

STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING COMMENTS ON  
PROPOSED AMENDMENTS TO THE RULES OF CIVIL PROCEDURE**


The Supreme Court Advisory Committee on the Rules of Civil Procedure in a report dated October 6, 2000 has recommended amendments to the Rules of Civil Procedure; and

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

IT IS HEREBY ORDERED that any individual wishing to provide statements in support or opposition to the proposed amendments shall submit twelve copies in writing addressed to Frederick K. Grittner, Clerk of the Appellate Courts, 25 Constitution Avenue, St. Paul, Minnesota 55155, no later than Friday, December 1, 2000. A copy of the committee's report containing the proposed amendments is annexed to this order.

Dated: October 10, 2000

BY THE COURT:

  
Kathleen A. Blatz  
Chief Justice

OFFICE OF  
APPELLATE COURTS

OCT 10 2000

FILED

C6-84-2134  
**STATE OF MINNESOTA  
IN SUPREME COURT**

OFFICE OF  
APPELLATE COURTS

OCT 9 2000

**FILED**

**In re:**

**Supreme Court Advisory Committee  
on Rules of Civil Procedure**

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**Recommendations of Minnesota Supreme Court  
Advisory Committee on Rules of Civil Procedure**

**Final Report**

**October 6, 2000**

**Hon. Paul H. Anderson, Chair**

**Barbara D'Aquila, Minneapolis  
Christopher Dietzen, Bloomington  
Maclay R. Hyde, Minneapolis  
Cynthia M. Johnson, Saint Paul  
Eric D. Larson, Rochester  
Douglas D. McFarland, Saint Paul**

**Timothy R. Murphy, Brainerd  
Richard L. Pemberton, Fergus Falls  
Hon. Carol Person, Duluth  
Hon. Marianne D. Short, Minneapolis  
Richard S. Slowes, Saint Paul  
Michael W. Unger, Minneapolis**

**David F. Herr, Minneapolis  
Reporter**

# **ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE**

## **Summary of Committee Recommendations**

This Court's Advisory Committee on Rules of Civil Procedure met twice during 2000 to consider various suggestions or proposals for modification of the rules. The changes recommended in this report are modest in scope, and should not significantly affect trial practice in the Minnesota state courts.

## **Specific Rule Amendment Recommendations**

The recommendations in this report are briefly summarized as follows:

1. Amend Rule 5 to clarify that filing, like service, is complete upon mailing. The rule is also amended to broaden the rule that documents should not be rejected for filing for mere failure to follow the form specified in the rules.
2. Amend Rule 10 to require that the name of the judge be identified in the caption of cases where a particular judge has been assigned to the case for all further proceedings.
3. Amend Rule 59 to expand the time for filing a motion for a new trial from 15 to 30 days and for having the motion heard from 30 to 60 days. (And add comments to Rules 50 and 52 to draw the attention of practitioners to the fact this amendment also extends these deadlines for motions for j.n.o.v. or for amended findings).
4. Make it explicit in Rule 63.03 that a judge specially assigned to complex cases by the Chief Justice cannot be removed by notice to remove. This rule is recommended if the Court adopts amendments to MINN. GEN. R. PRAC. 113.03(b) as recommended by the General Rules Advisory Committee.
5. Amend Rule 65 to incorporate a fourth subdivision drawn verbatim from its federal counterpart.

## **A Concern for Further Consideration**

We reported last year on problems relating to legislative actions that affect court procedure in civil actions. These concerns continue.

During the 2000 session the Legislature amended MINN. STAT. § 542.16 (1998) to modify the time during which a party may remove an assigned judge by mere filing of a notice to remove. *See* MINN. LAWS 2000, ch. 372 (S.F. 2742), *to be codified as* MINN. STAT. § 542.16, subd. 1. As a result of the amendment, the statute now conflicts with the carefully (and repeatedly) considered provisions of Rule 63.03 of the Minnesota Rules of Civil Procedure. The specific change made by the Legislature, extending the time to remove a judge until the time to answer the summons, was not one that had been proposed to this committee by either the bench, the bar, or the public. In addition to the obvious undesirability of having different procedural standards in the statutes and rules, this amendment is potentially quite vexing because in actions where a Rule 12 motion to dismiss is served, the due date for the answer may not occur for months, and will not occur until the parties have at least one substantive ruling from the assigned judge (the ruling on the Rule 12 motion). The new statutory provision similarly does not cut off the right to remove once the assigned judge actually begins to hear a matter.

