

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON
PROPOSED AMENDMENTS TO THE RULES OF GENERAL PRACTICE**

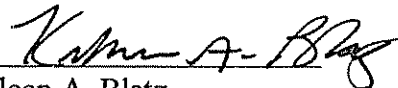
The Supreme Court Advisory Committee on General Rules of Practice in a report filed September 26, 2005 and annexed to this order has recommended amendments to the Rules of General Practice;

This court will consider the proposed amendments without a hearing after soliciting and reviewing comments on the proposed amendments;

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendments shall submit 12 copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Dr. Rev. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, on or before November 7, 2005.

Dated: September 28, 2005

BY THE COURT:



Kathleen A. Blatz
Chief Justice

OFFICE OF
APPELLATE COURTS

SEP 28 2005

FILED

**CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT**

OFFICE OF
APPELLATE COURTS

SEP 26 2005

In re:

FILED

**Supreme Court Advisory Committee
on General Rules of Practice**

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

**Final Report
September 26, 2005**

**Hon. Lawrence T. Collins
Chair**

**Hon. G. Barry Anderson
Liaison Justice**

**R. Scott Davies, Minneapolis
Lawrence K. Dease, Saint Paul
Hon. Elizabeth Ann Hayden, St. Cloud
Scott J. Hertogs, Hastings
Karen E. Sullivan Hook, Rochester
Hon. Lawrence R. Johnson, Anoka
Scott V. Kelly, Mankato
Hon. Gary Larson, Minneapolis
Hon. Kurt J. Marben, Crookston**

**Hon. Rosanne Nathanson, Saint Paul
Dan C. O'Connell, Saint Paul
Hon. Gary J. Pagliaccetti, Virginia
Philip A. Pfaffly, Minneapolis
Timothy Roberts, Foley
Hon. Donald M. Spilseth, Willmar
Hon. Jon Stafsholt, Glenwood
Hon. Robert D. Walker, Fairmount**

**Michael B. Johnson, Saint Paul
Staff Attorney**

**David F. Herr, Minneapolis
Reporter**

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

The Court's Advisory Committee on General Rules of Practice met twice in 2005 to review comments from Minnesota judges and lawyers and developments in practice under these rules. In addition, the committee considered issues relating to collaborative law processes and held a public hearing on these issues as contemplated by this Court's December 7, 2004, Order in this file, at ¶ 5.

The committee's specific recommendations are briefly summarized as follows:

1. The Court should amend Rule 8 to add a provision relating to the role of interpreters assigned to assist jurors with sensory disabilities.
2. The Court should amend Rule 302.01 to conform the service requirement of the rule to Minn. Stat. § 518.11, which has been amended to provide for service "by alternate means."
3. The Court should amend Rule 306.01 to provide for notice to defaulting non-appearing parties of a looming request for judgment by default and to improve the form of notice required by the existing rule. The committee will continue its review of this rule to consider the overall role of notice to parties in default and what should happen in the event such party wants to act.
4. The Court should amend Rule 372.07 to conform it to more recent legislation.
5. The Court should amend Rule 508 to provide greater clarity to service of process and proof of service methods in conciliation court proceedings.
6. As set forth below, the Court should defer action on collaborative law issues at this time.

Collaborative Law

The committee was directed by the Court to consider and gather additional information on collaborative law. The committee gave notice to interested parties of its August 19, 2005, public hearing by posting on the Minnesota state courts' website, and by notice sent to the ADR Review Board via its staff because the ADR Review Board made last year's collaborative law proposal. Notice was also sent to the ADR section of the state bar, which had opposed the ADR Review Board proposal last year. The committee heard from a number of speakers on the role of collaborative law under the rules.

