

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009  
(Formerly CX-89-1863)

OFFICE OF  
APPELLATE COURTS  
OCT 14 2011  
FILED

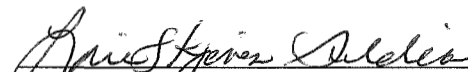
**ORDER ESTABLISHING DEADLINE FOR  
SUBMITTING COMMENTS ON PROPOSED  
AMENDMENTS TO THE MINNESOTA GENERAL  
RULES OF PRACTICE FOR THE DISTRICT COURTS**

The Minnesota Supreme Court Advisory Committee on General Rules of Practice filed a report on September 28, 2011, proposing amendments to the Minnesota General Rules of Practice for the District Courts. This court will consider the proposed amendments after soliciting and reviewing comments on the proposal.

IT IS HEREBY ORDERED that any individual wishing to provide written statements in support of or opposition to the proposed amendments shall submit twelve copies addressed to Bridget Gernander, Clerk of the Appellate Courts, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, no later than November 14, 2011. A copy of the committee's report containing the proposed amendments is annexed to this order.

Dated: October 14, 2011

BY THE COURT:

  
\_\_\_\_\_  
Lorie S. Gildea  
Chief Justice

**CX-89-1863  
STATE OF MINNESOTA  
IN SUPREME COURT**

**OFFICE OF  
APPELLATE COURTS  
SEP 28 2011  
FILED**

**In re:  
Supreme Court Advisory Committee  
on General Rules of Practice**

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

**REPORT  
September 28, 2011**

**Hon. Kathryn Messerich  
Chair**

**Hon. David Stras  
Liaison Justice**

**Hon. Steven J. Cahill, Moorhead  
Hon. Joseph T. Carter, Hastings  
Hon. Mel I. Dickstein, Minneapolis  
Francis Eggert, Winsted  
Jennifer L. Frisch, Minneapolis  
Joan Hackel, Saint Paul  
Hon. Rosanne Nathanson, Saint Paul**

**Dan C. O'Connell, Saint Paul  
Paul Reuvers, Bloomington  
Daniel Rogan, Minneapolis  
Hon. Shari Schluchter, Bemidji  
Erica Strohl, Minneapolis  
Hon. Robert D. Walker, Fairmont**

**Michael B. Johnson, Saint Paul  
Staff Attorney**

**David F. Herr, Minneapolis  
Reporter**

## **Introduction**

The advisory committee met twice during 2011 to consider two separate rules revision projects that have been underway for several years. First, this report contains the recommendations of the advisory committee on the implementation of the Court's March 11, 2011, Order on the use of video and audio recording of court proceedings in Minnesota. Second, this report sets forth the advisory committee's recommendations on the revisions to the rules in family law matters as initially brought to the Court by the 2009 "Divorce Camp" recommendations of the Minnesota Chapter of the American Academy of Matrimonial Lawyers. Both issues have been considered by the advisory committee over several meetings spanning several years.

## **Summary of Recommendations**

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

1. The committee believes it has developed, with the assistance of the Media Petitioners on the issue of "Cameras in the Courtroom" before this Court, a workable set of recommended ground rules to guide the implementation of a pilot project rule set forth in this Court's March 11, 2011, Order, as amended by its order of April 21, 2011. The ground rules are set forth as modifications to Rule 4.03.

2. Many of the recommendations advanced in the "Divorce Camp Report" in 2009, are worthy of adoption by the Court, and they are set forth, with recommended modifications by this advisory committee, in Recommendation 2 of this report.

3. The advisory committee considered recommendations regarding the modification of the timing provisions for motion practice in family law matters, generally

lengthening the briefing schedules and adopting in part the timing changes made in the federal courts in 2009. The committee believes any changes in the timing rules for family law matters should only be considered when the 2009 federal court timing changes are formally taken up in Minnesota for possible application in all proceedings.

4. The committee received numerous comments on the subject of the family law rules (Rules 301 through 314) and the interaction of these rules with the rules governing the expedited child-support enforcement process (Rules 351 through 379). The expedited-process rules were adopted initially by a group focusing on, and comprised of, the regular participants in that process. The committee believes that group should be encouraged to consider the impact of these family law rules on the expedited process and whether their adoption presents the occasion for further rule changes in the expedited-process rules.

#### **Effective Date**

Based on the comments received by the advisory committee during its consideration of these rule revision projects, the Court may receive comments during its comment period or at a hearing, if the Court determines to hold one. Notwithstanding those comments, the committee believes the rule amendments in this report related to family law proceedings can probably be considered fairly and fully with a public comment period and adopted to take effect on January 1, 2012. The rule amendments related to video and audio recording of court proceedings can be made effective immediately.

## **Comments to Rules**

The committee has completely revamped the Advisory Committee Comments to Rules 301 through 313 with the intention that these new comments would completely replace any prior comments. The committee has drawn heavily from the comments of the AAML Divorce Camp Draft and adopts those comments to the extent they are incorporated in the Advisory Committee Comments.

The committee believes all prior comments should be formally abrogated because of their bulk, their obsolescence, and the fact that they have been incorporated in new comments to the extent they continue to have value.

## **Style of Report**

The specific recommendations are reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~. Markings are omitted for the new advisory committee comments, regardless of their derivation.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY  
COMMITTEE ON GENERAL RULES OF  
PRACTICE

**Recommendation 1:       The Court should codify the role of the media coordinators in the rules on cameras in the courtroom.**

**Introduction**

By order dated March 11, 2011, the Court established a two-year pilot project on video and audio recording in civil cases beginning on July 1, 2011. The Order directed the advisory committee to work with the Media Petitioners and identify media coordinators who will facilitate interaction between the courts and the media. The Order also directed the committee to monitor the implementation of the pilot project and report to the court on any needed rules changes.

Regarding media coordinators, the advisory committee has worked with the Media Petitioners through their attorney, Mark Anfinson, and has identified a list of media coordinators for the various areas of the state. The list is posted on the state court website ([www.mncourts.gov](http://www.mncourts.gov)) and will be updated as the need arises.

Early on in the advisory committee discussions that preceded this committee's initial report to this Court (dated October 29, 2010) there was general consensus that media coordinators would be expected to resolve all issues related to pooling of cameras and microphones, and to explain to persons requesting video and audio coverage the local practices and procedures of the court related to audio and video coverage in their respective areas (e.g., what equipment and preparation is needed or permitted in certain courthouses and courtrooms). Representatives of the media are already meeting with various judges around the state to begin discussions of the logistics that need to be addressed and to demonstrate the audio and video technology involved. There is

agreement that the media coordinator's role and related process, including participation in data collection and monitoring of the pilot project, should be codified for the benefit of all.

Procedurally, Rule 4.03 requires that requests for camera coverage must go to the presiding judge with notice to all parties as far in advance as practicable, but no later than 10 days prior to the hearing. The rule does not reference media coordinators or the state's Court Information Office. The advisory committee is aware that Wisconsin has a rule that calls for appointment of media coordinators but does not clearly spell out their roles, and that in practice some Wisconsin media coordinators screen all media requests for their local courts, and some do not. The advisory committee recommends that any person requesting audio or video coverage of a civil proceeding should also be required to notify the respective media coordinator of the request in advance of submitting the request, if possible, or as soon thereafter as possible, and that the media coordinators should be required to keep the state's Court Information Office apprised of all requests for audio and video coverage of civil trial court proceedings.

Regarding data collection and monitoring, the Court's March 11, 2011, Order establishing the pilot project rejected the research study options proposed in the advisory committee's October 29, 2010, report. One of the rejected options was a formal research study, and the other option was a scaled down study that would rely on informal surveys of participants. The advisory committee considered several different approaches that would permit monitoring but not rise to the level of the options previously rejected by the Court.

At the outset, the Media Petitioners expressed the opinion that they have the continuing burden to demonstrate the success of the pilot project and a strong incentive to see that it is accurately tracked and measured. To that end the Media Petitioners, through their attorney, have developed a 25-element form that media coordinators would use to collect basic information such as the judge, parties, attorneys and dates of all camera usage and requests for usage during the pilot project. This data would permit solicitation of comments from participants at the point(s) in time that the committee considered was most appropriate.

One approach the committee considered involved media coordinators advising participants at or near the time of the camera usage that they could submit comments at a designated location on the main state court website. Comments submitted would be accessible to the public and would be used by the advisory committee in monitoring the pilot project and making recommendations. This would be followed up by a general, published notice from the advisory committee 18 months into the pilot project soliciting comments from any interested persons. The rationale included the view that confidential surveys may be ineffective in maintaining confidentiality if the prediction that few civil cases will be covered becomes fact; with low numbers, it may be relatively easy to identify survey respondents.

Other approaches included a confidential survey less extensive than the options rejected by the Court but soliciting some feedback. Use of a pass code or a requirement to identify the case involved may be necessary to prevent ballot box stuffing, and could allow participants to respond according to their own time frame.



Some advisory committee members thought that the solicitation of comments should occur at or near the time of the camera usage or the opportunity to collect information may be lost. Other members thought that some participants may not want to comment while a case or an appeal is pending, and a different perspective may exist once a little time has elapsed since the camera usage. Ultimately the committee recommends that solicitation using a confidential survey should occur no later than 18 months into the pilot project utilizing a survey form to be developed jointly by the committee reporter and staff, and the court's information office and Research and Evaluation unit, and approved after circulation to committee members. It is also recommended that media coordinators should also track the length of proceedings covered by cameras, and that aggregate data collected by the coordinators should be posted to a bulletin board so that all can access it.

Proposed modifications to Rule 4.03 incorporating the role of media coordinators is set forth below. Additional edits proposing headings to Rule 4.03 are added to improve readability.

**Specific Recommendation:**

Rule 4.03 should be amended as follows:

- 1 **Rule 4.03. Procedures Relating to Requests for Audio or Video Coverage of**
- 2 **District Court Proceedings**
- 3 (a) **Notice.** Unless notice is waived by the trial judge, the media shall provide
- 4 written notice of their intent to cover district court proceedings by either audio or video
- 5 means to the trial judge, all counsel of record, and any parties appearing without counsel
- 6 as far in advance as practicable, and at least 10 days before the commencement of the

7 hearing or trial. In civil proceedings subject to the pilot project authorized by supreme  
8 court order, the media shall also notify their respective media coordinator identified as  
9 provided under part (e) of this rule of the request to cover proceedings in advance of  
10 submitting the request to the trial judge, if possible, or as soon thereafter as possible.

11 (b) **Objections in Civil Cases.** In civil proceedings, if a party opposes audio  
12 or video coverage, the party shall provide written notice of the party’s objections to the  
13 presiding judge, the other parties, and the media requesting coverage as soon as  
14 practicable, and at least 3 days before the commencement of the hearing or trial in cases  
15 where the media have given at least 10 days’ notice of their intent to cover the  
16 proceedings. The judge shall rule on any objections and make a decision on audio or  
17 video coverage before the commencement of the hearing or trial. However, the judge has  
18 the discretion to limit, terminate, or temporarily suspend audio or video coverage of an  
19 entire case or portions of a case at any time.

20 (c) **Witness Information and Objection to Coverage.** At or before the  
21 commencement of the hearing or trial in cases with audio or video coverage, each party  
22 shall inform all witnesses the party plans to call that their testimony will be subject to  
23 audio or video recording unless the witness objects in writing or on the record before  
24 testifying.

25 (d) **Appeals.** No ruling of the trial judge relating to the implementation or  
26 management of audio or video coverage under this rule shall be appealable until the trial  
27 has been completed, and then only by a party.

28           **(e) Media Coordinators for Civil Pilot Project.** For civil proceedings

29 subject to the pilot project authorized by order of the supreme court, media coordinators  
30 for various areas of the state shall be identified on the main state court web site. The  
31 media coordinators shall facilitate interaction between the courts and the electronic media  
32 during the course of the pilot project. Responsibilities of the media coordinators include:

33           (i) Compiling basic information (e.g., case identifiers, judge, parties,  
34 attorneys, dates and coverage duration) on all requests for use of audio or video  
35 coverage of civil trial court proceedings for their respective court location(s) as  
36 identified on the main state court web site, and make aggregate forms of the  
37 information publicly available;

38           (ii) Notifying the state Court’s Information Office of all requests for audio  
39 and video coverage of civil trial court proceedings for their respective court  
40 location(s) as identified on the main state court web site.;

41           (iii) Explaining to persons requesting video or audio coverage of civil trial  
42 court proceedings for their respective court location(s) the local practices,  
43 procedures, and logistical details of the court related to audio and video coverage;

44           (iv) Resolving all issues related to pooling of cameras and microphones  
45 related to video or audio coverage of civil trial court proceedings for their  
46 respective court location(s);

47           (v) Making available to participants in the pilot project survey information  
48 as directed by the supreme court’s advisory committee on the general rules of  
49 practice.

**Recommendation 2: The Court Should Amend the Rules of Family Court Procedure, Set Forth in General Rules of Practice 301 to 314 and Should Invite Consideration of Changes to the Rules Applicable to the Expedited Child Support Process, Rules 351 through 379.**

**Introduction**

These amendments are explained in the Introduction to this report, and in the Advisory Committee Comments to the individual rules.