The new statutory approach appears likely to encourage judge-shopping and will likely be disruptive to trial court administration. Although the committee does not believe this problem can effectively be addressed by amendment of the rules, it remains an serious problem worthy of this Court's ongoing consideration.

## **Effective Date**

The Advisory Committee believes that these amendments may not require a public hearing because they do not significantly change existing court practice and are unlikely to be controversial. If a hearing is deemed desirable, the committee believes it appropriate to have the matter heard so the Court could attempt to issue any order on these recommendations so the amendments can take effect on January 1, 2001. The Committee believes this will facilitate the disclosure of these rules and distribution of them to the bench and bar well in advance of the effective date.

The Committee believes the new provisions can be applied to actions pending on January 1, 2001, as well as those filed thereafter.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY  
COMMITTEE ON RULES OF CIVIL  
PROCEDURE

**Recommendation 1:**                    **Rule 5 should be amended to clarify that filing, like service, is complete upon mailing.**

### **Introduction**

The Committee recommends that Rule 5 be amended to expressly provide that filing by mail is complete upon service as is service by mail. The Advisory Committee Comments to this change make it clear that this change is intended to help answer the question of what steps are necessary to perfect filing by mail, and not to deal with timing issues. Timing is governed by other rules of civil procedure and, in the case of motions, by the general rules of practice.

### **Specific Recommendation**

## **RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

\* \* \*

### **Rule 5.04. Filing; Certificate of Service**

All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless upon order of the court or for use in the proceeding. Filing by mail is complete upon mailing.

The administrator shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by ~~these rules or any local court~~ rules or practices.

**Advisory Committee Comment—2000 Amendments**

Rule 5.04 is amended to expressly provide that filing by mail is complete upon mailing. This change mirrors the existing provision in Rule 5.02 that service by mail is completed by mailing. It is important to understand that this change deals with what is necessary to perfect filing, deeming filing complete upon placing the filing in the mail. This rule does not affect the question—often a difficult question—of determining when it is necessary to file if filing is undertaken by mail. Those matters are covered by other rules and governed by the timing provisions of those rules. See particularly MINN. R. CIV. P. 6.01 & .05 and MINN. R. GEN. P. 115.01(b) (timing of reply papers).

The last sentence of Rule 5.04 is changed to broaden the direction to court administrators not to reject documents for filing for noncompliance with the form requirements of the rules. The rule as amended makes it clear that those form requirements, regardless of which set of rules contain them, should not be the basis for a refusal to file the document. Any deficiency as to form, should be dealt with by appropriate court order, including in most cases an opportunity to cure the defect.

**Recommendation 2:**            **Rule 10 should be amended to require that the name of the judge be identified in the caption of cases where a particular judge has been assigned to the case for all further proceedings.**

### **Introduction**

As is commonly done in districts using the “block” assignment system and in those circumstances in the non-block calendar systems when a judge is assigned to a case in a particular matter, it frequently would be helpful to the court administrators and other court personnel to have the caption include the identity of the judge to whom the pleadings should be directed. A simple amendment to Rule 10.01 implements this requirement.

One committee member voted against and dissents from this recommendation, and his comments are included here:

#### **Dissent of Douglas D. McFarland**

I dissent from the committee’s recommended amendment to Rule 10.01 because the sentence as drafted will cause confusion. The sentence requires the name of the trial judge to be placed in the caption “adjacent to the file number.” Nowhere does the rule require the file number to be in the caption.

