CX-89-1863
STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee on General Rules of Practice

---

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

Final Report
October 20, 2006

Hon. Elizabeth Anne Hayden
Chair

Hon. G. Barry Anderson
Liaison Justice

R. Scott Davies, Minneapolis
Jennifer L. Frisch, Minneapolis
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. Kathryn D. Messerich, Hastings
Hon. Rosanne Nathanson, Saint Paul
Dan C. O'Connell, Saint Paul
Linda M. Ojala, Edina
Philip A. Pfaffly, Minneapolis
Timothy Roberts, Foley
Hon. Donald M. Spilseth, Willmar
Hon. Jon Stafsholt, Glenwood
Hon. Robert D. Walker, Fairmont

Michael B. Johnson, Saint Paul
Staff Attorney

David F. Herr, Minneapolis
Reporter

ADVISORY COMMITTEE ON GENERAL RULES OF PRACTICE

Summary of Committee Recommendations

The advisory committee has reviewed various proposals and recommendations for amendment to the Minnesota General Rules of Practice during 2006. The committee met in September 2006 to review these communications from the bench and bar, and has since reviewed drafts of the rules and comments contained in this Final Report.

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

1. The Court should adopt Form 5.1 to facilitate compliance with existing Rules by attorneys applying for admission p*ro hac vice*.

2. The Court should amend Rule 8 relating to court-appointed interpreters to adopt recommendations of the Ad Hoc Interpreter Workgroup appointed by the State Court Administrator

3. The comment to Rule 10 should be amended to refer to a recent statutory development

4. The Court should adopt a rule to govern taking of testimony from child witnesses.

5. The Court should amend the Rule 114 Code of Ethics Enforcement Procedure as recommended by the ADR Review Board.

6. The comment to Rule 144.01 should be amended to remove confusion caused by a prior amendment of the rule.

7. The Court should adopt a new Rule 308.04 to provide for use of a combined marital termination agreement and decree.

8. The Court should modify Form 6B (Order for Immediate Income Withholding) to remove personal identifying information.

9. Rule 512(a) should be amended to permit Minnesota attorneys to issue subpoenas in conciliation court as they now may in other civil proceedings.

10. The Court should amend Rules 803, 808, and 814, relating to jury management, to clarify the requirement of jury representitiveness,

extend the period of exemption from repeat service, and change the requirements relating to access to jury records.

In addition to these affirmative recommendations, the committee has one additional recommendation, that a rule not be amended as proposed. The committee continues to study collaborative law to determine how this ADR process that avoids resort to the courts should be handled in the court rules.

Other Matters

The committee considered a proposal from interested attorneys to modify Rule 417.02 to remove the requirement that assets returning less than one percent per annum be separately identified on the trust accounting. Based on the views of a number of judges hearing trust account questions that the existing rule provision serves a useful, although not dispositive, role in reviewing trust accounts, the committee recommends that the present rule not be amended.

Collaborative Law

The committee has again considered proposals relating to "collaborative law," but will not be able to make a definitive recommendation to the Court until around April 1, 2007. The committee first took up the issues surrounding collaborative law in 2004, and did so again in 2005. *See* September 26, 2005, Final Report at 3. As anticipated in the 2005 report, in February 2006 the committee received a modified and expanded proposal from a "task force" that formed to make a recommendation for adoption of court rules recognizing collaborative law. The advisory committee invited comment from interested parties on that proposal.

Based on the information received and its questions that remained unanswered, the committee determined that it should seek additional input from the Minnesota Judicial Council, Minnesota District Judges Association, from interested boards, including the Minnesota Lawyers Professional Responsibility Board, Minnesota Board of Judicial Conduct, ADR Review Board, as well as from broader groups of

lawyers, including the Minnesota State Bar Association Family Law, Civil Litigation, and ADR Sections,

The committee intends to discuss this issue further during the winter of 2006-2007, and intends to submit a report to the Court on this subject not later than June 1, 2007.

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, 2007. The committee does not conclude that any of the issues in this report is controversial or likely to generate substantial comment, so it is possible the Court will deem a public hearing unnecessary.

Comment on Style of Report

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

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON CIVIL RULES OF PROCEDURE

Recommendation 1: **The Court should adopt Form 5 to facilitate compliance with existing Rule 5 by attorneys applying for admission p*ro hac vice***

Introduction

Rule 5 of the general rules was incorporated in the rules when they were adopted in 1991 to clarify the procedures for attorneys seeking pro hac vice admission in Minnesota trial court proceedings. The Minnesota State Bar Association proposed adoption of a form to facilitate the consistent application of the rule. The advisory committee believes that the adoption of a standard form, based on the language of the existing rule, would facilitate the implementation of the rule and ease the court's burden in determining whether a movant has complied with the rule's requirements.

Specific Recommendation

The following Form 5 should be adopted ***[note that underscoring for this form is omitted because the entire text is new]***:

FORM 5 Motion for Admission Pro Hac Vice

State of Minnesota **District Court**

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

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

_____,
Plaintiff

vs.

Motion for Admission of

_____

Pro Hac Vice

_____.

Defendant.

_____, being sworn/affirmed under oath, states:

I, _____, an active member in good standing of the bar of the State of Minnesota, move that this Court admit pro hac vice _____ _____, an attorney admitted to practice in the trial courts of _____, but not admitted to the bar of this Court, who will be counsel for the ( ) Plaintiff ( ) Defendant in this case. I am aware that Rule 5 of the Minnesota General Rules of Practice requires me to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

Dated: _____, 20__.

Signature:

_____

MN Attorney License Number:
Law Firm Name & Address:
Telephone: ( )

Affidavit of Proposed Admittee

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

_____, being duly sworn, states the following under oath:

I am currently admitted to practice and in good standing in the trial courts of the following jurisdiction(s), but not admitted to the bar of this Court:

State	License #	Status	Admission Date

I understand that if this Court grants me admission pro hac vice, Rule 5 of the Minnesota General Rules of Practice requires the Minnesota lawyer bringing this Motion to (1) sign all pleadings in this case, (2) be present in person or by telephone at the proceeding at which this Motion is heard, and (3) be present in person or by telephone at all subsequent proceedings in this case unless the Court, in its discretion, conducts the proceedings without the presence of Minnesota counsel.

