STATE OF MINNESOTA

IN SUPREME COURT

ADM04-8001

ORDER REGARDING PROPOSED AMENDMENTS TO THE MINNESOTA RULES OF CIVIL PROCEDURE

The Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure has recommended amendments to the Minnesota Rules of Civil Procedure to accommodate the judicial branch's increasing use of electronic filing and electronic service. The Committee's report with the proposed amendments to the Rules of Civil Procedure is attached to this order. The Committee's report and summaries of its 2014 meetings can also be accessed on P-MACS, the public access site for the Minnesota appellate courts, under case number: ADM04-8001 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure* (filed Dec. 23, 2014). Other than proposed amendments that may relate to public access to judicial branch records, the court will consider the proposed amendments to the Minnesota Rules of Civil Procedure based on written comments only.

IT IS HEREBY ORDERED THAT:

1. Any person or organization wishing to provide written comments in support of or opposition to the proposed amendments shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than March 2, 2015.

2. The court will consider issues related to public access to judicial branch records that might be presented by the amendments recommended by the Advisory Committee on the Rules of Civil Procedure, if any, in the proceedings for the Rules on Public Access to Records of the Judicial Branch, ADM10-8050. A copy of the order filed in ADM10-8050 is attached to this order. Requests to make a presentation at the hearing scheduled on March 17, 2015, in ADM10-8050, as allowed by paragraph 3 of that order, must identify the specific amendment proposed to the Rules of Civil Procedure that raises an issue related to public access to judicial branch records.

Dated: January 2, 2015

BY THE COURT:

Christopher J. Dietzen
Associate Justice

ADM04-8001
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on Rules of Civil Procedure

Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure

Final Report
December 10, 2014

Hon. Eric Hylden, Duluth
Chair

Hon. Christopher J. Dietzen, Saint Paul
Liaison Justice

Hon. Jerome Abrams, Hastings
James Attwood, Preston
John Cotter, Bloomington
Rita Coyle DeMeules, Saint Paul
Hon. Jennifer Frisch, Saint Paul
Barton Gernander, Minneapolis
William Harper, Saint Paul
Alethea Huyser, Saint Paul
Anna Lamb, Minneapolis
Cynthia Lehr, Saint Paul
Joe Leoni, Virginia
Hon. Mary Mahler, St. Cloud
Nicholas Nierengarten, Minneapolis
Eric Nystrom, Minneapolis
Lawrence Rocheford, Lake Elmo
Daniel Rogan, Minneapolis
Hon. Edward Wahl, Minneapolis

Michael B. Johnson, Saint Paul
Patrick Busch, Saint Paul
Staff Attorneys

David F. Herr, Minneapolis
Reporter

ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Summary of Committee Recommendations

The committee met three times in 2014 primarily to consider what impact the expanded use of electronic filing and electronic service would have on the procedures established under the civil rules. The committee considered the proposed rule changes submitted by the eCourt Steering Committee and generally recommends that those proposals be adopted.

The committee's only substantial disagreement with the eCourt proposals relates to the rejection of documents for filing. The committee developed a strong consensus that rejection for filing should be limited to submissions that cannot be processed by the court's case management system (documents without a required filing fee, with an invalid file number, or filed in the wrong action or court) or that by rule may not be filed at all (most discovery requests and responses without leave of court). The committee recommends responses less drastic than rejection in most other situations.

The most important of these less drastic response would require court administrators temporarily to segregate filed documents and notify the filer if they discover that the documents contain confidential information in violation of the rule and then to permit the filer to comply with the rules with respect to the documents (such as submitting redacted documents or moving for an obtaining a sealing order) or for the court to take further action, including imposing any appropriate sanction. For a limited time, the documents would not be publicly accessible yet would be on file. The eCourt proposal recommended the rejection of filings that did not include the Civil Cover Sheet required by Rule 104 of the Minnesota General Rules of Practice for the District Courts. The advisory committee believes this deficiency should be addressed by an opportunity to cure

rather than rejection of the filing, especially since filing may have jurisdictional significance.

The committee also recommends that these issues should be addressed in training for court personnel and for lawyers and other participants in the court system. The primary responsibility for ensuring compliance with the rule would remain with the filer in every case.

Many of the changes set forth in this report are not particularly consequential, nor are they likely to engender any controversy. These amendments purge the civil rules of references to court filings as "papers," in favor of the more expansive "documents." Similarly, these rules make uniform the references to "self-represented litigant" instead of "pro se party" or other similar terms.

The more substantial changes are those that relate to the implementation of e-filing and e-service in the district courts. These amendments contemplate the adoption of wider use of these electronic tools, and the implementation of their required use in some districts, counties, or lines of the courts' business on July 1, 2015, and extension of those requirements statewide within the following year.

One issue that generated a moderate level of disagreement on the advisory committee was the implementation of a new statute directing the courts to accept documents without notarization if they are signed under penalty of perjury. The statute, Minn. Stat. § 358.116 (2014)(codifying 2014 Minn. Laws ch. 204, § 3), allows the courts to require specifically, by rule, that notarization is necessary in any particular case, but otherwise intends that notarization and signing under penalty of perjury be interchangeable. The majority of the committee concluded that every requirement for notarization in the civil rules be modified to adopt the notarization/signature under penalty of perjury option. A minority of three committee members have submitted a minority report, which is appended to the end of this committee report. The Court should be aware that its Advisory Committee on General Rules of Practice is recommending, without dissent, the adoption of a new General Rule 15 that would provide that affidavits in all actions,

not only cases governed by the Minnesota Rules of Civil Procedure, can be signed under oath before a notary or under penalty of perjury without notarization.