Ultimately, the collaborative law proponents requested additional time to submit a proposal to the committee, and have advised the committee that they do not intend to have a specific proposal to the committee until February 2006. The committee believes that interested bar associations or bar committees may want to respond to that submission. As a result, the committee is not in a position to make definitive recommendation to the Court at this time. It will be able to do so not later than December 31, 2006, and possibly by June 30, 2006. The committee believes it is desirable to defer action until it can consider the promised submission from the Collaborative Law Institute or others. If the Court believes action on collaborative law is appropriate at this time, however, the committee would renew the recommendation made in its Report and Recommendations dated October 28, 2004, with one exception: the recommendation made then should be modified to include a specific provision in Rule 304 to provide in family cases (the primary current arena for the use of collaborative law) relief from scheduling pressures as recommended by the committee in its recommended Rule 111.05.

Other Matters

The committee considered a decision of the Minnesota Court of Appeals that identified a conflict between Minn. Gen. R. Pract. 355.01, subd. 2, and a practice form promulgated by the Conference of Chief Judges. *See Maki v.*

Hansen, 694 N.W.2d 78 (Minn. Ct. App. 2005). That form was promptly amended administratively, and the committee does not believe that the rule requires amendment, nor that any further action is necessary.

The committee is aware of work that is underway to prepare for use of electronic service and filing in the districts courts of Minnesota, and will be prepared to recommend appropriate amendments when the courts are ready to implement e-filing and e-service in any systematic and state-wide way. Until that time, however, the committee does not believe the general rules ought to be amended to anticipate this future contingency. To the extent e-service or e-filing are implemented on a pilot-project basis, the Court's implementation order should deal with these issues until a statewide rule is appropriate.

The committee also received a proposal from the MSBA Probate and Trust Law Committee to make a number of changes to the rule governing trust accounts, Rule 417. Because this proposal was made just as the committee was wrapping up its work on this report, and because there appear to be differing views within the bench and bar on the need for these amendments, the committee intends to study the proposal and make a recommendation on it to the Court in its next report.

The committee is not aware of other issues relating to the Minnesota General Rules of Practice that require substantive attention now.

Effective Date

The committee believes these amendments can be adopted, after public hearing if the Court determines a hearing is appropriate, in time to take effect on January 1, 2006.

Comment on Style of Report

The specific recommendations are reprinted in traditional legislative format, with new wording underscoring and deleted words ~~struck through~~.

Respectfully submitted,

MINNESOTA SUPREME COURT
ADVISORY COMMITTEE ON CIVIL
RULES OF PROCEDURE

Recommendation 1: The Court should amend Rule 8 to provide for the role of interpreters assigned to assist jurors with sensory disabilities.

Introduction

The civil and general rules are silent about the special role of interpreters assigned to assist jurors with a sensory disability, but an interpreter is regularly appointed in this circumstance. The committee recommends that Rule 8 be amended to include a provision drawn from Rule 26.03, subd. 16, of the Minnesota Rules of Criminal Procedure to provide for this situation. The advisory committee recommends in its note that the interpreter be given a special oath to govern the role in the jury room.

This recommendation results from a request from the Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts (Implementation Committee). The advisory committee believes this recommendation is a helpful one that should be implemented in the general rules.

Specific Recommendation

A new Rule 8.04 should be adopted as follows:

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RULE 8. INTERPRETERS

* * *

Rule 8.04. Interpreters to assist jurors

Qualified interpreters appointed by the court for any juror with a sensory disability may be present in the jury room to interpret while the jury is deliberating and voting.

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Advisory Committee Comment – 2006 Amendment

Rule 8.04 is intended to provide guidance on the role of interpreters appointed for the benefit of jurors with a sensory disability. The requirement that such interpreters be allowed to join the juror in the jury room is logical and necessary to permit the juror to communicate in deliberations. In this situation the interpreter should be given an oath to follow other constraints placed on jurors (e.g., not to discuss the case, not to read or listen to media accounts of the trial, etc.) and also that the interpreter will participate only in interpreting the statements of others, and will not become an additional juror. An interpreter in this situation should also not be allowed or required to testify as to any aspect of the jury’s deliberations in any context a juror would not be allowed or required to testify.

This amendment is drawn from the language of Minn. R. Crim. P. 26.03, subd. 16.

