

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

PROMULGATION OF AMENDMENTS
TO THE MINNESOTA GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS

ORDER

WHEREAS, The Conference of Chief Judges (CCJ) has proposed the adoption of a court rule regarding frivolous litigation (CCJ proposal); and

WHEREAS, the Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has recommended that this Court adopt the CCJ proposal, with minor modifications supported by the CCJ; and

WHEREAS, On November 24, 1998, the Supreme Court held a hearing on the proposed amendments; and


WHEREAS, the Supreme Court has reviewed the proposals, considered the comments and concerns raised at the hearing, and considered other rules and statutes relating to frivolous litigation, and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Rule 9 of the General Rules of Practice for the District Courts be, and the same hereby is, prescribed and promulgated to be effective immediately.
2. The attached Rule 9 shall apply to all actions pending on the effective date and to those filed thereafter.
3. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

DATED: September 1, 1999

BY THE COURT:


Kathleen A. Blatz
Chief Justice

OFFICE OF
APPELLATE COURTS

SEP 1 - 1999

FILED

RULE 9. FRIVOLOUS LITIGATION

Rule 9.01. Motion for Order Requiring Security or Imposing Sanctions

Relief under this rule is available in any action or proceeding pending in any court of this state, at any time until final judgment is entered. Upon the motion of any party or on its own initiative and after notice and hearing, the court may, subject to the conditions stated in Rules 9.01 to 9.07, enter an order: (a) requiring the furnishing of security by a frivolous litigant who has requested relief in the form of a claim, or (b) imposing preconditions on a frivolous litigant's service or filing of any new claims, motions or requests. All motions under this rule shall be made separately from other motions or requests, and shall be served as provided in the Rules of Civil Procedure, 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of the motion (or such other period as the court may prescribe), the challenged claim, motion, or request is not withdrawn or appropriately corrected.

Rule 9.02. Hearing

- (a) Evidence. At the hearing upon such motion the court shall consider such evidence, written or oral, by witnesses or affidavit, as may be material to the ground of the motion.
- (b) Factors. In determining whether to require security or to impose sanctions, the court shall consider the following factors:
 - (1) the frequency and number of claims pursued by the frivolous litigant with an adverse result;
 - (2) whether there is a reasonable probability that the frivolous litigant will prevail on the claim, motion, or request;
 - (3) whether the claim, motion, or request was made for purposes of harassment, delay, or vexatiousness, or otherwise in bad faith;
 - (4) injury incurred by other litigants prevailing against the frivolous litigant and to the efficient administration of justice as a result of the claim, motion, or request in question;
 - (5) effectiveness of prior sanctions in deterring the frivolous litigant from pursuing frivolous claims;
 - (6) the likelihood that requiring security or imposing sanctions will ensure adequate safeguards and provide means to compensate the adverse party;

(7) whether less severe sanctions will sufficiently protect the rights of other litigants, the public, or the courts.

The court may consider any other factors relevant to the determination of whether to require security or impose sanctions.

- (c) Findings. If the court determines that a party is a frivolous litigant and that security or sanctions are appropriate, it shall state on the record its reasons supporting that determination. An order requiring security shall only be entered with an express determination that there is no reasonable probability that the litigant will prevail on the claim. An order imposing preconditions on serving or filing new claims, motions, or requests shall only be entered with an express determination that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts.
- (d) Ruling Not Deemed Determination of Issues. No determination or ruling made by the court upon the motion shall be, or be deemed to be, a determination of any issue in the action or proceeding or of the merits thereof.

Rule 9.03. Failure to Furnish Security

If security is required and not furnished as ordered, the claim(s) subject to the security requirement may be dismissed with or without prejudice as to the offending party.

Rule 9.04. Stay of Proceedings

When a motion pursuant to Rule 9.01 is properly filed prior to trial, the action or proceeding is stayed and the moving party need not plead or respond to discovery or motions, until 10 days after the motion is denied, or if granted, until 10 days after the required security has been furnished and the moving party given written notice thereof. When a motion pursuant to Rule 9.01 is made at any time after commencement of trial, the action or proceeding may be stayed for such period after the denial of the motion or the furnishing of the required security as the court shall determine.

Rule 9.05. Appeal

An order requiring security or imposing sanctions under this rule shall be deemed a final, appealable order. Any appeal under this rule may be taken to the court of appeals as in other civil cases within 60 days after filing of the order to be reviewed.

Rule 9.06. Definitions

As used in this rule, the following terms have the following meanings:

- (a) "Claim" means any relief requested in the form of a claim, counterclaim, cross claim, third party claim, or lien filed, served, commenced, maintained, or pending in any federal or state court, including conciliation court.
- (b) "Frivolous litigant" means:
 - (1) A person who, after a claim has been finally determined against the person, repeatedly relitigates or attempts to relitigate either
 - (i) the validity of the determination against the same party or parties as to whom the claim was finally determined, or
 - (ii) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the final determination against the same party or parties as to whom the claim was finally determined;
or
 - (2) A person who in any action or proceeding repeatedly serves or files frivolous motions, pleadings, letters, or other papers, conducts unnecessary discovery, or engages in oral or written tactics that are frivolous or intended to cause delay; or
 - (3) A person who institutes and maintains a claim that is not well grounded in fact and not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law or that is interposed for any improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigating the claim.
- (c) "Security" means either:
 - (1) an undertaking to assure payment, issued by a surety authorized to issue surety bonds in the State of Minnesota, to the party for whose benefit the undertaking is required to be furnished, of the party's reasonable expenses, including attorney's fees and not limited to taxable costs, incurred in or in connection with a claim instituted, caused to be instituted,

or maintained or caused to be maintained by a frivolous litigant or;

- (2) cash tendered to and accepted by the court administrator for that purpose.

Rule 9.07 Effect on Other Provisions.

Sanctions available under this rule are in addition to sanctions expressly authorized by any other statute or rule, or in the inherent power of the court.

Advisory Committee Comment—1999 Amendment

This rule is intended to curb frivolous litigation that is seriously burdensome on the courts, parties, and litigants. This rule is intended to apply only in the most egregious circumstances of abuse of the litigation process, and the remedies allowed by the rule can be viewed as drastic. Because of the very serious nature of the sanctions under this rule, courts should be certain that all reasonable efforts have been taken to ensure that affected parties are given notice and an opportunity to be heard. Rule 9.01 also requires that the court enter findings of fact to support any relief ordered under the rule, and this requirement should be given careful attention in the rare case where relief under this rule is necessary.

It is appropriate for the court to tailor the sanction imposed under this rule to the conduct and to limit the sanction to what is necessary to curb the inappropriate conduct of the frivolous litigant. *See Cello-Whitney v. Hoover*, 769 F. Supp. 1155 (W.D. Wash. 1991).

This rule includes a specific provision relating to the possible appeal of an order for sanctions. The rule provides that an appeal may be taken within 60 days, the same period allowed for appeals from orders and judgment, but specifies that the 60-day period begins to run from entry of the date of filing of the order.

This timing mechanism is preferable because the requirement of service of notice of entry may not be workable where only one party may be interested in the appeal or where the order is entered on the court's own initiative. The date of filing can be readily determined, and typically appears on the face of the order or is a matter of record, obviating confusion over the time to appeal.