

STATE OF MINNESOTA
IN SUPREME COURT

JUL 17 2012

FILED

ADM10-8051
ADM09-8009
ADM04-8001

ORDER FOR HEARING TO CONSIDER PROPOSED AMENDMENTS
TO THE RULES OF CIVIL PROCEDURE AND
GENERAL RULES OF PRACTICE RELATING TO
THE CIVIL JUSTICE REFORM TASK FORCE

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center on October 30, 2012, at 2:00 p.m., to consider proposed changes to the Rules of Civil Procedure and the General Rules of Practice for the District Courts aimed at facilitating more cost effective and efficient civil case processing. The proposed changes were included as part of the Civil Justice Reform Task Force reports to this Court dated December 23, 2011, and May 22, 2012. The full reports are on file with the Clerk of the Appellate Courts under file ADM10-8051 and are posted on the judicial branch website at www.mncourts.gov/publications. The portions of the reports that will be the subject of this hearing are annexed to this order.

IT IS FURTHER ORDERED that:


1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to

make an oral presentation at the hearing, shall file 12 copies of such statement with Bridget Gernander, Clerk of Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Boulevard, St. Paul, MN 55155, on or before September 7, 2012.

2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and request shall be filed on or before September 7, 2012.

Dated: July 17, 2012

BY THE COURT:



Lorie S. Gildea
Chief Justice

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

Honorable Louise Dovre Bjorkman
Chair

Honorable Christopher Dietzen
Liaison Justice

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

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

Michael Johnson, Staff Attorney

Excerpts From Reports of the Civil Justice Task Force

Introduction

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

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

(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.

* * *

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

* * *

Rule 5.04 Filing; Certificate of Service

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

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

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

All papers 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 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.

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

* * *

RULE 26. DUTY TO DISCLOSE; GENERAL PROVISIONS GOVERNING DISCOVERY

26.01. Discovery Methods Required Disclosures

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

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

67 **(a) Initial Disclosure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

169 **(c) Pretrial Disclosures.**

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

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

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

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

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

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

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

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

195
196 **(a) Methods.** Parties may obtain discovery by one or more of the following
197 methods: depositions by oral examination or written questions; written interrogatories;
198 production of documents or things or permission to enter upon land or other property; for
199 inspection and other purposes; physical (including blood) and mental examinations; and
200 requests for admission.
201

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

215
216 (b) Limitations.

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

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

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

248 **(c) Insurance Agreements.** In any action in which there is an insurance policy
249 that may afford coverage, any party may require any other party to disclose the coverage
250 and limits of such insurance and the amounts paid and payable thereunder and, pursuant
251 to Rule 34, may obtain production of the insurance policy; provided, however, that this
252 provision will not permit such disclosed information to be introduced into evidence
253 unless admissible on other grounds.
254

255 **(d) Trial Preparation: Materials.** Subject to the provisions of Rule 26.02(e) a
256 party may obtain discovery of documents and tangible things otherwise discoverable
257 pursuant to Rule 26.02(a) and prepared in anticipation of litigation or for trial by or for
258 another party or by or for that other party's representative (including the other party's
259 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the
260 party seeking discovery has substantial need of the materials in the preparation of the
261 party's case and that the party is unable without undue hardship to obtain the substantial
262 equivalent of the materials by other means. In ordering discovery of such materials when
263 the required showing has been made, the court shall protect against disclosure of the
264 mental impressions, conclusions, opinions, or legal theories of an attorney or other
265 representative of a party concerning the litigation.
266

267 A party may obtain without the required showing a statement concerning the
268 action or its subject matter previously made by that party. Upon request, a party or other
269 person may obtain without the required showing a statement concerning the action or its
270 subject matter previously made by that person who is not a party. If the request is
271 refused, the person may move for a court order. The provisions of Rule 37.01(d) apply to
272 the award of expenses incurred in relation to the motion. For purposes of this paragraph,
273 a statement previously made is (1) a written statement signed or otherwise adopted or
274 approved by the person making it, or (2) a stenographic, mechanical, electrical, or other
275 recording, or a transcription thereof, that is a substantially verbatim recital of an oral
276 statement by the person making it and contemporaneously recorded.
277

