury trial has been requested, and if so, by which party.

102 (d) counsels' opinion whether the case should be handled as an expedited,
103 standard, or complex case (determination to be made by the court).

104 (e) a concise statement of the case indicating the facts that Plaintiff(s) intend
105 to prove and the legal basis for all claims.

106 (f) a concise statement of the case indicating the facts that Defendant(s) intend
107 to prove and the legal basis for all defenses and counterclaims.

108 (g) names and addresses of all witnesses known to the lawyer or client who
109 may be called at the trial by each party, including expert witnesses and the particular
110 area of expertise each expert will be addressing. If any witness is or party is likely to
111 require interpreter services, that fact and the nature of the required services
112 (specifying language and, if known, particular dialect) shall be provided.

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Advisory Committee Comment—2008 Amendment

Rule 112.02 is amended to include a provisions designed to foster earlier 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

119 **FORM 111.02. INFORMATIONAL STATEMENT (Civil Matters--Non-Family)**

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121 State of Minnesota

District Court

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COUNTY

JUDICIAL DISTRICT CASE NO

Case Type: _____

Plaintiff

and

INFORMATIONAL STATEMENT FORM

Defendant

1. All parties (have) (have not) been served with process.
2. All parties (have) (have not) joined in the filing of this form.
3. Brief description of the case: _____

4. It is estimated that the discovery specified below can be completed within ____ months from the date of this form. (Check all that apply, and supply estimates where indicated)
 - a. Factual Depositions No ____ Yes ____, estimated number: _____
 - b. Medical Evaluations No ____ Yes ____, estimated number: _____
 - c. Experts Subject to Discovery No ____ Yes ____, estimated number: _____
5. Assignment as an ____ expedited ____ standard ____ complex case is requested. (If not standard case assignment, include brief statement setting forth the reasons for the request)

6. The dates and deadlines specified below are suggested.
 - a. _____ Deadline for joining additional parties, whether by amendment or third party practice.
 - b. _____ Deadline for bringing non-dispositive motions.
 - c. _____ Deadline for bringing dispositive motions.
 - d. _____ Deadline for submitting _____ to the court.
(specify issue)
 - e. _____ Deadline for completing independent physical examination pursuant to Minn R. Civ. P. 35.
 - f. _____ Date for formal discovery conference pursuant to Minn. R. Civ. P. 26.06.
 - g. _____ Date for pretrial conference pursuant to Minn. R. Civ. P. 16.
 - h. _____ Date for scheduling conference.
 - i. _____ Date for submission of a Joint Statement of the Case pursuant to Minn. Gen. R. Prac. 112.
 - j. _____ Trial Date.
 - k. _____ Deadline for filing (proposed instructions), (verdicts), (findings of fact), (witness list), (exhibit list)
 - l. _____ Deadline for _____ (specify)

166 7. Estimated trial time: _____ days _____ hours (estimates less than a day must be
167 stated in hours).
168 8. A jury trial is: () waived by consent of _____ pursuant to R. Civ. P. 38.02.
169 (specify party)
170 () requested by _____ (NOTE: Applicable fee must be enclosed.)
171 (specify party)

172 9. a. Meeting: Counsel for the parties met on _____ to discuss case
173 management issues. (Date)

174 b. ADR PROCESS (Check one):
175 Counsel agree that ADR is appropriate and choose the following:
176 Mediation
177 Arbitration (non-binding)
178 Arbitration (binding)
179 Med-Arb
180 Early Neutral Evaluation
181 Moderated Settlement Conference
182 Mini-Trial
183 Summary Jury Trial
184 Consensual Special Magistrate
185 Impartial Fact Finder
186 Other (describe) _____
187 _____

188 Counsel agree that ADR is appropriate but request that the Court select the process.
189 Counsel agree that ADR is NOT appropriate because:
190 the case implicates the federal or state constitution.
191 other (explain with particularity) _____
192 _____

193 domestic violence has occurred between the parties.

194 c. PROVIDER (Check one):
195 The parties have selected the following ADR neutral:
196 _____
197 The parties cannot agree on an ADR neutral and request the Court to appoint one
198 The parties agreed to select an ADR neutral on or before
199 _____

200 d. DEADLINE: The parties recommend that the ADR process be completed by _____
201 (Date)

202 10 Please identify any party or witness who will require interpreter series, and describe the
203 services (specifying language and, if known, particular dialect) needed.

204 _____
205 _____
206 _____

207 101. Please list any additional information which might be helpful to the court when scheduling this
208 matter.

209 _____
210 _____
211 _____

212
213 Signed: _____ Signed: _____
214 Lawyer for (Plaintiff) (Defendant) Lawyer for (Plaintiff) (Defendant)

215 Attorney Reg. #: _____ Attorney Reg #: _____
 216 Firm: _____ Firm: _____
 217 Address: _____ Address: _____
 218 Telephone: _____ Telephone: _____
 219 Date: _____ Date: _____
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221 **FORM 112.01. JOINT STATEMENT OF THE CASE**

