

STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

DEC 23 2008

FILED

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

ORDER


In its report filed September 25, 2008, the Supreme Court Advisory Committee on the General Rules of Practice recommended amendments to the General Rules of Practice for the District Courts and the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act. This Court established a deadline of November 26, 2008, for submitting comments on the proposal. The Supreme Court has reviewed the proposals and the submitted comments, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached amendments to the General Rules of Practice for the District Courts and the Special Rules of Procedure Governing Proceedings under the Minnesota Commitment and Treatment Act be, and the same hereby are, prescribed and promulgated to be effective on March 1, 2009.
2. The attached amendments 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.
4. The order of this court dated December 19, 2008, contained several typographical errors and is superseded to the extent inconsistent herewith.

DATED: December 22, 2008

BY THE COURT:


Eric J. Magnuson
Chief Justice

Amendments to the General Rules of Practice for the District Courts:

[Note to publishers: Deletions are indicated by a line drawn through the text; additions are underlined.]

RULE 8. INTERPRETERS

* * *

Rule 8.13. Requirement for Notice of Anticipated Need for Interpreter

In order to permit the court to make arrangements for the availability of required interpreter services, parties shall, in the Informational Statement or Joint Statement of the Case, and as may otherwise be required by court rule or order, advise the court of that need in advance of the hearing or trial where services are required.

When it becomes apparent that previously-requested interpreter services will not be required, the parties must advise the court.

Advisory Committee Comment—2008 Amendment

Making a qualified interpreter available when needed in court often requires difficult prearrangement. Rule 8.13 is a simple rule drawing the attention of litigants to the likelihood they will encounter specific court rules or orders requiring identification of interpreter needs in advance of the need. See amendments to Rules 111.02, 111.03, 112.02, Forms 111.02 & 112.01, and Minnesota Civil Trialbook sections 5 & 11.

The second paragraph of the rule contains an obvious corollary: when it becomes clear that interpreter services will no longer be required, notice must be given to permit the court to avoid the expense that would otherwise be incurred. This notice would be required if a trial or hearing were obviated by settlement, and the requirement of notice is similar to that required by MINN. GEN. R. PRAC. 115.10 for the settlement of a motion, which would obviate a hearing and the court's preparation for the hearing.

RULE 111. SCHEDULING OF CASES

Rule 111.02. The Party's Informational Statement

30 Within sixty days after an action has been filed, each party shall submit, on
31 a form to be available from the court (see form 111.02 appended to these rules),
32 the information needed by the court to manage and schedule the case. The
33 information provided shall include:

- 34 (a) The status of service of the action;
- 35 (b) Whether the statement is jointly prepared;
- 36 (c) Description of case;
- 37 (d) Whether a jury trial is requested or waived;
- 38 (e) Discovery contemplated and estimated completion date;
- 39 (f) Whether assignment to an expedited, standard, or complex track is
40 requested;
- 41 (g) The estimated trial time;
- 42 (h) Any proposals for adding additional parties;
- 43 (i) Other pertinent or unusual information that may affect the scheduling or
44 completion of pretrial proceedings;
- 45 (j) Recommended alternative dispute resolution process, the timing of the
46 process, the identity of the neutral selected by the parties or, if the neutral has not
47 yet been selected, the deadline for selection of the neutral. If ADR is believed to
48 be inappropriate, a description of the reasons supporting this conclusion;
- 49 (k) A proposal for establishing any of the deadlines or dates to be included
50 in a scheduling order pursuant to Minn. Gen. R. Prac. 111.03; and
- 51 (l) Identification of interpreter services (specifying language and, if known,
52 particular dialect) any party anticipates will be required for any witness or party.

53
54 **Rule 111.03. Scheduling Order**

55 (a) **When Issued.** No sooner than sixty days and no longer than ninety
56 days after an action has been filed, the court shall enter its scheduling order. The

57 court may issue the order after either a telephone or in-court conference, or
58 without a conference or hearing if none is needed.

59 (b) **Contents.** The scheduling order shall provide for alternative dispute
60 resolution as required by Rule 114.04(c) and shall establish a date for completion
61 of discovery. The order may also establish any of the following:

62 (1) Deadlines for joining additional parties, whether by
63 amendment or third-party practice;

64 (2) Deadlines for bringing non-dispositive or dispositive
65 motions;

66 (3) *Deadlines or specific dates* for submitting particular
67 issues to the court for consideration;

68 (4) A deadline for completing any independent physical,
69 mental or blood examination pursuant to Minn. R. Civ. P. 35;

70 (5) A date for a formal discovery conference pursuant to
71 Minn. R. Civ. P. 26.06, a pretrial conference or conferences
72 pursuant to Minn. R. Civ. P. 16, or a further scheduling
73 conference.

74 (6) Deadlines for filing any pre-trial submissions,
75 including proposed instructions, verdicts, or findings of fact,
76 witness lists, exhibits lists, statements of the case or any
77 similar documents;

78 (7) Whether the case is a jury trial, or court trial if a jury
79 has been waived by all parties;

80 (8) Identification of interpreter services (specifying
81 language and, if known, particular dialect) any party
82 anticipates will be required for any witness or party;

83 (89) A date for submission of a Joint Statement of the Case
84 pursuant to Minn. Gen. R. Prac. 112; or

85 (910) A trial date.

86

87 Advisory Committee Comment—2008 Amendment

88 Rules 111.02(7) and 111.03(b)(8) are new provisions, adopted as part of
89 amendments designed to foster earlier gathering of information about the
90 potential need for interpreter services in a case, either for witnesses or for a
91 party. See MINN. GEN. R. PRAC. 8.13.