Federal Rule 10(a) requires a file number in the caption, but Minnesota Rule 10.01 departs from the federal rule in requiring instead a case type indicator, which is to be in the upper right hand corner. It would make sense to say the name should be “adjacent to the case type indicator” instead of “adjacent to the file number.” Another alternate drafting would be to end the sentence following the word “caption.” That alternative would offer no guidance on placement, but that lack of guidance could not be a problem of any size.

The majority of the committee members believe the rule as submitted will not create any confusion in practice, and noted that the existing rule omits the federal-court requirement that the caption include the file number because Minnesota practice does not require the filing of an action.



## **Specific Recommendation**

### **RULE 10. FORM OF PLEADINGS**

#### **Rule 10.01. Names of Parties**

Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, and a designation as in Rule 7, and, in the upper right hand corner, the appropriate case type indicator as set forth in the subject matter index included in the appendix as Form 23. If a case is assigned to a particular judge for all subsequent proceedings, the name of that judge shall be included in the caption and adjacent to the file number. In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the first party on each side with an appropriate indication of other parties.

#### **Advisory Committee Comments—2000 Amendments**

Rule 10.01 is new in 2001 and is intended to facilitate case management and document management in cases where a judge has been assigned to the case. By placing the judge's name on the caption, it is often possible to expedite the delivery of filed documents to that judge. This provision is commonly required in federal court cases where all matters are assigned to a judge, including in the United States District Court for the District of Minnesota. *See* LR 5.1 (D. Minn.). Although the rule does not require the inclusion of a file number in the caption, it is customary to do so once an action is filed.

**Recommendation 3: The rules governing timing of post-trial motions should be modified to extend both the time for filing these motions and having them heard.**

### **Introduction**

Under the current rules a motion for a new trial must be filed within fifteen days after a general verdict or service of a notice by the party of the filing of a decision or order, and the motion must be heard within thirty days. Failure to have the motion heard is fatal. This rule has created difficulty in practice for a variety of reasons. The Committee recommends that the deadlines be extended from fifteen to thirty days for filing of the motion and from thirty days to sixty days for having the motion heard. This deadline could still be extended beyond sixty days by an order filed within that time, but the Committee believes this modification will make such motions less frequently necessary.

In addition to changing the timing for Rule 59, the Committee believes it would be advantageous to replace the requirements in Rules 50.02 for motions for judgment notwithstanding the verdict and Rule 52.02 for motions for amended findings to draw attention to the fact that the timing requirements include both a requirement for filing and a requirement for having the motion heard. Amendments to those rules are proposed as well.

### **Specific Recommendation**

#### **RULE 59. NEW TRIALS**

\* \* \*

#### **Rule 59.03. Time for Motion**

A notice of motion for a new trial shall be served within ~~45~~ 30 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard

52 within ~~30~~ 60 days after such general verdict or notice of filing, unless the time for hearing be  
53 extended by the court within the ~~30~~ 60-day period for good cause shown.

54 **Advisory Committee Comment—2000 Amendments**

55 The single purpose of the amendment of this Rule 59.03 in 2000 is to create a longer  
56 and more reasonable period in which to hear post-trial motions. At the time this rule was  
57 adopted, post-trial motions were often heard in a somewhat perfunctory manner and court  
58 assignment practices permitted the scheduling of cases in this manner.

59 This amendment will also reduce, although not eliminate, the potential consequences  
60 of failing to have a post-trial motion heard in a timely manner.

61 The change in Rule 59 will serve to extend the deadline for other post-trial motions as  
62 well, because the current rules specifically tie the deadlines for those motions to Rule 59.  
63 See MINN. R. CIV. P. 50.02(c)(judgment notwithstanding the verdict); 52.02 (motion for  
64 amended findings). It will also have an indirect impact on Rule 60.02(b), which allows for  
65 relief from an order or judgment on the grounds of newly discovered evidence which could  
66 not have been discovered in time to move for a new trial. This latter impact will be  
67 negligible.