The rule is limited by its terms to interpreters appointed for the benefit of jurors with a sensory disability only because that is the only condition generally resulting in the appointment for jurors. In other, unusual, situations where such an interpreter is appointed, these procedures would presumably apply as well.

Recommendation 2: The Court should amend Rule 302.01 to conform service requirement to statutory changes.

Introduction

Rule 302.01 was adopted in 1991 and has not been amended to reflect amendment to the statute authorizing methods of service of process in family law actions. Minn. Stat. § 518.11 was amended in 1994 to deemphasize “service by publication” and to create a broader category of “service by alternate means.” This rule should therefore be amended to deal with service under this statute, as amended. The rule retains provision for service by publication because this form is expressly authorized by statute in actions involving title to real property.

Specific Recommendation

Rule 302.01 should be amended as follows:

**RULE 302. COMMENCEMENT; CONTINUANCE; TIME;
PARTIES**

Rule 302.01. Commencement of Proceedings

(a) **Service.** Marriage dissolution, legal separation and annulment proceedings shall be commenced by service of a summons and petition upon the person of the other party, by alternate means authorized by statute, or by publication pursuant to court order. Service in other family court proceedings shall be governed by the rules of civil procedure.

(b) Joint Petition.

(1) No summons shall be required if a joint petition is filed. Proceedings shall be deemed commenced when both parties have signed the verified petition.

38 (2) Where the parties to a proceeding agree on all property issues,
39 have no children together, the wife is not pregnant, and the wife has not
40 given birth since the date of the marriage to a child who is not a child of the
41 husband, the parties may proceed using a joint petition, agreement, and
42 judgment and decree for marriage dissolution without children. Form 12
43 appended to these rules is a sufficient form for this purpose.

44 (3) Upon filing of the “Joint Petition, Agreement and Judgment and
45 Decree,” and Form 11 appended to these rules, and a Notice to the Public
46 Authority if required by Minn. Stat. § 518.551, subd. 5 (a), the court
47 administrator shall place the matter on the default calendar for approval
48 without hearing pursuant to Minn. Stat. § 518.13, subd. 5. A Certificate of
49 Representation and Parties and documents required by Rules 306.01 and
50 306.02 shall not be required if the “Joint Petition, Agreement and
51 Judgment and Decree” provided in Form 12 is used.

52 (4) Court Administrators in each Judicial District shall make the
53 “Joint Petition, Agreement and Judgment and Decree for Marriage
54 Dissolution Without Children” available to the public at a reasonable cost,
55 as a fill-in- the-blank form.

56 (c) **Service by Alternate Means or Publication.** Service of the summons
57 and petition may be made by alternate means as authorized by statute. Service of
58 the summons and petition may be made by Ppublication only upon an order of the
59 court. If the respondent subsequently is located and has not been served
60 personally or by alternate means, personal service shall be made before the final
61 hearing.

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Advisory Committee Comment—2006 Amendment

Rule 302 is amended to incorporate procedures to deal with service “by alternate means” as authorized by statute. Minn. Stat. § 518.11 expressly provides authority for service by various other means. The rule retains provision for service by publication as well, because publication is authorized for a summons and petition that may affect title to real property. See Minn. Stat. § 518.11(c) (2004).

Recommendation 3: The Court should amend Rule 306.01 to provide for notice to defaulting party and to improve form of notice required by existing rule.

Introduction

Rule 306.01 provides detailed guidance on scheduling a hearing where a case is expected to proceed by default. Rule 306, a longstanding rule in family law practice, provides for notice to parties who, though in default, have “appeared” by some means other than an Answer. Because that notice is not specific as to what the notice must say, nor how the recipient should respond to it, the committee believes the notice should be modified. Additionally, the notice does not provide for the situation of a default being entered administratively and without a hearing, as allowed by Minn. Stat. § 518.13, subd. 5 (2004); the proposed rule adds a separate form of notice for this situation.