222 _____
 223 State of Minnesota District Court

224 COUNTY

225 JUDICIAL DISTRICT CASE NO.

226 Case Type: _____

227 _____
 228 Plaintiff

229 and

230 **JOINT STATEMENT OF THE CASE**

231 _____
 232 Defendant

- 233
- 234 1. All parties have been served with process. The case is at issue and all parties have joined in the filing of this Joint Statement of the Case.
 - 235 2. Estimated trial time: ___ days ___ hours (estimates less than a day must be stated in hours).
 - 236 3. Jury is requested by the ___ plaintiff ___ defendant. [If this is a change from a court to a jury request, then a \$30 fee must be paid when filing this document.]
 - 237 4. Concise statement of the case including facts plaintiff(s) intend to prove and legal basis for claims:
 238 _____
 239 _____
 240 _____
 - 241 5. Concise statement of the case indicating facts defendant(s) intend to prove and legal basis for defenses and counterclaim:
 242 _____
 243 _____
 244 _____
 - 245 6. List the names and addresses of witnesses known to either party that either party may call.
 246 Indicate the party who expects to call the witness and whether the party intends to qualify that
 247 witness as an expert. (Attach additional sheets if necessary.)
 248 _____
 249 _____

250 Party	251 Name/Addresses 252 of Witnesses	253 Please Indicate if 254 Expert Witness
255 _____	_____	_____ Yes
256 _____	_____	_____ Yes
257 _____	_____	_____ Yes

258 7. Identify any party or witness who will require interpreter services, and describe the services
259 needed.

260 _____
261 _____

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263 ~~78.~~ In claims involving personal injury, attach a statement by each claimant, whether by
264 complaint or counterclaim, setting forth a detailed description of claimed injuries and an
265 itemized list of special damages as required by the rule. Indicate whether parties will
266 exchange medical reports.

267 89. In claims involving vehicle accidents, attach a statement describing the vehicles with
268 information as to ownership and the name of insurance carriers, if any.

269 [Signature Blocks]

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271 (If more space is needed to add additional information or parties, attach a separate sheet typed in the
272 same format.)

273 The undersigned counsel have met and conferred this _____ day of _____ and certify the
274 foregoing is true and correct.

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Signature

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Signature

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Signature

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Signature

4. Minnesota Civil Trialbook sections 5 & 11 should be amended as follows:

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PART H. MINNESOTA CIVIL TRIALBOOK

285

Section 5. Pre-Trial Conferences

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(d) **Pre-trial Chambers Conferences.** At an informal chambers conference
288 before trial the trial court shall:

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(1) determine whether settlement possibilities have been exhausted;

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(2) determine whether all pleadings have been filed;

- 291 (3) ascertain the relevance to each party of each cause of action;
292 and,
293 (4) with a view to ascertaining and reducing the issues to be tried,
294 shall inquire:
- 295 (i) whether the issues in the case may be narrowed or
296 modified by stipulations or motions;
 - 297 (ii) whether dismissal of any of the causes of actions or
298 parties will be requested;
 - 299 (iii) whether stipulations may be reached as to those facts
300 about which there is no substantial controversy;
 - 301 (iv) whether stipulations may be reached for waiver of
302 foundation and other objections regarding exhibits, tests,
303 or experiments;
 - 304 (v) whether there are any requests for producing evidence out
305 of order;
 - 306 (vi) whether motions in limine to exclude or admit specified
307 evidence or bar reference thereto will be requested; and
 - 308 (vii) whether there are any unusual or critical legal or
309 evidentiary issues anticipated;
- 310 (5) direct the parties to disclose the number and names of witnesses
311 they anticipate calling, and to make good faith estimates as to the
312 length of testimony and arguments;
- 313 (6) direct the parties to disclose whether any party or witness
314 requires interpreter services and, if so, the nature of the
315 interpreter services (specifying language and, if known,
316 particular dialect) required;
- 317 (67) inquire whether the number of experts or other witnesses may be
318 reduced;

- 319 (78) ascertain whether there may be time problems in presentation of
320 the case, e.g., because of other commitments of counsel,
321 witnesses, or the court and advise counsel of the hours and days
322 for trial; and
- 323 (89) ascertain whether counsel have graphic devices they want to use
324 during opening statements; and
- 325 (910) ascertain whether a jury, if previously demanded, will be waived.
326 If a jury is requested, the judge shall make inquiries with a view
327 to determining:
- 328 (i) the areas of proposed voir dire interrogation to be directed
329 to prospective jurors, and whether there is any contention
330 that the case is one of "unusual circumstances";
 - 331 (ii) the substance of a brief statement to be made by the trial
332 court to the prospective jurors outlining the case, the
333 contentions of the parties, and the anticipated issues to be
334 tried;
 - 335 (iii) the number of alternate jurors (it is suggested that the
336 identity of the alternates not be disclosed to the jury); and
 - 337 (iv) in multiple party cases, whether there are issues as to the
338 number of "sides" and allocation of peremptory
339 challenges.

340 * * *

341 **Advisory Committee Comment—2008 Amendment**

342 Section 5(d)(6) is new, added to reflect the amendments to Rules 111.02(1),
343 111.03(b)(8), and 112.02(g), requiring earlier disclosure of information about the
344 potential need for interpreter services in a case, either for witnesses or for a party.
345 See MINN. GEN. R. PRAC 8.13.

347 **Section 11. Interpreters**

348 The party calling a witness for whom an interpreter is required shall advise the
349 court in advance in the Informational Statement or Joint Statement of the Case of the

350 need for an interpreter and interpreter services (specifying language and, if known,
351 particular dialect) expected to be required. Parties shall not use a relative or friend as
352 an interpreter in a contested proceeding, except as approved by the court.