68 **RULE 50. MOTION FOR A DIRECTED VERDICT;  
69 JUDGMENT NOTWITHSTANDING VERDICT;  
70 ALTERNATIVE MOTION**

71 \* \* \*

72 **Rule 50.02. Judgment Notwithstanding Verdict**

73 (a) A party may move that judgment be entered notwithstanding the verdict or  
74 notwithstanding the jury has disagreed and been discharged, whether or not the party has moved  
75 for a directed verdict, and the court shall grant the motion if the moving party would have been  
76 entitled to a directed verdict at the close of the evidence.

77 (b) A motion for judgment notwithstanding the verdict may include in the alternative a  
78 motion for a new trial.

79 (c) A motion for judgment notwithstanding the verdict or notwithstanding the jury has  
80 disagreed and been discharged shall be ~~made~~ served and heard within the times specified in Rule  
81 59 for the making of a motion for a new trial and may be made on the files, exhibits, and minutes  
82 of the court. On a motion for judgment notwithstanding the jury has disagreed and been  
83 discharged, the date of discharge shall be the equivalent of the date of rendition of a verdict

84 within the meaning of that rule, but such motion must in any event be ~~made~~ served and heard  
85 before a retrial of the action is begun.

86 (d) If the motion for judgment notwithstanding the verdict is granted, the court shall also  
87 rule on the motion for a new trial, if any, by determining whether it should be granted if the  
88 judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying  
89 the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order  
90 thereon does not affect the finality of the judgment. In case the motion for a new trial has been  
91 conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless  
92 the appellate court has otherwise ordered. In case the motion for a new trial has been  
93 conditionally denied, the respondent on appeal may assert error in that denial; and if the  
94 judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of  
95 the appellate court.

96 (e) The party whose verdict has been set aside on motion for judgment notwithstanding  
97 the verdict may serve a motion for a new trial pursuant to Rule 59 except that the times for  
98 serving and hearing said motion shall be determined from the date of notice of the trial court's  
99 order granting judgment notwithstanding rather than the date the verdict is returned.

100 (f) If the motion for judgment notwithstanding the verdict is denied, the party who  
101 prevailed on that motion may, as respondent, assert grounds entitling that party to a new trial in  
102 the event the appellate court concludes that the trial court erred in denying the motion for  
103 judgment notwithstanding the verdict. If the appellate court reverses the judgment, nothing in  
104 this rule precludes it from determining that the respondent is entitled to a new trial, or from  
105 directing the trial court to determine whether a new trial shall be granted.

106 **Advisory Committee Comment—2000 Amendments**

107 Although the text of this Rule 50.02 is not changed by these amendments, it is worth  
108 noting that Rule 59.03, governing the time for filing a motion for a new trial is changed to  
109 expand the time from 15 days for filing the motion to 30 days and from 30 days to 60 days  
110 for having the motion heard. This amendment has the practical effect of extending the time  
111 for filing a motion under Rule 50 because Rule 50.02(c) incorporates the filing and hearing  
112 time limits of Rule 59.

## RULE 52. FINDINGS BY THE COURT

\* \* \*

### **Rule 52.02. Amendment**

Upon motion of a party ~~made~~ served and heard not later than the times allowed for a motion for new trial pursuant to Rule 59.03, the court may amend its findings or make additional findings, and may amend the judgment accordingly if judgment has been entered. The motion may be made with a motion for a new trial and may be made on the files, exhibits, and minutes of the court. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

#### **Advisory Committee Comment—2000 Amendments**

Although the text of this Rule 52.02 is not changed by these amendments, it is worth noting that Rule 59.03, governing the time for filing a motion for a new trial is changed to expand the time from 15 days for filing the motion to 30 days and from 30 days to 60 days for having the motion heard. This amendment has the practical effect of extending the time for filing a motion for amended findings under Rule 52 because Rule 52.02 incorporates the filing and hearing time limits of Rule 59.

**Recommendation 4:** If the Court adopts amendments to MINN. GEN. R. PRAC. 113.03(b) as recommended by the General Rules Advisory Committee, it should also make clear in Rule 63.03 that a judge specially assigned to complex cases by the Chief Justice cannot be removed by Notice to Remove.