I also understand that Rule 5 of the Minnesota General Rules of Practice specifies that by appearing pursuant to that rule I am subject to the disciplinary rules and regulations governing Minnesota lawyers and that by applying to appear or appearing in any action I am subject to the jurisdiction of the Minnesota courts.

Dated: _____, 20__.

Signature:

_____

Attorney License Number:
Law Firm Name & Address:
Telephone: ( )

Subscribed and sworn to before me this
____ day of _____, 20__.

_____

ORDER

The foregoing Motion is hereby GRANTED.

Dated: _____, 20__.

_____

Judge of District Court

Dated: _____, 20__.

For the Court:

_____,

Court Administrator

Note: The original of this form must be filed with Court Administrator before you will receive notices generated in this action.

Advisory Committee Comments—2007 Amendment

Form 5.1 is a new form recommended to facilitate compliance with Rule 5 on the admission of out-of-state lawyers *pro hac vice*. Neither the rule nor the adoption of this form limits the discretion of trial judges to determine whether to permit pro hac vice admission and to define the terms upon which a trial court may permit or refuse appearance by out-of-state lawyers. Courts may also require verification of a lawyers good standing in the bar of another court, either by verification on a public website or by requiring a certificate of good standing.

Recommendation 2: **The Court should amend Rule 8 relating to court-appointed interpreters to adopt recommendations of the Ad Hoc Interpreter Workgroup appointed by the State Court Administrator**

Introduction

The committee reviewed and recommends adoption of changes to Rule 8, dealing with interpreters, upon the recommendation of the Ad Hoc Interpreter Advisory Workgroup. The Workgroup was appointed by the State Court Administrator, and the recommended changes are sensible and should be adopted by the Court.

Specific Recommendations

1. Rule 8.01(b) should be amended as follows:

RULE 8. INTERPRETERS.

* * *

Rule 8.01 Statewide Roster

*** * ***

(b) Non-certified Foreign Language Court Interpreters: To be included on the Statewide Roster, foreign language court interpreters must have: (1) completed the interpreter orientation program sponsored by the State Court Administrator; (2) filed with the State Court Administrator a written affidavit agreeing to be bound by the Code of Professional responsibility for Interpreters in the Minnesota State Court System as the same may be amended from time to time; ~~and~~ (3) received a passing score on a written ethics examination administered by the State Court Administrator~~.~~; and (4) demonstrated minimal language proficiency in English and any foreign language(s) for which the interpreter will be listed, as established by protocols developed by the State Court Administrator.

Advisory Committee Comments—2007 Amendment

Rule 8.01(b) is amended to add a new subsection (4). This subsection imposes an additional requirement that court interpreters demonstrate proficiency in English as well as the foreign languages for which they sill be listed. This provision is necessary because certification is currently offered only in 12 languages and many of the state's interpreters are not certified. This change is intended to minimize the current problems involving need to use non-certified interpreters who now often do not possess sufficient English language skills to be effective.

2. Rule 8.05(a)(3) should be amended as follows:

Rule 8.05 Examination for Legal Interpreting Competency

(a) Examination.

*** * ***

3. Results of Examination. The results of the examination, which may include scores, shall be released to examinees by regular mail to the address listed in the Coordinator's files. Statistical information relating to the examinations, applicants, and the work of the State Court Administrator's Office may be released at the discretion of the State Court Administrator's Office. Pass/fail examination results may be released to (1) District Administrators by the State Court Administrator's Office for purposes of assuring that interpreters are appointed in accordance with Rule 8.02, and (2) any state court interpreter certification authority.

[Advisory Committee Comments—2007 Amendment]

[See comment text below]

3. Rule 8.05(a)(5) should be amended as follows:

Rule 8.05 Examination for Legal Interpreting Competency

(a) Examination.

*** * ***

5. Confidentiality. Except as otherwise provided in Rule 8.05(a)3, all information relating to the examinations is confidential. unless waived by the examinee. The State Court Administrator's Office shall take steps to ensure the security and confidentiality of all examination information.

Advisory Committee Comments—2007 Amendment

Rule 8.05(a)(3) is amended to facilitate verification of interpreters' qualification by permitting the release of the interpreter test results to court administrators or interpreter program administrators.

Rule 8.05(a)(5) is amended to provide for the waiver of confidentiality by examinees for the purpose of permitting the release of examination information upon their request.

Recommendation 3: The comment to Rule 10 should be amended to refer to a recent statutory development.

Introduction

The committee considered recommending amendment of Rule 10 to provide explicitly for the enactment of 2006 MINN. SESS. LAWS ch. 260, art. 5, section 48, *adding* MINN. STAT. § 518B.01, subd. 19a. That statute arguably overlaps with parts of Rule 10, specifically Rule 10.01(b)(2) relating to VAWA orders. Because the statute neither conflicts with or expands the operation of the rule, the committee does not believe that a rule amendment is necessary. The committee nonetheless recommends that the advisory committee comment be amended to make it clear that the new statute is one of the state laws that the rule implements.

Specific Recommendation

The advisory committee comment to Rule 10 should be amended to make it clear that MINN. STAT. § 518B.01, subd. 19a, adopted in 2006 by MINN. SESS. LAWS ch. 260, art. 5, § 48, is one of the statutes that may mandate enforcement and recognition of a tribal court adjudication. The committee would not customarily recommend amendment of a comment not related to an amendment of a rule, but the nature of this rule and the importance of avoiding any lack of clarity over the status of orders for protection issued by tribal courts warrants amendment of this comment.

Advisory Committee Comments—~~2003 Adoption~~2007 Amendment

Introduction. Rule 10 is a new rule intended to provide a starting point for enforcing tribal court orders and judgments where recognition is mandated by state or federal law (Rule 10.01), and to establish factors for determining the effect of these adjudications where federal or state statutory law does not do so (Rule 10.02).

The rule applies to all tribal court orders and judgments and does not distinguish between tribal courts located in Minnesota and those sitting in other states. The only limitation on the universe of determinations is that they be from tribal courts of a federally-recognized Indian tribe. These courts are defined in 25 U.S.C. ' 450b(e), and a list is published by the Department of the Interior, Bureau of Indian Affairs. *See, e.g.*, 67 FED. REG. 46328 (July 12, 2002).