**Specific Recommendation**

The Minnesota General Rules of Practice should be amended as follows:

**Minnesota General Rules of Practice for the District Courts**

~~Includes amendments effective January 1, 2010~~

**TITLE IV. RULES OF FAMILY COURT PROCEDURE**

**PART A. PROCEEDINGS, MOTIONS, AND ORDERS**

**Rule 301. ~~Applicability of Rules~~ Scope; Time**

~~301.01 Applicable Statute or Rule~~

~~301.02 Time~~

**RULE 301. SCOPE; TIME**

**Rule 301.01 Applicability of Rules**

**Rule 302. ~~Commencement; Continuance; Time; Parties~~**

~~302.01 Commencement of Proceedings~~

~~302.02 Continuances~~

~~302.03 Time~~

~~302.04 Designation of Parties~~

**Rule 303. ~~Motions; Ex Parte~~ Emergency Relief; Orders to Show Cause; ~~Orders and Deerees~~**

~~303.01 Scheduling of Motions~~

~~303.02 Form of Motion~~

~~303.03 Motion Practice~~

~~303.04 Ex Parte and Emergency Relief~~

75	303.05	Orders to Show Cause
76	<del>303.06</del>	<del>Orders and Decrees Requiring Child Support or Maintenance</del>
77	<b>Rule 304.</b>	<b>Scheduling of Cases</b>
78	304.01	Scope
79	304.02	<del>The Party's Informational Statement</del> <u>Initial Case Information For Court</u>
80	304.03	Scheduling Order
81	304.04	Amendment
82	304.05	Collaborative Law
83	<u>304.06</u>	<u>Continuances</u>
84	<b>Rule 305.</b>	<b><del>Prehearing</del> <u>Pretrial</u> Conferences</b>
85	305.01	<del>Prehearing</del> <u>Parenting/Financial Disclosure</u> Statement
86	305.02	<del>Prehearing</del> <u>Pretrial</u> Conference Attendance
87	305.03	<del>Prehearing</del> <u>Conference Order for Trial or Continued Pretrial Conference</u>
88	<b>Rule 306.</b>	<b>Default</b>
89	306.01	Scheduling of Final Hearing
90	306.02	Preparation of Decree [ <u>Abrogated</u> ]
91	<b>Rule 307.</b>	<b>Final Hearings</b>
92	<b>Rule 308.</b>	<b><u>Final Order, Judgment or Decree</u></b>
93	308.01	Notices; Service
94	308.02	Statutorily Required Notices
95	308.03	Sensitive Matters
96	308.04	Joint Marital Agreement and Decree
97	<b>Rule 309.</b>	<b>Contempt</b>
98	309.01	Initiation
99	309.02	Hearing
100	309.03	Sentencing
101	<u>309.04</u>	<u>Findings</u>
102	<b>Rule 310.</b>	<b>Alternative Dispute Resolution</b>
103	310.01	Applicability
104	310.02	Post-Decree Matters
105	310.03-.09	[Deleted effective July 1, 1997]
106	<b>Rule 311.</b>	<b>Forms</b>
107	<b>Rule 312.</b>	<b>Review of Referee's Findings or Recommendations</b>
108	<del>312.01</del>	<del>Notice of Assignment to Judge; Parties' Submissions</del>
109	<del>312.02</del>	<del>Transcript of Referee's Hearing</del>
110	<b>Rule 313.</b>	<b>Confidential Numbers and Tax Returns</b>
111	<b><u>Rule 314.</u></b>	<b><u>Parentage Proceedings</u></b>

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113 **APPENDIX OF FORMS**

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115 ~~Effective January 1, 2008,~~ a All forms previously contained in Title IV have been  
116 deleted from the rules. Family Court Action forms are currently maintained on the state  
117 court website ([www.mncourts.gov](http://www.mncourts.gov)).

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119 **PART A. PROCEEDINGS, MOTIONS, AND ORDERS**

120 **RULE 301. SCOPE; TIME**

121 **Rule 301.01 Applicability of Rules**

122 **(a) Applicable Rule or Statute.** Rules 301 through 313~~4~~ and, where applicable,  
123 the Minnesota Rules of Civil Procedure, shall apply to ~~family law practice~~ Family Law  
124 Actions except where they are in conflict with applicable statutes or the Expedited Child  
125 Support Process Rules, Minn. Gen. R. Prac. 351 through 379.

126 **(b) Included Proceedings.** ~~Rules 301 through 313 do not apply to proceedings~~  
127 ~~commenced in the Expedited Child Support Process, except for Rules 302.04, 303.05,~~  
128 ~~303.06, 308.02, and 313.~~ The following types of proceedings are referred to in these rules  
129 as Family Court Actions:

130 1. Marriage dissolution, legal separation, ~~and~~ annulment proceedings, and  
131 child custody actions (Minnesota Statutes, chapter 518, section 260C.201, subd.  
132 11(d)(1)(iii));

133 2. Child custody enforcement proceedings (Minnesota Statutes, chapter  
134 518D);

135 3. Domestic abuse proceedings (Minnesota Statutes chapter 518B);

136 4. Proceedings to determine or enforce child support obligations  
137 (Minnesota Statutes, chapters 518A, 518C- U.I.F.S.A., sections 256.87; 289A.50,  
138 subd. 5; and 393.07, subd. 9);

139                    5. Contempt ~~actions~~ proceedings in Family Court (Minnesota Statutes,  
140                    chapter 588);

141                    6. Parentage determination proceedings (Minnesota Statutes, sections  
142                    257.51-.74);

143                    7. Proceedings for support, maintenance or county reimbursement  
144                    judgments (Minnesota statutes, section 548.091);

145                    8. Third-party custody proceedings (Minnesota Statutes, ~~section~~ chapter  
146                    257C); and

147                    9. Proceedings pursuant to the Hague Convention on Civil Aspects of  
148                    International Child Abductions and the International Child Abduction Remedies  
149                    Act.

150 Other matters may be treated as family court matters by order of the court.

151                    **(c) Excluded proceedings.** Rules 301 through 314 do not apply to proceedings  
152 commenced in the Expedited Child Support Process, except for Rules 302.02, 303.05,  
153 308.02, 309, 313, and 314.

154                    **(d) Applicability of Rules of Civil Procedure.** The Minnesota Rules of Civil  
155 Procedure apply to Family Court Actions as to matters not addressed by these rules. To  
156 the extent there is any conflict in the rules, these rules govern.

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158                    **Advisory Committee Comment--2011 Amendments**

159                    Rules 301 through 314 were originally derived primarily from the Rules of  
160 Family Court Procedure as they existed in 1992. These rules have been revised  
161 in several important ways in the ensuing years, and were revised and completely  
162 restated in 2011. The prior Advisory Committee Comments have been  
163 incorporated into a single set of Advisory Committee Comments for the benefit  
164 of the Minnesota Supreme Court as well as for courts and litigants. As is  
165 consistently made clear by the orders that have amended the rules, the Advisory

166 Committee Comments are not adopted by the Supreme Court and do not have  
167 any official status. They reflect the views of the Supreme Court’s advisory  
168 committees that have recommended amendments of the rules from time to time.

169 Rules 301 through 314 apply in the enumerated proceedings, comprising the  
170 majority of types of cases involving family relations. Adoption proceedings  
171 are governed by separate Rules of Adoption Procedure, adopted effective  
172 January 1, 2005.

173 Minn. R. Gen. Prac. 351.01 states that the Rules of Civil Procedure, Rules of  
174 Evidence, and General Rules of Practice shall apply to proceedings in the  
175 expedited process unless inconsistent with the Expedited Child Support Rules,  
176 Minn. Gen. R. Prac. 351 through 379. With the exception of Family Court  
177 Rules 302.02, 303.05, ~~303.06, 308.02~~, 309, 313 and 314, Rules 301-314 are  
178 inconsistent with the Expedited Child Support Rules and therefore do not apply  
179 to the expedited process.

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## 182 **Rule 301.02 Time**

183 Computation of time under these rules is governed by Rule 6 of the Minnesota

184 Rules of Civil Procedure.

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### **Advisory Committee Comment–2011 Amendments**

187 The rules relating to computation of time are critical, and it is important that  
188 they be clear and predictable to all users of the court system. Rule 6 of the  
189 Minnesota Rules of Civil Procedure provides the appropriate clarity and makes  
190 it expressly applicable in family matters thereby eliminating any room for  
191 confusion. Rule 6 is consistent with the general day-counting rules set forth in  
192 Minn. Stat. § 645.15, and provides additional guidance for counting days where  
193 the periods of time are short and for responding to papers served by mail, or  
194 facsimile.

195 The time periods in the rules are intended to apply in most situations. Where  
196 unusual circumstances exist and justice so requires, the court may shorten the  
197 time limits. See Rule 2.05 of these rules.

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## 200 **RULE 302. COMMENCEMENT; ~~CONTINUANCE; TIME; PARTIES~~**

### 201 **Rule 302.01 Commencement of Proceedings**

202 **(a) ~~Service. Marriage dissolution, legal separation and annulment proceedings~~**

203 **Methods of Commencement. Family Court Actions shall be commenced by service of a**

204 summons and petition ~~upon the person of the or other party, by alternate means~~

205 authorized by statute, ~~or by publication pursuant to court order. Service in other family~~



206 ~~court proceedings shall be governed by the rules of civil procedure.~~ upon the person of  
207 the other party. Commencement can be accomplished by the following means:

208 (1) **Personal Service.** The summons and petition may be served upon the  
209 person of the party to be served.

210 (2) **Admission/Acknowledgment.** Service may be accomplished when the  
211 party to be served signs an admission of service or acknowledges service as permitted in  
212 Minn. R. Civ. P. 4.05.

213 (3) **Alternate Means.** Service of the summons and petition may be made  
214 **accomplished** by alternate means as authorized by statute.

215 (4) **Publication.** Service of the summons and petition may be made by  
216 publication only upon an order of the court. If the respondent subsequently is located and  
217 has not been served personally or by alternate means, personal service shall be made  
218 before the final hearing.

219 **(b) Service After Commencement.** After a Family Law Action has been  
220 commenced, service may be accomplished in accordance with Minn. R. Civ. P. 5.

221 ~~**(b)(c) Joint Petition in Marriage Dissolution Proceedings.**~~

222 (1) No summons shall be required if a joint petition is filed to commence  
223 marriage dissolution proceedings. Proceedings shall be deemed commenced when both  
224 parties have signed the verified petition.

225 (2) Where the parties to a marriage dissolution proceeding agree on all  
226 issues, the parties may proceed using a joint petition, agreement, and judgment and  
227 decree for marriage dissolution.

228 (3) Upon filing of the “Joint Petition, Agreement and Judgment and  
229 Decree,” and the Confidential Information Form (Form 11.1 as published by the state  
230 court administrator), and a Notice to the Public Authority if required by Minn. Stat. §  
231 518A.44, the court administrator shall place the matter on the appropriate calendar  
232 pursuant to Minn. Stat. § 518.13, subd. 5. A Certificate of Representation and Parties and  
233 documents required by Rules 306.01 and 306.02 shall not be required if the “Joint  
234 Petition, Agreement and Judgment and Decree” published by the state court administrator  
235 is used.

236 (4) The state court administrator shall develop ~~maintain, publish and~~  
237 ~~regularly update, or provide references to,~~ forms that may be used by parties for purposes  
238 of this rule to file joint petitions to commence marriage dissolution proceedings. ~~Court~~  
239 ~~Administrators in each Judicial District shall make the forms available to the public at a~~  
240 ~~reasonable cost.~~

241 ~~(e) **Service by Alternate Means or Publication.** Service of the summons and~~  
242 ~~petition may be made by alternate means as authorized by statute. Service of the~~  
243 ~~summons and petition may be made by publication only upon an order of the court. If the~~  
244 ~~respondent subsequently is located and has not been served personally or by alternate~~  
245 ~~means, personal service shall be made before the final hearing.~~

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**Advisory Committee Comment—2011 Amendments**

Family court proceedings are generally governed by statute in Minnesota, and these rules implement the statutory procedures. Proceedings for dissolution, legal separation and annulment are governed in detail by Minnesota Statutes, chapter 518. *See generally* Minn. Stat. § 518.10 (requirements for petition); § 518.11 (service by publication and precluding substitute service or service by mail under Minn. R. Civ. P. 4.05); § 518.12 (requiring respondent’s answer to be served within 30 days). Service “by alternate means” as authorized by

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statute. *See* Minn. Stat. § 518.11 (authorizing service by various other means). The rule retains provision for service by publication because publication is authorized for a summons and petition that may affect title to real property. *See* Minn. Stat. § 518.11(c) (2010).

A joint proceeding is commenced on the date when both parties have signed the petition, and no summons is required. Minn. Stat. §§ 518.09 & 518.11. Rule 308.04 creates a procedure similar to that in Rule 302.01(c)(2) & (3). 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 or with children where the parties have agreed on all issues. 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(c) is, by its nature, limited to a decision prior to commencement of the proceedings.

Custody proceedings under the Uniform Child Custody Jurisdiction Act are governed by Minnesota Statutes, chapter 518D. Interstate service and notice must be accomplished at least 20 days prior to any hearing in Minnesota. Service within the state is governed by Minn. R. Civ. P. 4.

Domestic abuse order for protection proceedings are governed by Minnesota Statutes, chapter 518B. Notice and the timing of personal service on the respondent varies according to the circumstances detailed in the statute. “Support proceedings under the revised Uniform Interstate Enforcement of Support Act are governed by Minnesota Statutes, chapter 518C. The time for answer is governed by the law of the responding jurisdiction.

Statutes authorize commencement of certain Family Court Actions other than by summons and petition. Commencement of contempt proceedings under Minn. Stat. § 588.04 is addressed in Rule 309 of these rules. Court decisions set forth in *Rodewald v. Taylor*, 797 N.W.2d 729 (Minn. Ct. App. 2011), also permit commencement by motion following the signing of a Recognition of Parentage under Minn. Stat. § 257.75.

Actions to establish parentage are governed by Minnesota Statutes, chapter 257. Rule 314 of these rules addresses specific procedures applicable in these actions.

A child support proceeding that is not a IV(D) case as defined in Rule 352.01(g) must be commenced in district court and is subject to Rules 301-314. Actions for reimbursement for public assistance are governed by Minn. Stat. § 256.87 and are governed by the expedited process rules, Rules 351, et seq. The Petitioner must notify the public agency responsible for support enforcement of all proceedings if either party is receiving or has applied for public assistance. Minn. Stat. § 518A.44.

A party appearing pro se is required to perform the acts required by rule or statute in the same manner as an attorney representing a party. An attorney dealing with a party appearing pro se shall proceed in the same manner, including service of process, as in dealing with an attorney.

305 **Rule 302.02-Continuances**

306 ~~Minn. Gen. R. Prac. 122 shall be followed in connection with continuances for~~  
307 ~~pre-hearings and trial settings. No continuance of a motion shall be granted unless~~  
308 ~~requested within 3 days of receiving notice under Rule 303.01(a) and unless good cause~~  
309 ~~is shown~~

310 **Rule 302.03 Time**

311 ~~Time is governed by Minnesota Rules of Civil Procedure, except where a~~  
312 ~~different time is specified by statute. Procedural time limits may be shortened for good~~  
313 ~~cause shown.~~

314 **Rule 302.04 Designation of Parties**

315 **(a) Petitioner and Respondent.** Parties to ~~dissolution, legal separation,~~  
316 ~~annulment, custody, domestic abuse, U.C.C.J.A., and R.U.R.E.S.A. proceedings~~ Family  
317 Court Actions shall be designated as petitioner (joint petitioners or petitioner and co-  
318 petitioner) and respondent. ~~Parties to parentage and Minnesota Statutes, section 256.87~~  
319 ~~reimbursement actions shall be designated as plaintiff and defendant. After so~~  
320 designating the parties, it is permissible to refer to them as husband and wife, father and  
321 mother, or other designations if applicable by inserting the following in any petition,  
322 order, decree, etc.:

323 Petitioner is hereinafter referred to as (~~wife/husband~~ familial designation),  
324 and respondent as (~~husband/wife~~ familial designation).