The committee considered the eventual retirement of filing and service by facsimile, but does not believe that change—however desirable it may ultimately be—should be made until electronic filing and service have become universally available. The committee did hear from several interested parties for whom facsimile service and filing are important tools still in daily use.

Recommendation 2 recommends the adaptation of the procedures of the Uniform Interstate Deposition and Discovery Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007, for use in Minnesota. The committee believes that these procedures will facilitate the depositions of Minnesota witnesses with minimal burden on the courts and with full protection of the witnesses by making it clear that they are entitled to the safeguards of the Minnesota rules. The committee also believes that it is worthwhile for Minnesota to adopt uniform procedures, and notes that at least 30 jurisdictions have adopted this uniform law recommendation. Many have done so by court rule. *See* Ariz. R. Civ. P. 45.1; Idaho R. Civ. P. 45(i)(7)-(8); N.J. Ct. R. 4.11-4; N.M. Dist. Ct. R. Civ. P. 1-045.1; N.D. R. Ct. 5.1.

Effective Date

The committee believes that any rule amendments related to electronic filing and service can be made effective as of July 1, 2015, or earlier. This would allow for either a public hearing or a notice and comment period and sufficient time for consideration and promulgation by the Court with sufficient advance notice to the bench and bar and time for adjustments to various court forms.

Style of Report

The specific recommendation as to the existing rule is depicted in traditional legislative format, completely underscored to indicate new language and ~~lined-through~~ to show deletions. Markings are omitted for the new advisory committee comments, regardless of their derivation. The exception is a new rule 45.06 included in Recommendation 2; the entire new rule is set forth without underscoring, to make it easier to read.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON RULES
OF CIVIL PROCEDURE

Recommendation 1: The Rules of Civil Procedure Should be Amended to Allow the Implementation of E-Filing and E-Service.

Introduction

The advisory committee was asked to review the procedures being implemented for electronic filing and electronic service in Minnesota and recommend appropriate modifications to the civil rules. The multiple recommendations contained in this section are designed to facilitate the implementation of the e-file/e-serve system as now contemplated and to serve as transitional rules during the period of implementation with either geographic or "line-of-service" limitations. Because of that planned model for implementation, the rules necessarily provide for use of the existing procedures and alternatively new procedures where authorized by separate order of this Court.

Specific Recommendations

The Minnesota Rules of Civil Procedure should be amended as set forth below:

MINNESOTA RULES OF CIVIL PROCEDURE

RULE 3. COMMENCEMENT OF THE ACTION; SERVICE OF THE COMPLAINT; FILING OF THE ACTION

Rule 3.01. Commencement of the Action

A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant; or

(b) at the date of acknowledgment of service if service is made by mail or other means consented to by the defendant either in writing or electronically; or

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

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement in non-family cases.

Advisory Committee Comment—2015 Amendments

This rule is amended to add the explicit provision for consent to service by any means in subdivision (b), not only service by mail. If the party being served consents to service, the service is effective and constitutionally sound regardless of method. Thus, a party may consent to service by ordinary electronic mail even though the rules do not otherwise provide for it.

RULE 4. SERVICE

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Rule 4.04. Service by Publications; Personal Service Out of State

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(b) Personal Service Outside State. Personal service of such summons outside the state, proved by the affidavit of the person making the same ~~sworn to before a person authorized to administer an oath~~ shall have the same effect as the published notice provided for herein.

Advisory Committee Comment—2015 Amendments

Rule 4.04 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014)(codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically, by rule, that notarization is necessary. The difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization, and notarization often places a significant burden on self-represented litigants. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits." Proposed Rule 15 of the Minnesota General Rules of Practice establishes uniform

requirements for the formalities of documents signed under penalty of perjury.

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER ~~PAPERS~~ DOCUMENTS

Rule 5.02. Service; How Made

(a) Methods of Service. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. If Rule 14 of the Minnesota General Rules of Practice or an order of the Minnesota Supreme Court authorizes or requires that service be made by electronic means, service shall be made by compliance with subdivision (b) of this rule. Otherwise, s~~S~~ervice upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; ~~transmitting a copy by facsimile machine to the attorney or party's office; or~~ by mailing a copy to the attorney or party at the attorney's or party's last known address; or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: ~~Handing~~ handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. ~~If service is either authorized or required to be made by electronic means by these rules, delivery shall be accomplished by compliance with subdivision (b) of this rule.~~

(b) E-Service. Service of all documents after the original complaint may, and where required by these rules shall, be made by electronic means as ~~other than facsimile transmission if~~ authorized by Rule 14 of the Minnesota General Rules of Practice ~~and if service is made in accordance with that rule~~.

(c) Effective Date of Service. Service by mail is complete upon mailing. Service by facsimile is complete upon completion of the facsimile transmission. Service by authorized electronic means using the court's E-Filing System as defined by Rule 14 of the Minnesota General Rules of Practice is complete~~:~~

~~(1)~~ upon completion of the electronic transmission of the document(s) to the E-Filing System. ~~if the E-Filing System service command is used; and~~

~~(2) upon acceptance of the electronic filing by the court, as provided in Rule 14, if the E-Filing System joint service and filing command is used.~~

(d) Technical Errors; Relief. Upon satisfactory proof that electronic filing or electronic service of a document was not completed, any party may obtain relief in accordance with Rule 14.01~~(f)~~(c) of the General Rules of Practice. ~~That relief may be available because of:~~

~~(1) an error in the transmission of the document to the authorized electronic filing and service system that was unknown to the sending party;~~

~~(2) a failure of the system to process the document when received; or~~

~~(3) other technical problems experienced by any party or system.~~

~~The court may enter an order permitting the document to be deemed filed or served as of the date it was first attempted to be transmitted electronically. If appropriate, the court may adjust the schedule for responding to these documents or the court's hearing, or provide other relief.~~