Tribal court adjudications are not entitled to full faith and credit under the United States Constitution, which provides only for full faith and credit for "public acts, records, and judicial proceedings of every other state.' U. S. CONST. Art IV, ' 1. But state and federal statutes have conferred the equivalent of full faith and credit status on some tribal adjudications by mandating that they be enforced in state court. Where such full faith and credit is mandatory, a state does not exercise discretion in giving effect to the proper judgments of a sister state. *Baker v. Gen. Motors Corp*., 522 U.S. 222, 233 (1998) ("A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.') Through full faith and credit, a sister state's judgment is given res judicata effect in all other states. *See, e.g., id.; Hansberry v. Lee*, 311 U.S. 32, 42 (1940).

The enforcement in state court of tribal court adjudications that are not entitled to the equivalent of full faith and credit under a specific state or federal statute, is governed by the doctrine of comity. Comity is fundamentally a discretionary doctrine. It is rooted in the court=s inherent powers, as was early recognized in United States jurisprudence in *Hilton v. Guyot*, 159 U.S. 113, 163-164 (1895), where the court said: ANo law has any effect, of its own force, beyond the limits of the sovereignty from which its authority is derived. The extent to which the law of one nation, as put in force within its territory, whether by executive order, by legislative act, or by judicial decree, shall be allowed to operate within the dominion of another nation, depends upon what our greatest jurists have been content to call >the comity of nations.=@

This inherent power was recognized in Minnesota in *Traders' Trust Co. v. Davidson*, 146 Minn. 224, 227, 178 N.W. 735, 736 (1920) (citing *Hilton*, 159 U.S. at 227) where the court said: "Effect is given to foreign judgments as a matter of comity and reciprocity, and it has become the rule to give no other or greater effect to the judgment of a foreign court than the country or state whose court rendered it gives to a like judgment of our courts." In *Nicol v. Tanner*, 310 Minn. 68, 75-79, 256 N.W.2d 796, 800-02 (1976) (citing the Restatement (Second) of Conflicts of Laws ' 98 (1971)), the court further developed the doctrine of comity when it held that the statement in *Traders' Trust Co*. that enforcement required a showing of reciprocity was dictum; that 'reciprocity is not a prerequisite to enforcement of a foreign judgment in Minnesota;" and that the default status of a foreign judgment "should not affect the force of the judgment."

Statutory Mandates. Rule 10.01 reflects the normal presumption that courts will adhere to statutory mandates for enforcement of specific tribal court orders or judgments where such a statutory mandate applies. Federal statutes that do provide such mandates include:

1. Violence Against Women Act of 2000, 18 U.S.C. ' 2265 (2003) (full faith and credit for certain protection orders).

2. Indian Child Welfare Act, 25 U.S.C. ' 1911(d) (2003) ("full faith and credit" for certain custody determinations).

3. Full Faith and Credit for Child Support Orders Act, 28 U.S.C. ' 1738B(a) (2003) ("shall enforce" certain child support orders and "shall not seek or make modifications . . . except in accordance with [certain limitations]').

In addition to federal law, the Minnesota Legislature has addressed custody, support, child placement, and orders for protection. The Minnesota Legislature adopted the Uniform Child Custody Jurisdiction and Enforcement Act, MINN. STAT. '' 518D.101-518D.317 (2002) which: (1) requires recognition and enforcement of certain child custody

determinations made by a tribe Aunder factual circumstances in substantial conformity with the jurisdictional standards of@ the Act; and (2) establishes a voluntary registration process for custody determinations with a 20-day period for contesting validity. MINN. STAT. '' 518D.103; 104 (2002) (not applicable to adoption or emergency medical care of child; not applicable to extent ICWA controls). In addition, the Minnesota Legislature has adopted the Uniform Interstate Family Support Act, MINN. STAT. '' 518C.101-518C.902 (2002), which provides the procedures for enforcement of support orders from another state ["state" is defined to include an Indian tribe, MINN. STAT. ' 518C.101(s)(1) (2002)] with or without registration, and enforcement and modification after registration. The Minnesota Legislature has also adopted the Minnesota Indian Family Preservation Act, MINN. STAT. '' 260.751 B 260.835 (2002), which provides, among other things, that tribal court orders concerning child placement (adoptive and pre-adoptive placement, involuntary foster care placement, termination of parental rights, and status offense placements) shall have the same force and effect as orders of a court of this state. MINN. STAT. ' 260.771, subd. 4 (2002). In 2006 the Minnesota Legislature adopted MINN. STAT. § 518B.01, subd. 19a, which requires enforcement of certain foreign or tribal court orders for protection.

The facial validity provision in Rule 10.01(b)(2) fills in a gap in state law. MINN. STAT. ' 518B.01, subd. 14(e) (2002), authorizes an arrest based on probable cause of violation of tribal court order for protection; although this law includes immunity from civil suit for a peace officer acting in good faith and exercising due care, it does not address facial validity of the order. Similar laws in other jurisdictions address this issue. *See, e.g.*, 720 ILL. COMP. STAT. 5/12-30(a)(2) (Supp. 2003); OKLA. STAT. tit. 22 ' 60.9B(1) (2003); WISC. STAT. ' 813.128(1) (2001-02).

The Minnesota Legislature has also addressed enforcement of foreign money judgments. The Minnesota Uniform Foreign Country Money-Judgments Recognition Act, MINN. STAT. ' 548.35 (2002), creates a procedure for filing and enforcing judgments rendered by courts other than those of sister states. Tribal court money judgments fall within the literal scope of this statute and the statutory procedures therefore may guide Minnesota courts considering money judgments. *Cf. Anderson v. Engelke*, 954 P.2d 1106, 1110-11 (Mont. 1998) (dictum) (statute assumed to allow enforcement by state courts outside of tribal lands, but question not decided). In general, money judgments of tribal courts are not entitled to full faith and credit under the Constitution, and the court is allowed a more expansive and discretionary role in deciding what effect they have. Rule 10.02(a) is intended to facilitate that process.