325 **(b) Guardians Ad Litem.** Appointment of a guardian ad litem for minor  
326 children is governed by the Rules of Guardian Ad Litem Procedure in Juvenile and

327 Family Court (Rules 901-~~913~~907). The guardian ad litem shall carry out the  
328 responsibilities set forth in the Rules of Guardian Ad Litem Procedure in Juvenile and  
329 Family Court. The guardian ad litem shall have the rights set forth in the Rules of  
330 Guardian Ad Litem Procedure in Juvenile and Family Court.

331 A guardian ad litem for minor children may be designated a party to the  
332 proceedings in the order of appointment. If the child is made a party to the proceeding,  
333 then the child’s guardian ad litem shall also be made a party.

334 **Advisory Committee Comments—2011 Amendments**

335 Rule 302.02(a) specifies that the proper designation of parties in family court  
336 proceedings is as petitioner and respondent. Where a proceeding is commenced  
337 jointly, both parties may be designated as co-petitioners. The rule permits the  
338 parties, once properly designated in the appropriate pleadings, to be designated  
339 by less formal terms that indicate their relationship. The rule is amended to  
340 recognize that those designations are not limited to husband and wife, and other  
341 forms of relationships are encountered in family court proceedings. The  
342 “petitioner” and “respondent” labels are to be used in parentage cases, despite  
343 the historic use of “plaintiff” and “defendant” in these cases. There is no  
344 statutory or other requirement for the use of those labels, although at least one  
345 statute uses the term “defendant” in specifying the proper venue for these  
346 actions. See Minn. Stat. § 257.59. It is particularly helpful to use common  
347 terminology given the fact parentage proceedings may be combined with or  
348 joined with an action for dissolution, annulment, legal separation, custody under  
349 Minn. Stat. ch. 518, or reciprocal enforcement of support pursuant to Minn. Stat.  
350 § 257.59, subd. 1.

351 Rule 302.02(b) deals with guardians ad litem. A guardian appointed pursuant  
352 to Minnesota Statutes, section 257.60 becomes a party to the action if the child  
353 is made a party. The guardian then would be entitled to initiate and respond to  
354 motions, conduct discovery, call and cross-examine witnesses, make oral or  
355 written arguments or reports and appeal on behalf of a child without the  
356 necessity of applying to the court. This rule applies to appointment of a guardian  
357 ad litem for minor children. Appointment of a guardian in other situations is  
358 governed by Rule 17.02 of the Minnesota Rules of Civil Procedure.

359 A guardian appointed under Minnesota Statutes, section 518.165 is not a  
360 party to the proceeding, but may initiate and respond to motions and make oral  
361 statements and written reports on behalf of the child. A party has the right to  
362 cross-examine as an adverse witness the author of any report or recommendation  
363 on custody and visitation of a minor child. *Scheibe v. Scheibe*, 308 Minn. 449,  
364 241 N.W.2d 100 (1976); *Thompson v. Thompson*, 288 Minn. 41, 55 N.W. 329  
365 (1952).

366  
367

368 **RULE 303. MOTIONS; ~~EX PARTE~~ EMERGENCY RELIEF; ORDERS TO**  
369 **SHOW CAUSE; ~~ORDERS AND DECREES~~**

370 **Rule 303.01 Scheduling of Motions**

371 **~~(a) Notice.~~ Notice of Obtaining Hearing Date.**

372 ~~(1) All motions shall be accompanied by either an order to show cause or by a~~  
373 ~~notice of motion which shall state, with particularity, the time and place of the hearing~~  
374 ~~and the name of the judge, referee, or judicial officer, as assigned by the local assignment~~  
375 ~~clerk.~~

376 ~~(2) Except in cases in which the parties reside in the same residence and there is a~~  
377 ~~possibility of abuse, a party who obtains a date and time for hearing a motion shall~~  
378 ~~promptly give written notice of the hearing date and time, and the name of the judicial~~  
379 ~~officer, as assigned by the local assignment clerk, if known, and the primary issue(s) to~~  
380 ~~be addressed at the hearing to all parties in the action. If the parties reside in the same~~  
381 ~~residence and there is a possibility of abuse, notice shall be given in accordance with the~~  
382 ~~Minnesota Rules of Civil Procedure.~~

383 **~~(4)~~ b) Notice of Motion.** All motions shall be accompanied by either an order to  
384 show cause in accordance with Minn. R. Gen. Prac. 303.05 or by a notice of motion  
385 which shall state, with particularity, the date, time, and place of the hearing and the name  
386 of the ~~judge, referee, or judicial officer~~ if known, as assigned by the local assignment  
387 clerk.

388 ~~(2) Except in cases in which the parties reside in the same residence and there is a~~  
389 ~~possibility of abuse, a party who obtains a date and time for hearing a motion shall~~

390 promptly give notice of the hearing date and time and the name of the judge or referee, if  
391 known, to all other parties in the action. If the parties reside in the same residence and  
392 there is a possibility of abuse, notice shall be given in accordance with the Minnesota  
393 Rules of Civil Procedure.

394 **(bc) Notice of Time to Respond.** All motions and orders to show cause shall  
395 contain the following statement:

396 The Rules establish deadlines for responding to motions. All  
397 responsive pleadings shall be served and mailed to or filed with the court  
398 administrator no later than five days prior to the scheduled hearing. The  
399 court may, in its discretion, disregard any responsive pleadings served or  
400 filed with the court administrator less than five days prior to such hearing in  
401 ruling on the motion or matter in question.

402

403 **Advisory Committee Comments—2011 Amendments**

404 Rule 303.01 imposes a simple burden on any party, whether or not  
405 represented by counsel: to promptly advise the other parties when a hearing date  
406 is obtained from the court. The rule codifies common courtesy, but also serves  
407 specific purposes of reducing the need to reschedule motion hearings and  
408 permitting the other side to submit motions at the same hearing, if appropriate.  
409 “Promptly” is intentionally not rigidly defined, but notice should be sent the  
410 same day the hearing date is obtained. Notice of the assignment of a judicial  
411 officer also starts the time to remove an assigned judicial officer under Minn. R.  
412 Civ. P. 63.03 and Minn. Stat. § 542.16.

413 The Rule exempts a party from giving prior notice if there is a “possibility of  
414 abuse” and where the two parties share the same residence. This admittedly  
415 subjective standard is retained in the rule for the protection of victims of  
416 domestic violence. The trial court retains the authority to impose sanctions for  
417 the improper use of this exception.

418  
419

420 **Rule 303.02 Form of Motion**

421 **(a) Specificity and Supporting Documents.** Motions shall set out with  
422 particularity the relief requested in individually numbered paragraphs. All motions must  
423 be supported by ~~appropriate~~ signed, sworn and notarized affidavits that contain facts  
424 ~~relevant and material~~ to the issues before the court. ~~The paragraphs of the affidavits~~  
425 ~~should be specific and factual; where possible, they should be numbered to correspond to~~  
426 ~~the paragraphs of the motion.~~

427 **(b) ~~Application for Temporary Relief.~~** When temporary financial relief is  
428 ~~initially requested,~~ such as child support, maintenance, payment of debt and attorney's  
429 fees ~~the application for temporary relief is requested,~~ the Parenting/Financial Disclosure  
430 Statement form developed by the state court administrator shall be served and filed by the  
431 moving and responding parties. ~~Additional facts, limited to relevant and material~~  
432 ~~matters, shall be added to the application form or by supplemental affidavit, along with~~  
433 their motions and affidavits. Sanctions for failure to comply include, but are not limited  
434 to, the striking of pleadings or hearing.

435 **Rule 303.03 Motion Practice**

436 **(a) Requirements for Motions.**

437 (1) *Moving Party, Supporting Documents, Time Limits.* No motion shall  
438 be heard unless the ~~initial~~ moving party pays any required motion filing fee, properly  
439 serves a copy of the following documents ~~on opposing counsel~~ and files ~~the original~~  
440 them with the court administrator at least 14 days prior to the hearing:



441 (i) Notice of motion and motion in the form required by Minn. Gen.  
442 R. Prac. 303.01~~(a)~~ and 303.02;

443 ~~(ii) Motion;~~

444 (iii) ~~Any relevant~~ Relevant signed, sworn and notarized affidavits  
445 and exhibits; and

446 ~~(iviii)~~ Any memorandum of law the party intends to submit.

447 (2) *Motion Raising New Issues.* A responding party raising new issues  
448 other than those raised in the initial motion shall pay any required motion filing fee,  
449 properly serve a copy of the following documents on ~~opposing counsel~~, all parties and  
450 ~~file the original~~ them with the court administrator at least 10 days prior to the hearing:

451 (i) Notice of motion and motion in form required by Minn. Gen. R.  
452 Prac. 303.01~~(a)~~ and 303.02;

453 ~~(ii) Motion;~~

454 (iii) ~~Any relevant~~ Relevant signed, sworn and notarized, affidavits  
455 and exhibits; and

456 ~~(iv iii)~~ Any memorandum of law the party intends to submit.

457 (3) *Responding Party, Supporting Documents, Time Limits.* The party  
458 responding to issues raised in the initial motion, or the party responding to a motion  
459 ~~which~~ that raises new issues, shall pay any required motion filing fee, properly serve a  
460 copy of the following documents on ~~opposing counsel~~ all parties, and file ~~the original~~  
461 them with the court administrator at least ~~five~~ 5 days prior to the hearing, inclusive of  
462 Saturdays, Sundays, and holidays:

463 (i) Any memorandum of law the party intends to submit; and  
464 (ii) ~~Any relevant~~ Relevant signed, sworn and notarized affidavits  
465 and exhibits.

466 (4) *Computation of Time for Service* ~~and Filing By Mail~~. Whenever this  
467 rule requires documents to be served and filed with the court administrator within a  
468 prescribed period of time before a specific event, service and filing ~~may~~ must be  
469 accomplished as required by mail, subject to the following: (i) ~~3 days shall be added to~~  
470 ~~the prescribed period; and (ii) filing shall not be considered timely unless the documents~~  
471 ~~are deposited in the mail within the prescribed period. Service of documents on parties~~  
472 ~~by mail is subject to the provisions of Minn. R. Civ. R. P. 5:02 and 6:05.~~

473 (5) *Post-Trial Motions*. The timing provisions of Section 303.03(a) do not  
474 apply to post-trial motions.

475 **(b) Failure to Comply.** In the event ~~an initial~~ a moving party fails to timely  
476 serve and file documents required in this rule, the hearing may be cancelled by the court.  
477 If responsive papers are not properly served and filed, the court may deem the initial  
478 ~~motion or motion raising new issues~~ unopposed and may issue an order without hearing.  
479 The court, in its discretion, may refuse to permit oral argument by the party not filing the  
480 required documents, may consider the matter unopposed, may allow reasonable  
481 attorney's fees, or may take other appropriate action.

482 **(c) Settlement Efforts.** ~~No motion, except a motion for temporary relief, will be~~  
483 ~~heard unless the parties have conferred~~ Except in parentage cases when there has been no  
484 court determination of the existence of the parent and child relationship and in situations

485 where a court has order that no contact occur between the parties, the moving party shall,  
486 within 7 days of filing a motion, initiate a settlement conference either in person, or by  
487 telephone, or in writing in an attempt to resolve ~~their differences prior to the hearing.~~  
488 ~~The moving party shall initiate such conference. In matters involving post-decree~~  
489 ~~motions, if the parties are unable to resolve their differences in this conference they shall~~  
490 ~~consider the use~~ the issues raised. This conference shall include consideration of an  
491 appropriate ADR process under Rule 114 to attempt to accomplish resolution. The  
492 moving party shall certify to the court, ~~before the time of the hearing,~~ compliance with  
493 this rule or any reasons for not complying, ~~including lack of availability or cooperation~~  
494 ~~of opposing counsel.~~ The moving party shall file a Certificate of Settlement Efforts in the  
495 form developed by the state court administrator not later than 24 hours before the  
496 hearing. Unless excused by the Court for good cause, no motion shall be heard unless the  
497 parties have complied with this rule. Whenever any pending motion is settled, the  
498 moving party shall promptly advise the court.

499 **(d) ~~Motion with Request for Oral Testimony.~~**

500 (1) General Rule. ~~Motions, except for contempt proceedings,~~ shall be  
501 submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and  
502 arguments of counsel ~~unless otherwise ordered by the court for good cause shown. If~~  
503 ~~demand is made~~ except for contempt proceedings or as otherwise provided for in these  
504 rules.

505 (2) Request for Leave for Oral Testimony. Requests for the taking of oral  
506 testimony must be made by motion served and filed not later than the filing of that party's

507 initial motion papers. ~~and if the matter cannot be heard adequately in the scheduled~~  
508 ~~time, the hearing shall be utilized as a prehearing conference. Requests for hearing time~~  
509 ~~in excess of one-half hour shall be submitted by written motion specifically setting forth~~  
510 ~~the necessity and reason that evidence cannot be submitted by affidavit. The motion shall~~  
511 include names of witnesses, nature and length of testimony, including cross-examination,  
512 and types of exhibits, if any. ~~The court may issue an order limiting the number of~~  
513 ~~witnesses each party may call, the scope of their testimony, and the total time for each~~  
514 ~~party to present evidence. Such an order shall be made only after the lawyer for each~~  
515 ~~party has had an opportunity to suggest appropriate limits.~~

516 (3) Request for Hearing Longer Than One-Half Hour. Requests for  
517 hearing time in excess of one-half hour must be submitted by separate written motion  
518 specifically setting forth the necessity and reason that evidence cannot be submitted by  
519 affidavit.

520 (4) Conversion to Prehearing Conference. If the matter cannot be heard  
521 adequately in the scheduled time, the hearing shall be used as a prehearing conference.

522 (5) Court Discretion to Solicit Oral Testimony. If the request required by  
523 subdivision (2) of this rule has not been made, the court shall not take oral testimony at  
524 the scheduled hearing unless the court in its discretion solicits additional evidence from  
525 the parties by oral testimony.

526 (6) Order. In the event the court permits oral testimony, it may issue an  
527 order limiting the number of witnesses each party may call, the scope of their testimony,

528 and the total time for each party to present evidence. Each party shall be afforded an  
529 opportunity to suggest appropriate limits.