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Advisory Committee Comment—2008 Amendment

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This section is amended to incorporate the amendments to Rules 111.02(1),
111.03(b)(8), and 112.02(g), requiring earlier disclosure of information about the
356 potential need for interpreter services in a case, either for witnesses or for a party.
357 See MINN. GEN. R. PRAC 8.13.

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Recommendation 2: The Court Should Adopt a New Rule 12 to Require Parties to Serve and File Papers by Comparable Means.

Introduction

The committee has considered several times over its existence the question of whether the rules should include a provision mandating service by the same means for filing of a document. The concern arises from what is universally viewed—except possibly by those engaging in it—as a “sharp” practice: hand-delivery of a paper to the judge and mailing a copy to opposing counsel. The practice is not forbidden by any rule, and in some cases lawyers manage to serve and file in ways that papers arrive days apart.

The committee does not believe the rule should mandate precise parity—service need not be by the same means as filing, but it should allow for essentially simultaneous receipt.

Specific Recommendations

A new Rule 12 should be adopted as follows:

359 **Rule 12. Requirement for Comparable Means of Service**

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In all cases, a party serving a paper on a party and filing it with the court must select comparable means of service and filing so that the papers are delivered substantially contemporaneously. This rule does not apply to service of a summons or a subpoena.

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

Advisory Committee Comment—2008 Amendment

Rule 12 is a new rule, recommended to codify a longstanding practice of professional courtesy: that papers be served and filed by comparable means. The

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rule does not require that the same means be used, but if hand delivery to the court is chosen for filing, then either hand delivery, overnight courier sent the day before, or facsimile transmission to other parties must be used. The measure of compliance is approximate simultaneity; the purpose is to discourage gameplaying over service. Fairness requires that service and filing occur at about the same time; delivering papers immediately to the court and then serving them leisurely upon counsel is not justified and in some cases is not fair.

Recommendation 3: Rules 119.05 and 702 Should Be Amended to Remove the Forms Associated With Those Rules From the Rules.

Introduction

The committee has recommended that many of the forms contained in the general rules be moved out of the rules so they can be amended administratively and without requiring review by the committee and formal amendment by the Court. The committee believes Rules 119.05 and 702 should be amended to remove Forms 119.05 and 702 from the rules. The forms will in the future be maintained by the State Court Administrator. It is pointed out for the benefit of the State Court Administrator that the current form 119.05 contains a typographical error that should be corrected before the form is published. Immediately beneath the caption it states, "TO: _____, JUDGMENT DEBTOR;" It should read "TO: _____, DEFENDANT" because judgment has not been entered at the time the form is served.

Specific Recommendations

1. Rule 119 should be amended as follows:

RULE 119. APPLICATIONS FOR ATTORNEY FEES

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* * *

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Rule 119.05. Attorney Fees in Default Proceedings

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(a) A party proceeding by default and seeking an award of attorney fees that has established a basis for the award under applicable law, including parties seeking to enforce a confession of judgment, may obtain approval of the fees administratively without a motion hearing, provided that:

- 387 (1) the fees requested do not exceed fifteen percent (15%) of the
388 principal balance owing as requested in that party's pleadings, up
389 to a *maximum* of \$3,000.00. Such a party may seek a minimum
390 of \$250.00; and
- 391 (2) the requesting party's pleading includes a claim for attorney fees
392 in an amount greater than or equal to the amount sought upon
393 default; and
- 394 (3) the defaulting party, after default has occurred, has been provided
395 notice of the right to request a hearing under section (c) of this
396 rule, a form for making such a request substantially similar to
397 Form 119.05 as published by the state court administrator, and
398 the affidavit required under Rule 119.02.

399 * * *

400 (c) A defaulting party may request a hearing and further judicial review of the
401 attorneys' fees requested by completing a "Request for Hearing" provided by the
402 plaintiff substantially similar to Form 119.05 as published by the state court
403 administrator. A party may serve the form, at any time after a default has occurred,
404 provided that the defaulting party is given at least twenty (20) days notice before the
405 request for judgment is made. A defaulting party must serve the Request for Hearing
406 upon the requesting party or its counsel within twenty (20) days of its receipt. Upon
407 timely receipt of a Request for Hearing the party seeking fees shall request a judicial
408 assignment and have the hearing scheduled.

409 * * *

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411 Advisory Committee Comment—2008 Amendment
412 Rule 119.05 is amended to remove Form 119.05 from the rules, and to permit
413 the maintenance and publication of the form by the state court administrator. The
414 form, together with other court forms, can be found at <http://www.mncourts.gov/>.
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416 [Form 119.05 is to be deleted from the Rules and published by the State Court
417 Administrator]

2. Rule 702 should be amended as follows:

418 **RULE 702. BAIL**

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421 **(d) Posting Bonds.** Before any person is released on bond, the bond must be
422 approved by a judge after submission to the prosecuting lawyer for approval of form
423 and execution and filed with the court administrator during business hours or
424 thereafter with the custodian of the jail. In cases where bail has been set by the court
425 and the defendant has provided a bail bond with corporate surety, approval by a judge
426 is unnecessary if the bond conforms to Form 702 as published by the state court
427 administrator.