Specific Recommendation

Rule 306 should be amended as follows:

RULE 306. DEFAULT

Rule 306.01. Scheduling of Final Hearing

Except when proceeding under Rule 302.01(b) by Joint Petition, Agreement and Judgment and Decree, to place a matter on the default calendar for final hearing or for approval without hearing pursuant to Minnesota Statutes, section 518.13, subdivision 5, the moving party shall submit a default scheduling request substantially in the form set forth in Form 10 appended to these rules and shall comply with the following, as applicable:

(a) Without Stipulation—No Appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of nonmilitary

79 status of the defaulting party or a waiver by that party of any rights under the
80 ~~Soldiers' and Sailors' Servicemembers' Civil Relief Act of 1940~~, as amended,
81 shall be filed with the court.

82 **(b) Without Stipulation—Appearance.** Where the defaulting party has
83 appeared in by a pleading other than an answer, or personally without a pleading,
84 and has not affirmatively waived notice of the other party's right to a default
85 hearing, the moving party shall notify the defaulting party in writing at least ~~ten~~
86 ~~(10)~~ fourteen (14) days before the final hearing of the intent to proceed to
87 Judgment. The notice shall state:

88 You are hereby notified that an application has been made for a final
89 hearing to be held on _____, 20____, at _____:____.m. at
90 _____ [a date not sooner than ~~three (3)~~ fourteen
91 (14)] days from the date of this notice. You are further notified that
92 the court will be requested to grant the relief requested in the petition
93 at the hearing. You should contact the undersigned and the District
94 Court Administrator immediately if you have any defense to assert
95 to this default judgment and decree.

96 The default hearing will not be held until the notice has been mailed to the
97 defaulting party at the last known address and an affidavit of service by mail has
98 been filed.

99 If the case is to proceed administratively without a hearing under Minn.
100 Stat. § 518.13, then the notice shall be sent after the expiration of the 30-day
101 answer period, but at least fourteen (14) days before the case is submitted to the
102 administrative review, and shall state:

103 You are hereby notified that an application will be made for a final
104 judgment and decree to be entered not sooner than fourteen (14)
105 days from the date of this notice. You are further notified that the
106 court will be requested to grant the relief requested in the Petition.
107 You should contact the undersigned and the District Court

108 Administrator immediately if you have any defense to assert to this
109 default judgment and decree.

110 **(c) Default with Stipulation.** Whenever a stipulation settling all issues has
111 been executed by the parties, the stipulation shall be filed with an affidavit of
112 nonmilitary status of the defaulting party or a waiver of that party's rights under
113 the ~~Soldiers' and Sailors'~~ Servicemembers Civil Relief Act of 1940, as amended,
114 if not included in the stipulation.

115 In a stipulation where a party appears pro se, the following waiver shall be
116 executed by that party:

117 I know I have the right to be represented by a lawyer of my choice. I
118 hereby expressly waive that right and I freely and voluntarily sign
119 the foregoing stipulation.

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121 **Advisory Committee Comment—2006 Amendment**

122 Rule 306 is amended to clarify the role of the notice required to be given
123 to parties who are in default but who have “appeared” in some way. A party is
124 not entitled to prevent entry of judgment if that party is in default by not
125 servicing and filing a timely written answer to the Petition. Nonetheless, the
126 court may, in its discretion, consider some appropriate measures to prevent the
127 case from being decided on a default basis and to obviate a motion for relief
128 from the default judgment and decree. Accordingly, the rule is amended to
129 afford more useful notice as to the request for a default.

130 The rule does not define how a party might appear either by “a pleading
131 other than an answer,” or “personally without a pleading.” Both conditions
132 should be limited to some actions that approach responding to the Petition
133 despite the fact they may be insufficient as a matter of law to stand as a
134 response. Sending a letter that responds to a Petition might suffice for the first
135 condition, as might a letter to the court. Appearing at a court hearing despite
136 having not answered would certainly meet the “appeared personally” condition.
137 When in doubt as to other circumstances, the party seeking a default should, to
138 comply with Rule 306.01(b) provide the required notice, with the expectation
139 that many of these responses that fall short of an answer will not prevent entry
140 of judgment.