530 (7) Interviews of Minor Children. Any motion relating to custody or  
531 visitation shall additionally state whether either party desires the court to interview minor  
532 children. No child under the age of fourteen years will be allowed to testify without prior  
533 written notice to the other party and court approval.

534

535 **Advisory Committee Comments—2011 Amendments**

536 Motion practice in family law matters is intended to mirror, where  
537 appropriate to the needs of family law issues, the procedures followed generally  
538 in civil cases in Minnesota courts. The prevailing practice in Minnesota courts  
539 is for the submission of evidence relating to motions by written submissions,  
540 with sworn testimony provided by affidavit, deposition, or other written  
541 submissions. Rule 303.03(d)(1) restates that rule. The balance of Rule  
542 303.03(d) addresses the process to request leave to present oral testimony in the  
543 limited circumstances where it may be appropriate. Minn. Stat. § 518.131, subd.  
544 8, provides for allowing oral testimony upon demand of a party in requests for a  
545 temporary order or restraining order.

546 Rule 303.03(a)(5) makes it clear that the stringent timing requirements of  
547 the rule need not be followed on post-trial motions, such as a motion for a new  
548 trial or for amended findings made shortly after the conclusion of trial. *See*  
549 Minn. R. Civ. P. 52 & 59. This change is made to continue the uniformity in  
550 motion practice between family court matters and general civil cases, and is  
551 patterned on Minn. Gen. R. Prac. 115.01(c). Support, spousal maintenance, and  
552 custody modification motions, often brought months or years later, are subject to  
553 the general timing rules for motions.

554 The requirement in subsection (c) of an attempt to resolve motion disputes  
555 requires that the efforts to resolve the matter be made concluding the hearing,  
556 not before bringing the motion. The rule requires the moving party to initiate  
557 settlement efforts. If the motion is resolved, subsection (c) requires the parties  
558 to advise the court immediately.

559 The rule explicitly addresses the requirement for paying a motion filing fee.  
560 Since 2003, Minnesota law requires a fee for “filing a motion or response to a  
561 motion in civil, family, excluding child support, and guardianship case.” *See*  
562 Minn. Stat. § 357.021, subd. 2(4).

563

564 **Rule 303.04 Ex parte and Emergency Relief**

565 **(a) Motion Governing Rules.** The court may grant ~~ex parte~~ emergency relief  
566 ~~only if requested by a motion with supporting affidavit, properly executed if the~~

567 requirements in this Rule 303.04 are met. If emergency relief is sought ex parte, the  
568 party seeking the relief must demonstrate compliance with Rule 3 of these rules.

569 **(b) Order to Show Cause.** An order to show cause shall not be used to grant  
570 ~~ex parte relief~~ except in those cases where permitted pursuant to Minn. Gen. R. Prac.  
571 303.05.

572 ~~**(e) Filing.** All such orders and supporting documents must be filed with the~~  
573 ~~order appropriately signed out for personal service. A conformed file copy of such order~~  
574 ~~shall be retained by the court administrator in the file.~~

575 ~~———— **(d) Interim Support Order.** To insure support for an unemployed party or a~~  
576 ~~party with children pending a full temporary hearing, an initial order to show cause may,~~  
577 ~~if the situation warrants, contain the following:~~

578 ~~———— IT IS FURTHER ORDERED that pending the aforesaid scheduled~~  
579 ~~hearing, you, shall pay to the (petitioner) (respondent) commencing forthwith~~  
580 ~~\_\_\_\_\_ percent of your net earnings after the usual deductions for FICA,~~  
581 ~~withholding taxes and group insurance, such payments to be made within 24~~  
582 ~~hours of your receipt of such earnings for each pay period. These payments are to~~  
583 ~~insure that provision is made by you for the support of your (wife) (husband)~~  
584 ~~(and) (children) pending the aforesaid hearing.~~

585  
586 **(c) Requirement of Motion; Form.** The party seeking emergency relief must  
587 state with specificity in a motion and affidavit:

588 ~~The percentage to be used will be in accordance with the statutory child support~~  
589 ~~guidelines and such other factors related to maintenance as the court deems appropriate.~~

590 (i) Why emergency relief is required;

591 (ii) The relief requested;

592 (iii) Disclosure of any other attempts to obtain the same or similar relief  
593 and the result;

594 (iv) If there was a prior attempt to obtain emergency relief, the name of the  
595 judicial officer to whom the request was made;

596 (v) If a prior request was denied for the same or similar relief, explain what  
597 new facts are presented to support the current motion.

598 **(d) Proposed Order.** The party seeking emergency relief must present a  
599 proposed order for the court’s consideration.

600 **(e) Notice.** The party seeking emergency relief must serve the motion and  
601 affidavit, including notice of the time when and the place where the motion will be heard,  
602 on the other party or counsel, unless:

603 (i) the party seeking emergency relief provides a written statement that the  
604 party has made a good faith effort to contact the other party or counsel and has  
605 been unsuccessful; or

606 (ii) The supporting documents show good cause why notice to the other  
607 party should not be required and the court waives the notice requirement.

608 **(f) Hearing.** An order granting emergency relief without notice shall include a  
609 return hearing date before the judicial officer hearing the matter. If the relief obtained  
610 affects custody or parenting time, the court shall set the matter for hearing within 14 days  
611 of the date the emergency relief is granted.

612 ~~There must be a showing in the Application for Temporary Relief or separate~~  
613 ~~affidavit of the necessity for the interim order for support.~~

614

615 **Advisory Committee Comments—2011 Amendments**

616 Rule 303.04 is amended to make clearer the circumstances that justify  
617 seeking either emergency or ex parte relief. “Emergency” and “ex parte” are  
618 not synonymous, though sometimes both might be justified in a particular  
619 situation. Emergency relief may be appropriate where there is urgency, not  
620 caused by lack of diligence on the part of the moving party, that makes the  
621 normal deadlines in the rules unworkable. Even where exigent circumstances  
622 justify shortening the deadlines, they do not generally excuse the giving of  
623 notice—or the attempt thereof—to the other side. Rare situations may, however,  
624 permit or even demand that notice not be given to the other side before seeking  
625 relief from the court. Where destruction of property or evidence is threatened,  
626 assets appear to be concealed or are threatened to be concealed, or the abduction  
627 of children has occurred or is threatened, or other situations exist where the  
628 giving of notice is likely to make any relief impossible to obtain, the court may  
629 consider the matter ex parte (without notice to the other side). Rule 3 of these  
630 rules provides clear guidelines on seeking ex parte relief. The standards of Rule  
631 65.01 of the Minnesota Rules of Civil Procedure also provide guidance for relief  
632 in family law matters. *See* Minn. R. Civ. P. 65.01 (permitting relief without  
633 notice if “immediate and irreparable injury loss, or damage will result.”).

634 As is true for temporary restraining orders, any order granted without notice  
635 to all parties should be of extremely short duration and the court should hold a  
636 hearing upon notice to all parties before continuing or extending the relief. The  
637 availability of temporary relief, and the limits on that relief, are set forth in  
638 Minn. Stat. § 518.131.  
639

640 **Rule 303.05 Orders to Show Cause**

641 Orders to show cause shall be obtained in the same manner specified for ex-parte  
642 relief in Rule 3 of these rules. Such orders may require production of limited financial  
643 information. ~~deemed necessary by the court.~~ An order to show cause shall be issued only  
644 where the motion seeks a finding of contempt under Rule 309 or the supporting affidavit  
645 makes an affirmative showing of:

- 646 (a) a need to require the party to appear in person at the hearing, or  
647 (b) ~~the~~ a need for interim support is warranted, or  
648 (c) the production of limited financial information is deemed necessary by the  
649 court, ~~or~~



650 (d) a need for the issuance of an order to show cause, subject to the discretion  
651 of the judge. such other limited relief and appropriate restraining orders, as addressed  
652 individually in the separate supportive affidavit for ex parte relief.

653 All orders to show cause must be appropriately signed out for service. A  
654 conformed file copy of such order shall be retained by the court administrator in the file.

655

656 Advisory Committee Comments—2011 Amendments

657 Orders to show cause should be issued only when it is necessary that a party  
658 appear at a hearing. In most situations, the provision of notice of a hearing, and  
659 allowing parties to appear if they choose to contest entry of the relief sought, is  
660 sufficient. Orders to show cause are specifically authorized, in limited  
661 circumstances, by statute. *See, e.g.,* Minn. Stat. §§ 256.87, subd. 1; 393.07,  
662 subd. 9; 518A.73; and 543.20. It is often preferable to use a notice of motion,  
663 and if attendance is required, to issue a subpoena to a non-party. *See, e.g.,*  
664 *Stevens County Social Service Dept. ex rel. Banken v. Banken*, 403 N.W.2d 693  
665 (Minn. Ct. App. 1987). Orders to show cause are a recognized part of contempt  
666 proceedings. *See, e.g.,* Minn. Stat. § 588.04.

667 Parties should be aware that improper use of an order to show cause can  
668 result in the imposition of sanctions. *See, e.g., Nelson v. Quade*, 413 N.W.2d  
669 824 (Minn. Ct. App. 1987).

670 Former rule 303.06 setting forth notices to be included in a final decree have  
671 largely been obviated by statutorily required notices. Notices required under  
672 statute are discussed in Rule 308.02 and its accompanying advisory committee  
673 comment.

674 ~~**Rule 303.06 Orders and Decrees Requiring Child Support or Maintenance**~~

675 ~~———— All orders and judgments and decrees which include awards of child support~~  
676 ~~and/or maintenance, unless otherwise directed by the court, shall include the following~~  
677 ~~provisions:~~

678 ~~———— That both parties are hereby notified that:~~

679 ~~———— (a) Payment of support or maintenance, or both, is to be as ordered herein, and~~  
680 ~~the giving of gifts or making purchases of food, clothing and the like will not fulfill the~~  
681 ~~obligation.~~

682 ——— (b) ~~Payment of support must be made as it becomes due, and failure to secure,~~  
683 ~~or denial of rights of, visitation is not an excuse for nonpayment, but the aggrieved party~~  
684 ~~must seek relief through proper motion filed with the court.~~

685 ——— (c) ~~The payment of support or maintenance, or both, takes priority over payment~~  
686 ~~of debts and other obligations.~~

687 ——— (d) ~~A party who remarries after dissolution and accepts additional obligations of~~  
688 ~~support does so with full knowledge of his or her prior obligations under this proceeding.~~

689 ——— (e) ~~Child support and maintenance are based on annual income, and it is the~~  
690 ~~responsibility of a person with seasonal employment to budget income so that payments~~  
691 ~~are made regularly throughout the year as ordered.~~

692

## 693 **RULE 304. SCHEDULING OF CASES**

### 694 **Rule 304.01 Scope**

695 ~~The purpose of this rule is to provide a uniform system~~ Rules 304.01 through  
696 304.05 provide for scheduling matters for disposition and trial in all proceedings in f  
697 Family eCourt Actions, excluding only the following:

698 (a) Actions for reimbursement of public assistance (Minn. Stat. § 256.87);

699 (b) Contempt (Minn. Stat. ch. 588);

700 (c) Domestic abuse proceedings (Minn. Stat. ch. 518B);

701 (d) Child custody enforcement proceedings (Minn. Stat. ch. 518AD);

702 (e) Support enforcement proceedings (Minn. Stat. ch. 518C--~~R.U.R.I.E.F.S.A.~~);

703 (f) Withholding of refunds from support debtors (Minn. Stat. § 289A.50, subd. 5);

704 (g) Proceedings to compel payment of child support (Minn. Stat. § 393.07, subd.  
705 9); ~~and~~

706 (h) Proceedings for support, maintenance or county reimbursement judgments  
707 (Minn. Stat. § 548.091); and

708 (i) Expedited Child Support Proceedings.

709 Rule 304.06 applies to all Family Court Actions.

710 **Rule 304.02 ~~The Party's Informational Statement~~ Initial Case Management**

711 ~~(a) — **Timing.** Within 60 days after filing an action or, if a temporary hearing~~  
712 ~~is scheduled within 60 days of the filing of the action, then within 60 days after a~~  
713 ~~temporary hearing is initially scheduled to occur, whichever is later, each party shall~~  
714 ~~submit, on a form to be available from the court and developed by the state court~~  
715 ~~administrator, the information needed by the court to manage and schedule the case.~~

716 ~~(b) **Content.** The information provided shall include:~~

717 ~~(1) Whether minor children are involved, and if so:~~

718 ~~(i) Whether custody is in dispute; and~~

719 ~~(ii) Whether the case involves any issues seriously affecting~~  
720 ~~the welfare of the children;~~

721 ~~(2) Whether the case involves complex evaluation issues, and/or~~  
722 ~~marital and nonmarital property issues;~~

723 ~~(3) Whether the case needs to be expedited, and if so, the specific~~  
724 ~~supporting facts;~~

725 (4) ~~Whether the case is complex, and if so, the specific supporting~~  
726 ~~facts;~~

727 (5) ~~Specific facts about the case which will affect readiness for trial;~~

728 (6) ~~Recommended alternative dispute resolution process, the timing of~~  
729 ~~the process, the identity of the neutral selected by the parties or, if the neutral has~~  
730 ~~not yet been selected, the deadline for selection of the neutral. If ADR is believed~~  
731 ~~to be inappropriate, a description of the reasons supporting this conclusion;~~

732 (7) ~~Identification of interpreter services (specifying language and, if~~  
733 ~~known, particular dialect) any party anticipates will be required for any witness or~~  
734 ~~party; and~~

735 (8) ~~A proposal for establishing any of the deadlines or dates to be~~  
736 ~~included in a scheduling order pursuant to this rule.~~

737 ~~(e) Unrepresented Parties. Parties not represented by a lawyer may use forms~~  
738 ~~developed specially by the state court administrator for unrepresented parties.~~

739 Within 60 days after the initial filing in a case, or sooner if the court requires, the  
740 parties shall file an Initial Case Management Statement that substantially conforms to the  
741 form developed by the state court administrator.

742 Advisory Committee Comments—2011 Amendments

743 Rule 304.02 is amended to reflect the more varied approaches to case  
744 management being used in Minnesota courts. The Initial Case Management  
745 form replaces the former Party's Information Statement form and is intended to  
746 be a more flexible device for obtaining information to be used by the court in  
747 making case-management decisions.

