

STATE OF MINNESOTA

OFFICE OF
APPELLATE COURTS

IN SUPREME COURT

DEC 3 - 1999

No.: CX-89-1863

FILED

In re:

Supreme Court Advisory Committee
on General Rules of Practice

**WRITTEN COMMENTS OF THE
MINNESOTA TRIAL LAWYERS ASSOCIATION
TO PROPOSED RULE CHANGES IN NOV. 1, 1999 FINAL REPORT**

TO: The Minnesota Supreme Court

INTRODUCTION

On November 8, 1999, the Minnesota Supreme Court ordered that those wishing to offer comment on the changes proposed in the November 1, 1999 Final Report of the Supreme Court Advisory Committee on the General Rules of Practice, should submit written commentary to the Court by December 10, 1999.

The Minnesota Trial Lawyers Association is a group of more than 1,300 trial practitioners who daily utilize the General Rules of Practice. The Board of Governors of the MTLA has reviewed the proposed rule changes and wishes to submit the following observations to the Court regarding the proposed changes.

SUMMARY

The MTLA supports the proposed changes suggested by the Supreme Court Advisory Committee as they relate to the amendment of Rule 144 regarding actions for wrongful death.

ANALYSIS

I. Rule 144 Addresses the Procedure for Giving Notice at the Commencement and Conclusion of a Wrongful Death Action.

Wrongful death actions in Minnesota are governed by statute,¹ and the procedural rules applicable to these claims are set forth in MINN.R.GEN.PRAC. 144. Currently this rule requires the appointment of a trustee to prosecute the claim, through the filing of a petition that shows the “name, age, occupation and address of the decedent’s surviving spouse and each next of kin”² Currently the rule also requires that at the conclusion of the action, the court must approve the distribution of a verdict or settlement among the next of kin upon the filing of a petition that lists the “name, age, occupation and address of the decedent’s surviving spouse and each next of kin”³

At present, therefore, central to both the initiation and conclusion of wrongful death litigation is the identification and presentation of the full scope of all “next of kin” of the decedent. The scope of this task is thus dependent upon the breadth of the definition of “next of kin” for purposes of this statutory framework. Section 573.02 while establishing that “heirs” may pursue claims, does not set requirements for who must receive notification of the petitions for appointment of a trustee or for an order of distribution. This silence engenders two questions: (1) who may assert a claim, and (2) who should receive notice regarding the initiation and conclusion of the claim.

¹ MINN. STAT. 573.02 (1998).

² MINN.R.GEN.PRAC. 144.01 (1998).

³ MINN.R.GEN.PRAC. 144.05 (1998).

II. The Recent *Wynkoop* Decision Defined “Heirs” by Reference to the Intestacy Statute, thereby Creating a Broad Class of Persons “related by blood or marriage” who would be Entitled to Sue under the Wrongful Death Statute.

In 1998 this Court confronted the problem of notice under a statutory framework that fails to define the class of persons entitled to notice. In *Wynkoop v. Carpenter*, 574 N.W.2d 422 (Minn. 1998), the Court used the definition of heirs in the intestacy statute and embraced the right of all those related by blood or marriage to pursue compensation for the wrongful death of their relative.

This decision, while properly enfranchising all those aggrieved by the death of a relative, utilized a sufficiently broad definition of “heirs” to potentially create doubt about the scope of which “next of kin” should receive notice under Rule 144 at the commencement and conclusion of wrongful death litigation.

As noted by Justice Gilbert’s Supreme Court Advisory Committee, Minnesota’s “longstanding practice [had been to] . . . requir[e] petitioners to name and notify only the decedent’s surviving spouse and close relatives” of the commencement and conclusion of wrongful death litigation, and “not ‘all next of kin,’”⁴ which is the phrase used in Rule 144. Given recent amendments to the intestacy statute and the Court’s holding in *Wynkoop*, the phrase “all next of kin” in Rule 144 may be read to create the obligation to track down “distant relatives such as nieces, nephews, aunts, uncles, and cousins.”⁵

This potentially time consuming task could generate substantial expense, and risk triggering inadvertent infirmities that could threaten the orderly administration of this substantive legal remedy through failure to identify *every* “next of kin.”