141 The Soldiers' and Sailors' Civil Relief Act of 1940 was amended and
142 renamed in 2003, and the rule is amended to use the new name as a matter of
143 convenience. See 50 App. U.S.C.A. § 521, as amended by Pub.L. 108-189, § 1,
144 117 Stat. 2840. The former rule would still apply, however, because it included
145 the “as amended” extension of the citation.

Recommendation 4: The Court should amend rule 372.07 to correct a statutory reference.

Introduction

In 2005 the Minnesota Legislature changed the modification fee referred to in rule 372.07 to \$55.00 and the statutory reference was changed. Rule 372.07 is amended to reflect the correct citation, and an advisory committee note is included to remind litigants of the need to determine the correct amount of this fee.

Specific Recommendation

Rule 372.07 should be amended as follows:

146 **Rule 372.07. Fees**

147 * * *

148 **Subd. 2. Modification Fee.** Pursuant to Minn. Stat. § 357.021, subd.
149 2(132), a separate fee shall also be collected upon the filing of the motion to
150 modify and a responsive motion or counter motion.

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152 **Advisory Committee Comment – 2006 Amendment**
153 Rule 372.07, subd. 2, is amended to correct the statutory reference. In
154 2005, the legislature set tThe modification fee to be collected under Rule
155 372.07 at \$55.00. 2005 Minn. Laws ch. 164, § 2. Litigants are advised to
156 review the statute or contact the court administrator for current fee amounts. ~~is~~
157 \$20.00. (Order setting fee, File C9-85-1134, filed March 31, 1993).

Recommendation 5: The Court should amend Rule 508 to provide greater clarity to service of process and proof of service in conciliation court proceedings.

Introduction

This committee heard concerns from conciliation court officials that the rules do not expressly provide a rule as to whether service by mail is effective upon mailing, or upon receipt (or on any other date). Additionally, although the rule requires proof of service, the rules nowhere specify how service should be proven. Service by first-class or certified mail is relied on in conciliation court proceedings, and service is sometimes effected by the court and sometimes by non-court personnel acting on behalf of the parties. Certified mail may provide evidence of receipt, although in practice many parties simply fail or refuse to take delivery of the certified mailing. The committee also learned that there is significant divergence of practice through Minnesota that is not consistent with the goals of these rules (some courts pay no attention to the certified mail receipts; others require addressing of the receipts to the administrator). The committee believes a standard form of proof of service is desirable, and recommends that Rule 508 be amended to accomplish this goal. To implement this amendment, a new Form 508.1 should be adopted as part of these rules.

Specific Recommendation

Rules 508 should be amended as follows:

158 **RULE 508. SUMMONS; TRIAL DATE**

159 **(a) Trial Date.** When an action has been properly commenced, the court
160 administrator shall set a trial date and prepare a summons. Unless otherwise
161 ordered by a judge, the trial date shall not be less than 10 days from the date of
162 mailing or service of the summons.

163 **(b) Contents of Summons.** The summons shall state the amount and
164 nature of the claim; require the defendant to appear at the trial in person or if a
165 corporation, by officer or agent; shall specify that if the defendant does not appear
166 judgment by default may be entered for the amount due the plaintiff, including
167 fees, expenses and other items provided by statute or by agreement, and where
168 applicable, for the return of property demanded by the plaintiff; and shall
169 summarize the requirements for filing a counterclaim.

170 **(c) Service on Plaintiff.** The court administrator shall summon the
171 plaintiff by first class mail.

172 **(d) Service on Defendant.**

173 (1) If the defendant's address as shown on the statement of claim is
174 within the county, the administrator shall summon the defendant by first
175 class mail, except that if the claim exceeds \$2,500 the summons must be
176 served by the plaintiff by certified mail, and proof of service must be filed
177 with the administrator. If the summons is not properly served and proof of
178 service filed within 60 days after issuance of the summons, the action shall
179 be dismissed without prejudice.