Advisory Committee Comment—2015 Amendments

Rule 5.02 is amended in several ways to implement the use of e-filing and e-service in civil actions. Rule 5.02(a) adopts the more detailed provisions of Rule 14 of the Minnesota General Rules of Practice, which establishes procedures for e-filing and e-service in all trial courts. See Minn. Gen. R. Prac. 1.01. The deletion of reference to filing by facsimile is deleted from Rule 5.02(a) is not intended to affect the availability of facsimile service or filing. Under proposed amendments to the Minnesota General Rules of Practice, facsimile transmission is defined as a means of electronic transmission allowed under Minn. Gen. R. Prac 14.02(a)(7) as proposed for amendment in 2014.

The use of the alternative "may or shall" language in Rule 5.02(a) reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service will be required for some actions (based on district, county, or type of action), permitted for others, or not permitted at all. The applicability of e-filing and e-service to particular actions should be established in separate implementation orders.

Rule 5.04. Filing; Certificate of Service

(a) Deadline for Filing Action. Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with

prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by Rules 301 to 378 of the General Rules of Practice for the District Courts.

(b) Filing of Documents after the Complaint; Certificate of Service. All documents after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless ~~upon order of the court or for use in the proceeding~~ authorized by court order or rule.

(c) Rejection of Filing. The administrator shall not refuse to accept for filing any document~~s~~ presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices. A document may be rejected for filing if:

(1) tendered without a required filing fee or a correct assigned file number~~,~~;

(2) ~~or are~~ tendered to an administrator other than for the court where the action is pending; or

(3) the document constitutes a discovery request or response submitted without the express permission of the court.

(d) Restricted Identifiers; Sanctions. Upon discovery that a document containing restricted identifiers has been submitted without the appropriate designation or redaction as required by Rule 11 of the General Rules of Practice for the District Courts, the court administrator must file it and make it temporarily inaccessible to the public and shall direct the filer to, within 21 days, either:

(1) serve and file a properly redacted filing and pay any prescribed fee to the court, and, if the party desires that the filing date of the resubmitted document(s) relate back to the filing date of the original document(s), serve and file a motion requesting that relief from the court; or

(2) file a motion requesting other relief from the court.

Any other party may oppose the motion seeking relation-back of the filing date within the same time limits as are provided by court rules or law for responding to the type of document(s) being filed. If a filer timely pays any

prescribed fee, and timely requests relation-back of the filing date, the court may order that the filing date of the properly submitted document(s) relate back to the filing date of the original document(s).

If no action is taken in the 21 days after notice, the filing shall be stricken.

This rule shall not limit the ability of the court to impose other or additional sanctions.

[Note: ***This rule is proposed as an appropriate way to carry forward the provisions for rejection of filing documents containing Restricted Identifiers in civil actions that are the subject of these rules. The committee fully endorses, however, the placement of this provision in the General Rules of Practice, where it would apply to all types of actions.*** **]**

Advisory Committee Comment—2015 Amendments

Rule 5.04 clarifies the limited circumstances where documents tendered to the court administrator for filing can be rejected. These provisions largely reflect current practices in the courts. Concern about public access to sensitive information is greater in the context of electronic filing because of the risk that the information could be found and spread over the Internet shortly after filing. It is not feasible to accept for filing documents that relate to an action pending in another district or to file them in an action under an invalid file number. The acceptance of these documents would only create confusion for the parties, both in the intended district and action and in the district and action where they are mistakenly sent. Similarly, payment of the required filing fee is required by statute, see Minn. Stat. § 357.021, and there is no provision for filing without payment of that required fee. The filing of discovery requests and responses, other than notices of taking depositions, is already prohibited by the second paragraph of this rule; the amended language makes it clear that the court administrators are authorized to reject these unauthorized filings. The rule does not prevent a party from filing an affidavit that incorporates or attaches copies of discovery requests or responses that are authenticated by the affiant.

This rule also includes express authorization for court administrators to file documents containing restricted identifiers in a non-public, segregated part of the file (either paper or electronic) and to issue direction to the filer to correct the non-conformity by filing a motion for filing under seal, filing the documents in a manner that complies with Minn. Gen. R. Prac. 11, or taking other appropriate action. Non-compliance with that direction will result in an appropriate sanction (or additional sanction, given that the original filing may already warrant a sanction to be determined by the judge, even if the administrator's action limits the harm caused). The rule requires the

administrator to act upon discovery of the inappropriate inclusion of a restricted identifier, but does not impose any duty on the administrator to inspect every document. Responsibility for compliance with Minn. Gen. R. Prac. 11 falls exclusively on the filer. Minn. Gen. R. Prac. 11.04.

The recommended rule intentionally omits any recommendation that the absence of a Civil Cover Sheet would result in the rejection of a document for filing. The court can impose an appropriate sanction for this failure after appropriate notice to the parties and, if the court determines it is appropriate, an opportunity to cure the defect.

Rule 5.06. Filing Electronically

Where authorized or required by order of the Minnesota Supreme Court or Rule 14 of the Minnesota General Rules of Practice, documents may, or where required shall, be filed electronically by following the procedures of such order or rule, and will be deemed filed in accordance with the provisions of this rule.

A document that is electronically filed is deemed to have been filed by the court administrator on the date and time of its transmittal to the court through the E-Filing System as defined by Rule 14 of the Minnesota General Rules of Practice, and the filing shall be stamped with this date and time if it is subsequently accepted ~~subject to acceptance~~ by the court administrator. If the filing is not subsequently accepted by the court administrator for reasons authorized in Rule 5.04, no ~~the~~ date stamp shall be applied ~~removed~~ and the E-Filing System shall notify the filer that the filing was not accepted ~~document electronically returned to the person who filed it~~.