⁴ *Advisory Committee Comment*, MINN.R.GEN.PRAC. 144.06 (1999).

⁵ *Id.*

Fortunately, the problem created by this broad definition is not the potential for any technical errors in the petitions to result in the dismissal of wrongful death claims. This Court's ruling in *Stroud v. Hennepin County Medical Center*, 556 N.W.2d 552, 553-55, nn. 3, 5 (Minn. 1996), made clear that a trustee's original complaint effectively commenced a wrongful death action even when her appointment was technically deficient.

The problem posed by the broad definition of "heirs" in *Wynkoop* is instead that to otherwise "play it safe," a wrongful death trustee may have to expend considerable time, effort and resources in a hunt for "missing heirs" to comply with perceived procedural obstacles. The cost and delay in the processing of claims could be substantial in cases where either the decedent was fruitful or very young.

III. Clarification of the Scope of Notification would Materially Aid Minnesota Practice.

As noted by the Supreme Court Advisory Committee, longstanding practice has been to notify a discrete and readily identifiable class of heirs at the two main procedural stages described in Rule 144: "the decedent's surviving spouse and close relatives."⁶

So long as the Minnesota Rules of General Practice make clear that their procedural rules are not intended to diminish the substantive rights established by the ruling of the Court in *Wynkoop* regarding who may sue, and so long as avenues exist for more extended heirs to *opt in*, then the procedural objectives of the rules and substantive statutory rights are both preserved.

IV. The Proposed Amendments Achieve the Objectives of Fair Procedural Rules tied to the Preservation of Substantive Rights in Wrongful Death Litigation.

The amendments proposed by the Supreme Court Advisory Committee suggest three changes: (1) Narrowing the class of persons who must be given notice of the commencement and

⁶ *Id.*

conclusion of a claim to the traditional manageable list of close heirs, (2) expressly recognizing that substantively “all next of kin” *may* make a claim and affording a procedural device for them to *opt* into the class for which notice is required, and (3) expressly recognizing that technical infirmities of notice do not destroy the right of the heirs to pursue their substantive rights to make wrongful death claims.

The first change is achieved by the proposed amendment to Rule 144.01, striking the phrase “and each next of kin” from the class of persons to be notified and replacing it with the more traditional classification of the “spouse . . . children, parents, grandparents and siblings”

The second change is achieved by an amendment to Rule 144.05, which permits the class entitled to notification of an intended distribution to be expanded to include “all other next of kin who have notified the trustee in writing of a claim for pecuniary loss.” This enfranchises heirs who occupy a position more remote on the family tree, but who nonetheless enjoyed a close relationship with the decedent.

The final change is achieved through an express acknowledgment in Rule 144.06 that a “failure to name the next of kin in a petition required by Rule 144.01 or the failure to notify or obtain a waiver from the next of kin shall have no effect on the validity or timeliness of an action commenced by the trustee,” consistent with the Court’s decision in *Stroud v. Hennepin County Medical Center*, 556 N.W.2d 552, 553-55, nn. 3, 5 (Minn. 1996).

CONCLUSION

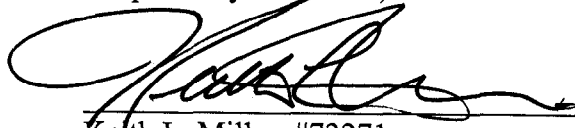
The amendments to Rule 144 that have been suggested by the Supreme Court Advisory Committee are non-controversial and yet eminently helpful to Minnesota practitioners in establishing clear guidance regarding the scope of the task involved in notifying heirs of the commencement and conclusion of wrongful death litigation. They apply well-established principals of substantive law

in a fair procedural framework that is readily understandable.

The proposed changes to Rule 144 should be adopted by the Minnesota Supreme Court.

Respectfully submitted,

Dated: 11/30/99



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President

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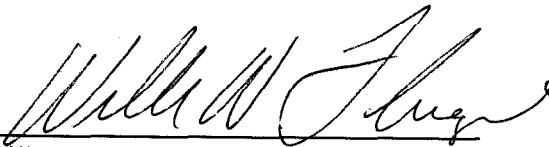
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