

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-1134

Order for Hearing to Adopt Rules  
of Family Court Procedure.

WHEREAS, the Minnesota Supreme Court has the inherent power to promulgate Rules of Family Court Procedure, and

WHEREAS, the Advisory Committee on the Rules of Family Court Procedure has formally requested that the Supreme Court adopt these rules,

NOW, THEREFORE, IT IS HEREBY ORDERED that a public hearing be held to consider the proposed rules on September 19, 1986, at 10:30 a.m. in the Supreme Court chambers at the State Capitol in St. Paul.

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 11 copies of such statement with the Clerk of the Appellate Courts, 230 Capitol, St. Paul, Minnesota, 55155, on or before September 8, 1986, and

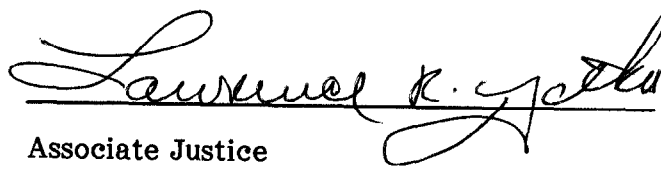
2. All persons desiring to make an oral presentation at the hearing shall file 11 copies of the material to be so presented with the aforesaid Clerk together with 11 copies of a request to make the oral presentation. Such statements and requests shall be filed on or before September 8, 1986, and

3. All persons wishing to obtain copies of the proposed rules shall write to the aforesaid Clerk.

Dated: August 7, 1986.

OFFICE OF  
APPELLATE COURTS  
FILED  
AUG - 9 1986  
WAYNE TSCHIMPERLE  
CLERK

BY THE COURT:

A handwritten signature in cursive script, reading "Lawrence R. Gotta", written over a horizontal line.

Associate Justice

9/11/86

GEORGE MARSHALL  
JUDGE



TELEPHONE  
(507) 537-6740

COUNTY OF LYON  
LYON COUNTY COURTHOUSE  
MARSHALL, MINNESOTA  
56258

September 11, 1986

Minnesota Supreme Court  
230 State Capitol  
St. Paul, MN 55155

RE: Family Court Rules C9-85-1134

Paragraph 7(c) should read: "Tax withholding above are based on married-single with # of exemptions:"

I oppose Rule 9.07 Memorandum of the Mediator as proposed by the Advisory Committee on Rules for Family Court Procedure. Since the mediator cannot be called as a witness under Rule 9.05, it is inadvisable to have him submit a memorandum to the Court enumerating the issues upon which the parties cannot agree. I recommend that the mediator draw a complete or partial agreement of the parties for the signature of the parties to be submitted to the Court or if there is no agreement, for the mediator to submit a memorandum to the Court stating that there is no agreement without enumerating the issues.

Sincerely,

*George Marshall*  
George Marshall  
Judge of County Court

GM:jc

STATE OF MINNESOTA  
DISTRICT COURT OF MINNESOTA  
FOURTH JUDICIAL DISTRICT



September 8, 1986

FAMILY COURT REFEREES  
5TH FLOOR COURTS TOWER  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS, MN 55487

EDWARD P. DIETRICH, CHIEF  
MILTON G. DUNHAM  
MARY D. WINTER  
LENORE MILLER  
DIANA S. EAGON  
GEORGE R. ADZICK

OFFICE OF  
APPELLATE COURTS  
FILED

SEP 11 1986

WAYNE TSCHIMPERLE  
CLERK

Wayne Tschimperle  
Clerk of Appellate Courts  
Room 230, State Capitol  
St. Paul, Minnesota 55155

Re: Public Hearing Scheduled on Proposed Rules  
of Family Court Procedure on September 19,  
1986, C9-85-1134

Dear sir:

Enclosed for filing is the original and 11 copies of  
my objections to the Proposed rules of Family Court Procedure  
that I request be filed in the above-entitled matter.

Thank you.

Very truly yours,

Handwritten signature of Edward P. Dietrich in cursive script.  
Edward P. Dietrich

EPD/dms

Encls. 12

OFFICE OF  
APPELLATE COURTS  
FILED

SEP 9 1986

WAYNE TSCHIMPERLE  
CLERK

September 9, 1986

Clerk of Appellate Court  
230 Capitol  
St. Paul, MN 55155

Re: Hearing of September 19, 1986, at 10:30 a.m.  
Proposed Rules of Family Court Procedure

C9-85-1134

Dear Clerk:

I will appear and make comments at the public hearing on the Proposed Rules of Family Court Procedure on September 19, 1986. My remarks will be specific to Proposed Rule 7, Sections 1(c) and Section 5.