92 **RULE 112. JOINT STATEMENT OF THE CASE**

93

94 * * *

95 **Rule 112.02. Contents**

96 The Joint Statement of the Case shall contain the following information to
97 the extent applicable:

98 (a) a statement that all parties have been served, that the case is at issue,
99 and that all parties have joined in the filing of the Statement of the Case.

100 (b) an estimated trial time.

101 (c) whether a jury trial has been requested, and if so, by which party.

102 (d) counsels' opinion whether the case should be handled as an expedited,
103 standard, or complex case (determination to be made by the court).

104 (e) a concise statement of the case indicating the facts that Plaintiff(s)
105 intend to prove and the legal basis for all claims.

106 (f) a concise statement of the case indicating the facts that Defendant(s)
107 intend to prove and the legal basis for all defenses and counterclaims.

108 (g) names and addresses of all witnesses known to the lawyer or client who
109 may be called at the trial by each party, including expert witnesses and the
110 particular area of expertise each expert will be addressing. If any witness or party
111 is likely to require interpreter services, that fact and the nature of the required
112 services (specifying language and, if known, particular dialect) shall be provided.

113

114 **Advisory Committee Comment—2008 Amendment**

115 Rule 112.02 is amended to include a provision designed to foster earlier
116 gathering of information about the potential need for interpreter services in a
117 case, either for witnesses or for a party. See MINN. GEN. R. PRAC. 8.13.

118

119 **FORM 111.02. INFORMATIONAL STATEMENT (Civil Matters--Non-Family)**

120
121 State of Minnesota

District Court

122
123 COUNTY

122
123 JUDICIAL DISTRICT CASE NO.

124
125 Case Type: _____

126
127 _____,

Plaintiff

128 and

INFORMATIONAL STATEMENT FORM

129
130 _____,

Defendant

- 131
132
133
- 134 1. All parties (have) (have not) been served with process.
 - 135 2. All parties (have) (have not) joined in the filing of this form.
 - 136 3. Brief description of the case: _____
 - 137 _____
 - 138 _____
 - 139 4. It is estimated that the discovery specified below can be completed within ____ months
 - 140 from the date of this form. (Check all that apply, and supply estimates where indicated.)
 - 141 a. Factual Depositions No ____ Yes ____, estimated number: _____
 - 142 b. Medical Evaluations No ____ Yes ____, estimated number: _____
 - 143 c. Experts Subject to Discovery No ____ Yes ____, estimated number: _____
 - 144 5. Assignment as an ____ expedited ____ standard ____ complex case is requested. (If not
 - 145 standard case assignment, include brief statement setting forth the reasons for the request.)
 - 146 _____
 - 147 _____
 - 148 6. The dates and deadlines specified below are suggested.
 - 149 a. _____ Deadline for joining additional parties, whether by amendment or third
 - 150 party practice.
 - 151 b. _____ Deadline for bringing non-dispositive motions.
 - 152 c. _____ Deadline for bringing dispositive motions.
 - 153 d. _____ Deadline for submitting _____ to the court.
 - 154 (specify issue)
 - 155 e. _____ Deadline for completing independent physical examination
 - 156 pursuant to Minn.R.Civ.P. 35.
 - 157 f. _____ Date for formal discovery conference pursuant to Minn. R. Civ. P. 26 06.
 - 158 g. _____ Date for pretrial conference pursuant to Minn. R. Civ. P. 16.
 - 159 h. _____ Date for scheduling conference.
 - 160 i. _____ Date for submission of a Joint Statement of the Case pursuant to
 - 161 Minn. Gen. R. Prac. 112.
 - 162 j. _____ Trial Date.
 - 163 k. _____ Deadline for filing (proposed instructions), (verdicts), (findings of fact),
 - 164 (witness list), (exhibit list).
 - 165 l. _____ Deadline for _____. (specify)

166 7. Estimated trial time: _____ days _____ hours (estimates less than a day must be
167 stated in hours).

168 8. A jury trial is: () waived by consent of _____ pursuant to R. Civ. P. 38.02.
169 (specify party)
170 () requested by _____. (NOTE: Applicable fee must be enclosed.)
171 (specify party)

172 9. a. Meeting: Counsel for the parties met on _____ to discuss case
173 management issues. (Date)

174 b. ADR PROCESS (Check one):
175 Counsel agree that ADR is appropriate and choose the following:
176 Mediation
177 Arbitration (non-binding)
178 Arbitration (binding)
179 Med-Arb
180 Early Neutral Evaluation
181 Moderated Settlement Conference
182 Mini-Trial
183 Summary Jury Trial
184 Consensual Special Magistrate
185 Impartial Fact Finder
186 Other (describe) _____
187 _____

188 Counsel agree that ADR is appropriate but request that the Court select the process.
189 Counsel agree that ADR is NOT appropriate because:
190 the case implicates the federal or state constitution.
191 other (explain with particularity) _____
192 _____
193 domestic violence has occurred between the parties.

