

STATE OF MINNESOTA

IN SUPREME COURT

CX-89-1863

**ORDER PROMULGATING AMENDMENTS TO
GENERAL RULES OF PRACTICE**

The Supreme Court Advisory Committee on the General Rules of Practice for the District Courts has recommended certain amendments to the General Rules of Practice.

The Court solicited comments on the proposed amendments.

The Court has reviewed the proposals and is advised in the premises.

IT IS ORDERED that:


1. The attached amendments to the General Rules of Practice for the district Courts be, and the same are, prescribed and promulgated to be effective on January 1, 2006.
2. These amendments shall apply to all actions or proceedings pending on or commenced on or after the effective date.
3. The inclusion of advisory committee comments is made for convenience and does not reflect court approval of the statements made therein.

Dated: November 30, 2005

BY THE COURT:

OFFICE OF
APPELLATE COURTS

DEC 1 2005



Kathleen A. Blatz
Chief Justice

FILED

158 **Amendments to Minnesota General Rules of Practice**
159 **for the District Courts**

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162 **TITLE I. RULES APPLICABLE TO ALL**
163 **COURT PROCEEDINGS**
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167 **RULE 8. INTERPRETERS**

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169 **Rule 8.04. Interpreters to assist jurors**

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

173 **Advisory Committee Comment – 2006 Amendment**

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

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

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

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194 **TITLE II. RULES GOVERNING CIVIL ACTIONS**
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198 **RULE 113. ASSIGNMENT OF CASE(S)**
199 **TO A SINGLE JUDGE**

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201 **Rule 113.03. ~~Consolidation~~ Assignment of Cases in More Than One**
202 **District to a Single Judge**

203 **(a) Assignment by Chief Justice.** When two or more cases pending in more
204 than one judicial district involve one or more common questions of fact or are
205 otherwise related cases in which there is a special need for or desirability of central
206 or coordinated judicial management, a motion by a party or a court’s request for
207 assignment of the cases to a single judge may be made to the chief justice of the
208 supreme court.

209 **(b) Procedure.** The motion shall identify by court, case title, case number,
210 and judge assigned, if any, each case for which assignment to a single judge is
211 requested. The motion shall also indicate the extent to which the movant anticipates
212 that additional related cases may be filed. An original and two copies of the motion
213 shall be filed with the clerk of appellate courts. A copy of the motion shall be served
214 on other counsel and any unrepresented parties in all cases for which assignment is
215 requested and the chief judge of each district in which such an action is pending.
216 Any party may file and serve a response within 5 days after service of the motion.
217 Any reply shall be filed and served within 2 days of service of the response. Except
218 as otherwise provided in this rule, the motion and any response shall comply with the
219 requirements of Minn. R. Civ. App. P. 127 and 132.02.

220 **(c) Mechanics and Effect of Transfer.** When such a motion is made, the
221 chief justice may, after consultation with the chief judges of the affected districts
222 and the state court administrator, assign the cases to a judge in one of the districts
223 in which any of the cases is pending or in any other district. If the motion is to be
224 granted, in selecting a judge the chief justice may consider, among other things,
225 the scope of the cases and their possible impact on judicial resources, the

226 availability of adequate judicial resources in the affected districts, and the ability,
227 interests, training and experience of the available judges. As necessary, the chief
228 justice may assign an alternate or back-up judge or judges to assist in the
229 management and disposition of the cases. The assigned judge may refer any case
230 to the chief judge of the district in which the case was pending for trial before a
231 judge of that district selected by the chief judge.

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Advisory Committee Comment — 2006 Amendment

The amendments to Rule 113.03 are intended to provide more detailed guidance about the procedures to be followed in seeking transfer of cases under the rule. The rule clarifies the existing practice and specifically incorporates the normal procedures for handling motions in the appellate courts. Because the motion is made to the chief justice rather than the entire court, fewer copies are necessary, but other procedures of Minn. R. Civ. App. P. 127 and 132.02 apply to these motions.

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TITLE IV. RULES OF FAMILY COURT PROCEDURE

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PART A. PROCEEDINGS, MOTIONS, AND ORDERS

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RULE 302. COMMENCEMENT; CONTINUANCE; TIME; PARTIES

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Rule 302.01. Commencement of Proceedings

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(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.