My suggestion is to amend the language of 7.01(c) as follows:

"The payments of support and/or spousal maintenance takes priority over payment of debts and other obligations and to the extent possible, shall be secured by unencumbered equity in the assets of the person obligated to make the payments".

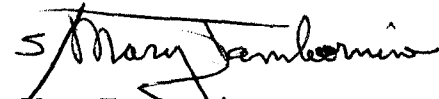
My suggestion is to amend the language of 7.05 as follows:

"All orders and decrees in Family Court proceedings shall contain particularized Findings of Fact in writing sufficient to support the determination of custody and visitation, child support or maintenance, distributions of property, and to other issues decided by the court. Determinations resulting in awarding payments of child support or maintenance shall be secured by the unencumbered equity in assets of the person obligated to make the payments".

I would further urge the court to pay special heed to Rule 7.01(b). There are legitimate reasons for requiring an aggrieved party to seek relief for non-payment, through the courts. However, in many if not most, cases puts an additional financial, time and emotional burden on the aggrieved person. This person is usually a woman who has already been awarded payment for child support or maintenance, or distribution of property. The result of the language as it is written is that in order to enforce the findings of the court must be obtained through additional proceedings which should be unnecessary.

I will include supporting data for all of the above in my remarks on or before September 19, 1986, and will have it in writing for the court's convenience.

Sincerely,

  
Mary Tamborino

RHU/IV/35



LAW OFFICES OF  
**SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, INC.**

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September 8, 1986

Justices of the Supreme Court  
Clerk of Appellate Courts  
230 State Capitol Building  
St. Paul, MN 55155

OFFICE OF  
APPELLATE COURTS  
FILED

SEP 8 1986

WAYNE TSCHIMPERLE  
CLERK

RE: Rules of Family Court Procedure

Dear Justices of the Supreme Court:

C9-85-1134

Enclosed please find eleven copies of comments on the Rules of Family Court Procedure proposed by the Supreme Court Advisory Committee on Rules of Family Court Procedure.

These comments were derived from discussions among several attorneys who practice in the area of family law within legal services programs in Minnesota.

We appreciate your consideration of these comments.

Sincerely,

*Eve R. Herschopf*  
Eve R. Herschopf  
Attorney at Law

ERH/gfs

Enc.

### **Rule 1.01 Commencement of Proceedings.**

The commentary is helpful in clarifying that substituted service or service by mail under Minn. R. Civ. P. 4.05 is precluded. However, the commentary should clarify whether obtaining an admission or acceptance of service remains permissible under the rule.

Rules 2.02 should include the language of current Rule 2.02(b) which specifies that motions shall be submitted on affidavits and argument of counsel unless otherwise ordered by the Court based upon good cause shown.

Rule 7.04 which provides for setting forth statutory notices in an attachment which is incorporated by reference into court orders is useful, and will provide for more efficient practice by all attorneys, including those who are providing service pro bono.

### **Rule IX Court-Order Mediation**

The rules and commentary are generally quite clear and excellent.

Rule 9.01 Under Rule 9.01, the court shall not require mediation when it finds probable cause that demonstic or child abuse has occurred. It would be helpful for the rules to provide guidance to practitioners and to the courts on the issue of probable cause.

Rule 9.05 and Rule 9.07 should include a provision that the memorandum of issues that are resolved should be sent to the parties and their counsel for review and signature of approval prior to being submitted to the court. This will avoid situations

in which the memorandum does not reflect the understanding of the parties as to their agreement or failure to agree. In Rule 9.07, the provision in subdivision (1) for a memorandum enumerating the issues upon which the parties cannot agree should also be without any explanation, as it is in subdivision (2).

Rule 9.08 is excellent in defining when the mediator can reasonably conduct the child custody investigation. Rule 9.08 (or Rule 9.05) should include a provision that the mediation proceedings are confidential as well as privileged and that the mediator is not permitted to communicate to the child custody investigator any information or impressions which were obtained in the mediation proceedings.

Rule 9.08 should include a provision that, when the child custody investigation is conducted by the same person who provided mediation, the confidentiality of the mediation proceedings may be waived for the purpose of demonstrating bias by the mediator-investigator.

Rule 9.09 provides for allocation of fees for court-ordered mediation. The rule should clarify that mediation fees may be covered under a request to proceed in forma pauperis.

The Rules of Family Court Procedure should include a rule which defines the procedure for appeal from a decision of a Family Court referee to a District Court judge.