Discretionary Enforcement: Comity. Where no statutory mandate expressly applies, tribal court orders and judgments are subject to the doctrine of comity. Rule 10.02(a) does not create any new or additional powers but only begins to describe in one convenient place the principles that apply to recognition of orders and judgments by comity.

Comity is also an inherently flexible doctrine. A court asked to decide whether to recognize a foreign order can consider whatever aspects of the foreign court proceedings it deems relevant. Thus Rule 10.02(a) does not dictate a single standard for determining the effect of these adjudications in state court. Instead, it identifies some of the factors a Minnesota judge may consider in determining what effect such a determination will be given. Rule 10.02(a) does not attempt to define all of the factors that may be appropriate for consideration by a court charged with determining whether a

tribal court determination should be enforced. It does enumerate many of the appropriate factors. It is possible in any given case that one or more of these factors will not apply. For example, reciprocity is not a pre-condition to enforceability generally, *Nicol*, 310 Minn. at 75-79, 256 N.W.2d at 800-02, but may be relevant in some circumstances. Notice of the proceedings and an opportunity to be heard (or the prospect of notice and right to hearing in the case of ex parte matters) are fundamental parts of procedural fairness in state and federal courts and are considered basic elements of due process; it is appropriate at least to consider whether the tribal court proceedings extended these rights to the litigants. The issue of whether the tribal court is "of record" may be important to the determination of what the proceedings were in that court. A useful definition of "of record" is contained in the Wisconsin statutes. WIS. STAT. ' 806.245(1)(c) (2001-02); *see also* WIS. STAT. ' 806.245(3) (2001-02) (setting forth requirements for determining whether a court is "of record"). The rule permits the court to inquire into whether the tribal court proceedings offered similar protections to the parties, recognizing that tribal courts may not be required to adhere to the requirements of due process under the federal and state constitutions. Some of the considerations of the rule are drawn from the requirements of the Minnesota Uniform Enforcement of Foreign Judgments Act, MINN. STAT. '' 548.26-.33 (2002). For example, contravention of the state=s public policy is a specific factor for non-recognition of a foreign state=s judgment under MINN. STAT. ' 548.35, subd. 4(b)(3)(2002); it is carried forward into Rule 10.02(a)(7). Inconsistency with state public policy is a factor for non-recognition of tribal court orders under other states' rules. *See* MICH. R. CIV. P. 2.615(C)(2)(c); N.D. R. CT. 7.2(b)(4).

Hearing. Rule 10.02(b) does not require that a hearing be held on the issues relating to consideration of the effect to be given to a tribal court order or judgment. In some instances, a hearing would serve no useful purpose or would be unnecessary; in others, an evidentiary hearing might be required to resolve contested questions of fact where affidavit or documentary evidence is insufficient. The committee believes the discretion to decide when an evidentiary hearing is held should rest with the trial judge.

Recommendation 4: The Court should adopt a rule to govern taking of testimony from child witnesses

Introduction

This recommendation follows the consideration of the issue of taking testimony from child witnesses by the Minnesota Supreme Court Advisory Committee on Rules of Evidence, and its conclusion that this subject would better be taken up by the general rules committee because the issue is a matter of procedure rather than substantive evidence law. The committee concurs with that conclusion.

The general background of this issue reflects the tension between the interests in protecting child witnesses, the occasional need for their testimony, and in criminal matters the defendant's constitutionally protected right to confront witnesses. These tensions, and the United States Supreme Court's recognition in *Maryland v. Craig*, 497 U.S. 836 (1990), that the Confrontation Clause does not require face-to-face confrontation in all cases, prompted the National Conference of Commissioners on Uniform State Laws to adopt its Uniform Act on Taking Testimony of Children by Alternative Methods in 2003. *See* Hon. Catherine L. Anderson, *Child Witneses: Alternatives to Face-to-Face Confrontation*, CRIM. J., Wint. 2004, at 22.

The advisory committee concluded that it is appropriate to adopt a uniform rule on this subject. The issue arises primarily, but not exclusively, in the criminal law context, and the Uniform Law provides separately for the greater discretion in civil proceedings. The committee's proposed rule is drawn directly from the Uniform Law, though the statutory language is converted to the format of these rules. This recommended rule is not intended to change the substantive law relating to the competency of child witnesses. MINN. STAT. § 595.02 sets forth the competency standards in a number of ways. The rule is intended to create a standard procedural framework within which the trial judge can exercise the discretion allowed under the substantive evidence law. *See* MINN. STAT. §§ 595.02, subd. 1(j)(confidentiality of parent-child communications), 595.02, subd. 3 (admissibility of certain out-of-court

statements made by child under 12), & 595.02, subd. 4 (allowing court to order that child witness under age 12 be allowed to testify other than from courtroom).

The proposed rule is derived from the proposed Uniform Act on Taking Testimony of Children by Alternative Methods. Because this subject relates directly to court procedure, the advisory committee believes it should be addressed in the court rules, and not by statute.

Specific Recommendation

The Court should adopt a new Rule 12 to provide a procedure for dealing with the issues presented by having child witnesses testify in both civil and criminal proceedings. ***[Note that underscoring for this rule is omitted because the entire text is new.]***

RULE 12. TESTIMONY FROM CHILD WITNESS

Rule 12.01. Applicability.

This rule applies to the testimony of a child witness in all court proceedings. This rule does not preclude, in a noncriminal proceeding, any other procedure permitted by law for a child witness to testify.

Rule 12.02. Definitions.

For the purposes of this Rule:

(a) "Alternative Method" means a method by which a child witness testifies which does not include all of the following:

1. having the child testify in person in an open forum;

2. having the child testify in the presence and full view of the finder of fact and presiding officer; and

3. allowing all of the parties to be present, to participate, and to view and be viewed by the child.

(b) "Child Witness" means an individual under the age of 13 who has been or will be called to testify in a proceeding.

(c) "Criminal Proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law in an adult or juvenile proceeding.

(d) "Noncriminal Proceeding" means a trial or hearing before a court having judicial or quasi-judicial powers, other than a criminal proceeding.

Rule 12.03. Hearing Whether To Allow Testimony By Alternative Method.

(a) The presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness, or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

(b) A hearing to determine whether to allow a child witness to testify by an alternative method must be conducted on the record after reasonable notice to all parties, any nonparty movant, and any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer. In conducting the hearing, the presiding officer is not bound by rules of evidence except the rules of privilege.