428 * * *

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430 **Advisory Committee Comment—2008 Amendment**

431 Rule 702(d) is amended to remove Form 702 from the rules, and to permit the
432 maintenance and publication of the form by the state court administrator. The form
433 together with other court forms, can be found at <http://www.mncourts.gov/>.
434

435 [Form 702 is to be deleted from the Rules and published by the State Court
436 Administrator]

Recommendation 4: The Court Should Adopt New Rules 131 and 708 to Implement Procedures for Conducting Interactive Television (“ITV”) Proceedings.

Introduction

The committee considered the drafting of an administrative rule for implementation of interactive television (“ITV”) in criminal cases. The committee undertook this review at the request of the Court. *See Order Promulgating Amendments to the Rules of Criminal Procedure Relating to Use of ITV in Criminal Matters*, No. C1-84-2137 (Minn. Nov. 19, 2007). Interim ITV Administrative Procedures were adopted by the State Court Administrator on March 25, 2008. *See MINNESOTA JUDICIAL BRANCH POLICY/PROCEDURES*, Policy No. 5.06(c) (March 25, 2008). Earlier ITV protocols were adopted during pilot project implementation of ITV.

The committee recommends that a new Rule 131 be adopted to deal with ITV in civil cases, and a companion Rule 708 to adopt those procedures, as well as the procedures in the criminal rules, for criminal cases. If these amendments are adopted, it is appropriate for the Court to amend Rule 114 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act to conform the time periods for requesting an ITV or other electronic hearing under the rules.

Specific Recommendations

1. Rule 131 should be adopted as follows:
(Because this rule is entirely new, no underlining is included.)

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**RULE 131 USE OF INTERACTIVE VIDEO TELECONFERENCE
IN CIVIL CASES**

Rule 131.01. Definitions.

- (a) "ITV" refers to interactive video teleconference.
- (b) A "terminal site" is any location where ITV is used for any portion of a court proceeding.
- (c) The "venue county" is the county where pleadings are filed and hearings are held under current court procedures.

Rule 131.02. Permissible Uses; Initiation.

In all civil actions and proceedings including commitment proceedings subject to the *Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act*, the court may conduct hearings and admit oral testimony, subject to cross-examination, by live audio-visual means, where authorized by this rule.

(a) Scheduling Conflicts. All scheduling conflicts and priorities shall be determined by the judge(s).

(b) Use of ITV on Court's Initiative; Notice. If the court on its own initiative orders the use of live audio-visual means (ITV) to conduct hearings and proceedings, it shall give notice in accordance with the *Rules of Civil Procedure and General Rules of Practice*, which notice shall advise the parties of the duty to exchange information under Rule 131.04, and the prohibition on recording in Rule 131.06(i).

(c) Use of ITV Upon Stipulation. The parties may, subject to court approval and site availability, stipulate that a hearing or proceeding be conducted by ITV in accordance with the procedures established in this rule. The parties shall contact the court administrator as soon as possible to permit scheduling of ITV facilities. A written, signed stipulation requesting the use of ITV shall be filed with the court at least 24 hours prior to the date set for the ITV hearing or proceeding. The stipulation

468 shall be substantially in the form set forth in the Stipulation and Approval form
469 appended to these rules. The parties are responsible for making arrangements to use
470 any site that is outside the control of the court in the venue county, for providing the
471 necessary contact information to the court administrator, and for ensuring the
472 compatibility of the equipment.

473 **(d) Use of ITV Upon Motion.**

474 (1) **Request.** Any party may, by motion, request the use of ITV for
475 a hearing or proceeding in accordance with this rule. No motion
476 for use of ITV shall be heard until the moving party serves a
477 copy of the motion on the opposing counsel and files the original
478 with the court administrator at least seven (7) days prior to the
479 scheduled hearing or proceeding for which ITV use is requested.
480 The moving party may, *ex parte*, contact the court for an
481 expedited hearing date on the motion for use of ITV and for
482 waiver of the usual notice of hearing. The moving party is
483 responsible under Rule 131.02(c) for making arrangements to use
484 any site that is outside the control of the court in the venue
485 county, for providing the necessary contact information to the
486 court administrator, and for ensuring the compatibility of the
487 equipment. The motion shall include, as an attachment, a notice
488 advising the other parties of their right to object to use of ITV,
489 the consequences of failing to timely file an objection, the duty to
490 exchange information under Rule 131.04, and the prohibition on
491 recording in Rule 131.06(i). A sample notice is set forth as an
492 appendix to these rules.

493 (2) **Objection.** Any party objecting to a motion for use of ITV may
494 file and serve a response to the motion 48 hours prior to the
495 hearing on the motion for use of ITV.