748

749 **Rule 304.03 Scheduling Order**

750 **(a) When Issued.** Within thirty days after the expiration of the time set forth in  
751 ~~Minn. Gen. R. Prae.~~ Rule 304.02 for filing ~~informational statements~~ an Initial Case  
752 Management statement, the court shall enter its scheduling order. The court may issue  
753 the order after either a telephone or in court conference, or without a conference or  
754 hearing if none is needed.

755 **(b) Contents of Order.** The scheduling order shall provide for alternative  
756 dispute resolution as required by Rule 114.04(c) and may establish any of the following:

757 (1) Deadlines or specific dates for the completion of ~~discovery and other~~  
758 ~~pretrial preparation~~ alternative dispute resolution including but not limited to  
759 mediation and early neutral evaluations;

760 (2) Deadlines or specific dates for ~~servicing, filing or hearing motions~~ the  
761 completion of discovery and other pretrial preparation;

762 (3) Deadlines or specific dates for servicing, filing or hearing motions;

763 (4) A deadline or specific date for ~~the prehearing conference;~~ and custody,  
764 parenting time or property evaluations;

765 (5) A deadline or specific date for the ~~prehearing~~ pretrial conference; and

766 (6) A deadline or specific date for the trial or final hearing.

767 **Rule 304.04 Amendment**

768 A scheduling order pursuant to this rule may be amended at a ~~prehearing~~ any  
769 pretrial or settlement conference, ~~or~~ upon motion for good cause shown, ~~or upon approval~~  
770 ~~by authorized court personnel if there is agreement of all parties.~~ , or upon stipulation of  
771 the parties if approved by the court.

772 **Rule 304.05. Collaborative Law**

773 A scheduling order under this rule may include provision for deferral on the  
774 calendar pursuant to Rule 111.05(b) of these rules and for exemption from additional  
775 ADR requirements pursuant to Rule 111.05(c).

776 **Rule 304.06 Continuances**

777 **(a) Trial.** Minn. Gen. R. Prac. 122 governs continuances for trial settings unless  
778 the court directs otherwise.

779 **(b) Motions and Pretrial.** A request for a continuance of a motion or pretrial  
780 conference shall be in writing and set forth the basis for the request.

781

782

**RULE 305. ~~PREHEARING~~ PRETRIAL CONFERENCES**

783 **Rule 305.01 ~~Prehearing~~ Parenting/Financial Disclosure Statement**

784 Each party shall complete a ~~prehearing conference~~ Parenting/Financial Disclosure  
785 ~~statement substantially~~ in the form developed by the state court administrator which shall  
786 be served upon all parties and ~~mailed to or~~ filed with the court at least ~~10~~7 days prior to  
787 the date of the ~~prehearing~~ pretrial conference.

788 **Rule 305.02 ~~Prehearing~~ Pretrial Conference Attendance**

789 (a) **Parties and Counsel.** Unless excused by the court for good cause, the  
790 parties and lawyers who will try the proceedings shall attend the ~~prehearing~~ pretrial  
791 conference, prepared to negotiate a final settlement. The lawyers attending the pretrial  
792 conference must have authority to settle the case. If a stipulation is reduced to writing  
793 prior to the ~~prehearing~~ pretrial conference, the case may be heard administratively or as a  
794 default at the time scheduled for the conference. In ~~that~~ the event, the matter will proceed  
795 as a default, then only the party obtaining the decree need appear.

796 (b) **Failure to Appear—Sanctions.** If a party fails to appear at a ~~prehearing~~  
797 pretrial conference, the court may dispose of the proceedings without further notice to  
798 that party.

799 (c) **Failure to Comply—Sanctions.** Failure to comply with the rules relating  
800 to ~~prehearing~~ pretrial conferences may result in the case being stricken from the contested  
801 calendar, granting of partial relief to the appearing party, striking of the nonappearing  
802 party's pleadings and the hearing of the matter as a default, award of attorney fees and  
803 costs, and such other relief as the court finds appropriate, without further notice to the  
804 defaulting party.

805 **Rule 305.03 ~~Prehearing~~ Conference Order for Trial or Continued Pretrial**  
806 **Conference**

807 If the parties are unable to resolve the case, in whole or in part, at the ~~prehearing~~  
808 pretrial conference, the court shall issue an order ~~which~~ that schedules any remaining  
809 discovery and any contemplated motions, identifies the contested issues for trial, and

810 provides for the exchange of witness lists and exhibits to be offered at trial. The order  
811 shall identify and describe the resolution of uncontested issues which that have been  
812 placed on the record.

## 813 **RULE 306. DEFAULT**

### 814 **Rule 306.01 Scheduling of Final Hearing**

815 Except when proceeding under Rule 302.01(b) by Joint Petition, Agreement and  
816 Judgment and Decree, to place a marriage dissolution matter on the default calendar for  
817 final hearing or for approval without hearing pursuant to Minnesota Statutes, section  
818 518.13, subdivision 5, the moving party shall submit a ~~default scheduling request~~  
819 ~~substantially in the~~ Default Scheduling Request form developed by the state court  
820 administrator and shall comply with the following, as applicable:

821 **(a) Without Stipulation—No Appearance.** In all default proceedings where a  
822 stipulation has not been filed, an ~~affidavit~~ Affidavit of default Default and of ~~nonmilitary~~  
823 ~~status~~ Nonmilitary Status of the defaulting party or a waiver by that party of any rights  
824 under the Servicemembers Civil Relief Act, as amended, shall be filed with the court.

825 **(b) Without Stipulation—Appearance.** Where the defaulting party has  
826 appeared by a pleading other than an answer, or personally without a pleading, and has  
827 not affirmatively waived notice of the other party's right to a default hearing, the moving  
828 party shall notify the defaulting party in writing at least ~~fourteen (14)~~ days before the  
829 final hearing of the intent to proceed to Judgment. The notice shall state:

830 You are hereby notified that an application has been made for a final  
831 hearing to be held on \_\_\_\_\_, 20\_\_, at \_\_:\_\_.m. at  
832 \_\_\_\_\_ [a date not sooner than ~~fourteen (14)~~ days from the



833 date of this notice]. You are further notified that the court will be requested  
834 to grant the relief requested in the petition at the hearing. You should  
835 contact the undersigned and the District Court Administrator immediately if  
836 you have any defense to assert to this default judgment and decree.

837 The default hearing will not be held until the notice has been mailed to the defaulting  
838 party at the last known address and an affidavit of service by mail has been filed.

839 If the case is to proceed administratively without a hearing under Minn. Stat. §  
840 518.13, subdivision 5, then the notice shall be sent after the expiration of the 30-day  
841 answer period, but at least ~~fourteen~~ (14) days before submission of a default scheduling  
842 request as required by this rule, and shall state:

843 You are hereby notified that an application will be made for a final  
844 judgment and decree to be entered not sooner than ~~fourteen~~ (14) days from  
845 the date of this notice. You are further notified that the court will be  
846 requested to grant the relief requested in the Petition. You should contact  
847 the undersigned and the District Court Administrator immediately if you  
848 have any defense to assert to this default judgment and decree.

849 **(c) Default with Stipulation.** Whenever a stipulation settling all issues has  
850 been executed by the parties, the stipulation shall be filed with an affidavit of nonmilitary  
851 status of the defaulting party or a waiver of that party's rights under the Servicemembers  
852 Civil Relief Act, as amended, if not included in the stipulation.

853 In a stipulation where a party appears pro se, the following waiver shall be  
854 executed by that party:

855 I know I have the right to be represented by a lawyer of my choice. I  
856 hereby expressly waive that right and I freely and voluntarily sign the  
857 foregoing stipulation.

858 **Advisory Committee Comments—2011 Amendments**

859 Rule 306 attempts to make clear the role of notice required to be given to  
860 parties who are in default but who have "appeared" in some way in marriage  
861 dissolution proceedings. A party is not entitled to prevent entry of judgment if  
862 that party is in default by not serving and filing a timely written answer to the

863 Petition. Nonetheless, the court may, in its discretion, consider some  
864 appropriate measures to prevent the case from being decided on a default basis  
865 and to obviate a motion for relief from the default judgment and decree.  
866 Accordingly, the rule is amended to afford more useful notice as to the request  
867 for a default. Defaults in other types of family proceedings are governed by  
868 Rule 55 of the Minnesota Rules of Civil Procedure.

869 The rule does not define how a party might appear either by “a pleading  
870 other than an answer,” or “personally without a pleading.” Both conditions  
871 should be limited to actions that approach responding to the Petition despite the  
872 fact they may be insufficient as a matter of law to stand as a response. Sending  
873 a letter that responds to a Petition might suffice for the first condition, as might a  
874 letter to the court. Appearing at a court hearing despite having not answered  
875 would certainly meet the “appeared personally” condition. When in doubt as to  
876 other circumstances, the party seeking a default should, to comply with Rule  
877 306.01(b), provide the required notice, with the expectation that many of these  
878 responses that fall short of an answer will not prevent entry of judgment.

879  
880 **Rule 306.02 Preparation of Decree [Abrogated]**

881 ~~Except in a proceeding under Rule 302.01(b) commenced by Joint Petition,~~  
882 ~~Agreement and Judgment and Decree, or in a scheduled default matter, proposed findings~~  
883 ~~of fact, conclusions of law, order for judgment and judgment and decree shall be~~  
884 ~~submitted to the court in advance of, or at, the final hearing.~~

885  
886 **Advisory Committee Comment—2011 Amendments**

887 Rule 306.02 is abrogated because it sets forth procedures that do not need to  
888 be established by rule and in practice individual judges deal with the preparation  
889 of a decree in different ways. The court may still require the submission of  
890 proposed findings of fact, conclusions of law, order for judgment, and judgment  
891 and decree in advance of the hearing.

892  
893 **RULE 307. FINAL HEARINGS**

894 **(a) Failure to Appear—Sanctions.** Failure to appear at the scheduled final  
895 hearing may result in the case being stricken from the contested calendar, granting of  
896 partial relief to the appearing party, striking of the nonappearing party’s pleadings and the  
897 hearing of the matter as a default, an award of attorney’s fees and costs, and such other  
898 relief as the court finds appropriate, without further notice to the defaulting party.

899           **(b) Stipulations Entered in Open Court—Preparation of Findings.** Where  
900 a stipulation has been entered orally upon the record, the lawyer directed to prepare the  
901 decree shall submit it to the court with a copy to each party. Unless a written, fully  
902 executed stipulation is filed or unless the decree contains the written approval of the  
903 ~~lawyer for each party or the~~ other party or their legal representative, a transcript of the  
904 oral stipulation shall be filed by the lawyer directed to prepare the decree. Responsibility  
905 for the cost of the transcript shall be determined by the court. Entry of the decree shall be  
906 deferred for fourteen (14) days to allow for objections unless the decree contains the  
907 written approval of the lawyer for each party, or the other party if not represented.

908                           **RULE 308. FINAL ORDER, JUDGMENT OR DECREE**

909           **Rule 308.01 Notices; Service**

910           **(a) Awards of Child Support and/or Maintenance.** All orders, judgments, and  
911 ~~decrees which~~ that include awards of child support ~~and/~~ or maintenance, unless otherwise  
912 directed by the court, shall include the provisions set forth in Minnesota ~~Gen. R. Prac.~~  
913 ~~303.06.~~ Statutes section 518.68 (Appendix A).

914           **(b) Public Assistance.** When a party is receiving or has applied for public  
915 assistance, the party obtaining the judgment and decree shall serve a copy of the  
916 judgment and decree on the agency responsible for child support enforcement, and the  
917 decree shall direct that all payments of child support and spousal maintenance shall be  
918 made to the ~~agency providing the assistance~~ Minnesota Child Support Central Payment  
919 Center for as long as the custodial parent is receiving assistance.

920           **(c) Child Support Enforcement.** When a private party has applied for or is  
921 using the services of the local child support enforcement agency, a copy of the decree  
922 shall be served by mail by the party submitting the decree for execution upon the county  
923 agency involved.

924           **(d) Supervised ~~Custody~~ Parenting Time or Visitation.** A copy of any  
925 judgment and decree or other order directing ongoing supervision of ~~e custody~~ parenting  
926 time or visitation shall be provided to the appropriate agency by the party obtaining the  
927 decree or other order.

928           **Rule 308.02 Statutorily Required Notices**

929           Where statutes require that certain subjects be addressed by notices in an order or  
930 decree, the notices may ~~shall not be included verbatim but shall~~ be set forth in an  
931 attachment and incorporated by reference.

932           **Rule 308.03 Sensitive Matters**

933           Whenever the findings of fact include private or sensitive matters as determined  
934 by the court, ~~a party may submit~~ a judgment and decree may be supported by separate  
935 documents comprising findings of fact, conclusions of law, and order for judgment.

936           **Rule 308.04. Joint Marital Agreement and Decree**

937           The parties to any marital dissolution proceeding may use a combined agreement  
938 and judgment and decree ~~for marriage dissolution~~. A judgment and decree ~~which~~ that is  
939 subscribed to by each party before a notary public and contains a final conclusion of law  
940 with words to the effect that “the parties agree that the foregoing Findings of Fact and  
941 Conclusions of Law incorporate the complete and full ~~Marital Termination Agreement~~

942 agreement” shall, upon approval and entry by the court, constitute an agreement and  
943 judgment and decree for marriage dissolution for all purposes.

944 **Advisory Committee Comments—2011 Amendment**

945 Rule 308.02 refers to statutory notice. The legislature has established  
946 numerous forms of notice including those required by Minn. Stat. § 518.68.  
947 These requirements are met in a two-page notice form, which is known as  
948 Appendix A and labeled as FAM 301 on the state court website  
949 (www.mncourts.gov, under “Court Forms” click on “Other”).

950 Rule 308.04 allows parties in any marriage dissolution proceeding, whether  
951 commenced by petition or joint petition, to use a combined agreement and  
952 judgment and decree. The agreement is often termed a “marital termination  
953 agreement,” but that label is not required by the rule. The primary benefit of  
954 this procedure is to reduce the risk of discrepancy between the terms of a marital  
955 termination agreement and the judgment and decree it purports to authorize.  
956 This procedure should benefit both the parties and the court in streamlining the  
957 court procedure where the parties are in agreement. The rule permits the parties  
958 to use this procedure by agreement, but does not require its use.

959 The procedure in Rule 308.04 is similar to the procedure for use of combined  
960 Joint Petition, Agreement and Judgment and Decree under Rule 302.01(b)(2),  
961 and is available in all cases where the parties agree on all issues.

