

STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

**ORDER FOR HEARING TO CONSIDER PROPOSED  
AMENDMENTS TO THE RULES OF CIVIL PROCEDURE**

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on November 10, 2005 at 2.00 p.m., to consider the recommendations of the Supreme Court Advisory Committee on the Rules of Civil Procedure to amend the rules. A copy of the committee's report and proposed amendments is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Dr. Rev. Martin Luther King Jr. Boulevard, St. Paul, Minnesota 55155, on or before November 7, 2005, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before November 7, 2005.


Dated: September 28, 2005

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

SEP 28 2005

**FILED**

  
Kathleen A. Blatz  
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

C6-84-2134

OFFICE OF  
APPELLATE COURTS

NOV - 7 2005

FILED

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In Re:

Supreme Court Advisory Committee  
On Rules of Civil Procedure

**RESPONSE OF  
MINNESOTA ASSOCIATION FOR  
COURT MANAGEMENT**

PROPOSED AMENDMENTS

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**SUBMISSION OF RESPONSE**

Pursuant to the Order of the Minnesota Supreme Court posted September 28, 2005, the Minnesota Association for Court Management submits this Response to the Proposed Amendments in lieu of testifying.

**BACKGROUND**

The Minnesota Association of Court Management (MACM) is a statewide organization of over 200 court professionals working to improve the justice system. MACM is providing the following comments for your consideration on behalf of the MACM Executive Board.

**SUBMISSION**

The Court invited comments on the language of the Rules and the proposed forms. MACM would like to take this opportunity to comment on some of the recommendations.

**Recommendation 1. The Court should amend Rule 5 to eliminate the requirement for filing a duplicate "original" document and to change the filing fee to reflect the significant costs incurred in handling fax filings.**

The Court Administrators fully support that Rule 5 should be amended to eliminate the requirement that an "original" document be filed following proper facsimile transmission. We

also support the amendment that changes the facsimile transmission fee and clarifies how it should be calculated. Right now, court staff are handling fax filings twice as they enter and track both the fax transmission and the original when it is filed later. Increasing the filing fee to \$25 per 50 pages transmitted should deter faxes from becoming the norm rather than the exception. In order to accomplish this change, the sender of the fax must maintain the original and make it available to the court or any party to the action. We suggest that it might be helpful to add how long the filing party must maintain the original. Many civil case records are kept a minimum of ten years, some permanently. Are we expecting the same of the attorneys? We suggest that the original be maintained at least until time for appeal expires and until all appeals are completed and would suggest adding language to that effect.

It is important to note that the Minnesota Rules of Court Manual published by West still contains the Court's Order dated November 21, 1988 which addresses facsimile transmission. In it, the Court urged all rules advisory committees to consider adopting rules governing facsimile transmission. We would hope that the Civil Rule proposal that the fax would be treated as the original would apply to all case types and would ask the Court to consider applying the Civil Rule to all case types. Perhaps it could be added to Title 1 in the General Rules of Practice for the District Courts. Hopefully this could be considered on an expedited basis so that all case types could be implemented on January 1, 2006.

**Recommendation 4. The Court should amend Rule 43 to conform it to practice relating to payment for interpreters.**

As was noted in the discussion of this Rule, most courts follow the statutory mandate and pay for interpreters in civil cases. We concur with the Implementation Committee and the advisory committee that this should be clarified and support the recommendation. It is sound public policy. We are aware that the 4<sup>th</sup> Judicial District Court does have concerns about this proposal and are submitting a separate statement of their concerns.

**Recommendation 5. The Court should amend Rule 45 to modernize subpoena practice, conform it to federal court practice, and remove the requirement for court issuance of subpoenas.**


The Court Administrators agree with the advisory committee that allowing attorneys to issue subpoenas will be more efficient and will ease the administrative burden on court staff. While there were some concerns expressed about turning this process over to attorneys, we feel there are adequate ways for the court to address any abuses or questions that might arise and support the amendment.

It was noted by the advisory committee that Court issuance of subpoenas has also become expensive, as the legislature has quadrupled the fee for issuance (from \$3.00 to \$12.00). *See* Minn. Stat § 357.021, subd. 2(3) (2004). This does raise a concern because attorneys will be able to issue subpoenas without paying a fee, while self represented parties will have to pay the fee to court administrators. Granted, the attorneys will have to bear the expense of printing their own subpoenas while the court provides them to self represented parties, but some may feel that this is unfair. If a party is indigent, the court would be able to waive the costs of the subpoena, but there will still be many self represented individuals who will have to pay a fee to have the court issue the subpoenas. One court administrator did question whether the loss of revenue would have an adverse impact on the courts budgets. It is our understanding that this money does go to the general fund, but it is not possible to break out how much revenue subpoenas generate.

MACM does not have any comments on any of the other recommendations, but wishes to thank and acknowledge the members of the Committee for their work on the Civil Rules.

Respectfully Submitted On Behalf of the Minnesota Association of Court Management.