### **Introduction**

If this Court formalizes the procedure for assignment of cases pending in various districts to a single judge, as has in the past been done in certain sets of complex cases, it is appropriate to amend Rule 63.03 to make it clear that an assignment of a judge by the Chief Justice would take precedence over a party's right to remove thereafter.

Although this Committee is not initiating the recommendation, it has reviewed and commented on the form of amendment to Rule 63.03, and believes it is appropriate for this Court to adopt that amendment if it adopts the amendment to MINN. GEN. R. PRAC. 113.03(b) as recommended by the Minnesota Supreme Court Advisory Committee on General Rules of Practice.

### **Specific Recommendation**

130 **RULE 63. DISABILITY OF DISQUALIFICATION OF JUDGE;**  
131 **NOTICE TO REMOVE; ASSIGNMENT OF A JUDGE**

132 \* \* \*

133 **Rule 63.03 Notice to Remove**

134 Any party or attorney may make and serve on the opposing party and file with the  
135 administrator a notice to remove. The notice shall be served and filed within ten days after the  
136 party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not  
137 later than the commencement of the trial or hearing.

138 No such notice may be filed by a party or party's attorney against a judge or judicial  
139 officer who has presided at a motion or any other proceeding of which the party had notice, or  
140 who is assigned by the Chief Justice of the Minnesota Supreme Court. A judge or judicial officer  
141 who has presided at a motion or other proceeding or who is assigned by the Chief Justice of the  
142 Minnesota Supreme Court may not be removed except upon an affirmative showing of prejudice  
143 on the part of the judge or judicial officer.

144 After a party has once disqualified a presiding judge or judicial officer as a matter of right  
145 that party may disqualify the substitute judge or judicial officer, but only by making an  
146 affirmative showing of prejudice. A showing that the judge or judicial officer may be excluded  
147 for bias from acting as a juror in the matter constitutes an affirmative showing of prejudice.

148 Upon the filing of a notice to remove or if a litigant makes an affirmative showing of  
149 prejudice against a substitute judge or judicial officer, the chief judge of the judicial district shall  
150 assign any other judge of any court within the district, or a judicial officer in the case of a  
151 substitute judicial officer, to hear the cause.

152 **Advisory Committee Comments— 2000 Amendments**

153 Rule 63.03 is amended to make clear the fact that a judge specially assigned by the  
154 Chief Justice to hear cases originally pending in more than one district cannot be removed by  
155 mere filing of a notice to remove. This amendment is a companion to the amendment of  
156 Rule 113.03 of the Minnesota General Rules of Practice in 2000, effective January 1, 2001,  
157 to provide a formal mechanism for requesting the Chief Justice to make such an assignment.

158 This rule codifies the existing practice in special cases such as special assignment of a judge  
159 by the Chief Justice. The rule makes it clear that even a judge assigned by the Chief Justice  
160 may be removed for cause.

**Recommendation 5:**                    **Rule 65 should be amended to incorporate a fourth subdivision in the same form as its federal counterpart.**

### **Introduction**

Although injunction practice is substantially the same in state and federal courts under MINN. R. CIV. P. 65 and FED. R. CIV. P. 65, Minnesota does not have a counterpart to FED. R. CIV. P. 65(d). The committee believes it would be helpful to have the Minnesota rules expressly address the subject matter of this rule, and believes the federal rule should be adopted in Minnesota. The committee believes this amendment will not significantly change Minnesota practice, though it should clarify some aspects of it.

### **Specific Recommendation**

## **RULE 65. INJUNCTIONS**

\* \* \*

### **Rule 65.04 Form and scope of injunction or restraining order**

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

#### **Advisory Committee Comments— 2000 Amendments**

This rule is entirely new in the Minnesota rules, it is drawn directly from FED. R. CIV. P. 65(d). There is no comparable provision currently in the Minnesota rules and questions do arise about what is necessary to make sure that a party is subject to a court's injunctive order. The amended rule is intended to resolve those questions.