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(b) Joint Petition.

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(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.

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

266 (3) Upon filing of the “Joint Petition, Agreement and Judgment and
267 Decree,” and Form 11.1 appended to Title I of these rules, and a Notice to
268 the Public Authority if required by Minn. Stat. § 518.551, subd. 5(a), the
269 court administrator shall place the matter on the default calendar for
270 approval without hearing pursuant to Minn. Stat. § 518.13, subd. 5. A
271 Certificate of Representation and Parties and documents required by Rules
272 306.01 and 306.02 shall not be required if the “Joint Petition, Agreement
273 and Judgment and Decree” provided in Form 12 is used.

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

278 (c) **Service by Alternate Means or Publication.** Service of the summons
279 and petition may be made by alternate means as authorized by statute. Service of
280 the summons and petition may be made by publication only upon an order of the
281 court. If the respondent subsequently is located and has not been served
282 personally or by alternate means, personal service shall be made before the final
283 hearing.

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285 **Advisory Committee Comment—2006 Amendment**

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

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RULE 306. DEFAULT

296 Rule 306.01. Scheduling of Final Hearing

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

303 (a) **Without Stipulation—No Appearance.** In all default proceedings
304 where a stipulation has not been filed, an affidavit of default and of nonmilitary
305 status of the defaulting party or a waiver by that party of any rights under the
306 ~~Soldiers' and Sailors'~~ Servicemembers Civil Relief Act of 1940, as amended, shall
307 be filed with the court.

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

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

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

325 If the case is to proceed administratively without a hearing under Minn.
326 Stat. § 518.13, subdivision 5, then the notice shall be sent after the expiration of
327 the 30-day answer period, but at least fourteen (14) days before submission of a
328 default scheduling request as required by this rule, and shall state:

329 You are hereby notified that an application will be made for a final
330 judgment and decree to be entered not sooner than fourteen (14)
331 days from the date of this notice. You are further notified that the
332 court will be requested to grant the relief requested in the Petition.
333 You should contact the undersigned and the District Court
334 Administrator immediately if you have any defense to assert to this
335 default judgment and decree.

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

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

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

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347 Advisory Committee Comment—2006 Amendment
348 Rule 306 is amended to clarify the role of the notice required to be given
349 to parties who are in default but who have "appeared" in some way. A party is
350 not entitled to prevent entry of judgment if that party is in default by not
351 servicing and filing a timely written answer to the Petition. Nonetheless, the
352 court may, in its discretion, consider some appropriate measures to prevent the
353 case from being decided on a default basis and to obviate a motion for relief

354 from the default judgment and decree. Accordingly, the rule is amended to
355 afford more useful notice as to the request for a default.

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

367 The Soldiers’ and Sailors’ Civil Relief Act of 1940 was amended and
368 renamed in 2003, and the rule is amended to use the new name as a matter of
369 convenience. See Servicemembers Civil Relief Act, Pub. L. No. 108-189, § 1,
370 117 Stat. 2835, 2840-42 (2003) (to be codified at 50 U.S.C. app. § 521). The
371 former rule would still apply, however, because it included the “as amended”
372 extension of the citation.

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374 **PART B. EXPEDITED CHILD SUPPORT PROCESS**

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378 **RULE 372. MOTIONS TO MODIFY, MOTIONS TO SET SUPPORT,**
379 **AND OTHER MATTERS**

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381 **Rule 372.07. Fees**

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383 **Subd. 2. Modification Fee.** Pursuant to Minn. Stat. § 357.021, subd.
384 2(132), a separate fee shall also be collected upon the filing of the motion to
385 modify and a responsive motion or counter motion.

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387 **Advisory Committee Comment – 2006 Amendment**

388 Rule 372.07, subd. 2, is amended to correct the statutory reference. In
389 2005, the legislature set (The modification fee to be collected under Rule
390 372.07 at \$55.00. Act of June 3, 2005, ch. 164, § 2, 2005 Minn. Laws 1878,
391 1879-80 (to be codified at Minn. Stat. § 357.021). Litigants are advised to
392 review the statute or contact the court administrator for current fee amounts. is
393 \$20.00. (Order setting fee, File C9-85-1134, filed March 31, 1993).