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

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## **RULE 309. CONTEMPT**

### **Rule 309.01 Initiation**

972 **(a) Moving Papers—Service; Notice.** Contempt proceedings may be initiated  
973 by notice of motion and motion or by an order to show cause served upon the person of  
974 the alleged contemnor together with motions accompanied by appropriate supporting  
975 affidavits. Pursuant to Rule 303.05 an order to show cause may be issued by the court  
976 without notice to the alleged contemnor provided the supporting affidavits credibly raise  
977 an issue of contempt.  
978

979           **(b) Content of Order to Show Cause or Notice of Motion and Motion.** The  
980 order to show cause shall direct the alleged contemnor to appear and show cause why he  
981 or she should not be held in contempt of court and why the moving party should not be  
982 granted the relief requested by the motion. If proceeding by notice of motion and motion,  
983 the motion may seek that relief directly.

984           The notice of motion and motion or the order to show cause shall contain at least  
985 the following:

986                   (1) a reference to the specific order or judgment of the court alleged to  
987 have been violated and the date of entry or filing of the order or judgment;

988                   (2) a quotation of the specific applicable provisions ordered; ~~and~~

989                   (3) the alleged failures to comply;

990                   (4) notice to the alleged contemnor that his or her ability to pay is a crucial  
991 issue in the contempt proceeding and that a Parenting/Financial Disclosure  
992 Statement form for submitting ability to pay information is available from the state  
993 court website, and this form should be served and filed with the court at or before  
994 the contempt hearing; and

995                   (5) a date to appear for a Rule 309.02 hearing no later than 30 days  
996 subsequent to the issuance of the notice of motion or order to show cause.

997           **(bc) Affidavits.** The supportive affidavit of the moving party shall set forth each  
998 alleged violation of the order with particularity. Where the alleged violation is a failure  
999 to pay sums of money, the affidavit shall state the kind of payments in default and shall

1000 specifically set forth the payment dates and the amounts due, paid and unpaid for each  
1001 failure.

1002 The Any responsive affidavit shall set forth with particularity any defenses the  
1003 alleged contemnor will present to the court. Where the alleged violation is a failure to  
1004 pay sums of money, the affidavit shall set forth the nature, dates and amount of payments,  
1005 if any.

1006 ~~The supportive affidavit and the responsive affidavit shall contain numbered~~  
1007 ~~paragraphs which shall be numbered to correspond to the paragraphs of the motion where~~  
1008 ~~possible.~~

1009 **Advisory Committee Comments—2011 Amendments**

1010 Rule 309.01 does not require that contempt proceeding be commenced by  
1011 an order to show cause, even though that is the most common and most direct  
1012 means of commencing the proceedings. Although an order to show cause is an  
1013 available mechanism for initiating contempt proceedings, the authorizing statute  
1014 also recognizes that these proceedings may be commenced by motion  
1015 accompanied by appropriate notice. *See* Minn. Stat. § 588.04. The amendment  
1016 to Rule 309.01 is intended simply to recognize that both mechanisms are  
1017 available. In many situations, proceeding by order to show cause is preferable.  
1018 Use of an order to show cause, which is court process served with the same  
1019 formality as a summons, permits the court to impose sanctions directly upon  
1020 failure to comply. *See* Minn. Stat. § 588.04. The order to show cause is still  
1021 the preferred means to commence a contempt proceeding if there is meaningful  
1022 risk that the alleged contemnor will not to appear in response to a notice of  
1023 motion. Service of the order to show cause upon the person provides  
1024 jurisdiction for the issuance of a writ of attachment or bench warrant, if  
1025 necessary, and meets the requirement for notice of an opportunity to be heard.  
1026 *See Clausen v. Clausen*, 250 Minn. 293, 84 N.W.2d 675 (1976); *Hopp v. Hopp*,  
1027 279 Minn. 170, 156 N.W.2d 212 (1968).

1028 The requirement in Rule 309.01(b)(5) that a hearing be held within 30 days  
1029 of issuance of an order or notice of motion is intended to create the standard rule  
1030 and to underscore the importance of holding the hearing promptly so that the  
1031 contempt issues may be resolved. Where exceptional circumstances are found  
1032 to exist by the court, the hearing may be held later than 30 days from the order  
1033 or notice, but it should still be heard by the court as promptly as possible.

1034

1035 **Rule 309.02 Hearing**

1036 The alleged contemnor must appear in person before the court to be afforded the  
1037 opportunity to ~~resist~~ respond to the motion for contempt by sworn testimony. The court  
1038 shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the  
1039 right to offer sworn testimony.

1040 **Rule 309.03 Sentencing**

1041 **(a) Default of Conditions for Stay.** Where the court has entered an order for  
1042 contempt with a stay of sentence and there has been a default in the performance of the  
1043 condition(s) for the stay, before a writ of attachment or a bench warrant will be issued, an  
1044 affidavit of noncompliance and request for writ of attachment must be served upon the  
1045 person of the defaulting party, unless the person is shown to be avoiding service.

1046 **(b) Writ of Attachment.** The writ of attachment shall direct law enforcement  
1047 officers to bring the defaulting party before the court for a hearing to show cause why the  
1048 stay of sentence should not be revoked. A proposed order for writ of attachment shall be  
1049 submitted to the court by the moving party.

1050 **Rule 309.04 Findings**

1051 An order finding contempt must be accompanied by appropriate findings of fact.

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**Advisory Committee Comments—2011 Amendments**

Rule 309.04 requires findings. Findings are required to permit appellate review of a contempt order. In cases where incarceration is a consequence of a contempt finding, due process may require notice to the alleged contemnor of the right to show inability to pay and findings on that issue. *See Turner v. Rogers*, 564 U.S. \_\_\_, 131 S. Ct. \_\_\_, 180 L. Ed. 2d 254 (2011).



1060 **RULE 310. ALTERNATIVE DISPUTE RESOLUTION**

1061 **Rule 310.01 Applicability**

1062 **(a) When ADR Required.** All family law matters in district court are subject to  
1063 Alternative Dispute Resolution (ADR) processes as established in Rule 114, except for:

- 1064 1. actions enumerated in Minn. Stat., ch. 518B (Domestic Abuse Act),  
1065 2. contempt actions, and  
1066 3. maintenance, support, and parentage actions when the public agency

1067 responsible for child support enforcement is a party or is providing services to a party  
1068 with respect to the action.

1069 **(b) ADR When There Is Domestic Abuse.** The court shall not require parties to  
1070 participate in any facilitative process if one of the parties claims to be the victim of  
1071 domestic abuse by the other party or if the court determines there is probable cause that  
1072 one of the parties or a child of the parties has been physically abused or threatened with  
1073 physical abuse by the other party. In circumstances when the court is satisfied that the  
1074 parties have been advised by counsel and have agreed to an ADR process established in  
1075 Rule 114 that will not ~~involve~~ require face-to-face meeting of the parties, the court may  
1076 direct that the ADR process be used.

1077 The court shall not require parties to attempt ADR if they have ~~made an~~  
1078 ~~unsuccessful effort to settle all issues~~ previously engaged in an ADR process under Rule  
1079 114 with a qualified neutral ~~before the filing of Informational Statement.~~ and reached an  
1080 impasse.

1081 **Rule 310.02 Post-Decree Matters**

1082 The court may order ADR under Rule 114 in matters involving post-decree relief.  
1083 The parties shall discuss the use of ADR as part of the settlement conference required by  
1084 Rule 303.03(c).

1085 **Rules 310.03-310.09 (Deleted effective July 1, 1997.)**

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**RULE 311. FORMS**

1088 The forms developed by the state court administrator are sufficient under these  
1089 rules. Forms are currently maintained on the state court website (www.mncourts.gov).  
1090 Court Administrators in each Judicial District shall make the forms available to the public  
1091 at a reasonable cost.

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**Advisory Committee Comments—2011 Amendments**

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Rule 311 establishes that court-established forms for family matters are deemed sufficient under the rules. These specific forms are not required to be used, but they contain what is required and are therefore appropriate for use.

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These rules direct the state court administrator to develop various forms: See Rules 303.02(b) (Parenting/Financial Disclosure Statement); 303.03(c) (Certificate of Settlement Efforts); 304.02(Initial Case Management Statement); 305.01(Parenting/Financial Disclosure statement); and 306.01 (Default Scheduling Request). By maintaining the forms on the courts' website they can be readily updated and distributed to all potential users.

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1106 **RULE 312. REVIEW OF REFEREE'S FINDINGS OR RECOMMENDATIONS**

1107 Review of decisions of district court referees is controlled by applicable statutes  
1108 and orders of the supreme court.

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**Advisory Committee Comments—2011 Amendments**

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Rule 312 is amended to replace the former rule, which established now-obsolete procedures for review of the findings or recommendations of a district court referee in family law matters. Family court referees are now used in limited circumstances in two districts, and the processes followed are established by statute and supreme court orders. Under Minn. Stat. § 484.65,

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1116 subd. 9, recommended orders and findings of Fourth Judicial District referees  
1117 are subject to confirmation by district court judge, and once confirmed by the  
1118 district court judge the orders and findings may be appealed directly to the court  
1119 of appeals. Essentially the same is true in the Second Judicial District under a  
1120 series of orders establishing a pilot project that is still operating. The history of  
1121 the pilot project is set forth by the Minnesota Court of Appeals in its Special  
1122 Term Opinion in *Culver v. Culver*, No. A09-0739 (Minn. Ct. App., Sept. 1,  
1123 2009):

1124  
1125 The pilot project came into existence in the Second Judicial District in  
1126 1996. *See* 1996 Minn. Laws ch. 365, § 2 (allowing Second Judicial District  
1127 to implement pilot project assigning related family matters to single judge or  
1128 referee); *In re* Second Judicial Dist. Combined Family, Civil Harassment,  
1129 Juvenile Probate Jurisdiction Pilot Project, No. CX-89-1863 (Minn. Apr. 10,  
1130 1996) (suspending, in light of pilot project, Minn. R. Gen. Pract. 312.01,  
1131 which recites procedure for district-court review upon filing of petition for  
1132 review). The suspension is still in effect. *See* 1998 Minn. Laws ch. 367, art.  
1133 11, § 26 (extending pilot-project legislation); 2000 Minn. Law ch. 452, § 1  
1134 (same); 2002 Minn. Law ch. 242 (same); *In re* Second Judicial Dist.  
1135 Combined Family, Civil Harassment, Juvenile Probate Jurisdiction Pilot  
1136 Project, No. CX-89-1863 (Minn. June 17, 1998) (extending suspension);  
1137 (Minn. May 23, 2000) (same); (Minn. June 3, 2002) (extending suspension  
1138 until further order of supreme court).

1139 Slip. Op. 5, n.1.

1140  
1141  
1142 **~~Rule 312.01 Notice of Assignment to Judge; Parties' Submissions~~**

1143 ~~Upon the filing of the notice of review of a referee's findings or recommended~~  
1144 ~~order, the court administrator shall notify each party:-~~

1145 ~~(a) of the name of the judge to whom the review has been assigned;-~~

1146 ~~(b) that the moving party shall have 10 days from the date of mailing the notice~~  
1147 ~~of assignment in which to file and serve a memorandum; and-~~

1148 ~~(c) that the responding party(s) shall have 20 days from the date of mailing the~~  
1149 ~~notice of assignment within which to file and serve a responsive memorandum.-~~

1150 ~~Failure to file and serve these submissions on a timely basis may result in~~  
1151 ~~dismissal of the review or disallowance of the submissions. No additional evidence may~~  
1152 ~~be filed and no personal appearance will be allowed except upon order of the court for~~  
1153 ~~good cause shown after notice of motion and motion.-~~

1154           The review shall be based on the record before the referee and additional  
1155 evidence will not be considered, except for compelling circumstances constituting good  
1156 cause.

1157 **Rule 312.02 Transcript of Referee's Hearing**

1158           Any party desiring to submit a transcript of the hearing held before the referee  
1159 shall make arrangements with the court reporter at the earliest possible time. The court  
1160 reporter must advise the parties and the court of the date by which the transcript will be  
1161 filed. The order and submission of the transcript shall not delay the due dates for the  
1162 submissions described in Rule 312.01.

1163  
1164           **RULE 313. CONFIDENTIAL NUMBERS AND TAX RETURNS**

1165           The requirements of Rule 11 of these rules regarding submission of restricted  
1166 identifiers (e.g., social security numbers, employer identification numbers, financial  
1167 account numbers) and financial source documents (e.g., tax returns, wage stubs, credit  
1168 card statements) apply to all family court matters.

1169           **RULE 314. PARENTAGE PROCEEDINGS**

1170           In proceedings to determine parentage, the following additional rules apply:

1171           (a) Parentage proceedings are commenced by a Summons and Complaint.

1172           (b) The parties in parentage proceedings are one or more Petitioners and one or  
1173 more Respondents, and must be so named in the initial pleadings. After so designating  
1174 the parties, it is permissible to use descriptive labels as allowed by Rule 302.02(a).

1175 (c) Upon proper demand, the parties to parentage proceedings may obtain a jury  
1176 trial.

1177 **Advisory Committee Comments—2011 Amendments**

1178 Rule 314 is a new rule, included to collect in one place the special  
1179 procedures followed in parentage (paternity) cases. The rule is not the source of  
1180 the procedures set forth in the rule; these procedures are either dictated by  
1181 statute or common law. *See, e.g.,* Minn. Stat. §§ 257.57, 257.67  
1182 (commencement of parentage action and specifying that the proper designation  
1183 of parties in family court proceedings is as petitioner and respondent). Where a  
1184 proceeding is commenced jointly, both parties may be designated as co-  
1185 petitioners or as petitioner and co-petitioner. The rule permits the parties, once  
1186 properly designated in the appropriate pleadings, to be designated by less formal  
1187 terms that indicate their relationship. *See* Rule 302.02(a). Parentage  
1188 proceedings may be brought by a parent as well as a governmental entity, thus  
1189 the provision for plural petitioners in Rule 314(b); they are commonly brought  
1190 against multiple respondents.

1191 Rule 314 provides additional rules applicable to parentage proceedings. As  
1192 to a wide array of procedural matters not addressed in this rule, other rules  
1193 govern their use. Rule 301.01; *see, e.g.,* Minn. R. Civ. P. 56 (summary  
1194 judgment); Minn. R. Civ. P. 55 (default).