180 (2) If the defendant's address as shown on the statement of claim is
181 outside the county but within the state, and the law provides for service of
182 the summons anywhere within the state, the administrator shall summon the
183 defendant by first class mail, except that if the claim exceeds \$2,500 the
184 summons must be served by the plaintiff by certified mail, and proof of
185 service must be filed with the administrator. If the summons is not properly

186 served and proof of service filed within 60 days after issuance of the
187 summons, the action shall be dismissed without prejudice.

188 (3) If the defendant's address as shown on the statement of claim is
189 outside the state, the administrator shall forward the summons to the
190 plaintiff who, within 60 days after issuance of the summons, shall cause it
191 to be served on the defendant and file proof of service with the
192 administrator. If the summons is not properly served and proof of service
193 filed within 60 days after issuance of the summons, the action shall be
194 dismissed without prejudice. A party who is unable to pay the fees for
195 service of a summons may apply for permission to proceed without
196 payment of fees pursuant to the procedure set forth in Minnesota Statutes
197 Section 563.01.

198 (4) Service by mail, whether first-class or certified, shall be
199 effective upon mailing.

200 (e) Proof of Service.

201 Service by first class mail or certified mail shall be proven by an affidavit
202 of service in form substantially similar to that contained in Form 508.1. Service
203 may be alternatively proven, when made by the court administrator, by any
204 appropriate notation in the court record of the date, time, method, and address used
205 by the administrator to effect service.

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207 **Advisory Committee Comment – 2006 Amendment**

208 Rule 508(d)(4) is a new provision, intended to remove any confusion in
209 the rule over when service by mail is deemed complete. This question is
210 important in determining questions of timing. Making service effective upon
211 mailing is consistent with the provisions of Minn. R. Civ. P. 5.02 and Minn. R.
212 Civ. App. 125.03

213 The rule has historically required proof of service, but has not specified
214 how service is proven. Rule 508(d) specifies that an affidavit of service should
215 be prepared in form substantially similar to new Form 508.1 to prove service by
216 anyone other than the court administrator. Where the rule requires the
217 administrator to effect service by mail or certified mail, it is not necessary to
218 require an affidavit of the administrator to prove serve, and Rule 508(e)
219 recognizes that a notation of the facts of service in the court's file will suffice
220 to prove that service was effected.

221 Some courts follow the practice of using certified mail receipts as proof
222 of service. In fact these receipts generally only prove receipt of the mailing,
223 not the mailing itself. Although proof of receipt may be important if a question

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arises as to the effectiveness of service, but it is not an adequate substitute for proof of the facts of service, including the date of mailing.

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**FORM 508.1
State of Minnesota**

Affidavit of Service

District Court

County

Judicial District:	_____
Court File Number:	_____
Case Type:	_____

227

STATE OF MINNESOTA)

228

) ss.

229

COUNTY OF HENNEPIN)

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231

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Plaintiff

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234

vs.

Affidavit of Service

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236

Defendant

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_____, being sworn/affirmed under oath, states:

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1. I am over eighteen years of age and not a party in the above-entitled action.

241

Check and complete one of the following:

242

243

2a. On the _____ day of _____, 20____, I served the

244

Summons

245

Demand For Limited Removal

246

Other Document _____(specify)

247

upon _____, (plaintiff/defendant or attorney

248

for _____), by placing a true and correct copy of it

249

in an envelope addressed as follows:

250

251

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253

which is the last known address of said party or attorney and depositing it,

254

first-class postage or _____) *specify one or both*

255

Certified Mail, Return Receipt Requested postage)

256

prepaid, in the United States mail.

257

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2b. I served a copy of the

259

Summons

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Demand For Limited Removal

261

Other Document _____(specify)

262

upon _____, (title) _____,

263

by delivering a copy personally to him/her at _____

264

at _____ am/pm, on _____, 20_____.

265

266

2c. After diligent search and inquiry, I was unable to locate _____

267

_____ (name of party to be served), or any residence

268

or business address for him/her at which service could be attempted.

269

270 Dated: _____

271

Signature of Server

272

(Sign only in front of notary public or court administrator.)

273 Sworn/affirmed before me this

274 _____ day of _____, 20____.