Advisory Committee Comment—2015 Amendments

This rule incorporates the provisions of Minn. Gen. R. Prac. 14 on the operation of electronic filing and the determination of the date and time of filing where it is accomplished by use of the court's E-Filing System.

The use of the alternative "may or shall" language in the first paragraph reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service may be required for some actions (based on district, county, or type of action), permitted for others, or not permitted at all. The rules are designed to implement e-filing and e-service in particular actions as established by separate implementation orders.

RULE 5A. NOTICE OF CONSTITUTIONAL CHALLENGE TO A STATUTE

A party that files a pleading, written motion, or other document ~~paper~~ drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the ~~paper~~ document that raises it, if:

(A) a federal statute is questioned and neither the United States nor any of its agencies, officers, or employees is a party in an official capacity; or

(B) a state statute is questioned and neither the state nor any of its agencies, officers, or employees is a party in an official capacity; and

(2) serve the notice and ~~paper~~ document on the Attorney General of the United States if a federal statute is challenged, or on the Minnesota Attorney General if a state statute is challenged, by U.S. mail to afford the Attorney General an opportunity to intervene.

RULE 6. TIME

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Rule 6.05 Additional Time After Service by Mail or Service Late in Day

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party, and the notice or document is served upon the party by U.S. mail, three days shall be added to the prescribed period. If service is made by any means other than U.S. mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

Advisory Committee Comment—2015 Amendments

Rule 6.05 is amended to remove a potential ambiguity in the existing rule—the 5:00 p.m. deadline for service to be accomplished without allowing an additional day for response is defined to be Minnesota time. This provision will be especially important for service using the court's E-Filing System, by which service could be effected from anywhere in the world.

RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS

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Rule 7.02 Motions and Other ~~Papers~~ Documents

(a) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise. Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.

(b) The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other ~~papers~~ documents provided for by these rules.

(c) All motions will be signed in accordance with Rule 11.

RULE 10. FORM OF PLEADINGS

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Rule 10.04. Failure to Comply

If a pleading, motion or other ~~paper~~ document fails to indicate the case type as required by Rule 10.01, it may be stricken by the court unless the appropriate case type indicator is communicated to the court administrator promptly after the omission is called to the attention of the pleader or movant.

RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER ~~PAPERS~~ DOCUMENTS; REPRESENTATIONS TO COURT; SANCTIONS

Rule 11.01. Signature

Every pleading, written motion, discovery request or response, or other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is ~~not represented by an attorney~~ self-represented, shall be signed by the party. Each document shall state the signer's address and telephone number and e-mail address, if any, and attorney registration number if signed by an attorney. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by an affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. If authorized by order of the Minnesota Supreme Court or by rule of court, a document filed, signed, or verified by electronic means in accordance with that order or rule constitutes a signed document for the purpose of applying these rules.

The filing or submitting of a document using an E-Filing System established by rule of court constitutes certification of compliance with the signature requirements of applicable court rules.

Rule 11.02. Representations to Court

By presenting to the court (whether by signing, submitting, or later advocating) a pleading, written motion, or other document ~~paper~~, an attorney or ~~unrepresented party~~ self-represented litigant is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances~~,~~:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; ~~and~~

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief~~.~~; and

(e) the pleading, motion or other document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Rule 11 of the General Rules of Practice for the District Courts.

Rule 11.03. Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 of these rules has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation. This rule does not limit the imposition of sanctions authorized by other rules, statutes, or the inherent power of the court.

(a) How Initiated. (1) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate Rule 11.02. It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged ~~paper~~ document, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

* * *

Advisory Committee Comment—2015 Amendments

The only substantive amendment to Rule 11 is found in Rule 11.02, which adds an additional certification made upon the signing of a pleading. Under this provision, signing a pleading is deemed to be a certification that the pleading does not contain any restricted identifiers in violation of Rule 11 of the General Rules of Practice.

The remaining amendments to Rule 11 are not substantive in nature or intended effect. The replacement of "paper" with "document" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them.

"Self-represented litigant" is being used uniformly throughout the judicial branch, and is preferable to "non-represented party" and "pro se party," both to avoid a Latin phrase not used outside legal jargon and because it facilitates the drafting of clearer rules.

RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

Rule 16.01. Pretrial Conferences; Objectives

In any action, the court may in its discretion direct the attorneys for the parties and any ~~unrepresented parties~~ self-represented litigants to appear before it for a conference or conferences before trial for such purposes as:

(a) expediting the disposition of the action;

(b) establishing early and continuing control so that the case will not be protracted because of lack of management;

(c) discouraging wasteful pretrial activities;

(d) improving the quality of the trial through more thorough preparation; and

(e) facilitating the settlement of the case.

* * *

Rule 16.04. Final Pretrial Conference

Any final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any ~~unrepresented parties~~ self-represented litigants.

RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

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Rule 26.06. Discovery Conference

* * *

(b) Conference Content; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly setting or resolving the case; make or arrange for the disclosures required by Rule 26.01(a), (b); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all ~~unrepresented parties~~ self-represented litigants that have appeared in the case are jointly responsible for arranging the conference, and for attempting in good faith to agree on the proposed discovery plan. A written report outlining the discovery plan must be filed with the court within 14 days after the conference or at the time the action is filed, whichever is later. The court may order the parties or attorneys to attend the conference in person.