194 c. PROVIDER (Check one):
195 The parties have selected the following ADR neutral:
196 _____
197 The parties cannot agree on an ADR neutral and request the Court to appoint one
198 The parties agreed to select an ADR neutral on or before _____
199 _____

200 d. DEADLINE: The parties recommend that the ADR process be completed by _____
201 (Date)

202 10. Please identify any party or witness who will require interpreter services, and describe the
203 services (specifying language and, if known, particular dialect) needed.
204 _____
205 _____
206 _____

207 10.1. Please list any additional information which might be helpful to the court when scheduling
208 this matter.
209 _____
210 _____
211 _____

212
213 Signed: _____ Signed: _____
214 Lawyer for (Plaintiff) (Defendant) Lawyer for (Plaintiff) (Defendant)

215 Attorney Reg. #: _____ Attorney Reg. #: _____
 216 Firm: _____ Firm: _____
 217 Address: _____ Address: _____
 218 Telephone: _____ Telephone: _____
 219 Date: _____ Date: _____
 220

221 **FORM 112.01. JOINT STATEMENT OF THE CASE**

222 _____
 223 State of Minnesota District Court
 224

COUNTY	JUDICIAL DISTRICT CASE NO.
--------	----------------------------

 225
 226
 227

228 Case Type: _____

229 _____
 230 Plaintiff
 231 and
 232 _____
 233 Defendant
 234
 235

JOINT STATEMENT OF THE CASE

- 236 1. All parties have been served with process. The case is at issue and all parties have joined in
 237 the filing of this Joint Statement of the Case.
- 238 2. Estimated trial time: ___ days ___ hours (estimates less than a day must be stated in hours).
- 239 3. Jury is requested by the ___ plaintiff ___ defendant. [If this is a change from a court to a jury
 240 request, then a \$30 fee must be paid when filing this document.]
- 241 4. Concise statement of the case including facts plaintiff(s) intend to prove and legal basis for claims:
 242 _____
 243 _____
 244 _____
- 245 5. Concise statement of the case indicating facts defendant(s) intend to prove and legal basis for
 246 defenses and counterclaim:
 247 _____
 248 _____
 249 _____
- 250 6. List the names and addresses of witnesses known to either party that either party may call.
 251 Indicate the party who expects to call the witness and whether the party intends to qualify that
 252 witness as an expert. (Attach additional sheets if necessary.)

Party	Name/Addresses of Witnesses	Please Indicate if Expert Witness
_____	_____	_____ Yes
_____	_____	_____ Yes
_____	_____	_____ Yes

258 7. Identify any party or witness who will require interpreter services, and describe the services
259 (specifying language, and, if known, particular dialect) needed.

260 _____
261 _____

262
263 - In claims involving personal injury, attach a statement by each claimant, whether by
264 complaint or counterclaim, setting forth a detailed description of claimed injuries and an
265 itemized list of special damages as required by the rule. Indicate whether parties will
266 exchange medical reports.

267 89. In claims involving vehicle accidents, attach a statement describing the vehicles with
268 information as to ownership and the name of insurance carriers, if any.

269 [Signature Blocks]

270
271 (If more space is needed to add additional information or parties, attach a separate sheet typed in
272 the same format.)

273 The undersigned counsel have met and conferred this _____ day of _____ and certify
274 the foregoing is true and correct.

275
276 _____
277 Signature

278 _____
279 Signature

280 _____
281 Signature

282 _____
283 Signature

284

285 **PART H. MINNESOTA CIVIL TRIALBOOK**

286 **Section 5. Pre-Trial Conferences**

287 * * *

288 (d) **Pre-trial Chambers Conferences.** At an informal chambers
289 conference before trial the trial court shall:

290 (1) determine whether settlement possibilities have been
291 exhausted;

292 (2) determine whether all pleadings have been filed;

293 (3) ascertain the relevance to each party of each cause of
294 action; and,

295 (4) with a view to ascertaining and reducing the issues to
296 be tried, shall inquire:

297 (i) whether the issues in the case may be narrowed or
298 modified by stipulations or motions;

299 (ii) whether dismissal of any of the causes of actions or
300 parties will be requested;

301 (iii) whether stipulations may be reached as to those facts
302 about which there is no substantial controversy;

303 (iv) whether stipulations may be reached for waiver of
304 foundation and other objections regarding exhibits,
305 tests, or experiments;

306 (v) whether there are any requests for producing evidence
307 out of order;

308 (vi) whether motions in limine to exclude or admit
309 specified evidence or bar reference thereto will be
310 requested; and

311 (vii) whether there are any unusual or critical legal or
312 evidentiary issues anticipated;

313 (5) direct the parties to disclose the number and names of
314 witnesses they anticipate calling, and to make good faith
315 estimates as to the length of testimony and arguments;

316 (6) direct the parties to disclose whether any party or
317 witness requires interpreter services and, if so, the nature of
318 the interpreter services (specifying language and, if known,
319 particular dialect) required;

320 (67) inquire whether the number of experts or other
321 witnesses may be reduced;

322 (78) ascertain whether there may be time problems in
323 presentation of the case, e.g., because of other commitments
324 of counsel, witnesses, or the court and advise counsel of the
325 hours and days for trial; and

326 (89) ascertain whether counsel have graphic devices they
327 want to use during opening statements; and

328 (910) ascertain whether a jury, if previously demanded, will
329 be waived. If a jury is requested, the judge shall make
330 inquiries with a view to determining:

331 (i) the areas of proposed voir dire interrogation to be
332 directed to prospective jurors, and whether there is any

333 contention that the case is one of "unusual
334 circumstances";

335 (ii) the substance of a brief statement to be made by the
336 trial court to the prospective jurors outlining the case,
337 the contentions of the parties, and the anticipated
338 issues to be tried;

339 (iii) the number of alternate jurors (it is suggested that the
340 identity of the alternates not be disclosed to the jury);
341 and

342 (iv) in multiple party cases, whether there are issues as to
343 the number of "sides" and allocation of peremptory
344 challenges.