Telephone (____) _____

275

Notary Public \ Deputy Court Administrator

276

Grittner, Fred

From: Johnson, Michael
Sent: Tuesday, November 08, 2005 9:12 AM
To: Grittner, Fred
Cc: Metcalf, Jodie; Dohrmann, Deanna; Dosal, Sue
Subject: Additional submission for both civil and general rules

OFFICE OF
APPELLATE COURTS

NOV - 8 2005

Attachments: RCIVP related changes to ex pro rules 2005 051102.doc

FILED

Fred,

I am submitting the attached changes on behalf of Child Support Unit of the State Court Administrators Office, Court Services Division. The changes are related to the Civil Rules changes but affect provisions in the General Rules of Practice. For this reason, they should probably be noted for both rules files. These are conforming/technical type changes and there is no request to make an oral presentation.

I would also point out that there is one other similar conforming change related to the facsimile transmission changes in R. Civ. P. 5.5. If that proposed change is adopted, then the last sentence of Gen. R. Prac. 6.01 should be deleted.



RCIVP related
changes to ex pr...

Mike

Michael B. Johnson
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Rule 355.02. Types of Service

Subdivision 1. Personal Service.

(a) Upon Whom.

(1) Upon an Individual. Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual's house or usual place of residence with some person of suitable age and discretion who presently lives at that location. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minn. Stat. ch. 518C (2000) and Minn. Stat. § 543.19 (2000). Personal service may not be made on Sunday, a legal holiday, or election day.

Rule 361.06. Subpoena

Subdivision 1. Written Request. Requests for subpoenas for the attendance of witnesses or for the production of documents shall be in writing and shall be submitted to the court administrator. The request shall specifically identify any documents requested, include the full name and home or business address of all persons to be subpoenaed, and specify the date, time, and place for responding to the subpoena. The court administrator shall issue a subpoena in accordance with Minn. R. Civ. P. 45 signed and sealed stating the name of the court and the title of the action, but otherwise in blank. The party requesting the subpoena shall fill out the subpoena before having it served. An attorney as officer of the court may also issue and sign a subpoena on behalf of the court where the action is pending.

Subd. 2. Service of Subpoenas Shall be by Personal Service. ~~Except as noted in this subdivision, a~~All subpoenas issued by the district court, shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minn. Stat. § 357.22 (2000). When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

Rule 370.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served;

- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written answer pursuant to Rule 370.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original written answer; and
- (b) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. Facsimile Transmission. If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Subd. 34. Treatment of Confidential Information. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

Note: Subdivisions typically have titles and I noticed that when this new language concerning restricted identifiers and financial source documents was approved in July 2005, subdivisions 3 for Rules 370.04, 371.04, and 372.04 were not given a title. Shouldn't we give it a title to be consistent with the format of the rules? Seems like the appropriate time to do it with the other changes being proposed and it is not a substantive change, but technical. For purposes of flow, the current subdivision 3, which has no title and speaks to restricted identifiers and financial source documents, should be moved to new subdivision 4.

Rule 371.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served; and
- (d) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than five (5) days before any scheduled hearing:

- (a) the original written answer; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. Facsimile Transmission. If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Subd. 34. Treatment of Confidential Information. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

Rule 372.04. Filing Requirements

Subdivision 1. Initiating Party. No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original notice of motion;
- (b) the original motion;
- (c) the original supporting affidavit;
- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

Subd. 2. Responding Party. If a noninitiating party responds with a responsive motion or counter motion pursuant to Rule 372.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original responsive motion or counter motion; and
- (a) proof of service upon each party pursuant to Rule 355.04.

Subd. 3. Facsimile Transmission. If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

Subd. 34. Treatment of Confidential Information. To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11

PLEASE NOTE: If these proposed changes to 370.04, subd. 3 and subd. 4 are adopted, then Rule 361.02, subd. 4 should also be re-titled to match with proposed changes to subdivision 4 for rules 370.04, 371.04, and 372.04.

Rule 361.02. Exchange of Documents

Subd. 4. ~~Redaction of Social Security Numbers~~ Treatment of Confidential Information

To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.