Dated: November 7, 2005

  
\_\_\_\_\_  
Michael G. Moriarity  
MACM President

Tenth Judicial District  
325 East Main Street, Room W370  
Anoka, MN 55303  
(763) 422-7477

**Grittner, Fred**

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**From:** Johnson, Michael  
**Sent:** Tuesday, November 08, 2005 9:12 AM  
**To:** Grittner, Fred  
**Cc:** Metcalf, Jodie; Dohrmann, Deanna; Dosai, Sue  
**Subject:** Additional submission for both civil and general rules

**Attachments:** RCIVP related changes to ex pro rules 2005 051102.doc

OFFICE OF  
APPELLATE COURTS

NOV - 8 2005

**FILED**

Fred,

I am submitting the attached changes on behalf of Child Support Unit of the State Court Administrators Office, Court Services Division. The changes are related to the Civil Rules changes but affect provisions in the General Rules of Practice. For this reason, they should probably be noted for both rules files. These are conforming/technical type changes and there is no request to make an oral presentation.

I would also point out that there is one other similar conforming change related to the facsimile transmission changes in R. Civ. P. 5.5. If that proposed change is adopted, then the last sentence of Gen. R. Prac. 6.01 should be deleted.



RCIVP related  
changes to ex pr...

Mike

Michael B. Johnson  
Senior Legal Counsel  
Legal Counsel Division  
State Court Administration  
140-C Minnesota Judicial Center  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155  
direct dial (651) 297-7584  
facsimile (651) 297-5636

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## **Rule 355.02. Types of Service**

### **Subdivision 1. Personal Service.**

#### **(a) Upon Whom.**

**(1) Upon an Individual.** Personal service upon an individual in the state shall be accomplished by delivering a copy of the summons and complaint, notice, motion, or other document to the individual personally or by leaving a copy at the individual's house or usual place of residence with some person of suitable age and discretion who presently lives at that location. If the individual has, pursuant to statute, consented to any other method of service or appointed an agent to receive service, or if a statute designates a state official to receive service, service may be made in the manner provided by such statute. If the individual is confined to a state institution, personal service shall be accomplished by also serving a copy of the document upon the chief executive officer at the institution. Personal service upon an individual outside the state shall be accomplished according to the provisions of Minn. Stat. ch. 518C (2000) and Minn. Stat. § 543.19 (2000). Personal service may not be made on Sunday, a legal holiday, or election day.

## **Rule 361.06. Subpoena**

**Subdivision 1. Written Request.** Requests for subpoenas for the attendance of witnesses or for the production of documents shall be in writing and shall be submitted to the court administrator. The request shall specifically identify any documents requested, include the full name and home or business address of all persons to be subpoenaed, and specify the date, time, and place for responding to the subpoena. The court administrator shall issue a subpoena in accordance with Minn. R. Civ. P. 45 signed and sealed stating the name of the court and the title of the action, but otherwise in blank. The party requesting the subpoena shall fill out the subpoena before having it served. An attorney as officer of the court may also issue and sign a subpoena on behalf of the court where the action is pending.

**Subd. 2. Service of Subpoenas Shall be by Personal Service.** ~~Except as noted in this subdivision, a~~ All subpoenas issued by the district court, shall be personally served by the sheriff or by any other person who is at least 18 years of age who is not a party to the action. Employees of the county agency may personally serve subpoenas. The person being served shall, at the time of service, be given the fees and mileage allowed by Minn. Stat. § 357.22 (2000). When the subpoena is requested by the county agency, fees and mileage need not be paid. The cost of service, fees, and expenses of any witnesses who have been served subpoenas shall be paid by the party at whose request the witness appears. The person serving the subpoena shall provide proof of service by filing the original subpoena with the court, along with an affidavit of personal service.

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## **Rule 370.04. Filing Requirements**

**Subdivision 1. Initiating Party.** No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
- (b) the original complaint;
- (c) the original supporting affidavit, if served;

- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

**Subd. 2. Responding Party.** If a noninitiating party responds with a written answer pursuant to Rule 370.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original written answer; and
- (b) proof of service upon each party pursuant to Rule 355.04.

**Subd. 3. Facsimile Transmission.** If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

**Subd. 34. Treatment of Confidential Information.** To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

**Note:** Subdivisions typically have titles and I noticed that when this new language concerning restricted identifiers and financial source documents was approved in July 2005, subdivisions 3 for Rules 370.04, 371.04, and 372.04 were not given a title. Shouldn't we give it a title to be consistent with the format of the rules? Seems like the appropriate time to do it with the other changes being proposed and it is not a substantive change, but technical. For purposes of flow, the current subdivision 3, which has no title and speaks to restricted identifiers and financial source documents, should be moved to new subdivision 4.

#### **Rule 371.04. Filing Requirements**

**Subdivision 1. Initiating Party.** No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original summons;
  - (b) the original complaint;
  - (c) the original supporting affidavit, if served; and
  - (d) proof of service upon each party pursuant to Rule 355.04.
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**Subd. 2. Responding Party.** If a noninitiating party responds with a written response pursuant to Rule 371.05, the following, if served, shall be filed with the court no later than five (5) days before any scheduled hearing:

- (a) the original written answer; or
- (b) a request for blood or genetic testing; and
- (c) proof of service upon each party pursuant to Rule 355.04.