Rule 26.07 Signing of Discovery Requests, Responses and Objections

In addition to the requirements of Rule 33.01(d), every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and e-mail address shall be stated. A ~~party who is not represented by an attorney~~ self-represented litigant shall sign the request, response, or objection and state the party's address and e-mail address. The signature constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of the signer's knowledge, information and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the

reasonable expenses incurred because of the violation, including reasonable attorney fees.

RULE 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS

Rule 32.05 Use of ~~Videotape~~ Video Depositions

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RULE 33. INTERROGATORIES TO PARTIES

Rule 33.01 Availability

(d) Answers to interrogatories shall be stated fully in writing and shall be signed under oath or penalty of perjury by the party served or, if the party served is the state, a corporation, a partnership, or an association, by an officer or managing agent, who shall furnish such information as is available. A party shall restate the interrogatory being answered immediately preceding the answer to that interrogatory.

All answers signed under penalty of perjury must have the signature affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 50 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26.02(a).

Advisory Committee Comment—2015 Amendments

Rule 33.01 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014)(codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically, by rule, that notarization is necessary, but the difficulty in accomplishing and

documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, interrogatory answers may be signed by the party under penalty of perjury, so long as the appropriate legend is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Proposed Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.

RULE 53. MASTERS

* * *

Rule 53.02 Order Appointing Master

(a) Notice. The court must give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(b) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(1) the master's duties; including any investigation or enforcement duties, and any limits on the master's authority under Rule 53.03;

(2) the circumstances—if any—in which the master may communicate ex parte with the court or a party;

(3) the nature of the materials to be preserved and filed as a record of the master's activities;

(4) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; ~~and~~

(5) the basis, terms, and procedure for fixing the master's compensation under Rule 53.08; and

(6) the extent to which, if at all, the parties and the master must use the court's E-Filing System in the proceedings before the master.

(c) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground

for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

(d) Amendment. The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard.

Advisory Committee Comment—2015 Amendments

Rule 53.02(b) is amended to add a new subdivision (6) that expressly requires the court's appointment order to address the extent to which the parties and an appointed master must use the court's E-Filing System. This provision recognizes that a particular master may not otherwise be a registered user of the court's E-Filing System, and it may be appropriate either to direct that the parties and the master use the system for all service and filing or in the rare case, to excuse the master or parties from doing so.

RULE 54. JUDGMENTS; COSTS

* * *

Rule 54.04 Costs

* * *

(b) Application for costs and disbursements. A party seeking to recover costs and disbursements must serve and file a detailed ~~sworn~~ application for taxation of costs and disbursements with the court administrator, substantially in the form as published by the ~~S~~state ~~C~~court ~~A~~administrator. The application must be signed under oath or penalty of perjury pursuant to Minn. Stat. § 358.116, and must be served and filed not later than 45 days after entry of a final judgment as to the party seeking costs and disbursements. A party may, but is not required to, serve and file a memorandum of law with an application for taxation of costs and disbursements.

(c) Objections. Not later than seven days after service of the application by any party, any other party may file a separate ~~sworn~~ application as in section (b), above, or may file written objections to the award of any costs or disbursements sought by any other party, specifying the grounds for each objection.

Advisory Committee Comment—2015 Amendments

Rule 54.04 is amended to implement a new statute directing the courts to consider accepting documents without notarization if they are signed under the following language: "I declare under penalty of

perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014)(codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically, by rule, that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, cost applications may be signed under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."

RULE 56. SUMMARY JUDGMENT

* * *

56.05 Form of Affidavits; Further Testimony; Defense Required

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all ~~papers~~ documents and parts thereof referred to in an affidavit shall be attached thereto or served therewith. A "sworn copy" includes documents that are authenticated by a signature under penalty of perjury, pursuant to Minn. Stat. § 358.116. The court may permit affidavits to be supplemented or opposed by depositions or further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Advisory Committee Comment—2015 Amendments

Rule 56.05 is amended in two ways. The first is not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them.

The second change is substantive in nature, and expressly implements a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I

declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014)(codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically, by rule, that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring notarization. Accordingly, summary judgment affidavits may be signed by the affiant under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."

RULE 65. INJUNCTIONS

* * *

Rule 65.03. Security

(a) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the court administrator as the surety's agent upon whom any ~~papers~~ documents affecting liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the court administrator, who shall forthwith ~~mail~~ transmit copies to the sureties if their addresses are known.

Advisory Committee Comment—2015 Amendments

The amendments to Rule 65.03 is not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them. The word "transmit" is used in preference to "mail," recognizing that many documents will be delivered by electronic or other means other than the United States Mail.

RULE 77. DISTRICT COURTS AND COURT ADMINISTRATORS

Rule 77.01. District Courts Always Open

The district courts shall be deemed always open for the purpose of filing any pleading or other proper ~~paper~~ documents, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

APPENDIX OF FORMS

(See Rule 84)

INTRODUCTORY STATEMENT

1. The following forms are for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except where otherwise indicated, each pleading, motion, ~~and~~ or other ~~paper~~ document should have a caption similar to that of the summons, with the designation of the particular ~~paper~~ document substituted for the word "SUMMONS." In the caption of the summons and in the caption of the complaint all parties must be named, but in other pleadings and ~~papers~~ documents it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4.01, 7.02(2), 10.01.

3. Each pleading, motion, and other ~~paper~~ document is to be signed in his or her individual name by at least one attorney of record (Rule 11). The attorney's name is to be followed by his or her address as indicated in Form 2. On forms following Form 2 the signature and address are not indicated.

4. If a party is self-represented ~~not represented by an attorney~~, the signature and address of the party are required in place of those of the attorney.