**SUPERVISING ATTORNEY**

Ron Elwood

**OFFICE MANAGER**

Colette Tate



**ATTORNEYS**

Melinda T. Hugdahl

Jessica L. Webster

Stacie L. Weeks

**LEGAL SERVICES ADVOCACY PROJECT**

**OFFICE OF  
APPELLATE COURTS**

November 14, 2011

NOV 14 2011

Ms. Bridget Gernander  
Clerk of the Appellate Courts  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

**FILED** H

**RE: Amendments to the General Rules of Practice – Family Court Rules**

Dear Ms. Gernander:

The following are comments submitted on behalf of all of the Minnesota regional legal services programs (Legal Services) in response to the Supreme Court's October 14, 2011 Order inviting comment on the proposed changes to the General Rules of Practice. Legal Services represents or advises thousands of low-income clients across Minnesota each year in a variety of matters, including family law. These comments focus on the proposed changes to the Rules of Family Court.

We appreciate the thoughtful work of the Minnesota Supreme Court Advisory Committee on General Rules of Practice. The recommendations of the Advisory Committee represent a significant improvement from the original proposal in many areas. We have two remaining concerns, and offer a proposed solution to each for your consideration.

1. Rule 303.03 and Rule 310.01 - Certificate of Settlement Efforts and ADR

The proposed rule requires a pre-hearing settlement conference utilizing alternative dispute resolution (ADR) and requiring the filing of a certificate of settlement efforts. If the certificate is not filed, the motion may not be heard. Our concern is that the lack of ADR resources for low-income litigants will preclude relief by the court. Under current practice, Rule 114.11 of the Rules of General Practice exempts parties from the ADR requirement if: (1) they are unable to pay; and (2) no free or reduced-fee ADR services exist. Because the proposed Family Court Rules provide that the Family Court Rules supersede if they are in conflict with the broader Rules of General Practice, mandatory participation in ADR would appear to override the exemption in the General Rules.

Additionally, it appears that Rule 303.03 is in conflict with Rule 310.01. Rule 310.01 provides multiple exceptions to ADR in the context of family law cases, none of which exist in Rule 303.03, even though Rule 303.03 requires ADR.

2324 University Avenue West, Suite 101 Midtown Commons St. Paul, MN 55114

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A United Way Agency

A solution to remedy this conflict would simply be to: (1) specifically include the language of Rule 114.11 of the Rules of General Practice in Rule 303.03 and Rule 310.01 (ADR rule in Family Court Procedures); (2) create a cross-reference to Rule 310.01 in Rule 303.03 so that the exceptions apply uniformly; and (3) provide on the proposed Settlement Efforts form prepared by the State Court Administrator a place to designate that ADR was not required.

2. Rule 304.02 and Rule 304.03 – Initial Case Management and Scheduling Order

The proposed rule requires parties to file the Initial Case Management Statement within 60 days of filing a family court action. The proposed rules require the court to issue a scheduling order within 30 days of the filing of the Case Management Statement. In comparing the existing and proposed rules and processes, it appears that the rules partially merge the existing rule processes with the Initial Case Management (ICMC) process. However, because they are two completely different processes, we believe that either they should be merged completely or kept completely separate.

The two processes become confused by the proposal to rename the Informational Statement the Initial Case Management Statement, which infers a merger of the current process with the ICMC process. However, it is our experience that they are two distinctly different processes - the ICMC notice (schedule) is sent by the courts immediately after filing, whereas a renamed Initial Case Management Statement can be filed within the first 60 days after filing, and a Scheduling Order is to be filed 30 days after that.

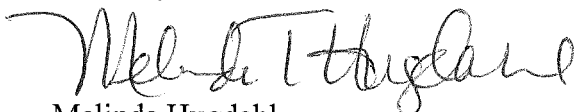
Similarly, the name change creates confusion about whether the scheduling order means the scheduling order as it currently exists, or whether it would now include the ICMC notice. If the intent is to merge the processes, then the scheduling order including the ICMC notice cannot be sent for up to 90 days after filing, which diminishes ICMC's goal of early intervention.

Furthermore, if the processes are combined, the rules must be consistent with the default period for filing an Answer. As currently proposed, the process would put the default timeline in the middle of the Initial Case Management submission timeline. As a result, if an ICMC notice is sent *prior* to the time period to file an Answer or default, but scheduling hearings for *after* the default timeline passes, litigants inadvertently default because they followed the later ICMC notice, rather than the original timeline to file an Answer.

Therefore, it is our suggestion to either: (1) keep the two processes separate and retain the form's designation as the Informational Statement to avoid confusion; or (2) intentionally change the name and merge the two processes. If the process is merged, a shortened time period of filing the Initial Case Management statement must be implemented to keep the early intervention working while recognizing the default timelines. One suggestion to accommodate both goals is to require the Initial Case Management Statement to be filed within 30 days of filing the action, which would trigger the ICMC notice/scheduling order within the following 30 days.

Thank you for the opportunity to comment on these proposed Rules of Family Court.

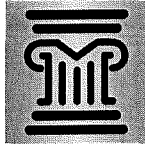
Sincerely,



Melinda Hugdahl

Staff Attorney

Legal Services Advocacy Project



MINNESOTA JUDICIAL BRANCH

OFFICE OF  
APPELLATE COURTS

NOV 10 2011

FILED H

**Statewide Steering Committee on Early Case Management / Early Neutral Evaluation**

**Hon. Sharon Hall**  
District Court Judge  
Anoka County Courthouse  
612-241-2811

**Hon. Sally Tarnowski**  
District Court Judge  
St. Louis County Courthouse  
218-726-2560

**To:** Bridget Gernander, Clerk of the Appellate Courts

**From:** Hon. Sharon Hall and Hon. Sally Tarnowski  
Co-Chairs, Statewide Steering Committee on Early Case Management / Early Neutral Evaluation

**Date:** November 10, 2011

**Re:** Proposed Amendment to Rule 304.02 of the Family Court Rules  
Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice

We are writing on behalf of ourselves and the Statewide ENE Steering Committee to oppose the proposed amendment to Rule 304.02 of the Family Court Rules. The amendment provides that "Initial Case Management Statements" be filed within 60 days of the initial filing or sooner if the court requires. The Initial Case Management Statement will replace the Informational Statement currently contained in the rules.

The Advisory Committee Comments for the proposed Rule describe an intention to reflect the more varied approaches to early case management being used in Minnesota courts at this time. We certainly appreciate that focus. However, we believe this particular rule change will be confusing to parties, attorneys and the courts.

The current practice in courthouses using Early Case Management/Early Neutral Evaluation ("ECM/ENE") is to require the parties to file an ICMC Data Sheet. This document is prepared by the parties on very short time constraints, sometimes as little as 24 hours. The purpose of the ICMC Data Sheet is to give the judicial officer the ability to spot issues prior to meeting with the parties for an Initial Case Management Conference. This issue-spotting is important as it helps to develop and shape the "pitch" given to the parties about early case management and early neutral evaluation. It has no other purpose and, given its short turnaround time, the information provided in it is not binding on the party submitting it for any purpose. The ICMC Data Sheet is not "filed" with the court, entered on MNCIS, or kept in the court file and is often returned to the party at the end of this conference. There is no filing fee attached to submitting an ICMC Data Sheet to the court.



Bridget Gernander  
November 10, 2011  
Page 2

Because of the name given to the new form under the proposed Rule, we have serious concerns that parties and attorneys, as well as courts, will view the Initial Case Management Statement as a substitute for what is now the ICMC Data Sheet. Our Committee has been drafting proposed standards which we hope to present to the Judicial Council in January. Those standards reference the use of a ICMC Data Sheet as described in this letter.

Requiring that the Initial Case Management Statement be filed will make it a pleading that will be binding on the parties and requires a filing fee. The effect of this amendment will likely be that ICMC Data Sheets will not be provided to the Court in advance of the Initial Case Management Conference, leaving the court with only the first-filed pleading to use in preparing for the Conference. Parties who will file the Initial Case Management Statement in advance of the ICMC will be preparing a pleading that is binding on them with very little turnaround time, and respondents, who previously did not pay a filing fee to submit their ICMC Data Sheets, will now have one imposed on them.

Our Committee's recommendations are as follows:

- Do not change Rule 304.02. Those jurisdictions that do still use Informational Statements may continue to do so. Those that do not use Informational Statements will not be affected.
- In the alternative, change the proposed rule to read as follows:  
If the court requires, the parties shall file a Case Management Statement that substantially conforms to the form developed by the state court administrator. This form is not intended to replace the ICMC Data Sheet in counties using Early Case Management/Early Neutral Evaluation.

If you have any questions or require additional information, please feel free to contact either or both of us.

Thank you for your consideration.

*Sharon Hall*

**Hon. Sharon Hall**  
District Court Judge

*Sally Tarnowski*

**Hon. Sally Tarnowski**  
District Court Judge

On behalf of and as Co-Chairs of the Statewide Steering Committee on Early Case Management/  
Early Neutral Evaluation

# AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

## Minnesota Chapter

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November 14, 2011

Bridget Gernander, Clerk of the Appellate Courts  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Re: Proposed Amendments to General Rules of Practice

Dear Ms. Gernander:

The AAML Minnesota Chapter thanks the Court for the opportunity to comment on the proposed changes to the General Rules of Practice as presented in the report dated September 28, 2011. The AAML MN commends the Committee on its herculean efforts in reviewing the work of the Divorce Camp attendees and incorporating many of the changes that diverse group recommended as well as the thoughtful contributions from the family law community.

The AAML MN believes strongly that these changes are necessary to address the changing demands on Family Court in Minnesota. The increasing pro se constituency and the increasing costs of litigation put even more demands on these Rules to be understandable and applicable to current practice.

The AAML reviewers noted some non substantive, clerical corrections which are noted on the attached errata sheet. AAML MN supports the revisions recommended except for the revisions to Rule 303.05.

First, we are concerned that because of the cost and inconvenience that Orders to Show Cause can generate, the use of such Orders should be reduced when at all possible. There has been a history of obtaining these Orders when they were not necessary.

With the new processes in place in most counties, interim support is available early in the process through the early case management systems. Also emergency relief can be obtained that does not require an Order to Show Cause. Based on current practice, we propose deleting section (b) of Rule 303.05.

Also section (c) of Rule 303.05 is already covered in the language in the first paragraph which states "Such orders may require production of limited financial information." There are many other ways to obtain limited financial information including the expanded availability of a subpoena so that an Order to Show Cause is not required.

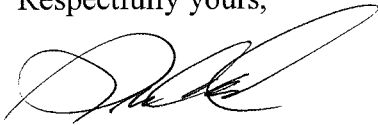
Ms. Bridget Gernander  
Clerk of Appellate Courts  
November 14, 2011  
Page 2

We propose the last paragraph regarding signing out of orders be deleted. This is a practice not followed in all counties, it is cumbersome, and incurs additional court administration costs.

Finally, it would appear that the language in Rule 309.01, is inconsistent with the requirements of Rules 303.05. Rule 309.01(a) provides that the court may issue an order to show cause without notice to the alleged contemnor if the "supporting affidavits credibly raise an issue of contempt." Rule 303.05 requires that an order to show cause be obtained in the same manner specified for ex-parte relief in Rule 3, which is a different standard. The standards should be consistent between the rules.

Thank you for the opportunity to comment.

Respectfully yours,

A handwritten signature in black ink, appearing to be "Susan C. Rhode", written in a cursive style.

Susan C. Rhode  
Michael D. Dittberner  
Debra E. Yerigan

AAML MN

Suggested clerical corrections:

Page	Line #	Correction
24	484	court determination of the existence of the parent and child relationship <b>or</b> in situations [ <i>there are two separate situations, the rule does not contemplate both situations exist.</i> ]
25	485	Where a court has <b>ordered</b> that no [typographical error]

November 14, 2011

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**VIA MESSENGER**

Bridget Gernander  
Clerk of the Appellate Courts  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

**RE: September 28, 2011 Report of the Minnesota Supreme Court  
Advisory Committee on the General Rules of Practice**

Dear Ms. Gernander:

The Family Law Section of the Minnesota State Bar Association has voted to endorse the recommendations for amendments to the Rules of Family Court Procedure made by the Minnesota Supreme Court Advisory Committee on the General Rules of Practice in their Report dated September 28, 2011, with two minor caveats. We thank the committee for their hard work in researching, reviewing and making these proposed amendments, which will help bring the practice of family law and adjudication of the family law actions into the 21<sup>st</sup> century. What follows is a detailed explanation of our proposed revisions to the Committee's draft of proposed Rules 303.03(a)(1) and 303.05.

**Proposed Rule 303.03(a)(1) Motion Practice** (service of initial motion "on all parties")

**Requirements for motions**

- (1) *Moving Party; Supporting Documents, Time Limits.* No motion shall be heard unless the moving party pays any required motion filing fee, properly serves a copy of the following documents on all parties and files them with the court administrator at least 14 days prior to the hearing:
- (i) Notice of motion and motion in the form required by Minn. Gen. R. Prac. 303.01 and 303.02;
  - (ii) Relevant signed, sworn and notarized affidavits and exhibits; and

Bridget Gernander  
Clerk of Appellate Courts  
November 14, 2011  
Page 2

(iii) Any memorandum of law the party intends to submit.

Reason for proposed revision to committee draft of September 28, 2011: The reference to "service on all parties" that is currently in Rule 303.03 (a)(2)(service of motion pleadings raising new issues) and Rule 303.03(a)(3)(service of responsive motion pleadings) should likewise be included in Rule 303.03 (a)(1)(service of initial motion pleadings).

**Proposed Rule 303.05 Orders To Show Cause** (discouraging the use of orders to show cause)

~~Orders to Show Cause shall be obtained in the same manner specified for ex part relief in Rule 3 of these Rules. Such orders may require the production of limited financial information. An~~  
order to show cause shall be issued only where the motion seeks a Finding of contempt under Rule 309 or the supporting affidavit makes an affirmative showing of:

- (a) need to require the party to appear in person at the hearing,
- ~~(b) a need for interim support is warranted, or~~
- (b) the production of limited financial information is deemed necessary by the court,  
or
- (c) a need for the issuance of an order to show cause, subject to the discretion to the  
discretion of the judge

~~All orders to show cause must be appropriately signed out for service. A conformed copy of the order shall be retained by the court administrator in the file.~~

Reasons for proposed revisions to committee draft of September 28, 2011:

- (1) We are recommending that the first sentence be eliminated, which states that orders to show cause shall be obtained in the manner specified for ex parte relief in Rule 3 of the Rules of General Practice. If the sentence is not deleted, it would require giving notice to the opposing party of intent to seek order to show cause or, in the alternative, an explanation to the judicial officer as to why no notice should be given. Orders to show cause are not as significant as ex parte orders because they do not grant any substantive

Bridget Gernander  
Clerk of Appellate Courts  
November 14, 2011  
Page 3

relief, and therefore should not be subject to the same notice requirements. The first sentence is also in conflict with the new proposed language for Rule 309.01 which states: "Pursuant to Rule 303.05 an Order to Show Cause may be issued by the court without notice to the alleged contemnor provided the supporting affidavits credibly raise an issue of contempt."

