C6-84-2134

STATE OF MINNESOTA
IN SUPREME COURT

In re:

Supreme Court Advisory Committee on Rules of Civil Procedure

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

Final Report

October 6, 2000

Hon. Paul H. Anderson, Chair

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Reporter

ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Summary of Committee Recommendations

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

Specific Rule Amendment Recommendations

The recommendations in this report are briefly summarized as follows:

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

A Concern for Further Consideration

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

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

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

Effective Date

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

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

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

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

Introduction

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

Specific Recommendation

RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

* * *

Rule 5.04. Filing; Certificate of Service

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

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

Advisory Committee Comment—2000 Amendments

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

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

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

Introduction

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

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

Dissent of Douglas D. McFarland

> I dissent from the committee's recommended amendment to Rule 10.01 because the sentence as drafted will cause confusion. The sentence requires the name of the trial judge to be placed in the caption "adjacent to the file number." Nowhere does the rule require the file number to be in the caption.
>
> Federal Rule 10(a) requires a file number in the caption, but Minnesota Rule 10.01 departs from the federal rule in requiring instead a case type indicator, which is to be in the upper right hand corner. It would make sense to say the name should be "adjacent to the case type indicator" instead of "adjacent to the file number." Another alternate drafting would be to end the sentence following the word "caption." That alternative would offer no guidance on placement, but that lack of guidance could not be a problem of any size.

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

Specific Recommendation

RULE 10. FORM OF PLEADINGS

Rule 10.01. Names of Parties

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

Advisory Committee Comments—2000 Amendments

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

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

Introduction

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

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

Specific Recommendation

RULE 59. NEW TRIALS

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Rule 59.03. Time for Motion

A notice of motion for a new trial shall be served within ~~15~~ 30 days after a general verdict or service of notice by a party of the filing of the decision or order; and the motion shall be heard

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

Advisory Committee Comment—2000 Amendments

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

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

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

RULE 50. MOTION FOR A DIRECTED VERDICT; JUDGMENT NOTWITHSTANDING VERDICT; ALTERNATIVE MOTION

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Rule 50.02. Judgment Notwithstanding Verdict

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

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

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

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

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

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

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

Advisory Committee Comment—2000 Amendments

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

RULE 52. FINDINGS BY THE COURT

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Rule 52.02. Amendment

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

Advisory Committee Comment—2000 Amendments

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

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

Introduction

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

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

Specific Recommendation

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

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Rule 63.03 Notice to Remove

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

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

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

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

Advisory Committee Comments— 2000 Amendments

Rule 63.03 is amended to make clear the fact that a judge specially assigned by the Chief Justice to hear cases originally pending in more than one district cannot be removed by mere filing of a notice to remove. This amendment is a companion to the amendment of Rule 113.03 of the Minnesota General Rules of Practice in 2000, effective January 1, 2001, to provide a formal mechanism for requesting the Chief Justice to make such an assignment. This rule codifies the existing practice in special cases such as special assignment of a judge by the Chief Justice. The rule makes it clear that even a judge assigned by the Chief Justice may be removed for cause.

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

Introduction

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

Specific Recommendation

RULE 65. INJUNCTIONS

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Rule 65.04 Form and scope of injunction or restraining order

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

Advisory Committee Comments— 2000 Amendments

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