- 496 (3) **Burden of Proof.** The moving party must establish good cause
497 for use of ITV by a preponderance of the evidence.
- 498 (4) **Good Cause.** The Court shall consider the following factors to
499 determine “good cause”:
- 500 (i) Whether a timely objection has been made;
 - 501 (ii) Whether any undue surprise or prejudice would result;
 - 502 (iii) The convenience of the parties, counsel, and the court;
 - 503 (iv) The cost and time savings;
 - 504 (v) The importance and complexity of the proceeding;
 - 505 (vi) Whether the proponent has been unable, after due
506 diligence, to procure the physical presence of a witness;
 - 507 (vii) The convenience to the parties and the proposed witness,
508 and the cost of producing the witness in relation to the
509 importance of the offered testimony;
 - 510 (viii) Whether the procedure would allow effective cross-
511 examination, especially where documents and exhibits
512 available to the witness may not be available to counsel;
 - 513 (ix) Whether the surroundings maintain the solemnity and
514 integrity of the proceedings and thereby impress upon the
515 witness the duty to testify truthfully;
 - 516 (x) Whether the witness is presently in prison or incarcerated;
517 and,
 - 518 (xi) Such other factors as the court may, in each individual
519 case, determine to be relevant.
- 520 (5) **Emergency Circumstances.** The court may shorten the time
521 periods provided in this rule 131.02(d) upon a showing of good
522 cause.

523 (6) **Determination.** If the use of ITV is thereafter allowed and
524 ordered by the court, the hearing shall proceed, by ITV, in
525 accordance with the provisions of this rule. If the court
526 determines that good cause for the use of ITV has not been
527 established, the hearing or proceeding shall be heard as provided
528 by the Rules of Civil Procedure and General Rules of Practice.

529 **Rule 131.03. Costs and Arrangements; Certification**

530 (a) **Costs.** The party or parties, other than the court, requesting use of ITV for
531 any hearing or proceeding shall be responsible for any additional use or other fees
532 over and above those normally incurred by the venue county in connecting from one
533 court site to another court site within the district or collaboration area.
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535 (b) **Arrangements.** If the court on its own initiative orders ITV, the court
536 shall, through the court administrator where the case is venued, establish and make
537 arrangements to carry out the ITV procedures required in order for the court to hear
538 the case as an ITV hearing or proceeding. In all other cases it will be the
539 responsibility of the party requesting the use of ITV to contact the court administrator
540 where the case is venued who shall, working with the judge assigned, establish a
541 hearing date and time so that the case may be scheduled as an ITV hearing or
542 proceeding. The court and counsel shall use reasonable efforts to confer with one
543 another in scheduling ITV hearings or proceedings so as not to cause, delay or create
544 scheduling conflicts.

545 (c) **Service.** The moving party shall have the responsibility of preparing,
546 serving and filing the motion and notice of motion papers as required by this rule.

547 (d) **Certification.** By signing a stipulation or motion for use of ITV, a person
548 certifies that the use of ITV will be in accordance with the provisions of this rule,
549 including, without limitation, the requirement in Rule 131.06(i) that no recording shall
550 be made of any ITV proceeding except the recording made as the official court
551 record.

552 **Rule 131.04. Exchange of information.**

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554 Whenever ITV is to be used to conduct a hearing or proceeding, evidentiary
555 exhibits shall be exchanged with all other parties and submitted to the court, as
556 appropriate, prior to the commencement of the hearing or proceeding.

557 **Rule 131.05. Location of Participants.**

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559 During the ITV hearing:

560 (a) The judge may be at any terminal site.

561 (b) The court clerk shall be in the venue county unless otherwise authorized by
562 the presiding judge.

563 (c) Except as otherwise provided in rule 131.05(d) regarding commitment
564 proceedings, counsel for the parties shall be present at the site from which the party
565 they represent will participate in the hearing, unless the court approves another
566 location prior to the hearing, and witnesses and other interested parties may be located
567 at any terminal site that will allow satisfactory video and audio reception at all other
568 sites.

569 (d) In commitment proceedings, the respondent's attorney shall be present at
570 the ITV site from which the respondent will participate in the proceedings.

571 **Rule 131.06. Proceedings.**

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573 In any proceeding conducted by ITV under this rule:

574 (a) Parties entitled to be heard shall be given prior notice of the manner and
575 time of the hearing or proceeding.

576 (b) Witnesses may testify by ITV at all hearings, including contested matters.

577 (c) Regardless of the physical location of any party to the ITV hearing or
578 proceeding, any waiver, stipulation, motion, objection, decision, order or any other
579 actions taken by the court or a party has the same effect as if done in person. Court
580 orders that bear the presiding judge's signature may be transmitted electronically or
581 via facsimile machine to the various ITV sites for the purpose of service.

582 (d) The court administrator of the venue county will keep court minutes and
583 maintain court records as if the proceeding were heard in person.

584 (e) All proceedings held by ITV will be governed by the Minnesota Rules of
585 Civil Procedure, the General Rules of Practice and state law, except as herein
586 provided. Courtroom decorum during ITV hearings will conform to the extent
587 possible to that required during traditional court proceedings.

588 (f) A sheriff, sheriff's deputy, bailiff or other licensed peace officer shall be
589 present at each ITV site for the purpose of maintaining order, as the court deems
590 necessary.

591 (g) The court shall ensure that each party has adequate opportunity to speak
592 privately with counsel, including, where appropriate, suspension of the audio
593 transmission and recording or allowing counsel to leave the conference table to
594 communicate with the client in private.

595 (h) Judges may continue any hearing that cannot proceed due to ITV
596 equipment problems or failure, unless other arrangements to proceed with the hearing
597 are agreed upon by all parties.

598 (i) No recording shall be made of any ITV proceeding except the recording
599 made as the official court record. This Rule 131 does not supersede the provisions of
600 the Minnesota Rules of Public Access to Records of the Judicial Branch.