345 * * *

346 **Advisory Committee Comment—2008 Amendment**

347 Section 5(d)(6) is new, added to reflect the amendments to Rules
348 111.02(l), 111.03(b)(8), and 112.02(g), requiring earlier disclosure of
349 information about the potential need for interpreter services in a case, either for
350 witnesses or for a party. See MINN. GEN. R. PRAC. 8.13.

351

352 **Section 11. Interpreters**

353 The party calling a witness for whom an interpreter is required shall advise
354 the court ~~in advance~~ in the Informational Statement or Joint Statement of the Case
355 of the need for an interpreter and interpreter services (specifying language and, if
356 known, particular dialect) expected to be required. Parties shall not use a relative
357 or friend as an interpreter in a contested proceeding, except as approved by the
358 court.

359

360 **Advisory Committee Comment—2008 Amendment**

361 This section is amended to incorporate the amendments to Rules
362 111.02(l), 111.03(b)(8), and 112.02(g), requiring earlier disclosure of

363
364

information about the potential need for interpreter services in a case, either for witnesses or for a party. See MINN. GEN. R. PRAC. 8.13.

365 **Rule 12. Requirement for Comparable Means of Service**

366 In all cases, a party serving a paper on a party and filing the same paper
367 with the court must select comparable means of service and filing so that the
368 papers are delivered substantially contemporaneously. This rule does not apply to
369 service of a summons or a subpoena.

370 In emergency situations, where compliance with this rule is not possible,
371 the facts of attempted compliance must be provided by affidavit.

372

373 **Advisory Committee Comment—2008 Amendment**

374 Rule 12 is a new rule, recommended to codify a longstanding practice of
375 professional courtesy: that papers served both to the court and to the other party
376 be served and filed by comparable means. The rule does not require that the
377 same means be used; but if hand delivery to the court is chosen for filing, then
378 either hand delivery, overnight courier sent the day before, or facsimile
379 transmission to other party must be used. The measure of compliance is
380 approximate simultaneity; the purpose of the rule is to discourage gameplaying
381 over service. Fairness requires that service and filing occur at about the same
382 time; delivering papers immediately to the court and then serving them
383 leisurely upon counsel is not justified and in some cases is not fair.

384

385 **RULE 119. APPLICATIONS FOR ATTORNEY FEES**

386

387 * * *

388 **Rule 119.05. Attorney Fees in Default Proceedings**

389 (a) A party proceeding by default and seeking an award of attorney fees
390 that has established a basis for the award under applicable law, including parties
391 seeking to enforce a confession of judgment, may obtain approval of the fees
392 administratively without a motion hearing, provided that:

393 (1) the fees requested do not exceed fifteen percent (15%)
394 of the principal balance owing as requested in that party's
395 pleadings, up to a maximum of \$3,000.00. Such a party may
396 seek a minimum of \$250.00; and

397 (2) the requesting party's pleading includes a claim for
398 attorney fees in an amount greater than or equal to the amount
399 sought upon default; and

400 (3) the defaulting party, after default has occurred, has
401 been provided notice of the right to request a hearing under
402 section (c) of this rule, a form for making such a request
403 substantially similar to Form 119.05 as published by the state
404 court administrator, and the affidavit required under Rule
405 119.02.

406 * * *

407 (c) A defaulting party may request a hearing and further judicial review of
408 the attorneys' fees requested by completing a "Request for Hearing" provided by
409 the plaintiff substantially similar to Form 119.05 as published by the state court
410 administrator. A party may serve the form, at any time after a default has
411 occurred, provided that the defaulting party is given at least twenty (20) days

412 notice before the request for judgment is made. A defaulting party must serve the
413 Request for Hearing upon the requesting party or its counsel within twenty (20)
414 days of its receipt. Upon timely receipt of a Request for Hearing the party seeking
415 fees shall request a judicial assignment and have the hearing scheduled.

416 * * *

417

418 Advisory Committee Comment—2008 Amendment

419 Rule 119.05 is amended to remove Form 119.05 from the rules, and to
420 permit the maintenance and publication of the form by the state court
421 administrator. The form, together with other court forms, can be found at
422 <http://www.mncourts.gov/>.

423

424 [Form 119.05 is to be deleted from the Rules and published by the State
425 Court Administrator; the deletion is not shown in strikeout underline format to
426 conserve space]

427

RULE 702. BAIL

428

429 * * *

430 **(d) Posting Bonds.** Before any person is released on bond, the bond must
431 be approved by a judge after submission to the prosecuting lawyer for approval of
432 form and execution and filed with the court administrator during business hours or
433 thereafter with the custodian of the jail. In cases where bail has been set by the
434 court and the defendant has provided a bail bond with corporate surety, approval
435 by a judge is unnecessary if the bond conforms to Form 702 as published by the
436 state court administrator.

437 * * *

438

439 Advisory Committee Comment—2008 Amendment

440 Rule 702(d) is amended to remove Form 702 from the rules, and to
441 permit the maintenance and publication of the form by the state court
442 administrator. The form, together with other court forms, can be found at
443 <http://www.mncourts.gov/>.

444

445 [Form 702 is to be deleted from the Rules and published by the State Court
446 Administrator; the deletion is not shown in ~~strikeout underline~~ format to conserve
447 space.]

448

449 **RULE 131 USE OF INTERACTIVE VIDEO TELECONFERENCE**
450 **IN CIVIL CASES**

451

452 **Rule 131.01. Definitions.**

453 (a) “ITV” refers to interactive video teleconference.