Rule 12.04 Standards For Determining Whether Child Witness May Testify By Alternative Method.

(a) In a criminal proceeding, the presiding officer may allow a child witness to testify by an alternative method only if the presiding officer finds by clear and convincing evidence that the child would suffer serious emotional trauma that would substantially impair the child's ability to communicate with the finder of fact if required to be confronted face-to-face by the defendant.

(b) In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds by a preponderance of the evidence that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of tact. In making this finding, the presiding officer shall consider:

(1) the nature of the proceeding;

(2) the age and maturity of the child;

(3) the relationship of the child to the parties in the proceeding;

(4) the nature and degree of emotional trauma that the child may suffer in testifying; and

(5) any other relevant factor.

Rule 12.05. Factors For Determining Whether To Permit Alternative Method.

If the presiding officer determines that a standard under Rule 12.04 has been met, the presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

1. alternative methods reasonably available;

2. available means for protecting the interests of or reducing emotional trauma to the child without resort to an alternative method;

3. the nature of the case;

4. the relative rights of the parties;

5. the importance of the proposed testimony of the child;

6. the nature and degree of emotional trauma that the child may suffer if an alternative method is not used; and

7. any other relevant factor.

Rule 12.06. Order Regarding Testimony By Alternative Method.

(a) An order allowing or disallowing a child witness to testify by an alternative method must state the findings of fact and conclusions of law that support the presiding officer's determination.

(b) An order allowing a child witness to testify by an alternative method must:

1. state the method by which the child is to testify;

2. list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

3. state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

4. state any condition or limitation upon the participation of individuals present during the testimony of the child; and

5. state any other condition necessary for taking or presenting the testimony.

(c) The alternative method ordered by the presiding officer may be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order.

Rule 12.07. Right of Party To Examine Child Witness.

An alternative method ordered by the presiding officer must permit a full and fair opportunity for examination or cross-examination of the child witness by each party.

Advisory Committee Comments—2007 Amendment

Rule 12 is intended to provide procedural guidelines for taking testimony from child witnesses. The rule neither expands nor contracts the admissibility of this evidence, which is governed by statute in any event. *See* MINN. STAT. § 595.02. This rule is derived in large part from the Uniform Act on Taking Testimony of Children by Alternative Methods, proposed by the National Conference of Commissioners on Uniform State Laws, though it is converted to the format of these rules. The uniform law is discussed in greater detail in Hon. Catherine L. Anderson, *Child Witneses: Alternatives to Face-to-Face Confrontation*, CRIM. J., Wint. 2004, at 22.

This rule is intended to provide a procedural mechanism for dealing with the issues that arise most often by the concerns for child witnesses and the rights of a criminal defendant to faces the witnesses. The right to invoke these alternatives is guided by the substantive evidence and constitutional law; this rule is not intended to expand or contract the use of alternative methods for taking testimony from child witnesses.

Recommendation 5: The Court should amend the Rule 114 Code of Ethics Enforcement Procedure as recommended by the ADR Review Board.

Introduction

The ADR Review Board, appointed by this Court, recommended to this committee in an August 25, 2006 letter, that the Rule 114 Code of Ethics Enforcement Procedure be amended. The committee has reviewed these proposed amendments, which were based on the ADR Review Board's experience investigating and making findings regarding complaints under the Rule 114, and believes that they are sensible and should be made.

Although the advisory committee supports this proposal for revision to the Rule 114 Code of Ethics Enforcement Procedure and recommends that it be adopted, it believes that it may be appropriate for the rules to provide for greater disclosure of the reasons for a sanction when a sanction is imposed. Specifically, the advisory committee concluded that it may be appropriate to provide some explanation of the nature of misconduct found to warrant a sanction. This information would be directly relevant to attorneys and parties seeking to determine whether a particular ADR Neutral should be employed. This may be appropriate for further consideration by the ADR Review Board.

The committee has not prepared separate advisory committee comments, but recommends that the Court include the ADR Review Board's Comments for convenience, with appropriate disclaimer of adoption by the Court.

Specific Recommendation

The Court should amend the Rule 114 Code of Ethics Enforcement Procedure as follows:

RULE 114 APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE

* * *

Rule II. Procedure

*** * ***

F. After review and investigation, the Board shall advise the complainant and neutral of the Board's action in writing by certified mail sent to their respective last known addresses. If the neutral does not file a request for an appeal hearing as prescribed in section G, the Board's decision becomes final. ~~Upon request within fourteen (14) days from receipt of the Board's action on the complaint, the neutral shall be entitled to a hearing before a three-member panel of the Board to contest proposed sanctions or findings. The neutral shall have the right to defend against all charges, to be represented by an attorney, and to examine and cross-examine witnesses. The Board shall receive evidence that the Board deems necessary to understand and determine the dispute. Relevancy shall be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board at its own initiative, or by request of the neutral, may issue subpoenas for the attendance of witnesses and the production of documents and other evidentiary matter. If the neutral does not file a request for hearing as prescribed, the Board's decision becomes final.~~

G. The neutral shall be entitled to appeal the proposed sanctions and findings of the Board to the ADR Ethics Panel by written request within fourteen days from receipt of the Board's action on the complaint. The Panel shall be appointed by the Judicial Council and shall be composed of two sitting or retired district court judges and one qualified neutral in good standing on the Rule 114 roster. Members of the Panel shall serve for a period to be determined by the Judicial Council. One member of the Panel shall be designated as the presiding member.

(1) Discovery. Within 30 days after receipt of a request for an appeal hearing, counsel for the Board and the neutral shall exchange the names and

addresses of all persons known to have knowledge of the relevant facts. The presiding member of the Panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. The Panel may issue subpoenas for the attendance of witnesses and production of documents or other evidentiary material. Counsel for the Board and the neutral shall exchange non-privileged evidence relevant to the alleged ethical violation(s), documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who will be called at the hearing. Both the Board and the neutral have a continuing duty to supplement information required to be exchanged under this rule. All discovery must be completed within 10 days of the scheduled appeal hearing.