# STROBEL & HANSON, P.A.

ATTORNEYS at LAW

Jack C. Strobel\*  
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\* also admitted in Iowa  
† also admitted in Wisconsin  
‡ Civil Trial Specialist, certified  
by the Minnesota State Bar Association

Lorens Q. Brynestad  
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October 23, 2000

OFFICE OF  
APPELLATE COURTS

OCT 25 2000

FILED

Frederick K. Grittner  
Clerk of the Appellate Courts  
25 Constitution Avenue  
St. Paul, MN 55155

RE: Proposed Amendments to the Rules of Civil Procedure  
of October 6, 2000

Dear Members of the Court:

I write to express my support of the dissent of Douglas McFarland to the proposed amendment to Rule 10.01 of the Rules of Civil Procedure. It would appear, though, Mr. McFarland's dissent would be best supported by an additional sentence reading as follows:

Once the case has been filed, the court file number will be included in the caption upon all subsequent pleadings.

Please supply this comment to the Supreme Court for its consideration in connection with the proposed amendment to these rules.

Sincerely yours,

STROBEL & HANSON, P.A.



Einar E. Hanson

EEH:mv

k:\eh\rulescivilproc

# FAEGRE & BENSON LLP

2200 WELLS FARGO CENTER, 90 SOUTH SEVENTH STREET  
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TELEPHONE 612-336-3000  
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OFFICE OF  
APPELLATE COURTS  
NOV 30 2000  
**FILED**

30 November 2000

Brian Melendez  
Direct Dial No. 612.336.3447  
E-mail [bmelendez@faegre.com](mailto:bmelendez@faegre.com)

Mr. Frederick K. Grittner,  
Clerk of Appellate Courts  
305 Minnesota Judicial Center  
25 Constitution Avenue  
St. Paul, MN 55155-6102

BY MESSENGER

Re: Minnesota State Bar Association, Court Rules & Administration Committee  
Rules of Civil Procedure  
Faegre File No. 40001/150027

Dear Mr. Grittner:

I am writing on behalf of the Minnesota State Bar Association, Court Rules & Administration Committee, with respect to the Advisory Committee on the Rules of Civil Procedure's latest recommendations. Please find enclosed twelve copies of this letter.

The Advisory Committee has recommended that "Rule 10 should be amended to require that the name of the judge be identified in the caption of cases where a particular judge has been assigned to the case for all further proceedings."<sup>1</sup> The MSBA Court Rules & Administration Committee joins in Douglas D. McFarland's dissent.<sup>2</sup>

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<sup>1</sup>Advisory Committee on Rules of Civil Procedure, Final Report, Recommendation 2 at 6 (10/6/00).

<sup>2</sup>Mr. McFarland writes,

I dissent from the committee's recommended amendment to Rule 10.01 because the sentence as drafted will cause confusion. The sentence requires the name of the trial judge to be placed in the caption "adjacent to the file number." Nowhere does the rule require the file number to be in the caption.

Federal Rule 10(a) requires a file number in the caption, but Minnesota Rule 10.01 departs from the federal rule in requiring instead a case type indicator, which is to

The Advisory Committee's recommended amendment would amend the rule by inserting the sentence, "If a case is assigned to a particular judge for all subsequent proceedings, the name of that judge shall be included in the caption and adjacent to the file number." Mr. McFarland correctly notes that the existing rule does not require that the file number appear anywhere in the caption. The majority argues in response that "the existing rule omits the federal-court requirement that the caption include the file number because Minnesota practice does not require the filing of an action."<sup>3</sup>

The majority report's argument does not address Mr. McFarland's point. While it is true that "Minnesota practice does not require the filing of an action," it is equally true that an action cannot be assigned to a judge unless and until it has been filed. When a civil action is filed, a file number is assigned to it, and the court administrator so notifies each party.<sup>4</sup> Therefore, any case that is assigned to a judge will also have been assigned a file number.

If the rule is amended so that the caption must include the assigned judge's name, then there is no reason why the caption ought not also to include the file number. As the Advisory Committee's comment says, "the inclusion of a file number in the caption . . . is customary . . . once an action is filed."<sup>5</sup> Adding a requirement that the caption include the file number will alleviate the potential confusion that Mr. McFarland's dissent identifies. Leaving such a requirement out makes no sense.