278 **(e) Trial Preparation: Experts.** Discovery of facts known and opinions held by
279 experts, otherwise discoverable pursuant to Rule 26.02(a) and acquired or developed in
280 anticipation of litigation or for trial, may be obtained only as follows:
281

282 (1)(A) A party may through interrogatories require any other party to
283 identify each person whom the other party expects to call as an expert witness at
284 trial, to state the subject matter on which the expert is expected to testify, and to
285 state the substance of the facts and opinions to which the expert is expected to
286 testify and a summary of the grounds for each opinion. (B) Upon motion, the
287 court may order further discovery by other means, subject to such restrictions as
288 to scope and such provisions, pursuant to Rule 26.02 (e)(3), concerning fees and
289 expenses, as the court may deem appropriate.
290

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

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

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

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

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

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

MINNESOTA GENERAL RULES OF PRACTICE

RULE 104. CIVIL COVER SHEET AND CERTIFICATE OF REPRESENTATION AND PARTIES

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

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

the state court administrator and published on the website www.mncourts.gov appended to these rules) or

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

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

Rule 111.02 The Party's Scheduling Input Informational Statement

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

- ~~(a) The status of service of the action;~~
- ~~(b) Whether the statement is jointly prepared;~~
- ~~(c) Description of case;~~
- ~~(d) Whether a jury trial is requested or waived;~~
- ~~(e) Discovery contemplated and estimated completion date;~~
- ~~(f) Whether assignment to an expedited, standard, or complex track is requested;~~
- ~~(g) The estimated trial time;~~
- ~~(h) Any proposals for adding additional parties;~~
- ~~(i) Other pertinent or unusual information that may affect the scheduling or completion of pretrial proceedings;~~
- ~~(j) Recommended alternative dispute resolution process, the timing of the process, the identity of the neutral selected by the parties or, if the neutral has not yet been selected, the deadline for selection of the neutral. If ADR is believed to be inappropriate, a description of the reasons supporting this conclusion;~~

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

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

Rule 111.03 Scheduling Order

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

* * *

RULE 115. MOTION PRACTICE

* * *

Rule 115.04. Non-Dispositive Motions

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

(1) Notice of motion and motion;

(2) Proposed order;

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

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

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

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

(2) Any relevant affidavits and exhibits.

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

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

412
413 [NOTE: advisory comments should note that Gen. R. Prac. 115.01 indicates that
414 this rule does not apply to family law cases.]
415
416

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

FORM 104A CIVIL COVER SHEET (Non-FAMILY)

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
_____ JUDICIAL DISTRICT
CASE NO. _____

CIVIL COVER SHEET (NON-FAMILY)

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

Date Case Filed: _____

_____ vs. _____

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

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

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

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

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

LAWYER FOR PLAINTIFF(S)

LAWYER FOR DEFENDANT(S)

(if not known, name party and address)

Name of Party

Name of Party

Atty Name(Not firm name)

Atty Name

(Not firm name)

Postal Address

Postal Address

E-mail Address

E-mail Address

Phone Number

Phone Number

MN Atty ID No.

MN Atty ID No.

(Attach additional sheet for additional lawyers/parties).

2. Concise statement of the case including facts and legal basis:

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

\$ _____ amount in controversy

☐ ELT does not apply

☐ ELT applies (*See Special Rules for Pilot ELT)

4. Estimated discovery completion within ____ months from the date of this form.

5. Proposed trial start date: _____

6. Estimated trial time: ____ days ____ hours (estimates less than a day must be stated in hours).

7. Jury trial is: () waived by consent of _____ pursuant to R. Civ. P. 38.02.
(specify party)

() requested by _____. (NOTE: Applicable fee must be enclosed.)
(specify party)

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

9. Identify any party or witness who will require interpreter services, and describe the services (specifying language and, if known, particular dialect) needed.