(2) Procedure. The neutral has the right to be represented by an attorney at all parts of the proceedings. In the hearing, all testimony shall be under oath. The Panel shall receive such evidence as the Panel deems necessary to understand and determine the issues. The Minnesota Rules of Evidence shall apply, however, relevancy shall be liberally construed in favor of admission. Counsel for the Board shall present the matter to the Panel. The Board has the burden of proving the facts justifying action by clear and convincing evidence. The neutral shall be permitted to adduce evidence and produce and cross-examine witnesses, subject to the Minnesota Rules of evidence. Every formal hearing conducted under this rule shall be recorded electronically by staff for the Panel. The Panel shall deliberate upon the close of evidence and shall present written Findings and Memorandum with regard to any ethical violations and sanction resulting there from. The panel shall serve and file the written decision on the Board, neutral and complainant within forty-five days of the hearing. The decision of the Panel is final.

~~**G.** The neutral or the complainant may appeal the panel decision to the Board, which shall conduct a de novo review of the existing record. An appeal must be filed in writing with the ADR Review Board within fourteen (14) days from receipt of the~~

~~panel's decision. The party that appeals shall pay for the record to be transcribed. The decision of the Board shall be final.~~

*** * ***

Rule III. Sanctions

A. The Board or the Panel may impose sanctions, including but not limited to:

*** * ***

(5) Remove the neutral from the roster of qualified neutrals, and set conditions for reinstatement if appropriate.

*** * ***

Rule IV. Confidentiality

A. Unless and until final sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

(1) As between Board members and staff;

(2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;

(3) As otherwise required or permitted by rule or statute; and

(4) To the extent that the neutral waives confidentiality.

B. If final sanctions are imposed against any neutral pursuant to Section III A (2)-(5), the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.

*** * ***

Recommendation 6: **The comment to Rule 144 should be amended to remove confusion caused by a prior amendment of the rule.**

Introduction

Following the amendment of Rule 144.01 in 1992, question have arisen as to whether separate filing fees should be collected for the proceeding for appointment of a trustee and the subsequent wrongful death action. This issue arises more frequently, but not exclusively, particularly in wrongful death actions where those proceedings occur in different counties. The Committee believes that it is appropriate to clarify in the Advisory Committee comment that a second filing fee should not be required in those circumstances. Amendment of the comment without an accompanying rule amendment is particularly appropriate because the phrasing of the current comment is the basis for some of the reported confusion over the rule's intended meaning.

Specific Recommendation

The Advisory Committee comment to Rule 144 should be amended as follows:

RULE 144. ACTIONS FOR DEATH BY WRONGFUL ACT

Rule 144.01. Application for Appointment of Trustee

* * *

Advisory Committee Comment—~~1999~~ 2007 Amendment

This rule is derived from Rule 2 of the Code of Rules for the District Courts. The Task Force has amended the rule to refer to "next of kin" rather than "heirs." Minn. Stat. § 573.02 makes no requirements as to who must receive notification of petitions for appointment of trustees or for orders for distribution. Amendments to Rule 144.01, 144.02, and 144.05 codify the longstanding practice of requiring petitioners to name and notify only the decedent's surviving spouse and close relatives, not "all next of kin," which under *Wynkoop v. Carpenter*, 574 N.W.2d 422 (Minn. 1998), and recent changes to Minnesota's intestacy statute would include distant relatives such as nieces, nephews, aunts, uncles, and cousins. These amendments address only the matter of notification and are not intended to reduce substantive rights of any next of kin.

The Task Force considered the advisability of amending Rule 144.05 to require the court to consider and either approve, modify, or disapprove the settlement itself, in addition to the disposition of proceeds as required under the existing rule. Although it appears that good reasons exist to change the

rule in this manner, the Minnesota Supreme Court has indicated that the trial court has no jurisdiction to approve or disapprove the settlement amounts agreed upon by the parties. The court can only approve the distribution of those funds among the heirs and next of kin. *See Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197, 200 n.1 (Minn. 1986).

The final sentence of Rule 144.01 was added in 1992 to make it clear that it is the filing of papers in the actual wrongful death action, and not papers relating to appointment of a trustee to bring the action, that triggers the scheduling requirements of the rules, including the requirement to file a certificate of representation and parties (Rule 104) and an informational statement (Rule 111.02). Some have interpreted this comment to mean that the advisory committee intended there to be two separate actions for purposes of computing filing fees. Although a filing fee must be paid when the petition for appointment of a trustee is filed, a second filing fee should not be required in the wrongful death action, even when that wrongful death action is commenced in a different county or district.

Rule 144.06 codifies existing law holding that failure to notify some next of kin does not void an appointment. *See Stroud v. Hennepin County Medical Center*, 544 N.W.2d 42, 48-49 (Minn. App. 1996) (failure to list and obtain signatures of all next of kin did not invalidate trustee's appointment and commencement of a wrongful death action), *rev'd on other grounds*, 556 N.W.2d 552, 553-55, nn.3 & 5 (Minn. 1996) (trustee's original complaint effectively commenced wrongful death action despite her improper appointment).

Recommendation 7: The Court should adopt a new Rule 308.04 to provide for use of a combined marital termination agreement and decree.

Introduction

In many marriage dissolution proceedings the parties may wish to file a combined Marital Termination Agreement and Judgment and Decree. Combining these documents allows them to be drafted to avoid duplication and also eliminates the possibility that language in these two documents might be different. Many Minnesota trial courts now permit the use of a combined version of these documents. The advisory committee solicited comments from family lawyers and there appears to be a broad consensus that this rule should be amended to permit, but not require, a combined Marital Termination Agreement and Judgment and Decree form.

Rule 302.01(b)(2) permits use of a combined Joint Petition, Agreement and Judgment and Decree in cases where the parties agree on all property issues, and there are no issues involving children. The new procedure added to Rule 308 permits the submission of a combined Marital Termination Agreement and Judgment and Decree available in all cases. The committee also recommends that a cross-reference be added to the comments to Rule 302 to explain the slightly different roles of these two rules.