Recommendation 2: **The adoption of Uniform Interstate and Deposition Rule in form similar to that proposed by Uniform Law Commissioners.**

Introduction

This recommendation favors the adoption of a new rule on issuance of subpoenas for use in actions pending in other jurisdictions. The proposed rule is derived in substantial part from the Uniform Interstate Deposition and Discovery Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2007. The uniform law has been adopted, at least in part (and by statute or rule) in a majority of the states as of the date of this report. (A map showing the states adopting the uniform law is set forth following the advisory committee's comment on the rule.) The committee believes the court should adopt this provision as a court rule as has been done in several other states.

The committee believes it is worthwhile to establish a uniform process for issuance of subpoenas to compel discovery in Minnesota. The proposed rule makes it clear that subpoenas issued pursuant to the rule must comply with Minnesota's procedures for the benefit of Minnesota deponents. The rule also clarifies that a party or attorney requesting a subpoena under the rule is subjected to the authority of the Minnesota courts and to Minnesota disciplinary standards, even though they are not actually appearing in an action here.

Specific Recommendations

The committee recommends the adoption of new Rule 45.06 as set forth below. Because the rule is entirely new, underlining is omitted as unnecessary.

RULE 45. SUBPOENA

* * *

Rule 45.06. Interstate Depositions and Discovery

(a) Definitions. In Rule 45.06:

(1) "Foreign jurisdiction" means a state other than this state.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

(b) Issuance of Subpoena.

(1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the district court administrator of the court in the county or district in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules, but does subject the filer to the jurisdiction of the court and to

Minnesota law and rules, including the Minnesota Rules of Professional Conduct.

(2) A district court administrator in this state, upon submission of a foreign subpoena, shall, in accordance with that court's procedure, promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under subsection (ii) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(c) Service of Subpoena. A subpoena issued by a district court administrator under Section (b) must be served in compliance with Rule 45.02 of these rules.

(d) Deposition, Production, and Inspection. All Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Section (b).

(e) Application to Court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a district court administrator under Section (b) must comply with the rules and statutes of this state and be submitted to the district court in the county in which discovery is to be conducted.

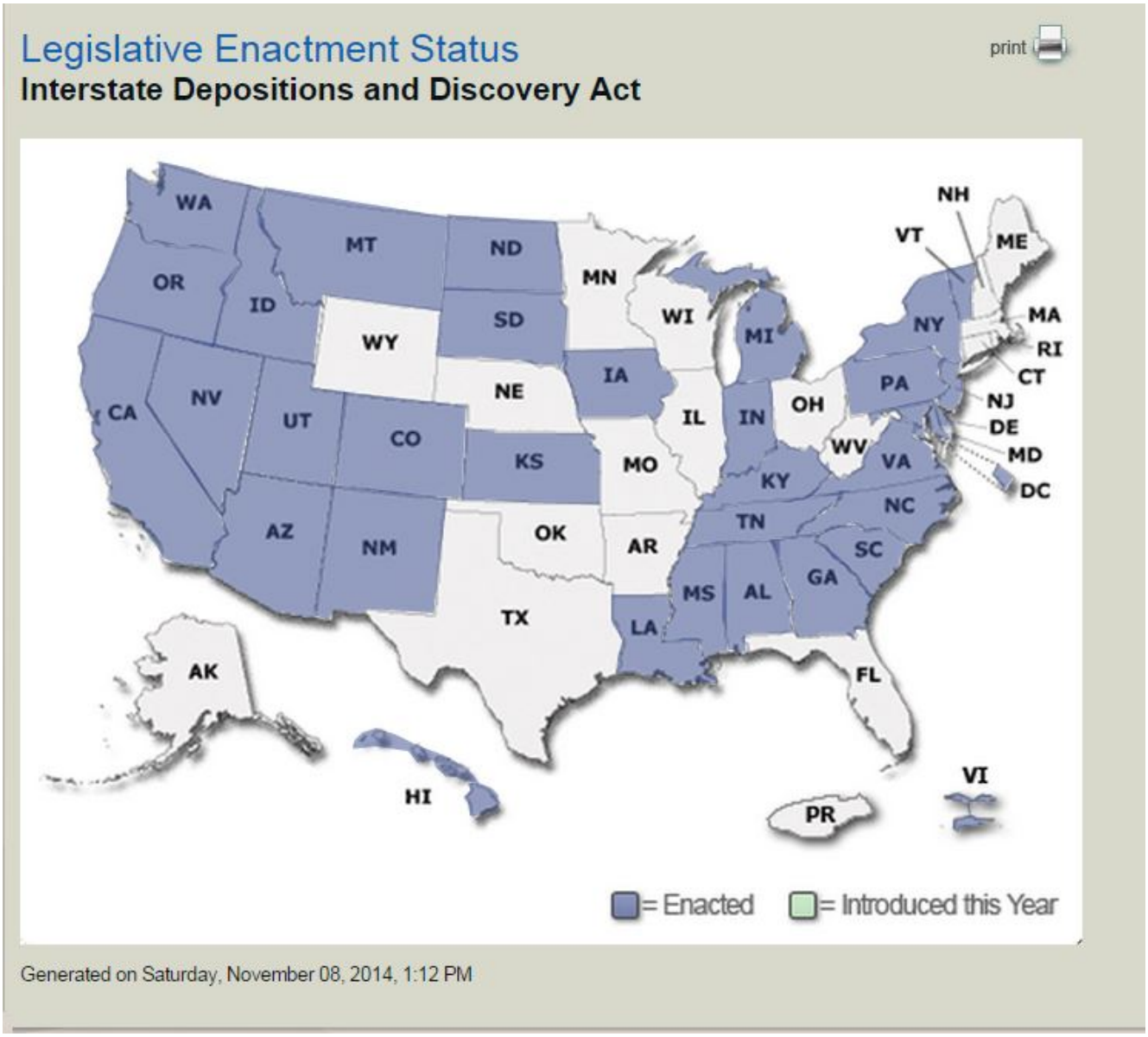
Advisory Committee Comment—2015 Amendments

Rule 45.06 is a new rule, recommended to adopt the Uniform Interstate Deposition and Discovery Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007.