396 TITLE VI. CONCILIATION COURT RULES
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399 RULE 508. SUMMONS; TRIAL DATE

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

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

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

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

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

421 (2) If the defendant's address as shown on the statement of claim is
422 outside the county but within the state, and the law provides for service of
423 the summons anywhere within the state, the administrator shall summon the
424 defendant by first class mail, except that if the claim exceeds \$2,500 the

425 summons must be served by the plaintiff by certified mail, and proof of
426 service must be filed with the administrator. If the summons is not properly
427 served and proof of service filed within 60 days after issuance of the
428 summons, the action shall be dismissed without prejudice.

429 (3) If the defendant's address as shown on the statement of claim is
430 outside the state, the administrator shall forward the summons to the
431 plaintiff who, within 60 days after issuance of the summons, shall cause it
432 to be served on the defendant and file proof of service with the
433 administrator. If the summons is not properly served and proof of service
434 filed within 60 days after issuance of the summons, the action shall be
435 dismissed without prejudice. A party who is unable to pay the fees for
436 service of a summons may apply for permission to proceed without
437 payment of fees pursuant to the procedure set forth in Minnesota Statutes
438 Section 563.01.

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

441 (e) Proof of Service.

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

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448 **Advisory Committee Comment – 2006 Amendment**

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

454 The rule has historically required proof of service, but has not specified
455 how service is proven. Rule 508(e) specifies that an affidavit of service should
456 be prepared in form substantially similar to new Form 508.1 to prove service by
457 anyone other than the court administrator. Where the rule requires the
458 administrator to effect service by mail or certified mail, it is not necessary to
459 require an affidavit of the administrator to prove serve, and Rule 508(e)

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recognizes that a notation of the facts of service in the court's file will suffice to prove that service was effected.
Some courts follow the practice of using certified mail receipts as proof of service. In fact these receipts generally only prove receipt of the mailing, not the mailing itself. Although proof of receipt may be important if a question arises as to the effectiveness of service, it is not an adequate substitute for proof of the facts of service, including the date of mailing.

226 [NOTE TO PUBLISHERS: FORM 508.1 IS NEW BUT IS NOT SHOWN IN
227 UNDERLINED TEXT FOR READABILITY. THE FORM IS TO BE
228 INSERTED IN TITLE VI FOLLOWING EXISITNG FORM UCF-22.]

229
230 **FORM 508.1** **Affidavit of Service**

State of Minnesota

District Court

County _____

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

231 STATE OF MINNESOTA)
232) ss.
233 COUNTY OF _____)

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235 _____
236 Plaintiff

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238 vs
239 _____
240 Defendant

Affidavit of Service

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243 _____, being sworn/affirmed under oath, states:

244 1. I am over eighteen years of age and not a party in the above-entitled action.
245 Check and complete one of the following:

246
247 2a. On the _____ day of _____, 20____, I served the
248 Summons
249 Demand For Limited Removal
250 Other Document _____ (specify)
251 upon _____, (plaintiff/defendant or attorney
252 for _____), by placing a true and correct copy of it
253 in an envelope addressed as follows:

254 _____
255 _____
256 _____

257 which is the last known address of said party or attorney and depositing it,
258 first-class postage or _____) *specify one or both*
259 Certified Mail, Return Receipt Requested postage)
260 prepaid, in the United States mail.

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262 2b. I served a copy of the
263 Summons
264 Demand For Limited Removal
265 Other Document _____ (specify)
266 upon _____, (title) _____,
267 by delivering a copy personally to him/her at _____
268 at _____ am/pm, on _____, 20____.

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2c. After diligent search and inquiry, I was unable to locate _____
_____(name of party to be served), or any residence
or business address for him/her at which service could be attempted.

Dated: _____
Signature of Server
(Sign only in front of notary public or court administrator)

Sworn/affirmed before me this
_____ day of _____, 20____. Telephone (____) _____

Notary Public \ Deputy Court Administrator