454 (b) A “terminal site” is any location where ITV is used for any portion of a
455 court proceeding.

456 (c) The “venue county” is the county where pleadings are filed and
457 hearings are held under current court procedures.

458 **Rule 131.02. Permissible Uses; Initiation.**

459 In all civil actions and proceedings including commitment proceedings
460 subject to the Special Rules of Procedure Governing Proceedings Under the
461 Minnesota Commitment and Treatment Act, the court may conduct hearings and
462 admit oral testimony, subject to cross-examination, by live audio-visual means,
463 where authorized by this rule.

464 (a) **Scheduling Conflicts.** All scheduling conflicts and priorities shall be
465 determined by the judge(s).

466 (b) **Use of ITV on Court’s Initiative; Notice.** If the court on its own
467 initiative orders the use of live audio-visual means (ITV) to conduct hearings and
468 proceedings, it shall give notice in accordance with the Rules of Civil Procedure
469 and General Rules of Practice, which notice shall advise the parties of the duty to
470 exchange information under Rule 131.04, and the prohibition on recording in Rule
471 131.06(i).

472 (c) Use of ITV Upon Stipulation. The parties may, subject to court
473 approval and site availability, stipulate that a hearing or proceeding be conducted
474 by ITV in accordance with the procedures established in this rule. The parties
475 shall contact the court administrator as soon as possible to permit scheduling of
476 ITV facilities. A written, signed stipulation requesting the use of ITV shall be
477 filed with the court at least 24 hours prior to the date set for the ITV hearing or
478 proceeding. The stipulation shall be substantially in the form set forth in the
479 Stipulation and Approval form as published by the state court administrator. The
480 parties are responsible for making arrangements to use any site that is outside the
481 control of the court in the venue county, for providing the necessary contact
482 information to the court administrator, and for ensuring the compatibility of the
483 equipment.

484 (d) Use of ITV Upon Motion.

485 (1) Request. Any party may, by motion, request the use
486 of ITV for a hearing or proceeding in accordance with this
487 rule. No motion for use of ITV shall be heard until the
488 moving party serves a copy of the motion on the opposing
489 counsel and files the original with the court administrator at
490 least seven (7) days prior to the scheduled hearing or
491 proceeding for which ITV use is requested. The moving
492 party may, ex parte, contact the court for an expedited hearing
493 date on the motion for use of ITV and for waiver of the usual
494 notice of hearing. The moving party is responsible under
495 Rule 131.02(c) for making arrangements to use any site that is
496 outside the control of the court in the venue county, for
497 providing the necessary contact information to the court
498 administrator, and for ensuring the compatibility of the
499 equipment. The motion shall include, as an attachment, a
500 notice advising the other parties of their right to object to use

501 of ITV, the consequences of failing to timely file an
502 objection, the duty to exchange information under Rule
503 131.04, and the prohibition on recording in Rule 131.06(i). A
504 sample notice is published by the state court administrator.

505 (2) **Objection.** Any party objecting to a motion for use of
506 ITV may file and serve a response to the motion 48 hours
507 prior to the hearing on the motion for use of ITV.

508 (3) **Burden of Proof.** The moving party must establish
509 good cause for use of ITV by a preponderance of the
510 evidence.

511 (4) **Good Cause.** The Court shall consider the following
512 factors to determine “good cause”:

513 (i) Whether a timely objection has been made;

514 (ii) Whether any undue surprise or prejudice would result;

515 (iii) The convenience of the parties, counsel, and the court;

516 (iv) The cost and time savings;

517 (v) The importance and complexity of the proceeding;

518 (vi) Whether the proponent has been unable, after due
519 diligence, to procure the physical presence of a
520 witness;

521 (vii) The convenience to the parties and the proposed
522 witness, and the cost of producing the witness in
523 relation to the importance of the offered testimony;

524 (viii) Whether the procedure would allow effective cross-
525 examination, especially where documents and exhibits
526 available to the witness may not be available to
527 counsel;

528 (ix) Whether the surroundings maintain the solemnity and
529 integrity of the proceedings and thereby impress upon
530 the witness the duty to testify truthfully;

531 (x) Whether the witness is presently in prison or
532 incarcerated; and,

533 (xi) Such other factors as the court may, in each individual
534 case, determine to be relevant.

535 (5) **Emergency Circumstances.** The court may shorten
536 the time periods provided in this rule 131.02(d) upon a
537 showing of good cause.

538 (6) **Determination.** If the use of ITV is thereafter allowed
539 and ordered by the court, the hearing shall proceed, by ITV,
540 in accordance with the provisions of this rule. If the court
541 determines that good cause for the use of ITV has not been
542 established, the hearing or proceeding shall be heard as
543 provided by the Rules of Civil Procedure and General Rules
544 of Practice.

545 **Rule 131.03. Costs and Arrangements; Certification**

546
547 (a) **Costs.** The party or parties, other than the court, requesting use of ITV
548 for any hearing or proceeding shall be responsible for any additional use or other

549 fees over and above those normally incurred by the venue county in connecting
550 from one court site to another court site within the district or collaboration area.

551 (b) Arrangements. If the court on its own initiative orders ITV, the court
552 shall, through the court administrator where the case is venued, establish and make
553 arrangements to carry out the ITV procedures required in order for the court to
554 hear the case as an ITV hearing or proceeding. In all other cases it will be the
555 responsibility of the party requesting the use of ITV to contact the court
556 administrator where the case is venued who shall, working with the judge
557 assigned, establish a hearing date and time so that the case may be scheduled as an
558 ITV hearing or proceeding. The court and counsel shall use reasonable efforts to
559 confer with one another in scheduling ITV hearings or proceedings so as not to
560 cause, delay or create scheduling conflicts.