- (2) The second sentence of the committee's proposed language, i.e., "[s]uch orders may require production of limited financial information" should also be deleted, because it is redundant in light of the fact that the need for limited financial information is a listed ground for the issuance of an order to show cause in the language which follows the first paragraph of proposed Rule 303.05.
- (3) The phrase "need for interim support" should be stricken as one of the grounds for the issuance of an order to show cause. Interim financial support orders, should they ever be warranted, more appropriately fall under the rubric of requests for emergency financial relief rather than orders to show cause. In addition, such orders really do not fit that well within our current "income shares" child support system. Under the old child support system, an obligor could be ordered to pay a certain percentage of their net income. Even then, such orders to show cause were rarely granted. Given the adoption of the income shares statute for calculation of child support, there is no justification for providing for the issuance of interim financial support orders in the form of orders to show cause.
- (4) The last two sentences of proposed Rule 303.05, which deal with the practice of signing out orders to show cause for service on an opposing and the retention of a conformed copy in the court file, should be deleted given the practice in many counties of not requiring the signing out of orders to show cause for service.

Sincerely,



Michael Dittberner, Esq.  
On Behalf of the Family Law Section of the Minnesota State Bar Association  
Linder, Dittberner & Bryant, Ltd.  
3205 West 76<sup>th</sup> Street  
Edina, Minnesota 55435-5244

cc: Susan Rhode, Esq.  
Deb Yerigan, Esq.  
Michael Johnson, Esq., Senior Legal Counsel, Legal Counsel Division, State Court Administration  
Steve Snyder, Esq., Chair, MSBA Family Law Section

DAKOTA COUNTY ATTORNEY'S OFFICE  
JAMES C. BACKSTROM  
COUNTY ATTORNEY

OFFICE OF  
APPELLATE COURTS

NOV 14 2011

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CHILD SUPPORT ENFORCEMENT DIVISION  
DAKOTA COUNTY NORTHERN SERVICE CENTER  
ONE MENDOTA ROAD W., SUITE 220  
WEST ST. PAUL, MINNESOTA 55118  
(651) 438-4438

TO: Bridget Gernander, Clerk of the Appellate Courts

FROM: Sandra M. Torgerson, Division Head, Dakota County Attorney's Office Child Support Enforcement Division *SMT*

RE: Comment In Opposition To Proposed Change to Minnesota Rules of General Practice Rules of Family Court Procedure Rule 309.01

DATE: November 14, 2011

The following comments are provided in opposition to the amendment of Rule 309.01(b)(5).

Proposed Rule 309.01(b)(5) provides that the notice of contempt motion or the order to show cause shall contain at least the following:

(5) a date to appear for a Rule 309.02 hearing no later than 30 days subsequent to the issuance of the notice of motion or order to show cause.

This proposed rule requires that the hearing be held on a date no later than 30 days after date of the notice of motion or order to show cause. This rule creates a very limited time period during which proper service and filing of the motion or order to show cause can be effectuated.

The contempt motion or order to show cause must be personally served<sup>1</sup> upon the alleged contemnor and filed with court administration at least 14 days prior to the hearing.<sup>2</sup> The

---

<sup>1</sup>Current and proposed Rule 309.01(a). Contempt proceedings shall be initiated by notice of motion and motion or by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.



rules therefore require the moving party achieve personal service in approximately 7 to 10 days from the signature date of the motion or order to show cause.<sup>3</sup> This window of opportunity to achieve personal service is shortened even further if a holiday falls within the period during which service is attempted.<sup>4</sup> In cases where all parties are cooperative, such a limited period in which to achieve personal service may not be problematic. However, in cases involving nonpayment of child support, which often involves uncooperative alleged contemnors, such a limited time period creates an unintended, prohibitive barrier to achieving proper service.

The Dakota County Attorney, as counsel to the Dakota County Child Support Office, initiates a significant number of civil contempt motions for nonpayment of child support.<sup>5</sup> Achieving personal service upon noncompliant child support obligors is frequently difficult and may require repeated attempts by the process server to effectuate personal service. For example, such obligors typically cannot be served at a place of employment or contacted through a private attorney for purposes of arranging service. While counsel may be later appointed or retained, at the time of service child support contemnors are typically unrepresented.

The proposed rule should be adjusted to permit sufficient time for the initiating party in a child support contempt case to complete the following steps prior to the hearing date:

- a. obtain the signed Order to Show Cause;
- b. transmit the pleadings to a process server;
- c. achieve personal service upon the alleged contemnor;
- d. receive the completed Affidavit of Service from the process server; and
- e. file the documents with court administration no later than 14 days prior to the hearing.

---

<sup>2</sup> Proposed Minn. R. Gen. P. 303.03 (a)(1) No motion shall be heard unless the moving party pays any required motion filing fee, properly serves a copy of the following documents and files the original them with the court administrator at least 14 days prior to the hearing.

<sup>3</sup> See attached sample calendar. A one week period would be typical, allowing for minimal internal processing times for obtaining the OTSC and transmittal of the pleadings to the process server.

<sup>4</sup> Minn. Stat. § 645.44, subd. 5 provides that no civil process may be served on a holiday.

<sup>5</sup> In Dakota County on each Monday a district court calendar is dedicated to civil contempt matters initiated by the Dakota County Attorney's Office. In 2010, the Dakota County Attorney's Office appeared at 557 hearings on the civil contempt calendar.

A service window of 7 to 10 days is impracticable. Dakota County's experience is that a two-month lead time from the date of the motion or order to show cause is usually needed so as to complete these steps and timely file the documents at least 14 days prior to the hearing date.

The proposed rule may also increase costs to the public and the court system. The initiating party may incur higher service costs, as some process servers charge higher rates for attempting service on a "rush" basis. The proposed rule may lead to the necessity of multiple, sequential orders to show cause and rescheduling of hearings, because perfection of personal service upon this group of contemnors is very challenging. The administrative burden on the County Attorney, the bench and court administrators will be increased. The purpose of civil contempt for nonpayment of child support is to force parents who are able to pay child support to actually pay the child support. The ultimate burden of such a proposed rule will fall upon the parent and child to whom the child support is owed.

### CONCLUSION

Proposed Rule 309.01(a)(5) should be deleted. In the alternative, the rule should be amended so as to permit at a minimum a 45 day window of opportunity to achieve personal service of civil contempt child support motions prior to the deadline for filing of documents. A date 45 days prior to the filing deadline is approximately 60 days prior to the date of the hearing. A 30 day period is not a viable period with regard to civil contempt child support motions.

November 2011 Calendar - Sample time frame impact.

~ November 2011 ~						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		<b>1</b> Order to Show Cause signed by Judge, with hearing date 11/28. (Nov. 28 <sup>th</sup> is latest possible Dakota County Monday contempt calendar date available within 30 day time frame.)	<b>2</b> Signed Order to Show Cause transmitted to and received by County Attorney's Office. Pleadings immediately sent to process server for purposes of personal service.	<b>3</b> Pleadings received by process server for personal service. Example assumes next day receipt. However, next day receipt may not always be feasible.	<b>4</b> Day 1 personal service could be attempted.	<b>5</b> Day 2 personal service could be attempted.
<b>6</b> Day 3 personal service could be attempted.	<b>7</b> Day 4 personal service could be attempted.	<b>8</b> Day 5 personal service could be attempted.	<b>9</b> Day 6 personal service could be attempted.	<b>10</b> Day 7 personal service could be attempted, <i>so long as affidavit can be returned for timely filing.</i>	<b>11</b> Affidavit of Service must be received by County Attorney's Office to allow time for preparation for filing. In November, Court and County offices closed for Veterans Day holiday and information needed to be received the 10 <sup>th</sup> , or early on the 14 <sup>th</sup> to permit timely filing on 11/14.	<b>12</b>
<b>13</b>	<b>14</b> 14 <sup>th</sup> day prior to hearing. Documents must be filed with Court Administration.	<b>15</b> 13 days prior to hearing	<b>16</b> 12 days prior to hearing	<b>17</b> 11 days prior to hearing	<b>18</b> 10 days prior to hearing	<b>19</b> 9 days prior to hearing
<b>20</b> 8 days prior to hearing	<b>21</b> 7 days prior to hearing	<b>22</b> 6 days prior to hearing	<b>23</b> 4 days prior to hearing	<b>24</b> 4 days prior to hearing	<b>25</b> 3 days prior to hearing	<b>26</b> 2 days prior to hearing
<b>27</b> 1 day prior to hearing	<b>28</b> Contempt Hearing.	<b>29</b>	<b>30</b>			

OCT 19 2011

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**Kathleen M. Murphy**

ATTORNEY AT LAW

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km@kmurphyllaw.com

---

October 17, 2011

Bridget Gernander  
Clerk of the Appellate Courts  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

Re: Minnesota Supreme Court Advisory Committee on General Rules of Practice,  
Proposed Amendments to Family Court Rules

Dear Ms. Gernander:

Enclosed please find 12 copies of my comments regarding the proposed amendments to the Family Court Rules recommended by the Minnesota Supreme Court Advisory Committee on General Rules of Practice (Committee). My comments relate solely to Rule 303.03(c).

I wish to bring to the Committee's attention that this proposed provision may create unintended consequences for pro se parties and create a chilling effect on this population's access to and use of the courts to resolve their family law issues. The Committee's proposed language is:

Rule 303.03 (c). Settlement Efforts:

(c) Settlement Efforts. ~~No motion, except a motion for temporary relief, will be heard unless the parties have conferred~~ Except in parentage cases when there has been no court determination of the existence of the parent and child relationship and in situations where a court has order that no contact occur between the parties, the moving party shall, within 7 days of filing a motion, initiate a settlement conference either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. ~~The moving party shall initiate such conference. In matters involving post-decree motions, if the parties are unable to~~

~~resolve their differences in this conference they shall consider the use~~ the issues  
raised. This conference shall include consideration of an appropriate ADR process  
~~under Rule 114 to attempt to accomplish resolution.~~ The moving party shall certify  
to the court, ~~before the time of the hearing,~~ compliance with this rule or any reasons  
for not complying, ~~including lack of availability or cooperation of opposing counsel.~~  
The moving party shall file a Certificate of Settlement Efforts in the form developed  
by the state court administrator not later than 24 hours before the hearing. Unless  
excused by the Court for good cause, no motion shall be heard unless the parties have  
complied with this rule. Whenever any pending motion is settled, the moving party  
shall promptly advise the court.

I believe that compliance with this provision may be unfairly burdensome for pro se parties and difficult for the courts to enforce unless ADR becomes institutionalized in the self-help systems currently operating in the Minnesota courts. Currently, the self-help centers primarily assist pro se litigants with forms and procedures connected to litigation (summons, petition, motions,...). If ADR is to be added to the mix for pro se parties, it must be done in a planned and thoughtful manner. Otherwise, pro se litigants are unlikely to internalize the requirement that they try to settle before appearing for their day in court.

I have been volunteering at the Family Law Self Help Center in the Fourth District for years and can personally attest to the confusion, frustration, and hopelessness that most clients present when they bring their problems to the consulting attorneys. Most pro se clients at the self-help center live from crisis to crisis. Their relationships with opposing parties are far beyond broken. Locating the self-help center and articulating a (usually) very complex problem to a stranger is already a significant accomplishment for many of these clients. Without sufficient orientation of pro se parties about settlement negotiations and procedural support to help them comply with the proposed requirement, this provision is a setup for failure and may unintentionally reduce, not increase, access to the courts for low income persons.

While I am not advocating that all pro se parties simply be exempted from this mandate, I do urge the Committee to acknowledge this concern – perhaps in the Advisory Committee Comments. My proposed language for the Comments is below and highlighted in yellow. Note also that I am proposing a few word changes to the Comments to make it consistent with what I believe is the Committee’s intent:

### Advisory Committee Comments—2011 Amendments

Motion practice in family law matters is intended to mirror, where appropriate to the needs of family law issues, the procedures followed generally in civil cases in Minnesota courts. The prevailing practice in Minnesota courts is for the submission of evidence relating to motions by written submissions, with sworn testimony provided by affidavit, deposition, or other written submissions. Rule 303.03(d)(1) restates that rule. The balance of Rule 303.03(d) addresses the process to request leave to present oral testimony in the limited circumstances where it may be appropriate. Minn. Stat. § 518.131, subd. 8, provides for allowing oral testimony upon demand of a party in requests for a temporary order or restraining order.

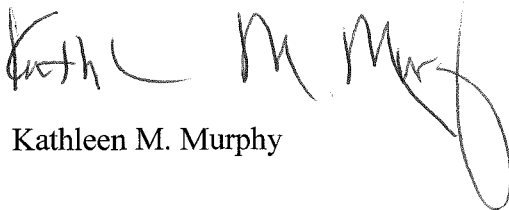
Rule 303.03(a)(5) makes it clear that the stringent timing requirements of the rule need not be followed on post-trial motions, such as a motion for a new trial or for amended findings made shortly after the conclusion of trial. *See* Minn. R. Civ. P. 52 & 59. This change is made to continue the uniformity in motion practice between family court matters and general civil cases, and is patterned on Minn. Gen. R. Prac. 115.01(c). Support, spousal maintenance, and custody modification motions, often brought months or years later, are subject to the general timing rules for motions.

The requirement in subsection (c) of an attempt to resolve motion disputes requires that the efforts to resolve the matter be made ~~concluding~~ prior to the hearing, but not before bringing the motion. The rule requires the moving party to initiate settlement efforts. If the motion is resolved, subsection (c) requires the parties to advise the court immediately. The Committee acknowledges the potential for additional challenges that mandated settlement efforts may create for pro se parties. However, because settlement efforts are central to the procedure for resolving family law issues, compliance with this provision, within reason, is expected of all parties.

The rule explicitly addresses the requirement for paying a motion filing fee. Since 2003, Minnesota law requires a fee for “filing a motion or response to a motion in civil, family, excluding child support, and guardianship case.” *See* Minn. Stat. § 357.021, subd. 2(4).

Thank you to the Committee for your work, and thank you for the opportunity to comment.

Sincerely,



Kathleen M. Murphy

Cc: Susan LeDray, Self Help Center Administration, Fourth Judicial District