601 **Rule 131.07. Administrative Procedures.**

602
603 The following administrative procedures are applicable to all ITV proceedings:

604 (a) **Off-Camera Presence.** During a hearing conducted by ITV, all off-
605 camera persons at any participating ITV terminal site must be identified for the
606 record. This shall not apply to members of the public located in general public
607 seating areas of any courtroom.

608 (b) **Court Administrator Duties.** The Court Administrator for each county
609 shall be responsible for the following:

- 610 (1) Ensure that the ITV equipment is ready and functioning properly
611 in advance of any ITV hearing, so that there will be no
612 interference with the punctual commencement of a hearing.
- 613 (2) Provide participants an opportunity to become familiar with use
614 of the ITV equipment and courtroom procedure prior to
615 commencement of the hearing.
- 616 (3) Set ITV system configuration as designated by the presiding
617 judge. The presiding judge shall consider the objections or
618 concerns of any party.
- 619 (4) Monitor audio and video quality, making adjustments and
620 providing technical assistance throughout the hearing as
621 necessary.
- 622 (5) Ensure that any court documents or exhibits that the judge will
623 require prior to or during the course of the hearing are mailed or
624 faxed to the judge prior to commencement of the hearing.
- 625 (6) Be familiar with problem management procedures, including
626 steps to be taken in performing initial problem determination,
627 identity and location of individual(s) who should be contacted if
628 initial problem/resolution attempts fail, and service call
629 placement procedures.

630 (c) **Technical Standards.** The following technical standards should be
631 followed:

- 632 (1) To optimize picture clarity, the room should have diffused
633 lighting and window shades to block external light.
- 634 (2) To optimize viewing, monitors should be placed in a darkened
635 area of the room and be of sufficient size and number to allow
636 convenient viewing by all participants.

- 637 (3) Cameras and microphones should be sufficient in number to
638 allow video and audio coverage of all participants, prevent
639 crowding of participants, facilitate security, and protect
640 confidential communications.
- 641 (4) Audio and visual must be synchronized and undistorted.
- 642 (5) All hearing participants should speak directly into their
643 microphones.
- 644

645 **Advisory Committee Comments—2008 Amendment**

646 In October 1999 the Supreme Court informally approved the use of ITV in
647 civil cases but did not adopt any specific rules. The addition of Rule 131 in 2008 is
648 intended to provide a uniform procedure permitting the use of interactive video
649 teleconferencing (ITV) to conduct hearings and admit oral testimony in civil cases.
650 It is based on protocols developed and implemented for a pilot project in the Ninth
651 Judicial District and later tweaked by a subcommittee of the Court's former
652 Technology Planning Committee. The success of the pilot project is reported in
653 NATIONAL CENTER FOR STATE COURTS, COURT SERVICES DIVISION, ASSESSMENT OF
654 THE INTERACTIVE TELEVISION PROGRAM IN THE NINTH JUDICIAL DISTRICT OF
655 MINNESOTA (Sept. 1999).

656 Rule 131.02 identifies the situations in which the district court may authorize
657 the use of ITV by order: upon the court's own initiative, upon stipulation by the
658 parties, or upon a showing of good cause. The court as part of its overall case
659 management practice initiated the bulk of the orders in the Ninth Judicial District
660 pilot project. It is anticipated that use of ITV will vary by district, depending on
661 factors such as geographical size and the nature of the cases.

662 Rule 131.02(b) recognizes that when a court orders the use of ITV on its own
663 initiative, the court must notify the parties of the use of ITV. Notices are to be in
664 accordance with rules of civil procedure and the general rules of practice. Once an
665 order is filed, MINN. R. CIV. P. 77.04 requires the court administrator to serve notice
666 of the order immediately by mail, and MINN. GEN. R. PRAC. 1.03 requires that
667 service be made on a party's attorney if represented, otherwise on the party directly.
668 The notice of ITV use may also be incorporated into a scheduling order issued under
669 MINN. GEN. R. PRAC. 111.03. Regardless of the precise mechanism, the notice of
670 ITV use must include the information required in Rule 131.02(b). A sample notice is
671 set forth for publication by the state court administrator.

672 Parties may, subject to court approval, stipulate to the use of ITV under rule
673 131.02(c). Upon reaching a stipulation, the parties must contact the court
674 administrator as soon as possible to obtain a date and time for the ITV hearing.
675 Failure to provide adequate lead time may result in rejection of the stipulation. The
676 parties are responsible for making arrangements to use any site that is outside the
677 control of the court in the venue county. Parties should be aware that use of court
678 and other governmental terminal sites might be subject to collaboration agreements
679 entered into between courts and other government agencies. This may limit the
680 availability of, or control the costs of using or accessing certain terminal sites,
681 particularly those outside the county or district where the action is venued or outside
682 the state's dedicated MNET network. Under Rule 131.03 parties requesting use of
683 ITV for any hearing or proceeding are responsible for any additional use or other
684 fees over and above those normally incurred by the venue county in connecting from
685 one collaboration site to another. Parties are also responsible for ensuring
686 compatibility of equipment for sites outside the control of the venue county.