561 (c) Service. The moving party shall have the responsibility of preparing,
562 serving and filing the motion and notice of motion papers as required by this rule.

563 (d) Certification. By signing a stipulation or motion for use of ITV, a
564 person certifies that the use of ITV will be in accordance with the provisions of
565 this rule, including, without limitation, the requirement in Rule 131.06(i) that no
566 recording shall be made of any ITV proceeding except the recording made as the
567 official court record.

568 **Rule 131.04. Exchange of information.**

569 Whenever ITV is to be used to conduct a hearing or proceeding, evidentiary
570 exhibits shall be exchanged with all other parties and submitted to the court, as
571 appropriate, prior to the commencement of the hearing or proceeding.

572 **Rule 131.05. Location of Participants.**

573 During the ITV hearing:

574 (a) The judge may be at any terminal site.

575 (b) The court clerk shall be in the venue county unless otherwise
576 authorized by the presiding judge.

577 (c) Except as otherwise provided in rule 131.05(d) regarding commitment
578 proceedings, counsel for the parties shall be present at the site from which the
579 party they represent will participate in the hearing, unless the court approves
580 another location prior to the hearing, and witnesses and other interested parties
581 may be located at any terminal site that will allow satisfactory video and audio
582 reception at all other sites.

583 (d) In commitment proceedings, the respondent's attorney shall be present
584 at the ITV site from which the respondent will participate in the proceedings.

585 **Rule 131.06. Proceedings.**

586 In any proceeding conducted by ITV under this rule:

587 (a) Parties entitled to be heard shall be given prior notice of the manner and
588 time of the hearing or proceeding.

589 (b) Witnesses may testify by ITV at all hearings, including contested
590 matters.

591 (c) Regardless of the physical location of any party to the ITV hearing or
592 proceeding, any waiver, stipulation, motion, objection, decision, order or any other
593 actions taken by the court or a party has the same effect as if done in person.
594 Court orders that bear the presiding judge's signature may be transmitted
595 electronically or via facsimile machine to the various ITV sites for the purpose of
596 service.

597 (d) The court administrator of the venue county will keep court minutes
598 and maintain court records as if the proceeding were heard in person.

599 (e) All proceedings held by ITV will be governed by the Minnesota Rules
600 of Civil Procedure, the General Rules of Practice and state law, except as herein
601 provided. Courtroom decorum during ITV hearings will conform to the extent
602 possible to that required during traditional court proceedings.

603 (f) A sheriff, sheriff's deputy, bailiff or other licensed peace officer shall
604 be present at each ITV site for the purpose of maintaining order, as the court
605 deems necessary.

606 (g) The court shall ensure that each party has adequate opportunity to
607 speak privately with counsel, including, where appropriate, suspension of the
608 audio transmission and recording or allowing counsel to leave the conference table
609 to communicate with the client in private.

610 (h) Judges may continue any hearing that cannot proceed due to ITV
611 equipment problems or failure, unless other arrangements to proceed with the
612 hearing are agreed upon by all parties.

613 (i) No recording shall be made of any ITV proceeding except the recording
614 made as the official court record. This Rule 131 does not supersede the provisions
615 of the Minnesota Rules of Public Access to Records of the Judicial Branch.

616 **Rule 131.07. Administrative Procedures.**

617 The following administrative procedures are applicable to all ITV
618 proceedings:

619 **(a) Off-Camera Presence.** During a hearing conducted by ITV, all off-
620 camera persons at any participating ITV terminal site must be identified for the
621 record. This shall not apply to members of the public located in general public
622 seating areas of any courtroom.

623 **(b) Court Administrator Duties.** The Court Administrator for each
624 county shall be responsible for the following:

625 (1) Ensure that the ITV equipment is ready and
626 functioning properly in advance of any ITV hearing, so that
627 there will be no interference with the punctual
628 commencement of a hearing.

629 (2) Provide participants an opportunity to become familiar
630 with use of the ITV equipment and courtroom procedure prior
631 to commencement of the hearing.

632 (3) Set ITV system configuration as designated by the
633 presiding judge. The presiding judge shall consider the
634 objections or concerns of any party.

635 (4) Monitor audio and video quality, making adjustments
636 and providing technical assistance throughout the hearing as
637 necessary.

638 (5) Ensure that any court documents or exhibits that the
639 judge will require prior to or during the course of the hearing
640 are mailed or faxed to the judge prior to commencement of
641 the hearing.

642 (6) Be familiar with problem management procedures,
643 including steps to be taken in performing initial problem
644 determination, identity and location of individual(s) who
645 should be contacted if initial problem/resolution attempts fail,
646 and service call placement procedures.

647 (c) Technical Standards. The following technical standards should be
648 followed:

649 (1) To optimize picture clarity, the room should have
650 diffused lighting and window shades to block external light.

651 (2) To optimize viewing, monitors should be placed in a
652 darkened area of the room and be of sufficient size and
653 number to allow convenient viewing by all participants.

- 654 (3) Cameras and microphones should be sufficient in
655 number to allow video and audio coverage of all participants,
656 prevent crowding of participants, facilitate security, and
657 protect confidential communications.
- 658 (4) Audio and visual must be synchronized and
659 undistorted.
- 660 (5) All hearing participants should speak directly into their
661 microphones.