10. Issues in dispute:_____.

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

12. Recommended Alternative Dispute Resolution (ADR) mechanism*:_____
*Note: select from list of ADR processes set forth in Minn. Gen. R. Prac.
114.02(a)

Recommended ADR provider (known as a "neutral"):_____

Recommended ADR completion date:_____

If applicable, reasons why ADR not appropriate for this case:_____

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

Submitted by:_____

Attorney Reg. #: _____

Firm: _____

Address: _____

Telephone: _____

Date: _____

532

533 **Appendix B: Special Rules for a Complex Case**

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

536

537 **Preface¹**

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

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

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

553

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

555

556 **(a) Definition**

557

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

562

563 **(b) Factors**

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

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

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

(c) Provisional designation

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

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

(d) Parties' designation

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

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

(e) Motion to Exclude Complex Case Designation

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

RULE 2 SINGLE JUDGE BLOCKED TO COMPLEX CASES

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

RULE 3 MANDATORY CASE MANAGEMENT CONFERENCES

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

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

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

RULE 4 CASE MANAGEMENT ORDER AND SCHEDULING ORDER

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

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

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

(c) the deadline for joining other parties;

(d) the deadline for amending the pleadings;

- 640
641 (e) the deadline by which fact discovery will close and provisions for disclosure or discovery
642 of electronically stored information;
643
644 (f) the deadlines by which parties will make expert witness disclosures and deadline for
645 expert witness depositions;
646
647 (g) the deadlines for non-dispositive and dispositive motions;
648
649 (h) any modifications to the extent of discovery, such as, among other things, limits on:
650
651 (i) the number of fact depositions each party may take;
652
653 (ii) the number of interrogatories each party may serve;
654
655 (iii) the number of expert witnesses each party may call at trial;
656
657 (iv) the number of expert witnesses each party may depose; and
658
659 (i) a date certain for trial subject to continuation for good cause only, and a statement of
660 whether the case will be tried to a jury or the bench and an estimate of the trial's duration.
661

662 **RULE 5 AUTOMATIC DISCLOSURES**

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

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

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

685

686

Complex Case Program Election Form

687

688 STATE OF MINNESOTA

DISTRICT COURT

689 COUNTY OF _____

_____ JUDICIAL DISTRICT

690

CASE TYPE: _____

691 _____, Plaintiff

File Number: _____

692 v.

CCP Election

693 _____, Defendant

694

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

698

699

700

Name of Party _____

Name of Party _____

701

702

Atty Name (Not firm name) _____

Atty Name (Not firm name) _____

703

704

705

Postal Address _____

Postal Address _____

706

707

708

709

710

Phone Number _____

Phone Number _____

711

712

MN Atty ID No. _____

MN Atty ID No. _____

713

714

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

715

Complex Case Program Sample Case Management Order

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

JUDICIAL DISTRICT

CASE TYPE: _____

FILE NUMBER: _____

Judge _____

Plaintiff,

V.

CASE MANAGEMENT ORDER

Defendant.

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

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

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

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

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

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

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

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

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

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

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

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

4. Discovery

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

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

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

Within a reasonable time before production, the producing party shall advise the inspecting party of the approximate volume of the documents and a general description of the types of files or other materials involved. Each party shall produce its documents at its option: (a) by production of originals as they are kept in the ordinary course of business; (b) by production of as legible as possible photocopies in the same format; or (c) by electronic means or other computerized storage. Notwithstanding these provisions, any party may request to inspect the original of any document, communication, or thing produced and the parties shall make arrangements for such inspection within ten (10) days of the request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Depositions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BY THE COURT

Dated: _____

Judge of District Court