#### **Rule X Forms**

Rule 4.02 requires the use of Form 2 (Prehearing Statement). One of the questions under section 2(b) of the forms



states: "Will your medical and dental insurance coverage be available for your spouse after the dissolution?" This question is vague and incomplete. The issue which the question addresses is significant and there have been recent statutory changes on this issue. The question should require the parties to provide more complete and definitive information regarding health insurance coverage following dissolution.

Form 3, Appendix A, should include the language of the order for dependent health and dental insurance pursuant to Minn. Stat. §518.171.



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September 22, 1986

OFFICE OF  
APPELLATE COURTS  
FILED

SEP 22 1986

WAYNE TSCHIMPERLE  
CLERK

Justices of the Supreme Court  
Clerk of the Appellate Courts  
230 State Capitol Building  
St. Paul, Minnesota 55155

RE: Proposed Rules of Family Court Procedure C9-85-1134

Dear Justices of the Supreme Court:

This letter is to supplement our previous comments on the proposed Family Court Rules submitted to the Court on September 8, 1986.

We attended the hearing on the proposed Rules held on September 19, 1986. After hearing the testimony of the Court Services personnel from Hennepin and Ramsey Counties regarding the proposed rules on mediation, and specifically Rule 9.08, we would like to offer responsive comments.

We practice in the area of family law and the majority of our cases are contested custody matters venued in Ramsey County. We have had extensive experience with the Department of Court Services on both mediation and custody investigation matters.

We have a copy of the attached form used by Ramsey County Court Services to have clients waive the confidentiality of mediation. It is the practice of the Ramsey County Department of Court Services to request clients to sign this form regarding data privacy and waiver of confidentiality at the initial intake interview. In contrast with the Data Privacy Rights section of the form, the Mediation/Investigation Agreement section does not inform the parties of their right to confidentiality in the mediation process or their right to have a separate person conduct the custody investigation should mediation fail. In cases in which mediation has failed, our clients have not been informed of their right to revoke their waiver. In addition, we have not been informed that the custody investigation phase is

being initiated so that the client's right to confidentiality could be invoked.

Clients referred to the Ramsey County Department of Court Services for custody mediation and investigation recognize the significant role Court Services may play in determining the custody arrangement of their children. The parties understand that a high premium is placed on cooperation throughout the process. Many clients believe that if they do not sign the confidentiality waiver, they may be perceived as uncooperative and their custody case may be jeopardized. This puts parties and their attorneys in a quandry whether to assert the rights guaranteed to them by law. We believe that the high percentage of people who agree to waive the confidentiality of mediation information reflects the parties' lack of knowledge of their rights and their recognition of the need to cooperate in the custody process. It is not an informed, freely made decision to waive valuable rights.

Further, it must be noted that the right to confidentiality in mediation is indeed an important one because of its potential impact on the final determination of custody. A custody investigation is initiated only after the effort to mediate the issue has failed. In mediation, the goal is to have the parties reach agreement regarding custody of their children. If the parties are unable to resolve this issue through mediation, the mediator is likely to have opinions on the parties and the reasons for their failure to mediate successfully. If the mediator then conducts the custody investigation, the impressions and information gained in mediation may carry over into the investigation.

The reality of family law practice is that the custody recommendation by the Court Services investigator generally carries great weight with the Court. Therefore, it is extremely important that the impartiality of the investigator be assured. This goal can best be achieved by maintaining the confidential nature of mediation efforts, and by separating the mediation and investigation functions of the Court Services personnel.

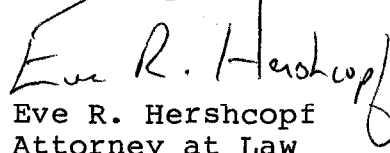
We believe that the proposed Rule 9.08 which provides that the mediator may not conduct the custody investigation except in very limited circumstances is the proper approach to this problem. We agree with Mr. Weissman's proposal that, in those cases in which the parties wish to have the mediator also conduct the custody investigation, the parties should be required to affirmatively request the continuing involvement of the mediator. We suggest that the Department of Court Services inform clients in writing of their right to consult with counsel before waiving

Justices of the Supreme Court  
September 22, 1986  
Page 3

their statutorily guaranteed right to confidentiality and a separate investigator. We would also urge that the parties' attorneys be informed by the Department of Court Services prior to the initiation of the investigation phase so that counsel can advise their clients of their confidentiality rights and options. The perceived pressure to cooperate by waiving rights to confidentiality and to a separate custody investigator serves to undermine the neutrality that is so important to a custody investigation. It lessens the possibility that the best interests of the children will be served through the Court process.

We appreciate your consideration of these comments.

Sincerely,

  
Eve R. Hershkopf  
Attorney at Law



Ellen Gavin  
Attorney at Law

ERH:EG