662
663 **Advisory Committee Comments—2008 Amendment**

664 In October 1999 the Supreme Court informally approved the use of ITV
665 in civil cases but did not adopt any specific rules. The addition of Rule 131 in
666 2008 is intended to provide a uniform procedure permitting the use of
667 interactive video conferencing (ITV) to conduct hearings and admit oral
668 testimony in civil cases. It is based on protocols developed and implemented
669 for a pilot project in the Ninth Judicial District and later tweaked by a
670 subcommittee of the Court's former Technology Planning Committee. The
671 success of the pilot project is reported in NATIONAL CENTER FOR STATE
672 COURTS, COURT SERVICES DIVISION, ASSESSMENT OF THE INTERACTIVE
673 TELEVISION PROGRAM IN THE NINTH JUDICIAL DISTRICT OF MINNESOTA (Sept.
674 1999).

675 Rule 131.02 identifies the situations in which the district court may
676 authorize the use of ITV by order: upon the court's own initiative, upon
677 stipulation by the parties, or upon a showing of good cause. The court as part of
678 its overall case management practice initiated the bulk of the orders in the
679 Ninth Judicial District pilot project. It is anticipated that use of ITV will vary
680 by district, depending on factors such as geographical size and the nature of the
681 cases.

682 Rule 131.02(b) recognizes that when a court orders the use of ITV on its
683 own initiative, the court must notify the parties of the use of ITV. Notices are to
684 be in accordance with rules of civil procedure and the general rules of practice.
685 Once an order is filed, MINN. R. CIV. P. 77.04 requires the court administrator
686 to serve notice of the order immediately by mail, and MINN. GEN. R. PRAC. 1.03
687 requires that service be made on a party's attorney if represented, otherwise on
688 the party directly. The notice of ITV use may also be incorporated into a
689 scheduling order issued under MINN. GEN. R. PRAC. 111.03. Regardless of the
690 precise mechanism, the notice of ITV use must include the information
691 required in Rule 131.02(b). A sample notice is set forth for publication by the
692 state court administrator.

693 Parties may, subject to court approval, stipulate to the use of ITV under
694 rule 131.02(c). Upon reaching a stipulation, the parties must contact the court
695 administrator as soon as possible to obtain a date and time for the ITV hearing.
696 Failure to provide adequate lead time may result in rejection of the stipulation.
697 The parties are responsible for making arrangements to use any site that is
698 outside the control of the court in the venue county. Parties should be aware
699 that use of court and other governmental terminal sites might be subject to
700 collaboration agreements entered into between courts and other government
701 agencies. This may limit the availability of, or control the costs of using or

702 accessing certain terminal sites, particularly those outside the county or district
703 where the action is venued or outside the state's dedicated MNET network.
704 Under Rule 131.03 parties requesting use of ITV for any hearing or proceeding
705 are responsible for any additional use or other fees over and above those
706 normally incurred by the venue county in connecting from one collaboration
707 site to another. Parties are also responsible for ensuring compatibility of
708 equipment for sites outside the control of the venue county.

709 Finally, a written, signed stipulation in the format substantially similar to
710 the form appended to the rule must be filed with the court no later than twenty-
711 four (24) hours prior to the hearing. By signing the stipulation the parties
712 certify that they will follow the protocol, including, without limitation, the
713 requirement in Rule 131.06(i) that no recording shall be made of the ITV
714 proceeding except a recording made as the official record of the proceeding.
715 Access to recordings of proceedings is governed by Rule 4, subd. 3. of the
716 RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH.

717 Rule 131.02(d) sets forth requirements for requesting ITV use when there
718 is no stipulation by the parties. A formal motion is required, and it must be
719 served and filed at least seven days prior to the scheduled hearing or
720 proceeding for which ITV use is requested. The rule authorizes ex parte contact
721 with the court for purposes of obtaining an expedited hearing date on the
722 motion for use of ITV. See MINN. GEN. R. PRAC. 115.04 (non-dispositive
723 motions normally must be served and filed at 14 days in advance of the
724 hearing). The moving party is responsible under Rule 131.03 for making
725 arrangements to use any site that is outside the control of the court in the venue
726 county, for providing the necessary contact information to the court
727 administrator, for ensuring the compatibility of the equipment, and paying any
728 additional costs incurred by the court in facilitating the ITV session. The
729 motion must also include or be accompanied by a notice informing opposing
730 parties of their right to object, consequences of failure to object, requirements
731 for exchange of information, and prohibitions on recording an ITV session (a
732 sample notice is provided for publication by the state court administrator).

733 Objections to a motion for use of ITV must be made prior to the hearing
734 on the motion. The failure of an opposing party to object may be considered
735 along with other factors set forth in Rule 131.02(d)(4) that may determine good
736 cause for use of ITV. The moving party has the burden of establishing good
737 cause.

738 Rule 131.02(d)(5) permits the court to shorten the time periods provided
739 for in Rule 131.02 in emergent circumstances upon a proper showing. As of the
740 time of the drafting of this commentary, a different time period is established
741 for requesting ITV use in commitment cases under Rule 14 of the SPECIAL
742 RULES OF PROCEDURE UNDER THE MINNESOTA COMMITMENT AND TREATMENT
743 ACT (requires notice to the other party at least 24 hours in advance of the
744 hearing, and court approval). The drafting committee is of the opinion that
745 following the protocol with the ability to shorten the time frames when
746 necessary will be sufficient to address the needs of commitment and other
747 matters covered by this rule.