This rule allows issuance of a subpoena in Minnesota based upon the proper issuance and service of a subpoena under the authority of another state. If a Minnesota subpoena is issued, the procedures of Rule 45 apply to the service and enforcement of that subpoena and other procedures relating to it. Notice must be provided to all other parties to the action, and the form of subpoena must conform to Minnesota law. Minnesota citizens and residents are entitled to the full protection of Minnesota's rules even where the subpoena is initiated for use in foreign proceedings.

Although adopted as a rule rather than a statute, recognizing the Minnesota Supreme Court's inherent and exclusive authority over matters of court procedure, the rule retains the operative provisions of the Uniform Act. Like uniform laws, this rule should be interpreted to accomplish uniformity among the states and should be construed to promote that purpose. *See* Minn. Stat. § 645.22. Construction of the uniform law by other states may accordingly be relevant to its interpretation in Minnesota. *See generally Layne-Minn. Co. v. Regents of the Univ. of Minn.*, 266 Minn. 284, 123 N.W.2d 371 (1963).

JURISDICTIONS ADOPTING UNIFORM LAW:



Obtained at:

http://www.uniformlaws.org/LegislativeMap.aspx?title=Interstate%20Depositions%20and%20Discovery%20Act on November 8, 2014.

ADM04-8001
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee
on Rules of Civil Procedure

Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure

Minority Report
December 16, 2014

JOHN COTTER, BLOOMINGTON

HON. JENNIFER FRISCH, SAINT PAUL

ALETHEA HUYSER, SAINT PAUL

Summary of Minority Report Recommendations

The Recommendations of Minnesota Supreme Court Advisory Committee on Rules of Civil Procedure includes language throughout incorporating changes made in the proposed Minnesota Rule of General Practice 15, based on the authority provided in Minn. Stat. § 358.116, which permits courts to accept affidavits without notarization if they include the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct."

Throughout the meetings, a number of Advisory Committee members expressed concern about the loss of external verification provided by the notarization process. This concern was expressed by several Advisory Committee members who are also members

of the Minnesota Judiciary and who often must rely on sworn statements and documents in making case dispositive decisions.

The Minnesota Attorney General's Office shares the concerns over loss of notarizations. The Office believes that, at least in certain contexts, the requirement that affidavits be notarized is an important tool for preventing and detecting fraud. A notary is required to verify an affiant's identity, to administer an oath or affirmation to the affiant that the contents of the affidavit are true, and to witness the affiant signing the affidavit. In taking a verification upon oath or affirmation and notarizing an affidavit, the notary must determine that the person appearing before the notary and making the verification is the person whose true signature is made in the presence of the notary on the affidavit. The notary also provides verification as to the accuracy of the date on which the attestations were made.

Recent cases brought by the Minnesota Attorney General's Office highlight the importance of affidavit notarization to safeguard against fraud and to detect fraud when committed. The discovery of breakdowns in the notary process has played an important part in uncovering tens of thousands of fraudulent affidavits used by litigants, and sometimes filed with courts as "proof" of alleged consumer debts or as "proof" of service of debt-collection lawsuits. These fraudulent affidavits were used—often in non-contested proceedings, such as default judgments—to obtain judgments against Minnesotans who may or may not owe the alleged debts and, in some cases, never received notice that they had been sued.

In 2011, the Attorney General's Office filed a lawsuit against Midland Funding, LLC, a debt buyer, alleging that Midland pursued individual defendants in court using "robo-signed" affidavits in which Midland's employees certified that a person owed a debt even though the employee had no personal knowledge of the alleged debt purportedly attested to in the affidavit, did nothing to verify the accuracy of the information in the affidavit, and signed hundreds of such affidavits in a single day. A settlement required Midland to change its business practices.

In 2013, the Attorney General's Office filed a lawsuit against United Credit Recovery, LLC, a debt buyer, alleging that it mass-produced thousands of affidavits at a time by using a computer program to cut and paste a scanned image of a bank official's signature from another document onto what was held out by United Credit Recovery to consumers, other debt buyers, and courts as a legitimate affidavit, making it appear as though the bank official attested to the veracity of the alleged debt, when in fact there was no review or involvement whatsoever by the bank official in the creation of the fraudulent, computer-generated affidavits. The court enjoined United Credit Recovery from creating, using, or disseminating its mass-generated computer affidavits in Minnesota.

In 2014, the Attorney General's Office filed a lawsuit against TJ Process Service, a Minnesota process-serving company, alleging that the company falsely certified that lawsuits had been served. The lawsuit further alleges that TJ Process Service had some of its process servers pre- sign blank pieces of paper and then fed the pre-signed papers through a printer to add details about the alleged service of process, making it appear as though service was verified in a sworn affidavit, when in fact the server actually signed a blank piece of paper without reviewing or verifying the contents of the affidavit. The State, through this pending lawsuit, seeks a court order to determine the scope of the service deficiencies and to remedy false certifications claiming that people were served.

While the existence of a notary process did not prevent the specific fraud described above, it disincentivizes such behavior. In addition, evidence of problems with notarization in the above cases played an instrumental role in proving that fraudulent court documents were used to obtain judgments in Minnesota courts against tens of thousands of Minnesota citizens. Proving the fraud was essential to obtaining relief and/or protections for affected individuals.