Specific Recommendation

1. The following amendment to Rule 308 to adopt a new Rule 308.04 should be adopted by the Court:

RULE 308. FINAL DECREE

* * *

Rule 308.04. Joint Marital Agreement and Decree

The parties to any proceeding may use a combined agreement and judgment and decree for marriage dissolution. A judgment and decree which is subscribed to by each party before a notary public and contains a final conclusion of law with words to the effect that "the parties agree that the foregoing Findings of Fact and Conclusions of Law incorporate the complete and full Marital Termination Agreement" shall, upon approval and entry by the court, constitute an agreement and judgment and decree for marriage dissolution for all purposes.

Advisory Committee Comments—2007 Amendment

Rule 308.04 is new. The rule allows parties in any marriage dissolution proceeding, whether commenced by petition or joint petition, to use a combined marital termination agreement and judgment and decree. The primary benefit of this procedure is to reduce the risk of discrepancy between the terms of a marital termination agreement and the judgment and decree it purports to authorize. This procedure should benefit both the parties and the court in streamlining the court procedure where the parties are in agreement. The rule permits the parties to use this procedure by agreement, but does not require its use.

The procedure in Rule 308.04 is similar to the procedure for use of combined Joint Petition, Agreement and Judgment and Decree under Rule 302.01(b)(2), but it is available in all cases where the parties agree on all issues (the Rule 302 procedure may be used only in cases not involving children).

The use of this procedure will result in the marital termination agreement becoming an integral part of the judgment and decree, which will render it a public record. To the extent the parties' agreement contains confidential information, they should consider alternative methods of protecting that information, such as use of separate documents as provided for in Rule 308.03 so the agreement is not filed or the use of the confidentiality protection procedures contained in Minn. Gen. R. Prac. 11.

2. If the above amendment is made, a comment should be placed under Rule 302 to eliminate any possible confusion of these procedures.

RULE 302. COMMENCEMENT; CONTINUANCE; TIME; PARTIES

Rule 302.01. Commencement of Proceedings.

* * *

Advisory Committee Comments—2007 Amendment

Although Rule 302 is not amended, the amendment made to Rule 308.04 creates a procedure similar to that in Rule 302.01(b)(2). The Rule 302 procedure is available only in limited circumstances to allow for a completely streamlined procedure – use of a joint petition, agreement and judgment and decree of marriage dissolution without children. The Rule 308 procedure is a more limited streamlined procedure, although it is available in any case, but it does not obviate service of a petition (or use of a separate joint petition). That procedure simply allows the parties to combine the marital termination agreement and judgment and decree into a single document. The decision to use the procedure established in Rule 308.04 may be made at any time, while the procedure in Rule 302.01(b) is, by its nature, limited to a decision prior to commencement of the proceedings.

Recommendation 8: **The Court should modify Form 6B (Order for Immediate Income Withholding) to remove personal identifying information.**

Introduction

The rules were amended in 2005 to provide for maintaining privacy of confidential information in filed court documents. Form 6B was not amended at that time, and because it requires submission of an obligor's social security number and possibly other confidential information, it should now be amended to conform to the procedures for handling confidential information set forth in Minn. Gen. R. Prac. 11. A proposed amended Form 6B is set forth below.

Specific Recommendation

Form 6B should be amended as follows:

FORM 6B.

ORDER FOR IMMEDIATE INCOME WITHHOLDING

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF _____	_____ JUDICIAL DISTRICT
In Re The Marriage Of:	
_____,	**Case No.** _____
Petitioner,	
and	**ORDER FOR IMMEDIATE INCOME WITHHOLDING**
_____,	
Respondent.	

WHEREAS, income withholding does not indicate any wrongdoing on the part of _____, referred to herein as the Obligor, but is required by Minnesota law to assure the regular and timely payment of support and maintenance obligations; and

WHEREAS, Obligors date of birth, social security number, and name and location of Obligor's employer or other payor of funds are:

DOB: _____ SSN: (see attached form 11.1)

Employer/Payor of Funds: _____
_____
_____

NOW, THEREFORE, pursuant to the provisions of Minnesota Statutes, sections 518.611 and 518.613, copies of which are attached, and the hearing on _____ and/or the order dated _____,

IT IS HEREBY ORDERED:

1. That the sum of $_____ per _____ representing child support and/or spousal maintenance, and $_____ per _____ representing payment on child support and/or maintenance arrears in the amount of $_____, shall immediately be withheld from the Obligor's income by Obligor's employer or other payor of funds and remitted to: _____ in accordance with the provisions of Minnesota Statutes, chapter 518.

2. That an additional amount equal to 20 percent of the amount required to be withheld in paragraph 1 above ($_____ per _____) shall be withheld from the income of the Obligor by the employer or other payor of funds until the arrearage is paid in full.

3. Withheld funds must be remitted within ten days of the date the Obligor is paid the remainder of the income, and the remittance information must include the Obligor's name, court file number, and the date the Obligor was paid the remainder of the income.

4. This order is binding on all current and future employers or payors of funds without further order of the court. NO EMPLOYER MAY DISCHARGE,

SUSPEND, OR OTHERWISE PENALIZE OR DISCIPLINE AN EMPLOYEE BECAUSE THE EMPLOYER MUST WITHHOLD SUPPORT. When Obligor's employment terminates, the Obligor and the employer or payor of funds must notify the child support agency of the termination.

Dated: _____, 20__. BY THE COURT:

_____

Advisory Committee Comments—2007 Amendment

Form 6B is amended solely to accommodate the protection of confidential information as required by Minn. Gen. R. Prac. 11.

Recommendation 9: **Rule 512(a) should be amended to permit Minnesota attorneys to issue subpoenas in conciliation court as they now may in other civil proceedings.**

Introduction

As part of the amendments to the Minnesota Rules of Civil Procedure in 2005, effective on January 1, 2006, the Court modified Rule 45 to permit the issuance of subpoenas, in the name of the court, by Minnesota attorneys. Rule 512, governing issuance of subpoenas in conciliation court, was not amended at that time. The committee believes it is appropriate to clarify that attorneys have the authority to issue subpoenas under the civil rules and there is no reason to have a different process in conciliation court.

Although this provision will often not be applicable because lawyers are not involved in many conciliation court actions, when a lawyer does appear, there is no reason not to permit that lawyer to issue subpoenas. Because Rule 45 of the civil rules is drafted broadly to govern use of subpoenas for pretrial discovery as well as for trial, the amendment to Rule 512 does not follow its civil counterpart directly, but the relevant language is the same. The rule is also amended to correct the internal references to Rule 45 of the Rules of Civil Procedure to reflect its renumbering as part of the amendments to the civil rules that took effect on January 1, 2006.