748 Rule 131.03 places responsibility for costs and site arrangements with
749 those seeking to use ITV. The court assumes this responsibility when ordering
750 ITV on its own initiative, as is done for the bulk of the ITV proceedings in the
751 Ninth Judicial District pilot project. When a party or parties initiate the
752 request, however, Rules 131.02(c) and 131.02(d) shift some of the
753 responsibility to the requesting party or parties. Parties also certify that they
754 will comply with the protocol, including the prohibition in Rule 131.06(i)
755 against recording ITV sessions.

756 Rule 131.04 attempts to highlight an important logistical requirement
757 when ITV is used. Documents and other information need to be exchanged and
758 submitted to the court, where appropriate, prior to the ITV session. This is
759 particularly important when the parties are located at different sites.

760 Rule 131.07(b) recognizes that ITV use imposes new logistical duties on
761 court administration staff. This section is intended to assist courts as they
762 implement ITV use and to train new staff.

763 Rules 131.05-.07 set forth the ground rules for conducting ITV sessions.
764 The prohibition on recording ITV sessions set forth in Rule 131.06(i) and
765 echoed throughout the rule is identical to that applicable to telephone hearings
766 under MINN. GEN. R. PRAC. 115.09. This requirement is consistent with the
767 directives of the supreme court regarding use of cameras in the courtroom. See
768 In re Modification of Section 3A(10) of the Minnesota Code of Judicial
769 Conduct, No. C7-81-300 (Minn. S. Ct., filed Jan. 11, 1996) (order reinstating
770 experimental program for audio and video coverage of trial court proceedings);
771 Order for Interactive Audio-Video Communications Experiment in First
772 Judicial District-Mental Illness Commitment Proceedings, No. C6-90-649
773 (Minn. S. Ct., filed April 5, 1995); Order re Interactive Audio-Video
774 communications Pilot Program in Third Judicial District Mental Illness
775 Commitment Proceedings, No. C6-90-649 (Minn. S. Ct., filed Jan. 29, 1999);
776 Order for Interactive Audio and Video Communications, Fourth Judicial
777 District, Mental Health Division, Price and Jarvis Proceedings, No. C6-90-649
778 (Minn. S. Ct., filed April 8, 1991).

779 Rule 131.05(c) requires that counsel and their party must be present at the
780 same terminal site unless otherwise permitted by the court. In commitment
781 cases, court rules do not permit counsel for the patient and the patient to be
782 present at different sites. See rule 14 of the Special Rules of Procedure Under
783 the Minnesota Commitment and Treatment Act. Witnesses and other
784 participants may be located at any terminal site that allows satisfactory video
785 and audio reception.

786 Rule 131.07(c) describes equipment and room standards in functional
787 terms. A more detailed discussion of technical issues and terminology can be
788 found in STATEWIDE VIDEOCONFERENCING COMMITTEE, BRIDGING THE
789 DISTANCE: IMPLEMENTING VIDEOCONFERENCING IN WISCONSIN (10/30/2007) (a
790 dynamic document that is continually updated and that is currently available for
791 download from the Wisconsin Supreme Court website, located at
792 <http://www.wicourts.gov/about/committees/ppacvidconf.htm>).

793 **RULE 708, ITV IN CRIMINAL CASES.**

794
795 Use of ITV in criminal cases is governed by the rules of criminal procedure
796 and rule 131.07 of these rules.

797 **Advisory Committee Comments—2008 Amendment**

798
799 On November 19, 2007, the Supreme Court issued an order promulgating
800 MINN. R. CRIM. P. 1.05 governing the use of interactive video teleconference
801 (ITV) in criminal proceedings. The order referred the task of developing rules
802 governing the administrative procedures for conducting ITV hearings in
803 criminal matters to the Advisory Committee on General Rules of Practice for
804 the District Courts. In the interim, the Court ordered the State Court
805 Administrator to develop temporary administrative procedures. The
806 administrative procedures are set forth in Rule 131.07 of the General Rules of
807 Practice for the District Courts

**Amendments to the Special Rules of Procedure Governing Proceedings
under the Minnesota Commitment and Treatment Act:**

808 **Rule 14 Location of Hearing, Rules of Decorum, Alternative Methods of**
809 **Presenting Evidence**

810

811 The judge or judicial officer shall assure the decorum and orderliness of
812 any hearing held pursuant to Minn. Stat. ch. 253B. The judge or judicial officer
813 shall afford to respondent an opportunity to be dressed in conformity with the
814 dignity of court appearances.

815 A hearing may be conducted or an attorney for a party, a party, or a witness
816 may appear by telephone, audiovisual, or other electronic means if the party
817 intending to use electronic means notifies the other party or parties at least 24
818 ~~hours~~ seven days in advance of the hearing and the court approves. If a witness
819 will be testifying electronically, the notice must include the name, address, and
820 telephone number where the witness may be reached in advance of the hearing.
821 This rule does not supersede Minn. Stat. §§ 595.02 – 595.08 (competency and
822 privilege). Respondent’s counsel will be physically present with the patient. The
823 court shall insure that the respondent has adequate opportunity to speak privately
824 with counsel, including, where appropriate, suspension of the audio recording or
825 allowing counsel to leave the conference table to communicate with the client in
826 private.

827

828 **General Rules of Practice Advisory Committee Comment—2008 Amendment**

829 Rule 14 is amended to lengthen the amount of notice required to be given
830 by a litigant desiring to have a matter heard by electronic means, typically
831 either telephone or interactive television. The seven days required by the rule
832 can be adjusted by the court if necessary.

833