The MSBA Court Rules & Administration Committee therefore recommends that Minnesota Rule of Civil Procedure 10.01 be amended as follows (wording to be inserted is underlined):

Every pleading shall have a caption setting forth the name of the court and the county in which the action is brought, the title of the action, and a designation as in Rule 7, and, in the upper right hand corner, the appropriate case

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be in the upper right hand corner. It would make sense to say the name should be "adjacent to the case type indicator" instead of "adjacent to the file number." Another alternate drafting would be to end the sentence following the word "caption." That alternative would offer no guidance on placement, but that lack of guidance could not be a problem of any size.

*Id.* (McFarland, dissenting).

<sup>3</sup>*Id.* (majority report).

<sup>4</sup>Minn. Gen. R. Prac. 104 (certificate of representation and parties) ("The court administrator shall . . . notify all parties or their lawyers, if represented by counsel, of the date of filing the action and the file number assigned.").

<sup>5</sup>Report at 7.

type indicator as set forth in the subject matter index included in the appendix as Form 23. If the action has been filed, then the caption shall include the file number; and, if the action has been assigned to a particular judge for all subsequent proceedings, then the caption shall also include the judge's name next to the file number. In the complaint, the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the first party on each side with an appropriate indication of other parties.

Thank you very much. Please call me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian Melendez", followed by a horizontal line.

Brian Melendez  
Co-Chair  
Court Rules & Administration Committee  
Minnesota State Bar Association

enclosures

cc (w/o encs.) (by regular mail):

Hon. Bruce R. Douglas, Co-Chair, MSBA Court Rules & Administration Committee  
Kent Gernander, President, Minnesota State Bar Association  
Mary Grau, Staff, MSBA Court Rules & Administration Committee  
Eric D. Larson, MSBA Representative, Advisory Committee on the Rules of Civil Procedure  
Douglas D. McFarland, Member, Advisory Committee on Rules of Civil Procedure

M1:689069.01

STATE OF MINNESOTA  
DISTRICT COURT OF MINNESOTA  
FOURTH JUDICIAL DISTRICT

DISTRICT COURT ADMINISTRATION  
12TH FLOOR COURTS TOWER  
HENNEPIN COUNTY GOVERNMENT CENTER  
MINNEAPOLIS, MINNESOTA 55487-0421  
FAX (612) 348-2131



OFFICE OF  
APPELLATE COURTS

DEC 1 2000

December 1, 2000

**FILED**

Frederick K Grittner, Clerk of the Appellate Court  
25 Constitution Avenue  
St. Paul, MN 55155

Re: Proposed Amendment to Rule 5.04 of Civil Procedure

Dear Mr. Grittner:

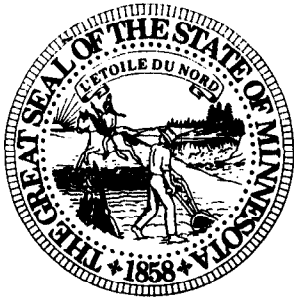
After reviewing the proposed amendment and talking with David Herr, a member of the Supreme Court Advisory Committee on Rules of Civil Procedure, Hennepin County District Court is concerned that the proposed language addition to Rule 5.04 will be a source of confusion.

We believe there is confusion surrounding the definitions of "filing" and of "mailing". This proposal as written does not address the inability to identify when something was actually mailed (and therefore completing the requirements for filing by mail) as the postmark is often different than the date it was physically placed in the mail. The postmark date would also be different from the date received by the court (currently the date of filing).

We recommend that this amendment be further studied so the language clearly reflects the intent and eliminates any confusion.

