

STATE OF MINNESOTA
IN SUPREME COURT
CX-89-1863

Order Promulgating Amendments to the
General Rules of Practice for the District Courts

ORDER

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

By order dated September 19, 2003, the Court solicited comments on the proposed amendments to be filed no later than November 3, 2003.

The Court has reviewed the comments received and the proposed amendments and is fully advised in the premises.

IT IS HEREBY 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, 2004.
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.
4. The standing order *Re: Attorney's Fees Approval in Default Cases* (4th Jud. Dist. June 2, 2003) (effective August 1, 2003) is vacated effective January 1, 2004.

Dated: December , 2003

BY THE COURT:

Kathleen A. Blatz
Chief Justice

AMENDMENT TO THE GENERAL RULES OF PRACTICE
FOR THE DISTRICT COURTS

RULE 119. APPLICATIONS FOR ATTORNEYS' FEES

Rule 119.05. Attorneys' Fees in Default Proceedings.

(a) A party proceeding by default and seeking an award of attorneys' fees that has established a basis for the award under applicable law may obtain approval of the fees administratively without a motion hearing, provided that:

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

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

(3) the defaulting party, after default has occurred, has been provided notice of the right to request a hearing under section (c) of this rule, a form for making such a request substantially similar to Form 119.05, and the affidavit required under Rule 119.02.

(b) A party may request a formal hearing and seek fees in excess of the amount described herein if that party provides the court with evidence relevant to the amount of attorneys' fees requested as established by the factors a court considers when determining the reasonableness of the attorneys' fees.

(c) A defaulting party may request a hearing and further judicial review of the attorneys' fees requested by completing a "Request for Hearing" provided by the plaintiff substantially similar to Form 119.05. A party may serve the form, at any time after a default has occurred, provided that the defaulting party is given at least twenty (20) days notice before the request for judgment is made. A defaulting party must serve the Request for Hearing upon the requesting party or its counsel within twenty (20) days of its receipt. Upon timely receipt of a Request for Hearing the party seeking fees shall request a judicial assignment and have the hearing scheduled.

(d) Rule 119.05 does not apply to contested cases, ancillary proceedings (*e.g.*, motions to compel or show cause) or proceedings subsequent to the entry of judgment.

* * *

Advisory Committee Comment—2003 Adoption

Rule 119.05 is a new rule to establish a streamlined procedure for considering attorneys' fees on matters that will be heard by default. The rule does not apply to situations other than default judgments, such as motions to compel discovery, motions to show cause, sanctions matters, or attorneys' fees in contested matters. This subsection is modeled on a rule adopted by the Fourth Judicial District and implemented as a local standing order. A simpler procedure for defaults is appropriate and will serve to conserve judicial resources, and it is appropriate to have a uniform rule throughout Minnesota.

New Form 119.05 is intended to provide useful information to the defaulting party and some care has gone into its drafting. Although use of the form is not required, the requirement that any notice conform "substantially" to the form should be heeded. The committee has attempted to use language that fairly advises the defaulting party of the procedure under Rule 119.05 without threatening consequences or confusing the defaulting party on the effect of either contesting or not contesting the fee award. The rule requires that notice be given after the defendant has defaulted. Notice given earlier is not effective to comply with the rule, as such notice is likely to confuse the recipient as to the differing procedures and timing for response to the Summons and responding to the request for fees. An affidavit detailing the basis for the award as required under rule 119.02 must accompany the notice and the form.

The rule does not affect the amounts that may be recovered for attorneys' fees; it allows either side to obtain a hearing on the request for fees; the rule supplies an efficient mechanism for the numerous default matters where a full hearing is not required. Similarly, the rule does not remove the requirement that a party seeking fees file a motion; it simply provides a mechanism for resolution of some motions without formal hearings.

NOTICE AND REQUEST FOR HEARING TO DETERMINE ATTORNEYS' FEES AWARD

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____ (Plaintiff)

vs.

NOTICE AND REQUEST FOR HEARING TO DETERMINE ATTORNEYS' FEES AWARD

_____ (Defendant(s))

Court File No.: _____

TO: _____, JUDGMENT DEBTOR:
(Provide Name)

The above-named plaintiff has commenced an action against you and you are in default because you failed to timely serve an Answer. The plaintiff is now seeking an award of attorneys' fees in addition to the principal, interest and court costs in this action. If you do not contest the attorney fee award by completing this form and returning it to the (plaintiff)(plaintiff's attorney) identified below within twenty (20) days, the court may award fees up to the amount of \$ _____, calculated as fifteen percent (15%) of the principal balance owing as requested in the Complaint up to a maximum of \$3,000.00 but not less than \$250.00. Attached to this notice is an affidavit from the plaintiff explaining its basis for an award of attorney fees. If you contest the reasonableness of the attorney fees, the plaintiff may seek an award of fees in excess of the amount indicated above, and the Court may award an amount larger or smaller than the amount indicated above.

You must return this form to the (plaintiff)(plaintiff's attorney) identified below within twenty (20) days of its receipt. Failure to timely return the form may result in judgment for the requested fees being granted.

NOTE: This form is not a substitute for an Answer to the action that has been commenced against you and will not preclude the entry of judgment for the principal claim. This form is limited solely to requesting a judicial review of the attorneys' fees requested by the plaintiff. Please contact legal counsel for advice related to serving an Answer or completing this form.

REQUEST FOR COURT HEARING

I request a hearing to determine the reasonableness of the attorneys' fees requested by the plaintiff.

(Defendant(s))

Return this form to:

(Plaintiff)(Plaintiff's Attorney)

(Address)