Specific Recommendation

Rule 512(a) should be amended as follows:

RULE 512. TRIAL

(a) Subpoenas. Upon request of a party and payment of the applicable fee, the court administrator shall issue subpoenas for the attendance of witnesses and production of documentary evidence at the trial. Rule 45 of the Minnesota Rules of Civil Procedure ~~45.01, 45.02, 45.03, 45.05, 45.06, and 45.07~~ to the extent relevant for use of subpoenas for trial apply~~y~~ies to subpoenas issued under this rule. A party who is

unable to pay the fees for issuance and service of a summons may apply for permission to proceed without payment of fees pursuant to the procedure set forth in Minnesota Statutes Section 563.01. An attorney who has appeared in an action may, as officer of the court, issue and sign a subpoena on behalf of the court where the action is pending.

* * *

Advisory Committee Comments—2007 Amendment

Rule 512(a) is amended to include express provision for issuance of subpoenas by attorneys admitted to practice before the Court. This provision is adopted verbatim from the parallel provision in the civil rules, Minn. R. Civ. P. 45.01(c), as amended effective Jan. 1, 2006. Although subpoenas may be used for pretrial discovery from non-parties in district court proceedings, conciliation court practice does not allow pretrial discovery, so this use of subpoenas is similarly not authorized by this rule.

The rule is also amended to clarify the cross-references to Minn. R Civ. P. 45, made necessary by the reorganization and renumbering of Rule 45 effective on Jan. 1, 2006. Rule 45 provides a comprehensive procedure for use of subpoenas that is helpful in conciliation court with one significant exception: because subpoenas are only available in conciliation court for use at trial, and not for pre-trial discovery, the portions of Rule 45 dealing with pre-trial discovery are not applicable in conciliation court.

Recommendation 10: **The Court should amend Rules 803, 808, and 814 relating to jury management to clarify the requirement of jury representitiveness, extend the period of exemption from repeat service, and change the requirements relating to access to jury records.**

Introduction

The committee recommends that three changes to the jury management rules be made as recommended by the Jury Managers Resource Team. That team, which includes representatives of Court Administration for every judicial district, has reviewed problems with the implementation of the current jury management rules. The advisory committee believes its recommendations are sound and should be adopted by the Court.

In summary, the recommended changes are three:

Rule 803 is amended to align make the rule more precisely define the duty of the jury commissioner to evaluate the representativeness of the jury pool.

Rule 808 is amended to change the two-year period of exemption after service from being called again as a juror, returning it to its pre-2003 level of four years. The reason for this change is that the two-year rule is unduly short, resulting in too many jurors being called for repeated service while large numbers of people in the eligible population are not called.

Rule 814 is changed to extend the current process for obtaining access to jury questionnaires during the first year after the jury list is prepared—request to the court supported by an affidavit setting forth the reason for access—to all requests. The present rule appears to create an unlimited, absolute right to access after one year, and there appear to be good reasons not to permit this form of unfettered access.

Specific Recommendation

The committee recommends that the following amendments be adopted:

1. Rule 803(b)(1) should be amended as follows:

RULE 803. JURY COMMISSIONER

* * *

(b) The jury commissioner shall collect and analyze information regarding the performance of the jury system on a regular basis in order to evaluate:

(1) the ~~representativeness and~~ inclusiveness of the jury source list and the representativeness of the jury pool;

* * *

Advisory Committee Comments—2007 Amendment

Rule 803(b)(1) is amended to state the jury commissioner's responsibility more precisely. Because a jury commissioner does not have control over the composition of the jury source list, the rule should not impose a duty relating to the source list. It shifts that responsibility, however, to require the jury commissioner assess the representitiveness of the jury pool as a whole, not the constituent lists. This amendment is not intended to lessen in any way the representitiveness of jury pools.

2. Rule 808(b)(7) should be amended as follows:

RULE 808. QUALIFICATIONS FOR JURY SERVICE

* * *

(b) To be qualified to serve as a juror, the prospective juror must:

* * *

(7) A person who has not served as a state or federal grand or petit juror in the past ~~two~~ four years.

Advisory Committee Comments—2007 Amendment

Rule 808 is amended to change the exemption from repeated jury service from two to four years. This change is made on the recommendation of the Jury Managers Resource Team and reflects that fact that sufficient numbers of jurors can be obtained with a four-year exemption. This change returns the rule to the period used before 2003, when the rule was amended to shorten the period to the current two-year

period. The two-year period has resulted in various disproportionate calls to jury service and to complaints from repeatedly summoned jurors.

3. Rule 814 should be amended as follows:

RULE 814. RECORDS.

The names of qualified prospective jurors drawn and the contents of juror qualification questionnaires shall not be disclosed except as provided by this rule or as required by Rule 813.

(a) **~~Qualified~~ Public Access.** ~~Before the expiration of the time period in part (d) of this rule, t~~The names of the qualified prospective jurors drawn and the contents of juror qualification questionnaires, except identifying information to which access is restricted by court order and social security numbers, completed by those prospective jurors must be made available to the public upon specific requests to the court, supported by affidavit setting forth the reasons for the request, unless the court determines:

(1) in a criminal case that access to any such information should be restricted in accordance with Minn. R. Crim. P. 26.02, subd. 2(2); or

(2) in all other cases that in the interest of justice this information should be kept confidential or its use limited in whole or in part.

* * *

~~(d) **Unqualified Public Access.** After one year has elapsed since preparation of the list and all persons selected to serve have been discharged, the contents of any records or lists, except identifying information to which access is restricted by court order and social security numbers, shall be accessible to the public.~~

Advisory Committee Comments—2007 Amendment

Rule 814 is amended to delete the apparently absolute right to public access to jury questionnaires one year after the jury list is prepared,

contained in Rule 814(d). The provision is replaced by the modified public access right contained in amended Rule 814(a). The procedure applies the uniform procedure of specific request to the court for access, and essentially simply removes the distinction between requests before and after the one-year anniversary.