Sincerely,

Mary A Gagne  
Administrative Manager, Civil Division  
Hennepin County District Court  
300 South Sixth Street, C 1211  
Minneapolis, MN 55487



# RAMSEY COUNTY DISTRICT COURT

CIVIL DIVISION, 600 COURTHOUSE, ST. PAUL, MN 55102-1682 (651) 266-8253  
FAX NUMBER (651) 266-8263

BETTY ANDRADE  
Supervisor  
Conciliation / Housing Court

CAROL BECKER  
Supervisor  
Public Services

THOMAS G. P. BOIES  
Supervisor  
Accounting

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Rules of Civil Procedure Amendments Comments  
c/o Frederick K. Grittner  
Clerk of Appellate Courts Office  
25 Constitution Avenue  
Suite 305  
St. Paul, MN 55155

OFFICE OF  
APPELLATE COURTS

DEC  
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**FILED**

Re: Comment to Amendment to Rule 5.04 of the  
Minnesota Rules of Civil Procedure

Dear Honorable Members of the Minnesota Supreme Court:

I am writing to express my opposition to the proposed amendment to Rule 5.04 which would make filing by mail complete upon mailing. This is a significant departure from current practice that requires that a document be physically presented to the court administrator to be filed or be filed by fax. I realize that the comments and other rules prescribe how to add mailing time to insure the filing is timely. Nevertheless, documents mailed to the court administrator are now considered filed when *received*. The physical presence in the court administrator's office where it is filed stamped on the day it is received provides clear and convincing proof as to the date it was filed. It provides not only certainty, but also finality. The way this amendment is worded and allowing the mailing date to be the filing date will have the opposite effect. It will also create significant problems in the court administrator's offices.

Let's assume something is to be filed by Day X and filing is complete upon mailing. Lawyer deposits documents in the mail three days before, but misses the last pickup and pickup is now really two days before and it is postmarked two days before, and received by the Court a day after it is due. I assume the court administrator will have to use the postmark date of as the filing date, essentially backdating the filing date of the document from when it was actually received in the court administrator's office. Must mailed filed documents be postmarked three days before they are due in the court administrator's offices to be considered timely? If so, in the example above, will we have to keep the envelope in order to respond to the lawyer who claims it was mailed three days before (and filed) timely and the filing date should have been the day he/she dropped it in the mail? If so, we will have envelopes attached to documents and cluttering up files in order to establish mailed filing dates. Of course, many firms use postage meters, the date of which is controlled by the mailer. These are not generally cancelled by the

post office so proof of mailing will be the meter date. There will be no independent verification of the mailing date. Let's assume a document is received in the mail more than three days after the due date but the postage meter indicates it was mailed 3 days before. Still timely?

As court administrators we will certainly file the documents presented to us but the integrity of the filing date might be suspect. I know lawyers will suggest that that is not a matter for court administrators to be concerned with – that lawyers can make objections if they feel a document wasn't filed timely. To the extent that these are court records, we must be concerned.

Please also consider the fact that we also have continuing problems with lawyers who persist in mailing documents to the wrong address. For example, we have not accepted civil filings in Maplewood for 7 years. Notwithstanding notices to attorneys that filings should be sent to the main Courthouse lawyers continue to incorrectly address their mail. By the time the mail is re-routed to the correct address several more days have elapsed.

In the end, neither judges nor clerks will know whether everything is submitted by a deadline or whether they should wait for slow mail submissions since they are "filed". The effect of this is that the Court will have less time between filing deadlines and hearing dates to process the documents, and get them filed and routed to the judge so the judge can prepare for hearings or review submissions to get an order out. I assume that one of the other rule changes, the one to add the judge's name to the caption, is designed to expedite the routing of filed documents. This change in 5.04 will have exactly the opposite impact.

In closing, I would like to also suggest that we are on the eve of a technology application that will revolutionize court filings. Many courts around the country have already implemented electronic filing of court documents. E-filing will solve some of the problems that the Rules Committee is trying to address. A Committee of the Technology Planning Committee is already drafting proposed rules for Minnesota. The issue of establishing mailed filing dates will be less of an issue in the future, and I suggest that you defer action at this point.

I thank you for allowing us to submit comments on the Rules Amendments. If you are ever inclined to add a court administrator to the Committee, I am sure that there would be many including myself who would volunteer. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Moriarty", written over a horizontal line.

Michael G. Moriarty  
Court Administrator