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JOSEPH ALEXANDER  
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JAMES D. O'CONNOR  
RICHARD G. WILSON  
HOWARD B. TARKOW  
WILLIAM M. MOWER, P.A.  
LARRY A. KOCH  
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SALLY STOLEN GROSSMAN  
TERRI KRIVOSHA  
MARY R. VASALY  
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CLARK T. WHITMORE  
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PHILIP J. TILTON  
GAY L. GREYER  
R. CHRISTOPHER SUR  
SHAWN R. McINTEE  
TIMOTHY R. VELNER

OF COUNSEL  
CHARLES QUAINANCE, JR.  
ROBERT A. ENGELKE  
MARTIN G. WEINSTEIN  
MICHAEL L. SNOW  
LEON I. STEINBERG  
ROYCE N. SANNER  
SUSAN J. LINK

SAMUEL H. MASLON  
1901-1988  
HYMAN EDELMAN  
1906-1998

3300 NORWEST CENTER  
90 SOUTH SEVENTH STREET  
MINNEAPOLIS, MINNESOTA 55402-4140  
(612) 672-8200  
FAX (612) 672-8397

Writer's Direct Dial:  
(612) 672-8350

dherr@email.maslon.com

November 3, 1997

**HAND DELIVERED**

Mr. Frederick K. Grittner  
Clerk of Appellate Courts  
Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

Re: Minnesota Supreme Court Advisory Committee  
on General Rules of Practice  
File No. CX-89-1863

Dear Mr. Grittner:


Enclosed for filing in the above-referenced matter, please find the original and twelve copies of the November 3, 1997, Supplement to the Final Report of the Supreme Court Advisory Committee on General Rules of Practice. **(The hearing is scheduled for Friday, November 7, 1997.)** I am also including a disk containing this Supplement to Final Report in WordPerfect 6.1 format. I can provide it in any other format if it would be more convenient for you.

I am also providing a copy of the Supplement to Final Report directly to Chief Justice Keith.

Thank you for your assistance in these matters. If you have any questions, please feel free to contact me.

Best personal regards.

Yours very truly,

  
David F. Herr  
Reporter

DFH:psp  
Enclosures  
cc: Committee Members

OFFICE OF  
APPELLATE COURTS

NOV - 3 1997

FILED

STATE OF MINNESOTA  
IN SUPREME COURT

NOV - 3 1997

CX-89-1863

FILED

In re:

Supreme Court Advisory Committee  
on General Rules of Practice

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

Supplement to Final Report

November 3, 1997

Hon. A. M. Keith, Chair

Suzanne Alliegro, Saint Paul  
G. Barry Anderson, Hutchinson  
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Leon A. Trawick, Minneapolis

David F. Herr, Minneapolis  
Reporter

Michael B. Johnson, Saint Paul  
Staff Attorney

The Advisory Committee submits this supplemental report to provide the Court a proposed amendment which came to the committee's attention after its report was initially made to the Court. The only recommendation in this supplemental report is the proposal for a new rule relating to probate proceedings, Rule 419. This provision was proposed to the Court and referred to the Advisory Committee on October 17, 1997, after the Committee's initial Report.

The amendment to the rules creates a standard procedure for dealing with notices (or amendment of those notices) required by statute amended in 1997. This rule was proposed to the advisory committee by a lawyer with the Minnesota Department of Human Services and a Deputy Examiner of Titles and Court Referee in Hennepin County District Court. This rule creates a procedure for filing in the estate file of the notice required by Minn. Stat. § 524.3-801(d)(1) or amendment of that notice as required by Minn. Stat. § 524.3-801(d)(3). These statutory provisions were added to the statutes by 1997 Minn. Laws ch. 217, art. 2, § 16. The statute requires notice be given to the commissioner of human services if either the decedent or a predeceased spouse of the decedent received public assistance for which a claim could be filed under Minn. Stat. §§ 246.53, 256B.15, 256D.16 or 261.04. The notice allows the agency involved to determine what action to take as creditor of the estate, and the statute prohibits distribution from the estate for a 70-day period after notice is given. Minn. Stat. § 524.3-801(d)(2).

The advisory committee has reviewed this recommendation and believes it will be helpful to the bench and bar. Accordingly, it recommends that Rule 419 be adopted with the other rules amendments now before the Court.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY  
COMMITTEE ON GENERAL RULES OF  
PRACTICE

**RULE 419 NOTICE TO THE COMMISSIONER OF HUMAN SERVICES AND  
CONSENT TO EARLY DISTRIBUTION OF PROPERTY BY THE  
ESTATE**

**(a) Responsibility of Personal Representative or Lawyer Prior to Closing of the Estate.** If a personal representative serves the commissioner of human services with a notice or amendment required by Minn. Stat. § 524.3-801(d)(1) or 524.3-801(d)(3), the personal representative shall also file a copy of the notice or amendment and an affidavit of service in the court file for the estate before the entry of an order or decree under Minn. Stat. §§ 524.3-1001 or 524.3-1002, or before the filing of a closing statement under Minn. Stat. § 524.3-1003.

**(b) Personal Representative's Representation to the Court.** The absence from the court file for the estate of any notices or amendments referred to in subsection (a) of this rule shall constitute the personal representative's representation to the court that the personal representative has made a reasonably diligent inquiry and determined that no notice to the commissioner of human services, or amendments to a filed notice, under Minn. Stat. § 524.3-801(d) are required in the estate. This representation, without more, shall serve as the basis for the entry of an order or decree under Minn. Stat. § 524.3-1001 or § 524.3-1002, or the filing of a closing statement under Minn. Stat. § 524.3-1003.

**(c) Responsibility of Interested Party after Closing of the Estate.** Any person who serves the commissioner of human services with an amendment to a notice under Minn. Stat. § 524.3-801(d)(4) shall file a copy of the amendment and an affidavit of service in the court file for the estate within ten (10) days after service of the amendment.

**(d) Consent to Early Distribution of Property.** The personal representative shall file a copy of any consent to the estate's early distribution of property under Minn. Stat. § 524.3-801(d)(6), in the court file for the estate prior to the entry of an order or decree under Minn. Stat. § 524.3-1001 or § 524.3-1002, or the filing of a closing statement under Minn. Stat. § 524.3-1003.

**Advisory Task Force Comments—1998 Adoption**

This rule is added by amendment in 1998 to create a required procedure for filing of the notice required by Minn. Stat. § 524.3-801(d)(1) or amendment of that notice as required by Minn. Stat. § 524.3-801(d)(3). Both sections were added to the statutes by 1997 Minn. Laws ch. 217, art. 2, § 16. The statute requires notice be given to the commissioner of human services if either the decedent or a predeceased spouse of the decedent received public assistance in certain circumstances.

This rule does not create or modify in any way the requirement for giving notice. It simply requires that the probate court file contain accurate information concerning the giving of that notice if it is required by statute, and imposes a duty on the personal representative to file the statement. The rule deems non-filing to be a representation by the personal representative that notice is not required by the statute. This presumption allows the court to rely on the contents of the file in approving distributions and in closing the estate.