687 Finally, a written, signed stipulation in the format substantially similar to the
688 form appended to the rule must be filed with the court no later than twenty-four (24)
689 hours prior to the hearing. By signing the stipulation the parties certify that they will

690 follow the protocol, including, without limitation, the requirement in Rule 131.06(i)
691 that no recording shall be made of the ITV proceeding except a recording made as
692 the official record of the proceeding. Access to recordings of proceedings is
693 governed by Rule 4, subd. 3, of the RULES OF PUBLIC ACCESS TO RECORDS OF THE
694 JUDICIAL BRANCH.

695 Rule 131.02(d) sets forth requirements for requesting ITV use when there is
696 no stipulation by the parties. A formal motion is required, and it must be served and
697 filed at least seven days prior to the scheduled hearing or proceeding for which ITV
698 use is requested. The rule authorizes ex parte contact with the court for purposes of
699 obtaining an expedited hearing date on the motion for use of ITV. *See* MINN. GEN.
700 R. PRAC. 115.04 (non-dispositive motions normally must be served and filed at 14
701 days in advance of the hearing). The moving party is responsible under Rule 131.03
702 for making arrangements to use any site that is outside the control of the court in the
703 venue county, for providing the necessary contact information to the court
704 administrator, for ensuring the compatibility of the equipment, and paying any
705 additional costs incurred by the court in facilitating the ITV session. The motion
706 must also include or be accompanied by a notice informing opposing parties of their
707 right to object, consequences of failure to object, requirements for exchange of
708 information, and prohibitions on recording an ITV session (a sample notice provided
709 for publication by the state court administrator).

710 Objections to a motion for use of ITV must be made prior to the hearing on
711 the motion. The failure of an opposing party to object may be considered along with
712 other factors set forth in Rule 131.02(d)(4) that may determine good cause for use of
713 ITV. The moving party has the burden of establishing good cause.

714 Rule 131.02(d)(5) permits the court to shorten the time periods provided for in
715 Rule 131.02 in emergent circumstances upon a proper showing. As of the time of the
716 drafting of this commentary, a different time period is established for requesting
717 ITV use in commitment cases under Rule 14 of the SPECIAL RULES OF PROCEDURE
718 UNDER THE MINNESOTA COMMITMENT ACT AND TREATMENT ACT (requires notice to
719 the other party at least 24 hours in advance of the hearing, and court approval). The
720 drafting committee is of the opinion that following the protocol with the ability to
721 shorten the time frames when necessary will be sufficient to address the needs of
722 commitment and other matters covered by this rule.

723 Rule 131.03 places responsibility for costs and site arrangements with those
724 seeking to use ITV. The court assumes this responsibility when ordering ITV on its
725 own initiative, as is done for the bulk of the ITV proceedings in the Ninth Judicial
726 District pilot project. When a party or parties initiate the request, however, Rules
727 131.02(c) and 131.02(d) shift some of the responsibility to the requesting party or
728 parties. Parties also certify that they will comply with the protocol, including the
729 prohibition in Rule 131.06(i) against recording ITV sessions.

730 Rule 131.04 attempts to highlight an important logistical requirement when
731 ITV is used. Documents and other information need to be exchanged and submitted
732 to the court, where appropriate, prior to the ITV session. This is particularly
733 important when the parties are located at different sites.

734 Rule 131.07(b) recognizes that ITV use imposes new logistical duties on court
735 administration staff. This section is intended to assist courts as they implement ITV
736 use and to train new staff.

737 Rules 131.05–07 set forth the ground rules for conducting ITV sessions. The
738 prohibition on recording ITV sessions set forth in Rule 131.06(i) and echoed
739 throughout the rule is identical to that applicable to telephone hearings under MINN.
740 GEN. R. PRAC. 115.09. This requirement is consistent with the directives of the
741 supreme court regarding use of cameras in the courtroom. *See In re Modification of*
742 *Section 3A(10) of the Minnesota Code of Judicial Conduct*, No. C4-87-697 (Minn.
743 S. Ct., filed April Jan. 11, 1996) (order reinstating experimental program for audio
744 and video coverage of trial court proceedings); *Order for Interactive Audio-Video*
745 *Communications Experiment in First Judicial District-Mental Illness Commitment*
746 *Proceedings*, No. C6-90-649 (Minn. S. Ct., filed April 5, 1995); *Order re Interactive*
747 *Audio-Video communications Pilot Program in Third Judicial District Mental*
748 *Illness Commitment Proceedings*, No. C6-90-649 (Minn. S. Ct., filed Jan. 29, 1999);
749 *Order for Interactive Audio and Video Communications*, Fourth Judicial District,
750 Mental Health Division, *Price and Jarvis Proceedings*, No. C6-90-649 (Minn. S.
751 Ct., filed April 8, 1991).

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Rule 131.05(c) requires that counsel and their party must be present at the same terminal site unless otherwise permitted by the court. In commitment cases, court rules do not permit counsel for the patient and the patient to be present at different sites. See rule 14 of the Special Rules of Procedure Under the Minnesota Commitment Act and Treatment Act. Witnesses and other participants may be located at any terminal site that allows satisfactory video and audio reception.

Rule 131.07(c) describes equipment and room standards in functional terms. A more detailed discussion of technical issues and terminology can be found in STATEWIDE VIDEOCONFERENCING COMMITTEE, BRIDGING THE DISTANCE: IMPLEMENTING VIDEOCONFERENCING IN WISCONSIN (June 1999) (available for download from the Wisconsin Supreme Court website, located at <http://www.courts.state.wi.us/circuit/Videoconferencing.htm>).