**Subd. 3. Facsimile Transmission.** If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

**Subd. 34. Treatment of Confidential Information.** To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

**Rule 372.04. Filing Requirements**

**Subdivision 1. Initiating Party.** No later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served, the initiating party shall file the following with the court:

- (a) the original notice of motion;
- (b) the original motion;
- (c) the original supporting affidavit;
- (d) the request for hearing form, if returned to the initiating party; and
- (e) proof of service upon each party pursuant to Rule 355.04.

**Subd. 2. Responding Party.** If a noninitiating party responds with a responsive motion or counter motion pursuant to Rule 372.05, the following shall be filed with the court no later than five (5) days before any scheduled hearing or, if no hearing is scheduled, within fourteen (14) days from the date the last party was served:

- (a) the original responsive motion or counter motion; and
- (a) proof of service upon each party pursuant to Rule 355.04.

**Subd. 3. Facsimile Transmission.** If a paper is filed by facsimile, the sender's original must not be filed but must be maintained in the files of the party transmitting it for filing and made available to the court or any party to the action upon request.

**Subd. 34. Treatment of Confidential Information.** To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11



**PLEASE NOTE: If these proposed changes to 370.04, subd. 3 and subd. 4 are adopted, then Rule 361.02, subd. 4 should also be re-titled to match with proposed changes to subdivision 4 for rules 370.04, 371.04, and 372.04.**

**Rule 361.02. Exchange of Documents**

**Subd. 4. ~~Redaction of Social Security Numbers~~ Treatment of Confidential Information**

To retain privacy, restricted identifiers (e.g., social security numbers, employer identification numbers, financial account numbers) must be blackened out from any documents provided under this rule and may only be submitted on a separate Confidential Information Form as required in Rule 11 of these rules. In addition, financial source documents (e.g., tax returns, wage stubs, credit card statements) must be submitted under a cover sheet entitled "Sealed Financial Source Documents" as required in Rule 11.

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STATE OF MINNESOTA  
DISTRICT COURT OF MINNESOTA  
FOURTH JUDICIAL DISTRICT



November 3, 2005

Frederick K. Grittner  
Clerk of the Appellate Courts  
25 Dr. Rev. Martin Luther King Jr. Boulevard  
St. Paul, MN 55155

OFFICE OF  
APPELLATE COURTS

NOV - 4 2005

**FILED**

RE: Proposed Amendments To The Rules Of Civil Procedure; Interpreters (Rule 43.07).

Dear Mr. Grittner:

The Fourth Judicial District has reviewed the proposed recommendation for amending Rule 43.07, which is trying to address the state's disparate practice related to payment of court interpreters in civil related matters.

The judicial officers in the Fourth Judicial District have the discretionary authority to determine when an interpreter should be provided for civil matters. In instances where the parties have the financial resources to cover this expense, the judicial officers have directed those expenses to be covered by the involved parties.

With the Judiciary's current fiscal budget, we are not able to cover all involved costs for mandated services. To add the additional expense of paying for interpreters in all civil cases would require us to review and prioritize other services. Last year our district assembled a summary of civil appearances where interpreter services were needed and attached the associated costs to those hearings. On a cost per appearance basis our expenses could potentially reach \$300,000. However, because we have the ability to consolidate interpreter assignments, that figure would be greatly decreased. We are not able to determine an absolute amount in which we could decrease that expense but, based on our experiences, we anticipate consolidating approximately fifty percent of our interpreter assignments.

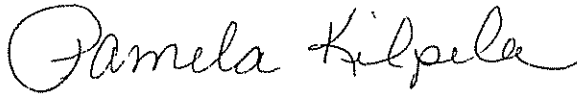
Allowing judges to have discretion in deciding who should pay interpreter expenses in civil matters (i.e., the court or the parties) is critical if we are to continue to effectively manage an already overly-taxed mandated services budget. Therefore, we would propose the following amendment to the language that gives recognition to the limited nature of interpreter and total mandated services funds and allows judges appropriate discretion in determining who shall pay the interpreter expense in civil cases:

**43.07 Interpreters**

The court may appoint an interpreter of its own selection and may fix reasonable compensation. The compensation shall be paid out of funds provided by law *if available and at the discretion of the court* ~~or by one or more of the parties as the court may direct, and may ultimately be taxed as a cost, in the discretion of the court.~~

If the amendments to the Civil Rules are adopted as originally stated, we ask that the effective date coincide with the beginning of the FY2008-09 biennium so we can seek appropriate and necessary funding.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Kilpela". The signature is fluid and elegant, with the first name "Pamela" being larger and more prominent than the last name "Kilpela".

Pamela Kilpela  
Administrative Manager, Scheduling Division  
Fourth Judicial District  
(612) 348-8663

Cc: Mark Thompson  
Michael Kelley  
Marsha Unthank  
Michael Moriarity