The problems associated with fraudulent court filings are most heightened in non-contested proceedings, such as high volume consumer debt collection cases, where no adversarial process exists to vet the accuracy and veracity of the representations made to the court. In such circumstances, Minnesota courts would benefit from retaining a

notarization process that would provide some external verification of the sworn representations upon which the courts rely.

The following recommendations propose that, at a minimum, notarization requirements be maintained in the rules governing procedures most likely to lead the court to rely on a non- contested affidavit.

Minority Report Recommendations:

Rule 4.06 Return.

Service of summons and other process shall be proved by the certificate of the sheriff or other peace officer making it, by the notarized affidavit of any other person making it, by the written admission or acknowledgement of the party served, or if served by publication, by the notarized affidavit of the printer or printer's designee. The proof of service in all cases other than by published notice shall state the time, place, and manner of service. Failure to make proof of service shall not affect the validity of the service.

Rule 55.01 Judgment

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend within the time allowed therefor by these rules or by statute, and that fact is made to appear by notarized affidavit, judgment by default shall be entered against that party as follows:

(a) When the plaintiff's claim against a defendant is upon a contract for the payment of money only, or for the payment of taxes and penalties and interest thereon owing to the state, the court administrator, upon request of the plaintiff and upon notarized affidavit of the amount due, which may not exceed the amount demanded in the complaint or in a written notice served on the defendant in accordance with Rule 4 if the complaint seeks an unspecified amount pursuant to Rule 8.01, shall enter judgment for the amount due and costs against the defendant.

(b) In all other cases, the party entitled to a judgment by default shall apply to the court therefor. If a party against whom judgment is sought has appeared in the action, that party shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If the action is one for the recovery of money only, the court shall ascertain, by a reference or otherwise, the amount to which the plaintiff is entitled, and order judgment therefor.

(c) If relief other than the recovery of money is demanded and the taking of an account, or the proof of any fact, is necessary to enable the court to give judgment, it may take or hear the same or order a reference for that purpose, and order judgment accordingly.

(d) When service of the summons has been made by published notice, or by delivery of a copy outside the state, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make concerning restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in

actions involving the title to real estate or to foreclose mortgages thereon such bond shall not be required.

(e) When judgment is entered in an action upon a promissory note, draft or bill of exchange under the provisions of this rule, such promissory note, draft or bill of exchange shall be filed with the court administrator and made a part of the files of the action.

65.01 Temporary Restraining Order; Notice; Hearing; Duration

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by notarized affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required. In the event that a temporary restraining order is based upon any affidavit, a copy of such affidavit must be served with the temporary restraining order. In case a temporary restraining order is granted without notice, the motion for a temporary injunction shall be set down for hearing at the earliest practicable time and shall take precedence over all matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction, and, if the party does not do so, the court shall dissolve the temporary restraining order. On written or oral notice to the party who obtained the ex parte temporary restraining order, the adverse party may appear and move its dissolution or modification, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8050

ORDER REGARDING PROPOSED AMENDMENTS TO THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

The Minnesota Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch has recommended amendments to the Rules of Public Access to Records of the Judicial Branch to address public access to court records in light of the judicial branch's increased use of electronic case records. The Committee's recommendations and proposed amendments draw upon recommendations made by other advisory committees regarding access to electronic records, including the Advisory Committee for the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure and the Advisory Committee for the Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act. The court has reviewed the proposed amendments and is fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. Any person or organization wishing to provide written comments in support of or opposition to the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch shall file one copy of those comments with AnnMarie O'Neill, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr.

Blvd., Saint Paul, Minnesota 55155. The written comments shall be filed so as to be received no later than March 2, 2015.

2. A hearing will be held before this court to consider the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch. The hearing will take place in Courtroom 300, Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota, on March 17, 2015, at 11:00 a.m.

3. Any person or organization desiring to make an oral presentation at the hearing in support of or in opposition to the proposed amendments to the Minnesota Rules of Public Access to Records of the Judicial Branch, or to recommendations for rule amendments related to access to judicial branch records that have been separately proposed by the court's Advisory Committees on the Rules of Civil Procedure, the Rules of General Practice, the Criminal Rules of Procedure, the Rules of Juvenile Delinquency Procedure, the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure, or the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act, shall file one copy of a written request to so appear, along with one copy of the material to be presented, with AnnMarie O'Neill, Clerk of Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. The request to appear and written materials shall be filed with the Clerk of Appellate Courts so as to be received no later than March 2, 2015.

4. A copy of the committee's report and the proposed amendments to Rules of Public Access to Records of the Judicial Branch is attached to this Order. Copies of the

reports and recommendations filed by the court's other advisory committees can be accessed on P-MACS, the public access site for case records of the Minnesota appellate courts, as follows:

ADM04-8001 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Civil Procedure* (filed Dec. 23, 2014).

ADM09-8009 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the General Rules of Practice* (filed Dec. 23, 2014).

ADM10-8049 *Report and Proposed Amendments to the Minnesota Rules of Criminal Procedure* (filed Dec. 19, 2014).

ADM10-8003 *Report and Proposed Amendments to the Minnesota Rules of Juvenile Delinquency Procedure* (filed Dec. 19, 2014).

ADM10-8041 *Final Report of the Advisory Committee on the Rules of Juvenile Protection, Adoption, and Guardian Ad Litem Procedure* (filed Dec. 29, 2014).

ADM10-8046 *Final Report and Recommendations of the Minnesota Supreme Court Advisory Committee on the Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act* (filed Dec. 23, 2014).

Dated: January 2, 2015

BY THE COURT:

Christopher J. Dietzen
Associate Justice