2. A new Rule 708 should be adopted as follows:

RULE 708. ITV IN CRIMINAL CASES.

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Use of ITV in criminal cases is governed by the rules of criminal procedure and rule 131.07 of these rules.

Advisory Committee Comments—2008 Amendment

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On November 19, 2007, the Supreme Court issued an order promulgating MINN. R. CRIM. P. 1.04 governing the use of interactive video teleconference (ITV) in criminal proceedings. The order referred the task of developing rules governing the administrative procedures for conducting ITV hearings in criminal matters to the Advisory Committee on General Rules of Practice for the District Courts. In the interim, the Court ordered the State Court Administrator to develop temporary administrative procedures. The administrative procedures are set forth in Rule 131.07 of the General Rules of Practice for the District Courts.

3. Although not part of the rule amendment, adoption of these rules will result in the inclusion of the following Forms 131.01 &.02 among those published by the State Court Administrator.

778 **FORM 131.01. STIPULATION AND APPROVAL FORM FOR USE OF ITV**

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780 State of Minnesota

District Court

781

782 COUNTY

783 JUDICIAL DISTRICT CASE NO.

784

785

Case Type: _____

786

Jane Doe,

Plaintiff

787

788 vs.

**STIPULATION FOR USE OF
INTERACTIVE TELEVISION**

789

790 John Smith,

Defendant.

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The parties, through their counsel, stipulate and request that _____ (describe motion) scheduled for hearing on _____, at ____ o'clock ____ m. be heard by interactive television. The parties also certify that the use of ITV will be in accordance with the provisions of Rule 131 of the General rules of Practice for the District Court, including, without limitation, the requirement that no recording shall be made of any ITV proceeding except the recording made as the official court record.

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799 Dated: _____

Counsel for Plaintiff

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803 Dated: _____

Counsel for Defendant

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APPROVAL

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The court, upon review of the file and stipulation of the parties, approves the use of interactive television for the above hearing pursuant to the Protocol for Use of ITV in Civil Cases in District Court.

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812 Dated: _____

Judge of District Court

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815 [Note: The above Stipulation will be attached to the substantive motion to be heard.]

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FORM 131.02: SAMPLE NOTICES

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NOTICE BY COURT OF ITV USE ON COURT'S INITIATIVE

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820 THE HEARING OR PROCEEDING DESCRIBED ABOVE WILL BE CONDUCTED
821 BY INTERACTIVE VIDEO TELECONFERENCE (ITV) PURSUANT TO THE
822 GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS.

823

824 WHEN ITV IS USED TO CONDUCT A HEARING OR PROCEEDING, ANY
825 DOCUMENTS OR OTHER WRITTEN MATERIAL WHICH YOU KNOW TO BE
826 RELEVANT OR NECESSARY TO THE PROCEEDING MUST BE EXCHANGED
827 WITH ALL PARTIES AND SUBMITTED TO THE COURT, AS APPROPRIATE,
828 PRIOR TO COMMENCEMENT OF THE HEARING.

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830 NO RECORDING SHALL BE MADE OF ANY ITV PROCEEDING EXCEPT THE
831 RECORDING MADE AS THE OFFICIAL COURT RECORD.

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NOTICE BY PARTY OF ITV USE REQUESTED BY MOTION

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834
835 THE MOTION FOR USE OF ITV REQUESTS THAT THE HEARING OR
836 PROCEEDING DESCRIBED IN THE MOTION BE CONDUCTED BY ITV.
837 PURSUANT TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT
838 COURTS, YOU HAVE THE RIGHT TO OBJECT TO THE USE OF ITV, BUT
839 YOU MUST DO SO IN WRITING FORTY EIGHT (48) HOURS PRIOR TO THE
840 HEARING ON THE MOTION FOR USE OF ITV. THE COURT IN RULING ON
841 THE MOTION WILL CONSIDER FAILURE TO TIMELY OBJECT.

842

843 WHEN ITV IS USED TO CONDUCT A HEARING OR PROCEEDING, ANY
844 DOCUMENTS OR OTHER WRITTEN MATERIAL WHICH YOU KNOW TO BE
845 RELEVANT OR NECESSARY TO THE PROCEEDING MUST BE EXCHANGED
846 WITH ALL PARTIES AND SUBMITTED TO THE COURT, AS APPROPRIATE,
847 PRIOR TO COMMENCEMENT OF THE HEARING.

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849 NO RECORDING SHALL BE MADE OF ANY ITV PROCEEDING EXCEPT THE
850 RECORDING MADE AS THE OFFICIAL COURT RECORD.

4. Rule 114 of the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act should be amended as follows:

851 **Rule 114 Location of Hearing, Rules of Decorum, Alternative Methods of**
852 **Presenting Evidence**

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854 The judge or judicial officer shall assure the decorum and orderliness of any
855 hearing held pursuant to Minn. Stat. ch. 253B. The judge or judicial officer shall
856 afford to respondent an opportunity to be dressed in conformity with the dignity of
857 court appearances.

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

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870 **Advisory Committee Comment—2008 Amendment**

871 Rule 114 is amended to lengthen the amount of notice required to be given by
872 a litigant desiring to have a matter heard by electronic means, typically either
873 telephone or interactive television. The seven days required by the rule can my
874 adjusted by the court if necessary.
875